

## Supervision And Enforcement of Criminal Laws for Cartels in the Digital Era According to Law Number 5 of 1999 Concerning Prohibition of Monopolistic Practices And Unfair Business Competition

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### Abstract

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Supervision and law enforcement as well as proof of cartel crimes in digital transactions face a number of complex challenges. where there is limited knowledge and technical capabilities of law enforcement in understanding and handling technological aspects used in digital cartel practices including the use of online platforms, encrypted messages, and digital trace erasure techniques designed to deceive investigators. This research uses a type of qualitative research with a normative juridical approach with a comparative approach, a normative research basis with study and analysis of Law Number 5 of 1999. Proving cartels is hampered due to the existence of business competition authorities and experiencing difficulties in proving the existence of cartel acts, by finding evidence of the existence of an agreement where business actors mutually agree to carry out cartel actions. Of course, perpetrators often have unwritten cartel agreements so that there is no physical evidence or direct evidence regarding the cartel crimes that have occurred. The highly secretive nature of cartels makes cartel actions a crime in the field of business competition that is difficult to detect for proof in the world and in the digital era. It can be concluded that the obstacle and cause of the ineffectiveness of monitoring and enforcing cartels in Indonesia in this digital era is that in Law no. 5 of 1999 does not recognize indirect evidence, so that evidence in judicial practice has different views regarding its position in the procedural law system that exists and applies in Indonesia. UU no. 5 of 1999 does not provide the KPPU with the authority to search and confiscate to obtain the necessary documents, both for business actors suspected of violating it and also for other related parties.

**Keywords:** Business Competition, Cartel, Digital Era

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### INTRODUCTION

Digital transactions have become an important part of the global economy thanks to advances in information and communication technology today. After the previous industrial revolution, the Industrial Revolution 5.0 has changed many important aspects of human life. What is meant by "industrial revolution" is a major change in the social, cultural and economic structure of society. One of the countries with the highest internet usage is Indonesia, as reported by the Central Statistics Agency (BPS) in January 2024, 185 million individuals or 66.5% of Indonesian people have used the internet. In the digital era, it is at least understood as a change in transaction patterns that were previously carried out traditionally by visiting

markets or shops so that transactions are carried out digitally or online. Both business actors and law enforcement face challenges due to digitalization, so business actors must adapt to new market mechanisms while considering the risks that arise in the digital market. With this progress, law enforcement faces new challenges, especially related to cartel crimes carried out digitally. Cartels, which are a form of collusion between competitors to manipulate markets in a way that harms consumers and other competitors, have become a major concern in competition law. In the digital era, cartel practices increasingly incorporate information and communications technology to design, execute and conceal their collusive activities. With the existence of regulations that regulate and pay attention to any aspects as well as strategic factors that support the implementation of digital market mechanisms. Basically, to prevent unforeseen unfair competition, the law functions as a tool that must set limits on what can and cannot be done. This needs to be considered considering how digital markets work together with conventional markets.

In terms of law enforcement against cartel crimes in digital transactions, there are many complex problems. One of them is that law enforcement does not have sufficient knowledge and technical capabilities to understand and handle the technological components used in digital cartel practices. The use of online platforms, encrypted messages, and digital trace erasure methods intended to deceive investigators fall into this category. Additionally, it is difficult to discover and pinpoint criminal cartels due to the anonymity and complex security of the digital world. The use of cryptocurrencies, encrypted communications, and anonymous transactions make it increasingly difficult for law enforcement efforts to discover and uncover cartel practices. Given the global nature of cartel activities and unlimited technological infrastructure, cross-border cooperation is essential for law enforcement against cartels in digital transactions. If there are differences in laws, rules, and policies between countries, it can hinder cooperation in investigating and prosecuting cartel perpetrators. To overcome cartel crimes in digital transactions, law enforcement, regulators and other related institutions need to improve capabilities, skills and collaboration. Increasing knowledge about digital technology, strengthening cross-border cooperation, and developing relevant regulations are essential to upholding the law in an ever-evolving digital environment.

## **METHOD**

This research uses a qualitative type of research with a normative juridical approach with a comparative approach. Searching for law and literature related to the problem under study is used as a basis for normative research. The study and analysis of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition was carried out by the author. The author looks at the factors that support and hinder the formation of this legal umbrella in the Indonesian digital market to increase the role of KPPU in monitoring and enforcing laws relating to cartels and business competition.

## RESULT

According to Article 5, Article 7, Article 9, Article 10, and Article 11 of Law no. 5 of 1999, "an agreement is an act of one or more business actors in binding themselves to one or more other business actors in any name, whether written or unwritten." The meaning of agreement if we look closely as stated in Article 1 Number 7 of the a quo Law is almost the same as the provisions of Article 1313 of the Civil Code which states that "Agreement is an act by which one or more people bind themselves to one or more other people." In matters related to cartels, it is regulated in Article 5, Article 7, Article 9, Article 10 and Article 11 of Law no. 5 of 1999 states that a cartel is an agreement. Article 1 Number 7 of the a quo Law, states that "an agreement is an act of one or more business actors to bind themselves to one or more other business actors in whatever name, written or unwritten." After careful consideration, the meaning of agreement as stated in Article 1 Number 7 of the a quo Law is definitely the same as that stated in Article 1313 of the Civil Law Code, which states that "Agreement is an act by one or more people which binds itself to one or more people. .".

In cases such as unilateral decisions, which are examples of cartel actions as mentioned by Jurgita Bruneckiene, using the definition of agreement as set out in the Civil Code becomes problematic. association decision (association decision), joint action (joint action), and other forms. What does it mean, according to the Civil Code, that this type of cartel can also be considered an agreement? It is very important to remember what Munir Fuady said that Indonesian business competition law does not recognize "vague agreements" or agreements that have "understanding". One of the characteristics of cartel activities is the existence of collusion between several business actors, the involvement of business owners or companies in meetings and policy making, the use of associations to cover activities, and the determination of prices for production products in an effective way according to consumer allocation. Thus, there are regulations agreed upon by both cartel parties through an agreement, and if one of the cartel members.

Sudikno Mertokusumo has stated that an agreement is a legal relationship between two people who have agreed to give rise to legal consequences. It is called a "legal relationship" because it contains two actions that must be carried out by two or more people; for example, offer, aanbond, or offer, and acceptance, aanvararding, or acceptance. Apart from that, according to Muhammad Syaifuddin, an agreement (contract), firstly, is a reciprocal legal act in the field of property law, secondly. The relationship between contract and engagement is contract and has legal consequences that give rise to an agreement. Third, the substance of the contract, also referred to as the content of the contract, is an agreement based on authority, namely free will which is the authority and also the ability to carry out legal actions, except in certain cases where the intervention of compelling law, public order. KPPU is an independent institution that supervises all activities and business that occur in Indonesia. According to Article 1 Number 18 of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, the KPPU institution was established to supervise business actors to carry out their business activities in the context of public order and prevent monopolistic practices or unfair business competition. In the midst of the development of the electronic

trading process, supervision carried out by the KPPU in the digital era will definitely become more extensive.

Digital commerce can also be defined as a business process that can be carried out through a system via a website or application and begins with purchasing, selling, payment, and product and service information, all of which are carried out via the internet. Digital markets are very different from conventional markets because they have many layers and it can be interpreted that digital markets can involve two or more business groups working on digital platforms, and competition between service providers also occurs against digital platform providers. Therefore, these different conditions certainly need to be balanced by the existence of supervision with a more complex mechanism as an effort to prevent monopolistic practices and unfair business competition. In Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition in Indonesia for law enforcement against cartel actions in digital transactions which are in direct conflict with the interests of privacy and data security, you can follow the following steps:

1. A broad interpretation of violations is that the Law provides a legal basis for opposing cartel and collusion practices that harm business competition in Indonesia. Where law enforcement can interpret cartel practices for digital transactions as a form of monopolistic practice and unfair business competition which is contrary to the objectives of the law.
2. Evidence Collection and Investigation where law enforcement can carry out investigations into suspected cartels in digital transactions by collecting relevant evidence. This may involve monitoring online communications, analyzing electronic transaction data, or collaborating with relevant parties to obtain necessary information.
3. Collaboration with Data Protection Authorities where In situations where law enforcement against cartel actions involves the use of or access to personal data, law enforcement may cooperate with data protection authorities to ensure that the steps taken remain in compliance with applicable privacy and data security rules.
4. Application of Sanctions and Law Enforcement If an investigation reveals cartel practices in digital transactions that violate Law Number 5 of 1999, law enforcement can apply sanctions in accordance with the provisions of that law. This can include fines which are certainly significant, revocation of business permits, or other legal action with applicable provisions.
5. Education and Public Awareness It is important to provide education and awareness to the public about the importance of fighting cartel practices in digital transactions and their negative impact on business competition and consumers. This can help the public understand the importance of supporting law enforcement efforts and reporting suspicious activity.
6. Strengthening Relevant Regulations In line with developments in technology and business practices, the government may also consider strengthening or changing existing regulations to more effectively deal with cartels in digital transactions that violate data privacy and security.

Law enforcers can strive to protect privacy and data security interests while enforcing the law against cartel actions in digital transactions by following these steps and ensuring that law enforcement is within the limits of Law Number 5 of 1999. Soerjono Soekanto stated that legal factors with legal substance, which includes statutory regulations and also laws, is one of the factors that influences law enforcement. UU no. 5 of 1999 is the legal substance that outlines things that hinder the supervision and enforcement of cartel violations in Indonesia. Because there are differences in the supervision and enforcement of laws related to cartel practices compared to other unfair business competition laws, enforcement of these laws is considered difficult and even difficult. Therefore, it is not surprising that in 2006, for example, the OECD (Organization for Economic Co-operation and Development) held a Global Forum, which specifically highlighted how to prove cartels and then issued a report entitled "Policy Roundtables: Prosecuting Cartels without Direct Evidence". In the context of law enforcement, evidence is a very important part, including in cartel activities. Van Bummelen and Moeljatno have explained that proof or proof is to provide reasonable certainty (*redelijk*) about: (a) whether a certain thing really happened and (b) why that is. where for these evidentiary activities of course evidence is required. In the provisions of Article 42 of Law no. 5 of 1999 which states that evidence for KPPU examinations consists of witness statements; expert information; letters and/or documents; instruction; and information from business actors. because of business competition authorities, proving cartels is often hampered. This is because it is difficult to prove the existence of cartel actions, namely by finding evidence of an agreement in which business actors mutually agreed to carry out cartel actions. These agreements are usually not written, so there is no physical evidence or direct evidence of the success of the cartel. The secretive nature of cartels makes them one of the crimes in the field of business competition that is very difficult to detect, especially in the digital era. Therefore, bearing in mind the difficulty of obtaining direct agreements (agreements), indirect evidence was introduced, which is economic evidence and communication evidence in countries.

In Law no. 5 of 1999 and the Indonesian procedural law system, both civil and criminal, do not recognize the use of economic or communication indications as evidence of cartel violations. As a result, in some case handling and in court practice there are differences in attitudes regarding the position of indirect evidence. The District Court in many of its decisions rejected the existence of indirect evidence or indirect evidence, while the Supreme Court took the position that some rejected it but others accepted it. With the attitude of the court in addressing the position of indirect evidence for cartel enforcement in Indonesia as stated by Binoto Nadapdap. With efforts to enforce cartel law not being optimal due to difficulties in the evidentiary process when faced with the fact that market conditions in Indonesia are concentrated, it has even been suspected and controlled by cartel actors, which is something that is very worrying. In the Indonesian market structure, the majority of business actors are still very oligopolistic. In the manufacturing industry, for example, which is considered the heart of the Indonesian economy, the fundamental problem for more than the last decade lies in the market structure which is very oligopolistic. Of course, oligopolistic market conditions that produce this cartel behavior for business actors are currently occurring in Indonesia. The Business

Competition Supervisory Commission has explained that economic conditions in Indonesia have been controlled by cartels, because they are controlled by a handful of people. Because of the emerging cartel behavior, it will definitely be worrying because it has targeted sectors related to people's livelihoods, such as food, such as chicken, beef, rice and onions.

Every country recognizes the fact that there is indirect or indirect evidence of cartel law enforcement in line with the current development of cartel supervision and law enforcement. The question then is whether indirect evidence can stand alone as evidence or must it be supported by other evidence? In answering this question there are of course some variations between various countries. In Brazil, in the case of The Steel Cartel Case, for example, even though it acknowledged the existence of economic evidence, the CADE (Council for Economic Defense) decision was not solely based on considerations of economic evidence, but also based on what is known as "parallelism plus theory" . The KPPU's limited authority, especially with regard to searches and seizures, is another obstacle to cartel law enforcement. This is proven by considering the KPPU's authority as regulated in Article 36 of Law no. 5 of 1999, which does not provide such authority (search and seizure). Because in this article, the KPPU can only carry out investigations or examinations by requesting information from government institutions related to investigations or examinations of business actors deemed to have violated this law. This means that Law no. 5 of 1999 does not provide authority to search and confiscate as an important part of the case examination process. In the absence of authority regarding searches and confiscations, of course the KPPU institution cannot carry out its duties optimally. Moreover, if you pay attention, KPPU institutions often face problems with business confidentiality when they obtain company data that could indicate cartel violations. Because the data is documentary and documentary evidence, the KPPU must carry out investigations and examinations. Article 41 of Law no. 5 of 1999 stipulates that business actors or other parties who have been examined by the KPPU regarding monopolistic practices and unfair business competition, in this case cartel activities, must submit the necessary evidence. However, because there is no threat to business actors or other parties if they do not submit documents or other evidence, it will certainly make it difficult for the KPPU to carry out its duties and authority.

According to Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition in Indonesia, proving criminal acts in cartel activities in digital transactions certainly involves a lot of evidence and elements that can be considered. Some of this evidence may include:

Evidence of Communication or Agreement where there should be direct evidence of communication or agreement between business actors or between competitors in manipulating prices, production, distribution or other competitive conditions which is a strong indication of the existence of a cartel crime. It can also be categorized as emails, text messages, or other digital transaction records that indicate collusion.

Transaction Data Analysis Electronic transaction data can be categorized as sales data or unreasonable prices, so that it can be evidence indicating the existence of cartel practices. suspicious patterns in the data, for example uniform or the same prices or unreasonable price fluctuations, can be an indicator of cartel activity.

There is evidence of deviation from the principles of fair competition. Actions that are considered inconsistent with one of the principles of fair business competition, such as limiting production or allocation to marketing areas, can be a strong indicator of the existence of a cartel crime. With evidence like this, it could be in the form of contract documents or internal company policies that show collusion.

Expert Witness Testimony Testimony from witnesses involved in the cartel or economic experts who can provide analysis regarding the impact of cartel practices on markets and business competition between business actors can be additional strong evidence in cartel cases.

On Consistent Behavior Patterns Evidence of consistent behavior patterns from competitors in the market that indicates illegal coordination or agreements and is used as an indicator of cartel crime. It can also include a simultaneous increase in prices as well as a uniform decrease in production from competitors in the same market.

During the evidentiary process, law enforcers must ensure that accusations of cartel crimes are supported by clear and strong evidence. In addition, perpetrators must comply with applicable legal procedures and ensure that the evidence presented in court meets the required standards of validity and reliability.

## **CONCLUSION**

Based on the description above, it can be concluded that Law no. 5 of 1999 does not recognize indirect evidence, which causes judicial practices to vary regarding its position in the current Indonesian procedural law system. This causes supervision and enforcement of cartels in Indonesia to be ineffective in the computer era. There are several decisions of the Supreme Court of the Republic of Indonesia that accept indirect evidence, but there are also those that reject it as evidence. UU no. 5 of 1999 restrains the KPPU from searching and confiscating documents required for business actors suspected of violating them and other related parties. The definition of cartel as an agreement regulated in the Civil Code certainly results in a narrowing of the meaning of cartel, which is only limited to actions within the meaning of the agreement itself. In this case the agreement in question is an agreement according to the Civil Code, as a result, the Government and the House of Representatives (DPR) must carry out revisions to take into account the substance of Law no. 5 of 1999 by including indirect evidence as one of the methods of evidence in business competition. and adapting to technological advances, which allows cartels and business competition that transact with technological advances. Apart from that, it needs to be considered that the KPPU's authority must be expanded to carry out inspections and investigations. This would include powers to search, seize and collect evidence, as well as expanding the meaning and definition of cartel, not limited to acts defined as agreements

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