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# Effectiveness of Handling Cartel Cases by the Business Competition Supervisory Commission (KPPU)

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**Abstract.** One of the prohibitions in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition is "cartel." The impact caused by the cartel can not only lead to unfair competition between business actors. However, it can also cause consumer losses due to price increases resulting from the cartel of a product or service. This study aims to analyze the problem regarding the effectiveness of handling cartel cases by the Business Competition Supervisory Commission (KPPU) and what factors impede the handling of cartel cases by the Business Competition Supervisory Commission. This research was conducted using the Juridical method by reviewing applicable laws and regulations, and documents such as case decisions. From the results of studies and interpretations, the handling of the Cartel by the Business Competition Supervisory Commission is still not effective because several cases of business actors were finally decided not to have committed violations. The court annulled several decisions of the Business Competition Supervisory Commission. In contrast, the factors hindering the handling of cartel cases are the lack of public awareness to report the activities of several business actors that lead to cartel indications, the difficulty of obtaining evidence, and several KPPU decisions being annulled by the court at the objection level. This research is intended to produce recommendations to improve the process of handling cases of violations of monopoly practices and unfair business competition, especially cartels.

## 1 Introduction

Some of the things behind the birth of Law Number 5 of 1999, concerning the Prohibition of Monopolistic Practices and Unfair Competition, are the situations and conditions which were followed by the economic crisis in 1997, many existing challenges and problems, especially in economic development that have not been resolved, in conjunction with the prevailing phenomenon of worldwide trade, as well as the intricate dynamics and progression of the corporate landscape [1]. The commercial opportunities

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that have emerged in the last three decades have not facilitated universal participation and engagement of individuals across diverse economic sectors. [2]. The growth of privately held enterprises during this time frame was, on one side, influenced by various governmental policies that were not quite right so that the market became distorted [3]. On the other side, the growth of privately held businesses is primarily a manifestation of conditions of unfair business competition [4].

Direct and indirect ties between decision-makers and entrepreneurs have helped these phenomena flourish, worsening the problem, the national economy's implementation is monopolistic and does not comply with Article 33 of the 1945 Constitution [5]. Small business players are unable to compete because entrepreneurs with ties to the power elite receive unfair advantages [6]. The factor contributing to the fragility and diminished competitiveness of economic resilience is the emergence of conglomerates and a restricted cohort of influential entrepreneurs who lack the necessary backing of a genuine entrepreneurial ethos. This condition, among other things, is the cause for some business actors who are only supported and influenced by the closeness of the authorities but are not based on professional skills and knowledge in running a business, so in a crisis condition, they are unable to deal with it and eventually go bankrupt [7].

Taking all of this into account, it is clear that Indonesia's business sector needs to be restructured and regulated to promote healthy growth and proper development, foster an environment conducive to fair competition among businesses, and prevent the abuse of economic power by a few individuals or organizations through monopolistic or otherwise unethical means [7]. To avoid the influence of power by giving treatment and unique facilities to certain business actors, regulations are needed that regulate restrictions on state officials and apparatus in business activities. By prohibiting state officials from holding concurrent positions inside and outside the country, they may not directly or indirectly manage business entities [8].

Legal certainty guarantees provided by the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition help speed up economic development and boost social well-being [9]. The Business Competition Supervisory Commission was subsequently established to oversee commercial competition and administer penalties by the legislation. This body is autonomous from the government and other interested parties. Administrative actions are taken, while the Court has the power to take criminal action [10]. Promoting an environment conducive to business growth by establishing equitable competition and guaranteeing equal access to business opportunities for all stakeholders; preventing monopolistic practices arose out of a commitment to economic democracy, which involved weighing the competing needs of business actors and the public interest in formulating the Law on the Prohibition of Monopolistic Practices and Unfair Competition [11].

Thus, the purpose of the act is that every business actor has equal opportunities, participates in the manufacturing or marketing phase of his business activities, and operates in a situation of fair and reasonable competition. In the business world, competition is significant because it can drive the business world and the economy to thrive [12]. Economists argue that competition will determine prices through market mechanisms so that business actors are motivated to innovate their products[13].

o achieve this goal, there are provisions on prohibitions divided into 3 (three) groups, namely groups of agreements, activities, and dominant positions [14]. One of the prohibitions included in the group of the accords is a cartel, where in essence, business actors are prohibited from entering into agreements between business actors (coordination/collusion occurs), which can influence costs through manufacturing and promotional regulation.

The occurrence of this cartel is generally influenced by very tight competition between certain products so that business actors try to coordinate with each other with agreements between business actors to regulate marketing and production strategies. The formation of cartels was triggered by intense market competition [15]. Besides that, cartels give rise to unhealthy competition and can be detrimental to other parties who are not included in the cartel and even impact society. Therefore, the existence of cartels ensures the facilitation of contractual transactions that promote competition. In a manner characteristic of cartels, they concurrently engage in the practice of constraining competition. [16].

The Law still provides exceptions for certain business activities exempt from the Law. Not all monopolies are prohibited, such as monopolies that are born naturally because they are supported by the local climate and natural environment; monopolies that Law permits are not prohibited as individual business activities [17]. Article 33 of the 1945 Constitution grants the state the power of trust, which it uses to regulate industries vital to the nation's economy and the lives of its citizens. The state also owns and manages the land, water, and any natural resources it finds, to maximize the well-being of its citizens. For example, the mining natural resources business sector is controlled by the State through Pertamina, included in setting the price of oil at one price. The Government uses Pertamina for other significant social and political projects, such as the One Price and Fuel policies [8].

To enforce the Law against the Law, an institution has been formed in the form of a commission called the Business Competition Supervisory Commission (KPPU) which is independent. The KPPU is designed to be an independent agency free from government control and interference [18]. Since the enactment of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition with the establishment of an institution authorized to enforce the Law, namely the (KPPU until now, there have been many cases of violations of the Law that have been examined and decided by KPPU, one of which is are cartel cases, such as the cooking oil cartel, tire cartel, beef cartel, and others, but from year to year these cartel violations still occur. This is very unfortunate and needs serious attention to prevent harm to all parties, both the affected business actors and the consumer community. As is well known, the occurrence of a cartel can not only damage competing business actors, but it can also be detrimental to the consumer community in general due to high price increases due to price fixing and marketing or cartels being carried out by several business actors. Cartel is an agreement between one business actor and another to eliminate competition [19].

This study will analyze the problems, namely first, how effective is the handling of cartel cases by the Commission for the Supervision of Business Competition (KPPU)? This research was conducted using the Juridical-Normative method by examining the applicable laws and regulations and documents such as case decisions and information obtained from sources. With primary legal materials, namely: Law Number 5 Year 1999 Concerning Prohibition of Monopolistic Practices and Unfair Competition. The material data and information will be analyzed to conclude the problems raised.

## **2 Research Method**

This article used a normative research approach by Armia [20] that integrates studies of legal principles, legal systematics, legal synchronization, and comparative law. By focusing on the analysis of legal theory, legislation, and court decisions. Normative legal research is a method and approach to scientific inquiry into the law that is grounded in the normative logic of the law [21] by combining the conceptual and statutory approaches. The focus of a statutory approach was on the analysis of relevant statutes and regulations. Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition, as well as KPPU papers and judicial decisions, was the primary source of legal material. To

arrive at results that are both objective and scientifically justifiable, the conceptual method would utilize doctrines in the form of expert legal opinions.

### **3 Discussion and Analysis**

#### **3.1. Procedure for Handling Cartel Cases by the Commission for the Supervision of Business Competition**

Business actors who engage in cartels violate Law Number 5 of 1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition [22]. Violation of the cartel prohibition is an issue that has received sufficient attention from the public because cartels can cause harm to the consumer community, which generally involves commodity products, such as cooking oil, beef, garlic, and others [23]. Cartel practices have become prominent among the anti-competitive conducts prohibited by the Indonesian Competition Law [24].

A cartel is classified as a form of agreement, so a cartel must fulfill the elements of two business actors or groups or more who enter into a contract or agreement to regulate production and marketing to affect prices [25]. The influence of this cartel generally results in high prices due to reduced supply and circulation of goods on the market. In this case, it can be detrimental to the consumer community because they have to pay high prices for goods, and even scarcity of goods can occur. Higher prices make consumers spend more than paying costs obtained through competition mechanisms. Consumers incur losses because they are unable to receive as much value as they would in a competitive market[26].

Business Competition Supervisory Commission (KPPU) is an institution in the form of commission established in the context of law enforcement of Law Number 5 of 1999 About the Prohibition of Monopolistic Practices and Unfair Business Competition [27]. By Presidential Decree No. 75 of 1999 and Presidential Regulation No. 80 of 2008, the Commission for the Supervision of Business Competition (KPPU) (henceforth referred to as the Commission) was founded [28]. The purpose of the KPPU Commission is to ensure that businesses are not engaging in monopolistic or unfair business practices in the course of conducting their daily operations. This Commission operates free from the control of the government or any other entity. As the first door for deciding business competition law cases, KPPU is like a general case court, positioning itself as investigators, public prosecutors, and breakers.

KPPU has the responsibility of enforcing the law, particularly Business Competition Law, but it is not an exceptional judiciary authority [29]. Therefore, KPPU lacks the authority to impose both criminal and civil sanctions. The KPPU is primarily an administrative institution due to the administrative nature of its chief; consequently, the sanctions imposed are administrative[30]. From the regulatory material of the Law on monopolistic practices and unfair competition and its authority, KPPU is more of a public judicial institution. The characteristic of commercial dispute resolution is that it is included in general Law. Even though KPPU is charged with enforcing the law, particularly Business Competition Law, it is not an exceptional judicial institution. The characteristic of commercial dispute resolution is that it is included in general Law [31].

KPPU procedures and case examinations are conducted by procedural Law, which is governed by a separate regulation: KPPU Regulation Number 1 of 2019 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition, which superseded KPPU Regulation Number 1 of 2010 [32]. Besides, it is related to legal remedies for objections to KPPU's decisions regulated in Supreme Court Regulation Number 3 of 2019 concerning Procedures for Submitting Objections to Legal Remedies against KPPU's Decisions.

In handling cases, KPPU conducts examinations of business actors based on reports or without reports [33]. If a review is based on an account, it can come from anyone who knows there has been an alleged violation of the Law. Individuals who possess knowledge of a violation of the Law or have reasonable grounds to suspect its occurrence are able to submit a report to the Commission. Each person referred to is an individual or legal entity, from now on referred to as the *Rapporteur*, with a Report addressed to the Chairperson of the Commission using good and correct Indonesian and signed by the *Rapporteur*, which can be submitted via: a) the Commission headquarters, b) the Commission representative offices in the regions, or c) the online reporting application. The report is presented in writing format, comprising essential elements such as the identification of the Reporting Party and the Reported Party, a comprehensive depiction of the alleged Violation of the Law, and substantiating facts pertaining to the suspected infractions.

While the investigation was conducted on the initiative of the KPPU Commission, the data or information on alleged violations of the Law came from various sources, including but not limited to: the findings of the study, the findings of the inspection process, the results of the Hearing held by the Commission, incomplete reports, news articles, and/or data or other information that can be accounted for.

Clarification results from cases based on reports and research results from claims based on Commission initiatives that meet the requirements are continued to the Investigation stage. KPPU conducts investigations on its industry, which can be carried out based on observation, direct monitoring, or information from various parties or the media. Identifying cartel behavior in competition has an initial indicator in determining a business actor to enter into a cooperation agreement between competitors with similar products to set prices, increase prices, and control specific markets, inhibiting new competitors from entering the market share [34].

The preliminary examination is the first step in a multi-step process by which the Commission Council of the KPPU determines whether or not to conduct a full investigation into a reported infringement. This examination must be completed no later than 30 days after the determination of the preliminary examination (section 39, paragraph 1, of the Law). To determine whether or not there is evidence of violations, the Commission Council conducts a series of actions known as a follow-up examination (if there are indications of Monopolistic activities and unfair commercial competition). This examination must be completed within 60 days of the conclusion of the preliminary inquiry (article 43 v. 1 Law No. 5), with a 30-day extension possible (article 43 v. 2 Law). The Commission's decision is the Council's evaluation of whether or not a breach has occurred and the implementation of consequences in the form of administrative measures by the Law; it is announced in a public session. The deadline for this judgment is 30 days after the follow-up examination has been completed (Article 43, paragraph 3, of Law No. 5/1999). Article 43(4) of the Law mandates that the decision be read aloud in a public session and promptly communicated to relevant business players.

In opposition to the decision made by the KPPU, business entities that have been terminated and penalized have the option to seek legal recourse by submitting objections to the Commission's Decision within a maximum period of 14 days subsequent to the receipt of excerpts and copies of the Commission's Decision, as well as its announcement on the Commission's official website. Originally the objection was submitted to the District Court where the Business Actor's legal domicile is. However, the objection was filed with the Commercial Court of the District Court after the passage of Law No. 11 of 2020 about Job Creation, which was subsequently repealed by Perpu No. 2 of 2022 on Job Creation. The granting of authority to handle business competition disputes in the Commercial Court due to objections to the KPPU's decision shows that the KPPU's dispute is a commercial dispute [31].

Cases being investigated and decided by KPPU are investigation cases for violations of one of the prohibitions in the Law, namely those related to price fixing and cartels, which are specifically regulated in Article 11 [33]. It asserts that competing companies in a given market cannot collude to lower their competitors' pricing while maintaining or improving their product's quality. Article 11 regulates the prohibition of cartels, which states that businesses may not make deals with their rival businesses to control the supply and/or demand for a product or service in order to manipulate market prices in a way that could lead to monopolistic behavior or unfavorable commercial rivalry. This article forbids competitors from entering into an agreement that includes arrangements for the production and/or marketing of goods and/or services with the intent to affect prices, as this would discourage healthy economic competition and lead to monopolistic practices.

Both of these articles regulate the prohibition of an agreement or agreement entered into by several business actors that can affect prices and can have an effect on unreasonable prices. In particular, cartel agreements entered into by two or more business actors can influence and cause high prices due to limited or even scarcity of goods due to restrictions on production and marketing carried out by several business actors on a product. This, of course, can not only lead to unhealthy competition between competing business actors, but it can also harm consumers and disrupt economic stability. Prohibited forms of cartel agreements are agreements on production levels, price levels, and marketing areas for certain goods, services [35].

In general, there are several characteristics of a cartel, including there is a conspiracy in the form of an agreement between several business actors, involving executive heads from companies involved in attending meetings and making agreements, involving associations or organizations between several companies, carrying out price fixing or price fixing, followed by marketing arrangements to consumers or territorial division or production arrangements, threats or sanctions for members who violate and do not comply with the agreement in the agreement, the distribution of information to all company members who agree to form a cartel, the existence of a mechanism to ensure member compliance with decisions that have been approved. The cartel encompasses a range of activities, including the management of production and the implementation of horizontal pricing strategies [36].

This cartel can lead to scarcity of goods and price increases for goods needed by consumers; this is detrimental to consumers and dangerous to economic development because cartels cause inefficiencies in natural and human, and financial resources. For this reason, cartels need to get serious attention through prevention and law enforcement and by giving strict sanctions to business actors deliberately involved in the cartel. However, dealing with cartels is not easy. Cartel business actors also have ways and strategies to avoid cartel evidence, such as regular meetings, agreements to make arrangements, and other matters that will serve as evidence for competition law enforcers. In studying business competition cases, there are two types of evidence: direct and indirect. The application of these two types of evidence is due to the difficulty in obtaining direct evidence, such as witness statements, business actor statements, and letters or documents proving the occurrence of business competition, especially cartel violations [37].

For this reason, in handling cartel cases, methods or models of cartel proof have been used through the utilization of indirect evidence, which encompasses various economic analyses, it is possible to establish a correlation between different economic phenomena. This correlation can be substantiated by a comprehensive compilation of evidence, thereby demonstrating the existence of a cartel. Furthermore, this approach allows for the identification of the extent of community losses resulting from such practices [38]. In this particular scenario, the task of locating written agreements or other forms of documentation that expressly delineate agreements pertaining to pricing, marketing territories, and the manufacturing of goods and services among corporate entities poses a challenge for KPPU.

Hence, in order to establish the existence of a cartel, it becomes necessary to rely on indirect evidence[39]. When handling cases, KPPU often encounters obstacles in establishing claims with direct and indirect evidence [23]. Article 42 does not govern indirect evidence in the form of communication evidence and economic evidence in this particular situation. [40]. Multiple decisions made by the KPPU have demonstrated a preference for utilizing indirect evidence when addressing instances related to business competition, particularly those involving cartels.(Franciska Lestari Simanjuntak, 2019). In practice, in several cartel cases, KPPU uses indirect evidence, which can be seen in the case of KPPU's Decision Number 24/KPPU-I/2009 with 21 (twenty-one) private companies conducting activities in the bulk oil market which, based on the KPPU's findings, have carried out cartel violations, in which indirect evidence is carried out, by gathering communication evidence, economics evidence, and facilitating practices[42].

The Commission for the Supervision of Business Competition issued Regulation No. 4 of 2010 on Guidelines for the Implementation of Article 11 Concerning Cartels Based on Law No. 5 of 1999 Prohibiting Monopolistic Practices and Unfair Business Competition to aid in the handling of cartels. These guidelines, among other things, contain matters that need to be considered in analyzing the existence of a cartel. Evidence To demonstrate the existence of a cartel in an industry, KPPU must attempt to collect several parts of evidence by demanding documentation in hard copy or electronic format, presenting witnesses, and conducting field investigations. If necessary, cooperation with the authorities, specifically the police, will be utilized to surmount obstacles in obtaining the desired evidence.

In certain cases, several pieces of evidence for handling cartel cases include:[38]: 1. The documentation or archival records pertaining to agreements on pricing, quotas for production, or the allocation of marketing territories. 2. The archival materials or official documents including price lists disseminated by specific commercial entities during previous time intervals, which may encompass yearly or semi annual periods. The available data include information regarding pricing fluctuations, production quantities, and sales volumes throughout many marketing regions at various time intervals, such as monthly or yearly periods. 4. Data pertaining to production capacity. The data pertaining to operating profit, either in isolation or in conjunction with overall company earnings, exhibits a correlation. The findings of the data processing analysis indicate a significant surplus in profits. The outcomes of the data analysis conducted on intentional parallelism encompassing pricing coordination, production quotas, and partition of marketing areas. The financial statements of the company for each implicated person throughout many preceding periods are purportedly available in the data. The available data pertaining to the shareholders of each firm purportedly implicated, including any modifications in their ownership. 10. Testimonials from diverse entities pertaining to the communication, coordination, and information sharing among participants of the cartel. 11. Testimonials provided by customers or affiliated entities on price adjustments that exhibit a consistent pattern among vendors under suspicion of engaging in cartel activities. 12. Testimonies provided by current or former workers of the organization who are purportedly implicated, pertaining to the existence of business rules that are in accordance with agreements within the cartel. 13. The existence of causes driving cartels is supported by many forms of evidence, including documents, recordings, and testimonials, which align with the identified indicators.

After applying the Rule of Reason, after sufficient evidence has been obtained, the next step is to prove it and determine whether a cartel has taken place, which is prohibited under the Law by business actors. To confirm whether there has been a cartel that Law prohibits, it is necessary to examine the reasons business actors agree to a cartel. Business competition law enforcers, in this case, the Business Competition Supervisory Commission (KPPU), must read and decide whether the reasons given by business actors to engage in

this cartel are reasonable restraint so that no elements of the Cartel are prohibited or the reasons put forward by business actors are not acceptable, so it is a cartel agreement that Law prohibits.

There are a number of telltale signs that indicate the presence of a cartel, including: a. There are indications that production of products and/or services is slowing down or that prices are rising, b in agreements between business actors containing conspiracies that aim to reduce or even kill competition, c. Have sufficient market share (market power) to influence the market, thus having the ability to abuse said market power, d. There is strong evidence of considerable efficiency, e. There is a reasonable necessity that the actions of the cartel actors are indeed necessary to gain profits, f. Balancing test, measurement of the benefits obtained through the cartel, with the resulting losses [43].

If based on the legal relationship in a cartel is a legal relationship agreement between business actors, then to prove the existence of a cartel, it must be proven that there is a legal relationship agreement between business actors that contains an agreement to regulate production and marketing, which then results from the implementation of the cartel can affect prices are generally high prices, thus harming consumers [44]. To prove that there has been a legal agreement relationship between business actors in the cartel, it is not required to be in written form. However, it can only be verbal, through direct communication, telecommunication, or telephone letters. It can even be seen in the behavior between business actors in a particular activity, for example, when a sport or meeting is in action.

One example of a tire cartel case, the evidence contained in the alleged cartel practice case in the tire industry case, is the Minutes of the APBI Presidium Meeting.[45]. Cartels are generally carried out secretly among members; the agreements they make are usually carried out in certain activities such as sports or meetings. The inherent collaboration exhibited by the cartel posed significant challenges in procuring evidence from the KPPU, which serves as the national competition authority [46]. In this case, according to the principle of contract law, which adheres to the consensual principle, the most important thing is that there has been an agreement/agreement of will or consensus between business actors. This is similar to the evidence that was carried out in the cooking oil cartel case, as one of the considerations of the KPPU Commission Council that KPPU found evidence of communication between companies engaged in the bulk cooking oil business in the form of direct or indirect meetings on 29 February 2008 and 9 February 2009 discussing prices, production capacity and production cost structure[47].

The evidence requires other evidence to support and strengthen the confidence of KPPU judges in deciding cases. In order to streamline the evidentiary procedure at KPPU, the utilization of indirect evidence should be supplemented by additional evidence, as the Indonesian legal system adheres to the principle of "unus testis nullus testis," which stipulates that a single piece of evidence is insufficient. This principle necessitates the inclusion of corroborating evidence to support the initial evidence [23].

Even though in the end, the KPPU's decision in the case of the Violation of the Cooking Oil Cartel was annulled by the Court and the Supreme Court. Of the several Cartel cases that were canceled in general because they were related to alleged violations alleged by KPPU, they were deemed unable to be proven in court. As in the case of the cooking oil cartel, the Court canceled it because KPPU in its decision used indirect evidence, alias indirect evidence, which cannot be used as evidence and is not recognized in the Law on Evidence of Business Competition[48].

The Court canceled the Chicken Meat Cartel because there was no evidence of an agreement to regulate prices or services, which led to violations of business competition. Early abandonment is an instruction in the form of a letter from the Ministry of Agriculture through the Director General of Animal Husbandry and Animal Health, Ministry of

Agriculture of the Republic of Indonesia regarding the adjustment of the parent stock population and is carried out openly and supervised by the Cros Team, including the Joint Association, Universities and the Government[49].

Of the several KPPU decisions that were annulled, they were generally due to weak evidence used as a basis for consideration of decisions. Obtaining strong evidence of the existence of an agreement containing an agreement to regulate production and marketing within a cartel is not easy, because the agreement is generally not made directly in written form, but is carried out through certain activities such as sports activities or other meetings.

### **3.2 The effectiveness of handling cartel cases by the Business Competition Supervisory Commission (KPPU)**

Cartels are detrimental to consumers and the economic development of a nation because cartels lead to inefficiencies in natural resources, human resources, and other financial resources. A cartel exists due to an agreement between business actors in a particular product by regulating marketing and production, resulting in a high market price. As happened in a case, for example, The members of the cartel are subject to a prohibition that restricts them from engaging in the sale of their products at prices that fall below the mutually decided minimum price [50]. The management of cartels by corporate competition institutions across different regions is undergoing rapid evolution to address the growing intricacies associated with cartel-related challenges. Various business entities have strategically evaded the scrutiny of competition agencies in order to circumvent the gathering of incriminating information related to cartels, including regular meetings, agreements to coordinate activities, and other actions that often serve as evidence for enforcement of competition laws. In this context, a model for establishing the existence of a cartel was constructed based on indirect evidence. This approach involved employing diverse economic analysis findings to establish a correlation between different economic phenomena. Consequently, this comprehensive body of evidence substantiated the presence of a cartel, revealing numerous detrimental effects on society.

Cartels are extremely risky because they have the potential to engage in monopolistic behavior by setting artificially high prices or production levels, which can have a chilling effect on innovation and create an uneven playing field for businesses [51]. Consumers would lose out if businesses band together to raise prices and restrict supply. Given the rationale formulation of Article 11, it is understood that investigations into and proof of violations of this provision must first establish that monopolistic practices and/or unfair business competition have occurred. This means that if you read about an alleged cartel, you'll learn about the motivations of the involved business actors, as well as the effects of the agreement on competitive dynamics. Thus, it is necessary to have an in-depth study regarding the reasons for the understanding of the business actors in question compared to the losses or negative things the Cartel has for business competition.

The provisions of Article 11 of Law No. 5 of 1999 are elaborated as follows: According to Article 1 number 5, "Business Actors" include any person or organization, regardless of their legal status, that is established and resides in, or conducts operations within, the jurisdiction of the Republic of Indonesia, and is involved in diverse economic activities, either independently or in collaboration with others through contractual arrangements.. More than two businesses must be involved to be considered a cartel. A successful cartel involves the participation of the vast majority of businesses operating in the target market [52]. Elements of the Agreement According to Article 1, number 7, an agreement is any action taken by two or more firms to tie themselves to another or more businesses, regardless of whether the agreement is written or oral. Third, a look at the constituent parts of rival companies. A business actor's competitor is another firm operating in the same market. The Commission for the Supervision of Business Competition issued Regulation

No. 3 of 2009 on July 1, 2009, outlining guidelines for Article 110 on Relevant Markets, which defines the relevant market. Factors Intended to Influence Costs A cartel's stated purpose of influencing pricing is established under Article 11. To this end, members of the cartel agree to limit their manufacturing and marketing of certain products or services. 5. Factors Involved in Managing Manufacturing and/or Sales Managing production requires establishing targets for both the Cartel as a whole and its members. This may exceed or fall short of the firm's production capability or customer demand. Meanwhile, managing marketing entails restricting sales volume and geographical distribution. Article 1 number 16 defines goods elements to include anything that can be bought, sold, bartered, used, or exploited by consumers or commercial actors. Article 1 section 17 defines services as "any services in the form of work or achievements traded in the community for use by consumers or business actors." This includes but is not limited to, services such as consulting, legal advice, and accounting. Eight, some factors could lead to monopolistic behavior. Article 1, paragraph 2 defines monopoly practices as the exercise of undue dominance over the production and distribution of products and services by a single or small group of businesses. Cartels allow their members to exercise monopolistic control over the manufacturing and distribution of their products or services.

The public interest will be harmed because the ultimate purpose of a cartel is to obtain large profits for cartel members. Nine Factors That Could Cause Unfair Competition in the Business World According to Article 1, paragraph 6, unfair business competition occurs when different companies produce and advertise their products and services dishonestly. A cartel is an illegal agreement between business rivals. Since the Cartel's acts are carried out in an unhealthy and dishonest manner, all the benefits accrue solely to the Cartel's members. In this circumstance, for instance, by slashing production, breaking the law, or stifling market competition by doing things like setting prices or carving up territories. A cartel is an illegal agreement between business rivals. Since the Cartel's acts are carried out in an unhealthy and dishonest manner, all the benefits accrue solely to the Cartel's members. In this circumstance, for instance, by slashing production, breaking the law, or stifling market competition by doing things like setting prices or carving up territories. A cartel is an illegal agreement between business rivals. Since the Cartel's acts are carried out in an unhealthy and dishonest manner, all the benefits accrue solely to the Cartel's members. In this circumstance, for instance, by slashing production, breaking the law, or stifling market competition by doing things like setting prices or carving up territories.

At first glance, Article 5 of the Law on Price-Fixing has similarities with Article 11, which regulates cartels. One notable distinction between Article 11 and Article 5 is in the nature of the agreements made by corporate players. While Article 5 entails the establishment of price-fixing arrangements, Article 11 diverges from this by encompassing other provisions. In the context of a cartel, the members reach a consensus to exert control over prices through the regulation of goods or services production and/or marketing. In a cartel, the participating entities reach a consensus regarding the quantity of production and/or marketing of goods or services. This agreement then influences the pricing dynamics of the aforementioned commodities or services that are being produced. Cartel agreements are commonly observed in the context of monopolistic actions. A cartel refers to an agreement entered into by two or more commercial entities with the aim of eliminating competition between them [53].

**Concept and Definition of Cartel** A cartel arises when a consortium of firms within a specific industry foregoes competition. Nevertheless, they consent to synchronize their endeavors through the implementation of measures like as production regulation, territorial division, bid collusion, and other forms of anti-competitive conduct, all aimed at elevating prices and attaining profits beyond what would be achievable under competitive

circumstances. Table1 presents some cartel and price fixing cases that have been decided by KPPU since 2000 to 2022.

**Table 1.** Several Cartel and Price Fixing Cases have been Decided by KPPU Since 2000 to 2022[54]

<i>Case number</i>	<i>The object of the alleged Violation</i>	<i>initiative</i>	<i>Violation</i>	<i>Decision</i>
Number: 26/KPPU-L/2007	SMS basic rates by cellular operator companies	Community Report	Article 5 Fine respectively	Fines between Rp. 4,000,000,000,- sd. Rp. 25,000,000,000,-
Number 24/KPPU-L/2009	Cooking Oil Cartel	KPP Initiative	Article 5 and Article 11 Penal Sanctions	Fines between Rp. 1,000,000,000,- sd. Rp. 25,000,000,000,-
Number: 25/KPPU-L/2009	Determination Fuel Surcharge Prices in the Domestic Aviation Services Industry	KPPU's initiative	Article 5 and Article 21 Penal Sanctions respectively	Fines between Rp. 1,000,000,000,- sd. Rp. 25,000,000,000 plus compensation of Rp. 1,600,000,000,- sd. 162,000,000,000
Number 05/KPPU-L/2013	Garlic Import Cartel	KPPU's initiative	Article 11, Article 19 letter c (Cartel & ...)	Fines between Rp. 11.000.000,- up to Rp. 900,000,000,-
Number 14/KPPU-L/2014	Determination of Liquefied Petroleum Gas (LPG) Selling Price	KPPU's initiative	Article 5 Penal Sanctions respectively	Fines between Rp. 20,000,000 sd. Rp. 10,000,000,000,-
Number 08/KPPU-L/2014	Tire Cartel	KPPU's initiative	Article 5, Article 11 Penal Sanctions respectively	Good Rp. 25,000,000,000, (Strengthened by the Supreme Court with a change in the amount of the fine)
Number 10/KPPU-L/2015	Beef	KPPU's initiative	Article 11, Article 19 Penal Sanctions respectively	Fines between Rp. 71,000,000,000,- up to Rp. 21,000,000,000,-
Number 02/KPPU-L/2016	Chicken Cartel	KPPU initiative	article 11 Fines for each	Fines between Rp. 1,000,000,000,- up to Rp. 25,000,000,000,-
Number 04/KPPU-L/2016	Auto scooter type motor cartel type 110-125 CC	KPPU's initiative	Article 5	Fines between Rp. 25,000,000,000,- up to 22,500,000,-

Source: Database of KPPU Decisions 2000 to 2022

Based on the data table above, of the 9 cases handled by KPPU, there were 8 cases, or 89% originating from KPPU initiatives and 1 point, or 11%, arising from public reports. The small number of cartel cases that are reported by the public is probably due to the public's knowledge of cartel cases and the procedures for handling cartel cases, or it could also be due to a lack of public concern and legal awareness to take legal action, for example reporting to the KPPU. Perhaps this is also because the economic impact for individuals is not too significant, so individuals do not need to make efforts. If you look at the effects of the existence of a cartel-related to price increases that the community feels as individuals, maybe the economic value is not too big.

The table also describes cartel cases that broadly impact the community, mainly due to skyrocketing prices. However, the KPPU's inspection initiatives are not from public reports but from KPPU's industries, such as the cooking oil, garlic, chicken, and meat cartel cases. Inspection cattle from KPPU's initiative.

In addition, there are difficulties for the KPPU in exercising its authority to handle cartel cases because it is not easy to prove the existence of a cartel. In reality, this authority

has not been implemented effectively by KPPU. One of the cases that are difficult for KPPU to act on is importers proven to have committed a cartel. This problem arises due to the limited authority of KPPU to investigate indications of cartel practices in the business world. One of the difficulties is finding strong evidence of cartel practices[55].

In the context of this Cartel, there existed a dynamic of engagement among entrepreneurs, as well as interactions aimed at cultivating mutually advantageous connections between entrepreneurs and officials. Importers opt to engage in cooperative practices rather than competitive ones within the garlic trade sector, primarily through the establishment of affiliates and the consolidation of processing Single Process Initiative (SPI) paperwork under a unified entity. Importers fail to fulfill their duty of importing garlic in accordance with the prescribed quota within the specified grace period, so disregarding their affiliation-based supply arrangements. [56].

It's just a pity that from several Cartel cases that KPPU decided at the level of the objection, legal efforts were canceled by the Court, such as the Cooking Oil Cartel. The cooking oil cartel case occurred when the objection mechanism for the KPPU's decision was filed at the District Court, which ultimately changed with the enactment of Law Number 11 of 2020 Concerning Job Creation, so objections to the KPPU's decision were submitted to the existing Niada Court. At the District Court. It is hoped that the objection law remedies at the Commercial Court will provide a more appropriate and fair decision, bearing in mind that judges at the Commercial Court are experts in their field and have been given special education and training.

## **4 Conclusion**

From the discussion and analysis produced, the following conclusions can be drawn as follow. *First*, the handling of cartels by the Business Competition Supervisory Commission is still not effective because several cases of business actors were finally decided not to have committed violations. Several decisions of the Business Competition Supervisory Commission (KPPU) were canceled by the Court. These cancellations are generally due to evidence-related matters, several cases were considered by the Courts to be unable to be proven by the KPPU, both due to a lack of evidence and the evidence used was not appropriate. Besides that, there were also not many indications of a cartel being carried out by several business actors for a product that is processed and sanctioned by KPPU. *Second*, factors hindering the handling of cartel cases include the lack of public awareness to report the activities of several business actors that lead to cartel indications, the difficulty of obtaining evidence, and several KPPU decisions being annulled by the Court at the Objection level because it involves the lack or incompatibility of evidence. This has also led to cartel behavior carried out by several business actors and resulted in an increase in the price of a good product which has caused losses to the consumer community, not much of which has been processed through the KPPU.

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# Effectiveness of Handling Cartel Cases by the Business Competition Supervisory Commission (KPPU)

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**Abstract.** One of the prohibitions in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition is "cartel." The impact caused by the cartel can not only lead to unfair competition between business actors. However, it can also cause consumer losses due to price increases resulting from the cartel of a product or service. This study aims to analyze the problem regarding the effectiveness of handling cartel cases by the Business Competition Supervisory Commission (KPPU) and what factors impede the handling of cartel cases by the Business Competition Supervisory Commission. This research was conducted using the Juridical method by reviewing applicable laws and regulations, and documents such as case decisions. From the results of studies and interpretations, the handling of the Cartel by the Business Competition Supervisory Commission is still not effective because several cases of business actors were finally decided not to have committed violations. The court annulled several decisions of the Business Competition Supervisory Commission. In contrast, the factors hindering the handling of cartel cases are the lack of public awareness to report the activities of several business actors that lead to cartel indications, the difficulty of obtaining evidence, and several KPPU decisions being annulled by the court at the objection level. This research is intended to produce recommendations to improve the process of handling cases of violations of monopoly practices and unfair business competition, especially cartels.

## 1 Introduction

Some of the things behind the birth of Law Number 5 of 1999, concerning the Prohibition of Monopolistic Practices and Unfair Competition, are the situations and conditions which were followed by the economic crisis in 1997, many existing challenges and problems, especially in economic development that have not been resolved, in conjunction with the prevailing phenomenon of worldwide trade, as well as the intricate dynamics and progression of the corporate landscape [1]. The commercial opportunities

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that have emerged in the last three decades have not facilitated universal participation and engagement of individuals across diverse economic sectors. [2]. The growth of privately held enterprises during this time frame was, on one side, influenced by various governmental policies that were not quite right so that the market became distorted [3]. On the other side, the growth of privately held businesses is primarily a manifestation of conditions of unfair business competition [4].

Direct and indirect ties between decision-makers and entrepreneurs have helped these phenomena flourish, worsening the problem, the national economy's implementation is monopolistic and does not comply with Article 33 of the 1945 Constitution [5]. Small business players are unable to compete because entrepreneurs with ties to the power elite receive unfair advantages [6]. The factor contributing to the fragility and diminished competitiveness of economic resilience is the emergence of conglomerates and a restricted cohort of influential entrepreneurs who lack the necessary backing of a genuine entrepreneurial ethos. This condition, among other things, is the cause for some business actors who are only supported and influenced by the closeness of the authorities but are not based on professional skills and knowledge in running a business, so in a crisis condition, they are unable to deal with it and eventually go bankrupt [7].

Taking all of this into account, it is clear that Indonesia's business sector needs to be restructured and regulated to promote healthy growth and proper development, foster an environment conducive to fair competition among businesses, and prevent the abuse of economic power by a few individuals or organizations through monopolistic or otherwise unethical means [7]. To avoid the influence of power by giving treatment and unique facilities to certain business actors, regulations are needed that regulate restrictions on state officials and apparatus in business activities. By prohibiting state officials from holding concurrent positions inside and outside the country, they may not directly or indirectly manage business entities [8].

Legal certainty guarantees provided by the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition help speed up economic development and boost social well-being [9]. The Business Competition Supervisory Commission was subsequently established to oversee commercial competition and administer penalties by the legislation. This body is autonomous from the government and other interested parties. Administrative actions are taken, while the Court has the power to take criminal action [10]. Promoting an environment conducive to business growth by establishing equitable competition and guaranteeing equal access to business opportunities for all stakeholders; preventing monopolistic practices arose out of a commitment to economic democracy, which involved weighing the competing needs of business actors and the public interest in formulating the Law on the Prohibition of Monopolistic Practices and Unfair Competition [11].

Thus, the purpose of the act is that every business actor has equal opportunities, participates in the manufacturing or marketing phase of his business activities, and operates in a situation of fair and reasonable competition. In the business world, competition is significant because it can drive the business world and the economy to thrive [12]. Economists argue that competition will determine prices through market mechanisms so that business actors are motivated to innovate their products[13].

to achieve this goal, there are provisions on prohibitions divided into 3 (three) groups, namely groups of agreements, activities, and dominant positions [14]. One of the prohibitions included in the group of the accords is a cartel, where in essence, business actors are prohibited from entering into agreements between business actors (coordination/collusion occurs), which can influence costs through manufacturing and promotional regulation.

The occurrence of this cartel is generally influenced by very tight competition between certain products so that business actors try to coordinate with each other with agreements between business actors to regulate marketing and production strategies. The formation of cartels was triggered by intense market competition [15]. Besides that, cartels give rise to unhealthy competition and can be detrimental to other parties who are not included in the cartel and even impact society. Therefore, the existence of cartels ensures the facilitation of contractual transactions that promote competition. In a manner characteristic of cartels, they concurrently engage in the practice of constraining competition. [16].

The Law still provides exceptions for certain business activities exempt from the Law. Not all monopolies are prohibited, such as monopolies that are born naturally because they are supported by the local climate and natural environment; monopolies that Law permits are not prohibited as individual business activities [17]. Article 33 of the 1945 Constitution grants the state the power of trust, which it uses to regulate industries vital to the nation's economy and the lives of its citizens. The state also owns and manages the land, water, and any natural resources it finds, to maximize the well-being of its citizens. For example, the mining natural resources business sector is controlled by the State through Pertamina, included in setting the price of oil at one price. The Government uses Pertamina for other significant social and political projects, such as the One Price and Fuel policies [8].

To enforce the Law against the Law, an institution has been formed in the form of a commission called the Business Competition Supervisory Commission (KPPU) which is independent. The KPPU is designed to be an independent agency free from government control and interference [18]. Since the enactment of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition with the establishment of an institution authorized to enforce the Law, namely the (KPPU until now, there have been many cases of violations of the Law that have been examined and decided by KPPU, one of which is are cartel cases, such as the cooking oil cartel, tire cartel, beef cartel, and others, but from year to year these cartel violations still occur. This is very unfortunate and needs serious attention to prevent harm to all parties, both the affected business actors and the consumer community. As is well known, the occurrence of a cartel can not only damage competing business actors, but it can also be detrimental to the consumer community in general due to high price increases due to price fixing and marketing or cartels being carried out by several business actors. Cartel is an agreement between one business actor and another to eliminate competition [19].

This study will analyze the problems, namely first, how effective is the handling of cartel cases by the Commission for the Supervision of Business Competition (KPPU)? This research was conducted using the Juridical-Normative method by examining the applicable laws and regulations and documents such as case decisions and information obtained from sources. With primary legal materials, namely: Law Number 5 Year 1999 Concerning Prohibition of Monopolistic Practices and Unfair Competition. The material data and information will be analyzed to conclude the problems raised.

## **2 Research Method**

This article used a normative research approach by Armia [20] that integrates studies of legal principles, legal systematics, legal synchronization, and comparative law. By focusing on the analysis of legal theory, legislation, and court decisions. Normative legal research is a method and approach to scientific inquiry into the law that is grounded in the normative logic of the law [21] by combining the conceptual and statutory approaches. The focus of a statutory approach was on the analysis of relevant statutes and regulations. Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition, as well as KPPU papers and judicial decisions, was the primary source of legal material. To

arrive at results that are both objective and scientifically justifiable, the conceptual method would utilize doctrines in the form of expert legal opinions.

### **3 Discussion and Analysis**

#### **3.1. Procedure for Handling Cartel Cases by the Commission for the Supervision of Business Competition**

Business actors who engage in cartels violate Law Number 5 of 1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition [22]. Violation of the cartel prohibition is an issue that has received sufficient attention from the public because cartels can cause harm to the consumer community, which generally involves commodity products, such as cooking oil, beef, garlic, and others [23]. Cartel practices have become prominent among the anti-competitive conducts prohibited by the Indonesian Competition Law [24].

A cartel is classified as a form of agreement, so a cartel must fulfill the elements of two business actors or groups or more who enter into a contract or agreement to regulate production and marketing to affect prices [25]. The influence of this cartel generally results in high prices due to reduced supply and circulation of goods on the market. In this case, it can be detrimental to the consumer community because they have to pay high prices for goods, and even scarcity of goods can occur. Higher prices make consumers spend more than paying costs obtained through competition mechanisms. Consumers incur losses because they are unable to receive as much value as they would in a competitive market[26].

Business Competition Supervisory Commission (KPPU) is an institution in the form of commission established in the context of law enforcement of Law Number 5 of 1999 About the Prohibition of Monopolistic Practices and Unfair Business Competition [27]. By Presidential Decree No. 75 of 1999 and Presidential Regulation No. 80 of 2008, the Commission for the Supervision of Business Competition (KPPU) (henceforth referred to as the Commission) was founded [28]. The purpose of the KPPU Commission is to ensure that businesses are not engaging in monopolistic or unfair business practices in the course of conducting their daily operations. This Commission operates free from the control of the government or any other entity. As the first door for deciding business competition law cases, KPPU is like a general case court, positioning itself as investigators, public prosecutors, and breakers.

KPPU has the responsibility of enforcing the law, particularly Business Competition Law, but it is not an exceptional judiciary authority [29]. Therefore, KPPU lacks the authority to impose both criminal and civil sanctions. The KPPU is primarily an administrative institution due to the administrative nature of its chief; consequently, the sanctions imposed are administrative[30]. From the regulatory material of the Law on monopolistic practices and unfair competition and its authority, KPPU is more of a public judicial institution. The characteristic of commercial dispute resolution is that it is included in general Law. Even though KPPU is charged with enforcing the law, particularly Business Competition Law, it is not an exceptional judicial institution. The characteristic of commercial dispute resolution is that it is included in general Law [31].

KPPU procedures and case examinations are conducted by procedural Law, which is governed by a separate regulation: KPPU Regulation Number 1 of 2019 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition, which superseded KPPU Regulation Number 1 of 2010 [32]. Besides, it is related to legal remedies for objections to KPPU's decisions regulated in Supreme Court Regulation Number 3 of 2019 concerning Procedures for Submitting Objections to Legal Remedies against KPPU's Decisions.

In handling cases, KPPU conducts examinations of business actors based on reports or without reports [33]. If a review is based on an account, it can come from anyone who knows there has been an alleged violation of the Law. Individuals who possess knowledge of a violation of the Law or have reasonable grounds to suspect its occurrence are able to submit a report to the Commission. Each person referred to is an individual or legal entity, from now on referred to as the *Rapporteur*, with a Report addressed to the Chairperson of the Commission using good and correct Indonesian and signed by the *Rapporteur*, which can be submitted via: a) the Commission headquarters, b) the Commission representative offices in the regions, or c) the online reporting application. The report is presented in writing format, comprising essential elements such as the identification of the Reporting Party and the Reported Party, a comprehensive depiction of the alleged Violation of the Law, and substantiating facts pertaining to the suspected infractions.

While the investigation was conducted on the initiative of the KPPU Commission, the data or information on alleged violations of the Law came from various sources, including but not limited to: the findings of the study, the findings of the inspection process, the results of the Hearing held by the Commission, incomplete reports, news articles, and/or data or other information that can be accounted for.

Clarification results from cases based on reports and research results from claims based on Commission initiatives that meet the requirements are continued to the Investigation stage. KPPU conducts investigations on its industry, which can be carried out based on observation, direct monitoring, or information from various parties or the media. Identifying cartel behavior in competition has an initial indicator in determining a business actor to enter into a cooperation agreement between competitors with similar products to set prices, increase prices, and control specific markets, inhibiting new competitors from entering the market share [34].

The preliminary examination is the first step in a multi-step process by which the Commission Council of the KPPU determines whether or not to conduct a full investigation into a reported infringement. This examination must be completed no later than 30 days after the determination of the preliminary examination (section 39, paragraph 1, of the Law). To determine whether or not there is evidence of violations, the Commission Council conducts a series of actions known as a follow-up examination (if there are indications of Monopolistic activities and unfair commercial competition). This examination must be completed within 60 days of the conclusion of the preliminary inquiry (article 43 v. 1 Law No. 5), with a 30-day extension possible (article 43 v. 2 Law). The Commission's decision is the Council's evaluation of whether or not a breach has occurred and the implementation of consequences in the form of administrative measures by the Law; it is announced in a public session. The deadline for this judgment is 30 days after the follow-up examination has been completed (Article 43, paragraph 3, of Law No. 5/1999). Article 43(4) of the Law mandates that the decision be read aloud in a public session and promptly communicated to relevant business players.

In opposition to the decision made by the KPPU, business entities that have been terminated and penalized have the option to seek legal recourse by submitting objections to the Commission's Decision within a maximum period of 14 days subsequent to the receipt of excerpts and copies of the Commission's Decision, as well as its announcement on the Commission's official website. Originally the objection was submitted to the District Court where the Business Actor's legal domicile is. However, the objection was filed with the Commercial Court of the District Court after the passage of Law No. 11 of 2020 about Job Creation, which was subsequently repealed by Perpu No. 2 of 2022 on Job Creation. The granting of authority to handle business competition disputes in the Commercial Court due to objections to the KPPU's decision shows that the KPPU's dispute is a commercial dispute [31].

Cases being investigated and decided by KPPU are investigation cases for violations of one of the prohibitions in the Law, namely those related to price fixing and cartels, which are specifically regulated in Article 11 [33]. It asserts that competing companies in a given market cannot collude to lower their competitors' pricing while maintaining or improving their product's quality. Article 11 regulates the prohibition of cartels, which states that businesses may not make deals with their rival businesses to control the supply and/or demand for a product or service in order to manipulate market prices in a way that could lead to monopolistic behavior or unfavorable commercial rivalry. This article forbids competitors from entering into an agreement that includes arrangements for the production and/or marketing of goods and/or services with the intent to affect prices, as this would discourage healthy economic competition and lead to monopolistic practices.

Both of these articles regulate the prohibition of an agreement or agreement entered into by several business actors that can affect prices and can have an effect on unreasonable prices. In particular, cartel agreements entered into by two or more business actors can influence and cause high prices due to limited or even scarcity of goods due to restrictions on production and marketing carried out by several business actors on a product. This, of course, can not only lead to unhealthy competition between competing business actors, but it can also harm consumers and disrupt economic stability. Prohibited forms of cartel agreements are agreements on production levels, price levels, and marketing areas for certain goods, services [35].

In general, there are several characteristics of a cartel, including there is a conspiracy in the form of an agreement between several business actors, involving executive heads from companies involved in attending meetings and making agreements, involving associations or organizations between several companies, carrying out price fixing or price fixing, followed by marketing arrangements to consumers or territorial division or production arrangements, threats or sanctions for members who violate and do not comply with the agreement in the agreement, the distribution of information to all company members who agree to form a cartel, the existence of a mechanism to ensure member compliance with decisions that have been approved. The cartel encompasses a range of activities, including the management of production and the implementation of horizontal pricing strategies [36].

This cartel can lead to scarcity of goods and price increases for goods needed by consumers; this is detrimental to consumers and dangerous to economic development because cartels cause inefficiencies in natural and human, and financial resources. For this reason, cartels need to get serious attention through prevention and law enforcement and by giving strict sanctions to business actors deliberately involved in the cartel. However, dealing with cartels is not easy. Cartel business actors also have ways and strategies to avoid cartel evidence, such as regular meetings, agreements to make arrangements, and other matters that will serve as evidence for competition law enforcers. In studying business competition cases, there are two types of evidence: direct and indirect. The application of these two types of evidence is due to the difficulty in obtaining direct evidence, such as witness statements, business actor statements, and letters or documents proving the occurrence of business competition, especially cartel violations [37].

For this reason, in handling cartel cases, methods or models of cartel proof have been used through the utilization of indirect evidence, which encompasses various economic analyses, it is possible to establish a correlation between different economic phenomena. This correlation can be substantiated by a comprehensive compilation of evidence, thereby demonstrating the existence of a cartel. Furthermore, this approach allows for the identification of the extent of community losses resulting from such practices [38]. In this particular scenario, the task of locating written agreements or other forms of documentation that expressly delineate agreements pertaining to pricing, marketing territories, and the manufacturing of goods and services among corporate entities poses a challenge for KPPU.

Hence, in order to establish the existence of a cartel, it becomes necessary to rely on indirect evidence[39]. When handling cases, KPPU often encounters obstacles in establishing claims with direct and indirect evidence [23]. Article 42 does not govern indirect evidence in the form of communication evidence and economic evidence in this particular situation. [40]. Multiple decisions made by the KPPU have demonstrated a preference for utilizing indirect evidence when addressing instances related to business competition, particularly those involving cartels.(Franciska Lestari Simanjuntak, 2019). In practice, in several cartel cases, KPPU uses indirect evidence, which can be seen in the case of KPPU's Decision Number 24/KPPU-I/2009 with 21 (twenty-one) private companies conducting activities in the bulk oil market which, based on the KPPU's findings, have carried out cartel violations, in which indirect evidence is carried out, by gathering communication evidence, economics evidence, and facilitating practices[42].

The Commission for the Supervision of Business Competition issued Regulation No. 4 of 2010 on Guidelines for the Implementation of Article 11 Concerning Cartels Based on Law No. 5 of 1999 Prohibiting Monopolistic Practices and Unfair Business Competition to aid in the handling of cartels. These guidelines, among other things, contain matters that need to be considered in analyzing the existence of a cartel. Evidence To demonstrate the existence of a cartel in an industry, KPPU must attempt to collect several parts of evidence by demanding documentation in hard copy or electronic format, presenting witnesses, and conducting field investigations. If necessary, cooperation with the authorities, specifically the police, will be utilized to surmount obstacles in obtaining the desired evidence.

In certain cases, several pieces of evidence for handling cartel cases include:[38]: 1. The documentation or archival records pertaining to agreements on pricing, quotas for production, or the allocation of marketing territories. 2. The archival materials or official documents including price lists disseminated by specific commercial entities during previous time intervals, which may encompass yearly or semi annual periods. The available data include information regarding pricing fluctuations, production quantities, and sales volumes throughout many marketing regions at various time intervals, such as monthly or yearly periods. 4. Data pertaining to production capacity. The data pertaining to operating profit, either in isolation or in conjunction with overall company earnings, exhibits a correlation. The findings of the data processing analysis indicate a significant surplus in profits. The outcomes of the data analysis conducted on intentional parallelism encompassing pricing coordination, production quotas, and partition of marketing areas. The financial statements of the company for each implicated person throughout many preceding periods are purportedly available in the data. The available data pertaining to the shareholders of each firm purportedly implicated, including any modifications in their ownership. 10. Testimonials from diverse entities pertaining to the communication, coordination, and information sharing among participants of the cartel. 11. Testimonials provided by customers or affiliated entities on price adjustments that exhibit a consistent pattern among vendors under suspicion of engaging in cartel activities. 12. Testimonies provided by current or former workers of the organization who are purportedly implicated, pertaining to the existence of business rules that are in accordance with agreements within the cartel. 13. The existence of causes driving cartels is supported by many forms of evidence, including documents, recordings, and testimonials, which align with the identified indicators.

After applying the Rule of Reason, after sufficient evidence has been obtained, the next step is to prove it and determine whether a cartel has taken place, which is prohibited under the Law by business actors. To confirm whether there has been a cartel that Law prohibits, it is necessary to examine the reasons business actors agree to a cartel. Business competition law enforcers, in this case, the Business Competition Supervisory Commission (KPPU), must read and decide whether the reasons given by business actors to engage in

this cartel are reasonable restraint so that no elements of the Cartel are prohibited or the reasons put forward by business actors are not acceptable, so it is a cartel agreement that Law prohibits.

There are a number of telltale signs that indicate the presence of a cartel, including: a. There are indications that production of products and/or services is slowing down or that prices are rising, b in agreements between business actors containing conspiracies that aim to reduce or even kill competition, c. Have sufficient market share (market power) to influence the market, thus having the ability to abuse said market power, d. There is strong evidence of considerable efficiency, e. There is a reasonable necessity that the actions of the cartel actors are indeed necessary to gain profits, f. Balancing test, measurement of the benefits obtained through the cartel, with the resulting losses [43].

If based on the legal relationship in a cartel is a legal relationship agreement between business actors, then to prove the existence of a cartel, it must be proven that there is a legal relationship agreement between business actors that contains an agreement to regulate production and marketing, which then results from the implementation of the cartel can affect prices are generally high prices, thus harming consumers [44]. To prove that there has been a legal agreement relationship between business actors in the cartel, it is not required to be in written form. However, it can only be verbal, through direct communication, telecommunication, or telephone letters. It can even be seen in the behavior between business actors in a particular activity, for example, when a sport or meeting is in action.

One example of a tire cartel case, the evidence contained in the alleged cartel practice case in the tire industry case, is the Minutes of the APBI Presidium Meeting.[45]. Cartels are generally carried out secretly among members; the agreements they make are usually carried out in certain activities such as sports or meetings. The inherent collaboration exhibited by the cartel posed significant challenges in procuring evidence from the KPPU, which serves as the national competition authority [46]. In this case, according to the principle of contract law, which adheres to the consensual principle, the most important thing is that there has been an agreement/agreement of will or consensus between business actors. This is similar to the evidence that was carried out in the cooking oil cartel case, as one of the considerations of the KPPU Commission Council that KPPU found evidence of communication between companies engaged in the bulk cooking oil business in the form of direct or indirect meetings on 29 February 2008 and 9 February 2009 discussing prices, production capacity and production cost structure[47].

The evidence requires other evidence to support and strengthen the confidence of KPPU judges in deciding cases. In order to streamline the evidentiary procedure at KPPU, the utilization of indirect evidence should be supplemented by additional evidence, as the Indonesian legal system adheres to the principle of "unus testis nullus testis," which stipulates that a single piece of evidence is insufficient. This principle necessitates the inclusion of corroborating evidence to support the initial evidence [23].

Even though in the end, the KPPU's decision in the case of the Violation of the Cooking Oil Cartel was annulled by the Court and the Supreme Court. Of the several Cartel cases that were canceled in general because they were related to alleged violations alleged by KPPU, they were deemed unable to be proven in court. As in the case of the cooking oil cartel, the Court canceled it because KPPU in its decision used indirect evidence, alias indirect evidence, which cannot be used as evidence and is not recognized in the Law on Evidence of Business Competition[48].

The Court canceled the Chicken Meat Cartel because there was no evidence of an agreement to regulate prices or services, which led to violations of business competition. Early abandonment is an instruction in the form of a letter from the Ministry of Agriculture through the Director General of Animal Husbandry and Animal Health, Ministry of

Agriculture of the Republic of Indonesia regarding the adjustment of the parent stock population and is carried out openly and supervised by the Cros Team, including the Joint Association, Universities and the Government[49].

Of the several KPPU decisions that were annulled, they were generally due to weak evidence used as a basis for consideration of decisions. Obtaining strong evidence of the existence of an agreement containing an agreement to regulate production and marketing within a cartel is not easy, because the agreement is generally not made directly in written form, but is carried out through certain activities such as sports activities or other meetings.

### **3.2 The effectiveness of handling cartel cases by the Business Competition Supervisory Commission (KPPU)**

Cartels are detrimental to consumers and the economic development of a nation because cartels lead to inefficiencies in natural resources, human resources, and other financial resources. A cartel exists due to an agreement between business actors in a particular product by regulating marketing and production, resulting in a high market price. As happened in a case, for example, The members of the cartel are subject to a prohibition that restricts them from engaging in the sale of their products at prices that fall below the mutually decided minimum price [50]. The management of cartels by corporate competition institutions across different regions is undergoing rapid evolution to address the growing intricacies associated with cartel-related challenges. Various business entities have strategically evaded the scrutiny of competition agencies in order to circumvent the gathering of incriminating information related to cartels, including regular meetings, agreements to coordinate activities, and other actions that often serve as evidence for enforcement of competition laws. In this context, a model for establishing the existence of a cartel was constructed based on indirect evidence. This approach involved employing diverse economic analysis findings to establish a correlation between different economic phenomena. Consequently, this comprehensive body of evidence substantiated the presence of a cartel, revealing numerous detrimental effects on society.

Cartels are extremely risky because they have the potential to engage in monopolistic behavior by setting artificially high prices or production levels, which can have a chilling effect on innovation and create an uneven playing field for businesses [51]. Consumers would lose out if businesses band together to raise prices and restrict supply. Given the rationale formulation of Article 11, it is understood that investigations into and proof of violations of this provision must first establish that monopolistic practices and/or unfair business competition have occurred. This means that if you read about an alleged cartel, you'll learn about the motivations of the involved business actors, as well as the effects of the agreement on competitive dynamics. Thus, it is necessary to have an in-depth study regarding the reasons for the understanding of the business actors in question compared to the losses or negative things the Cartel has for business competition.

The provisions of Article 11 of Law No. 5 of 1999 are elaborated as follows: According to Article 1 number 5, "Business Actors" include any person or organization, regardless of their legal status, that is established and resides in, or conducts operations within, the jurisdiction of the Republic of Indonesia, and is involved in diverse economic activities, either independently or in collaboration with others through contractual arrangements.. More than two businesses must be involved to be considered a cartel. A successful cartel involves the participation of the vast majority of businesses operating in the target market [52]. Elements of the Agreement According to Article 1, number 7, an agreement is any action taken by two or more firms to tie themselves to another or more businesses, regardless of whether the agreement is written or oral. Third, a look at the constituent parts of rival companies. A business actor's competitor is another firm operating in the same market. The Commission for the Supervision of Business Competition issued Regulation

No. 3 of 2009 on July 1, 2009, outlining guidelines for Article 110 on Relevant Markets, which defines the relevant market. Factors Intended to Influence Costs A cartel's stated purpose of influencing pricing is established under Article 11. To this end, members of the cartel agree to limit their manufacturing and marketing of certain products or services. 5. Factors Involved in Managing Manufacturing and/or Sales Managing production requires establishing targets for both the Cartel as a whole and its members. This may exceed or fall short of the firm's production capability or customer demand. Meanwhile, managing marketing entails restricting sales volume and geographical distribution. Article 1 number 16 defines goods elements to include anything that can be bought, sold, bartered, used, or exploited by consumers or commercial actors. Article 1 section 17 defines services as "any services in the form of work or achievements traded in the community for use by consumers or business actors." This includes but is not limited to, services such as consulting, legal advice, and accounting. Eight, some factors could lead to monopolistic behavior. Article 1, paragraph 2 defines monopoly practices as the exercise of undue dominance over the production and distribution of products and services by a single or small group of businesses. Cartels allow their members to exercise monopolistic control over the manufacturing and distribution of their products or services.

The public interest will be harmed because the ultimate purpose of a cartel is to obtain large profits for cartel members. Nine Factors That Could Cause Unfair Competition in the Business World According to Article 1, paragraph 6, unfair business competition occurs when different companies produce and advertise their products and services dishonestly. A cartel is an illegal agreement between business rivals. Since the Cartel's acts are carried out in an unhealthy and dishonest manner, all the benefits accrue solely to the Cartel's members. In this circumstance, for instance, by slashing production, breaking the law, or stifling market competition by doing things like setting prices or carving up territories. A cartel is an illegal agreement between business rivals. Since the Cartel's acts are carried out in an unhealthy and dishonest manner, all the benefits accrue solely to the Cartel's members. In this circumstance, for instance, by slashing production, breaking the law, or stifling market competition by doing things like setting prices or carving up territories. A cartel is an illegal agreement between business rivals. Since the Cartel's acts are carried out in an unhealthy and dishonest manner, all the benefits accrue solely to the Cartel's members. In this circumstance, for instance, by slashing production, breaking the law, or stifling market competition by doing things like setting prices or carving up territories.

At first glance, Article 5 of the Law on Price-Fixing has similarities with Article 11, which regulates cartels. One notable distinction between Article 11 and Article 5 is in the nature of the agreements made by corporate players. While Article 5 entails the establishment of price-fixing arrangements, Article 11 diverges from this by encompassing other provisions. In the context of a cartel, the members reach a consensus to exert control over prices through the regulation of goods or services production and/or marketing. In a cartel, the participating entities reach a consensus regarding the quantity of production and/or marketing of goods or services. This agreement then influences the pricing dynamics of the aforementioned commodities or services that are being produced. Cartel agreements are commonly observed in the context of monopolistic actions. A cartel refers to an agreement entered into by two or more commercial entities with the aim of eliminating competition between them [53].

**Concept and Definition of Cartel** A cartel arises when a consortium of firms within a specific industry foregoes competition. Nevertheless, they consent to synchronize their endeavors through the implementation of measures like as production regulation, territorial division, bid collusion, and other forms of anti-competitive conduct, all aimed at elevating prices and attaining profits beyond what would be achievable under competitive

circumstances. Table1 presents some cartel and price fixing cases that have been decided by KPPU since 2000 to 2022.

**Table 1.** Several Cartel and Price Fixing Cases have been Decided by KPPU Since 2000 to 2022[54]

<i>Case number</i>	<i>The object of the alleged Violation</i>	<i>initiative</i>	<i>Violation</i>	<i>Decision</i>
Number: 26/KPPU-L/2007	SMS basic rates by cellular operator companies	Community Report	Article 5 Fine respectively	Fines between Rp. 4,000,000,000,- sd. Rp. 25,000,000,000,-
Number 24/KPPU-L/2009	Cooking Oil Cartel	KPP Initiative	Article 5 and Article 11 Penal Sanctions	Fines between Rp. 1,000,000,000,- sd. Rp. 25,000,000,000,-
Number: 25/KPPU-L/2009	Determination Fuel Surcharge Prices in the Domestic Aviation Services Industry	KPPU's initiative	Article 5 and Article 21 Penal Sanctions respectively	Fines between Rp. 1,000,000,000,- sd. Rp. 25,000,000,000 plus compensation of Rp. 1,600,000,000,- sd. 162,000,000,000
Number 05/KPPU-L/2013	Garlic Import Cartel	KPPU's initiative	Article 11, Article 19 letter c (Cartel & ...)	Fines between Rp. 11.000.000,- up to Rp. 900,000,000,-
Number 14/KPPU-L/2014	Determination of Liquefied Petroleum Gas (LPG) Selling Price	KPPU's initiative	Article 5 Penal Sanctions respectively	Fines between Rp. 20,000,000 sd. Rp. 10,000,000,000,-
Number 08/KPPU-L/2014	Tire Cartel	KPPU's initiative	Article 5, Article 11 Penal Sanctions respectively	Good Rp. 25,000,000,000, (Strengthened by the Supreme Court with a change in the amount of the fine)
Number 10/KPPU-L/2015	Beef	KPPU's initiative	Article 11, Article 19 Penal Sanctions respectively	Fines between Rp. 71,000,000,000,- up to Rp. 21,000,000,000,-
Number 02/KPPU-L/2016	Chicken Cartel	KPPU initiative	article 11 Fines for each	Fines between Rp. 1,000,000,000,- up to Rp. 25,000,000,000,-
Number 04/KPPU-L/2016	Auto scooter type motor cartel type 110-125 CC	KPPU's initiative	Article 5	Fines between Rp. 25,000,000,000,- up to 22,500,000,-

Source: Database of KPPU Decisions 2000 to 2022

Based on the data table above, of the 9 cases handled by KPPU, there were 8 cases, or 89% originating from KPPU initiatives and 1 point, or 11%, arising from public reports. The small number of cartel cases that are reported by the public is probably due to the public's knowledge of cartel cases and the procedures for handling cartel cases, or it could also be due to a lack of public concern and legal awareness to take legal action, for example reporting to the KPPU. Perhaps this is also because the economic impact for individuals is not too significant, so individuals do not need to make efforts. If you look at the effects of the existence of a cartel-related to price increases that the community feels as individuals, maybe the economic value is not too big.

The table also describes cartel cases that broadly impact the community, mainly due to skyrocketing prices. However, the KPPU's inspection initiatives are not from public reports but from KPPU's industries, such as the cooking oil, garlic, chicken, and meat cartel cases. Inspection cattle from KPPU's initiative.

In addition, there are difficulties for the KPPU in exercising its authority to handle cartel cases because it is not easy to prove the existence of a cartel. In reality, this authority

has not been implemented effectively by KPPU. One of the cases that are difficult for KPPU to act on is importers proven to have committed a cartel. This problem arises due to the limited authority of KPPU to investigate indications of cartel practices in the business world. One of the difficulties is finding strong evidence of cartel practices[55].

In the context of this Cartel, there existed a dynamic of engagement among entrepreneurs, as well as interactions aimed at cultivating mutually advantageous connections between entrepreneurs and officials. Importers opt to engage in cooperative practices rather than competitive ones within the garlic trade sector, primarily through the establishment of affiliates and the consolidation of processing Single Process Initiative (SPI) paperwork under a unified entity. Importers fail to fulfill their duty of importing garlic in accordance with the prescribed quota within the specified grace period, so disregarding their affiliation-based supply arrangements. [56].

It's just a pity that from several Cartel cases that KPPU decided at the level of the objection, legal efforts were canceled by the Court, such as the Cooking Oil Cartel. The cooking oil cartel case occurred when the objection mechanism for the KPPU's decision was filed at the District Court, which ultimately changed with the enactment of Law Number 11 of 2020 Concerning Job Creation, so objections to the KPPU's decision were submitted to the existing Niada Court. At the District Court. It is hoped that the objection law remedies at the Commercial Court will provide a more appropriate and fair decision, bearing in mind that judges at the Commercial Court are experts in their field and have been given special education and training.

## **4 Conclusion**

From the discussion and analysis produced, the following conclusions can be drawn as follow. *First*, the handling of cartels by the Business Competition Supervisory Commission is still not effective because several cases of business actors were finally decided not to have committed violations. Several decisions of the Business Competition Supervisory Commission (KPPU) were canceled by the Court. These cancellations are generally due to evidence-related matters, several cases were considered by the Courts to be unable to be proven by the KPPU, both due to a lack of evidence and the evidence used was not appropriate. Besides that, there were also not many indications of a cartel being carried out by several business actors for a product that is processed and sanctioned by KPPU. *Second*, factors hindering the handling of cartel cases include the lack of public awareness to report the activities of several business actors that lead to cartel indications, the difficulty of obtaining evidence, and several KPPU decisions being annulled by the Court at the Objection level because it involves the lack or incompatibility of evidence. This has also led to cartel behavior carried out by several business actors and resulted in an increase in the price of a good product which has caused losses to the consumer community, not much of which has been processed through the KPPU.

## **5 Acknowledgments**

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