

## Research Article

# Implementation of the Circumstantial Evidence in the Evidence Mechanism Process on Cartel Cases in Indonesia

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**ORCID**Rimba Supriatna: <https://orcid.org/0000-0002-2733-4620>**Abstract.**

Proving a cartel as one of the agreements prohibited in Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition is not easy. Therefore, KPPU often uses indirect evidence as evidence in giving its decision, but this indirect evidence is not yet known in the legal system in Indonesia. This study aims to analyze the implementation of the use of indirect evidence in the process of proving cartel cases in Indonesia. The results of this study indicate that the implementation of the use of indirect evidence in the process of proving cartel cases in Indonesia has not been effective because it collides with the procedural law system in Indonesia, which has not accommodated indirect evidence so that many KPPU decisions have been cancelled both at the level of objection and cassation.

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## 1. INTRODUCTION

A cartel is an agreement made by a business actor with its competitors to gain excessive profits. This measure is a violation of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, especially those regulated in Article 11, which has a significant impact and is very detrimental to the community as consumers. However, proving against the cartel is not easy if it must be based on direct evidence, especially documentary evidence. Thus, often the KPPU as the authority authorized to enforce the law in the field of business competition uses indirect evidence to prove the existence of a cartel carried out by business actors. The use of indirect evidence is at least used in Decision Number 17/KPPU\_I/2010 related to drug cartels [1].

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Cases involving cartels in several countries have relied on indirect evidence. However, the use of indirect evidence is still much debated because it is not yet known in the procedural law system in Indonesia. Indirect evidence that has so far been widely used by KPPU is evidence of communication and economic evidence, which so far have been equated with evidence that cannot stand alone [2]. Therefore, many KPPU's Decisions related to cartels that use indirect evidence have been cancelled both at the level of objection and cassation. There are at least two KPPU decisions that use indirect evidence in cartel cases that are upheld by the Supreme Court, namely Decision Number 12/KPPU-L/2009 related to tenders and Decision Number 09/KPPU-L/2008 regarding the Hajj give away tender conducted by Garuda Indonesia.

## 2. RESULTS AND DISCUSSION

### 2.1. Circumstantial Evidence in Handling Cartels in Indonesia

Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition regulates various prohibitions for actions that cause unfair business competition from activities or agreements between business actors, one of which is cartels. A cartel is an agreement between one business actor and a competing business actor to eliminate competition between the two. In other words, a cartel is a collaboration between producers of certain products with the aim of controlling production, sales, and prices as well as to establish a monopoly on certain commodities or industries. Evidence is everything that has to do with an act, where with the evidence [3].

In proving a cartel case, indirect evidence in the form of communication evidence and economic evidence can be categorized as directive evidence. As stated in Article 27 paragraph (3) of the Regulation of the Business Competition Supervisory Commission Number 1 of 2010 concerning Procedures for Handling Cases, it is stated that the instructions are the knowledge of the Commission Council which they know and believe to be true [4].

There are differences between the use of evidence according to business competition procedural law, civil procedural law, and criminal procedural law. Proof is a stage in law to examine the truth of a legal case. The criminal procedure law expressly stipulates in Article 184 of the Criminal Procedure Code "legitimate evidence, namely: witness statements; expert testimony; letter; instruction; defendant's statement. The law of proof in the criminal procedural law system does not recognize the existence of direct and indirect evidence. On the other hand, the civil procedural law in article 164 HIR mentions

valid evidence, namely: documentary evidence; witness evidence; thought; confession; oath. The grouping of indirect evidence and direct evidence is explained in M. Yahya Harahap's book as follows: "It is called direct evidence, because it is physically submitted by an interested party before the trial". "...The evidence submitted is not physical, but is obtained as a conclusion from things or events that occurred at the trial". [5] Judging from the physical form, the indirect evidence according to civil procedural law is suspicion, confession and oath. The physical form of the three indirect evidence can be said as a conclusion from the rights or events that occurred at trial. [5] In general, the terms Indirect and Direct Evidence are not very familiar in the Faculty of Law. Both the Criminal Procedure Code and the Civil Procedure Code do not include these two terms. but which is obtained as a conclusion from things or events that occur at the trial". [5] Judging from the physical form, the indirect evidence according to civil procedural law is suspicion, confession and oath. The physical form of the three indirect evidence can be said as a conclusion from the rights or events that occurred at trial. [5] In general, the terms Indirect and Direct Evidence are not very familiar in the Faculty of Law. Both the Criminal Procedure Code and the Civil Procedure Code do not include these two terms. but which is obtained as a conclusion from things or events that occur at the trial". [5] Judging from the physical form, the indirect evidence according to civil procedural law is suspicion, confession and oath. The physical form of the three indirect evidence can be said as a conclusion from the rights or events that occurred at trial.[5] In general, the terms Indirect and Direct Evidence are not very familiar in the Faculty of Law. Both the Criminal Procedure Code and the Civil Procedure Code do not include these two terms. The physical form of the three indirect evidence can be said as a conclusion from the rights or events that occurred at trial.[5] In general, the terms Indirect and Direct Evidence are not very familiar in the Faculty of Law. Both the Criminal Procedure Code and the Civil Procedure Code do not include these two terms. The physical form of the three indirect evidence can be said as a conclusion from the rights or events that occurred at trial.[5] In general, the terms Indirect and Direct Evidence are not very familiar in the Faculty of Law. Both the Criminal Procedure Code and the Civil Procedure Code do not include these two terms.

According to the Business Competition Law, evidence in the evidentiary process can be divided into two, namely direct evidence and indirect evidence. Direct evidence is evidence that can explain specifically, clearly and clearly the subject matter of the agreement between business actors. While indirect evidence is evidence that cannot explain specifically, clearly and clearly regarding the material of the agreement between business actors, what is included in the indirect evidence is communication evidence

and economic evidence that can be found in market price statistics, market price analysis results, and others.[6]

The practice of cartels is a very difficult violation to prove. This is because cartel cases are rare or do not have direct evidence, considering that in general cartel agreements are not made based on written agreements. Due to these difficulties, the emergence of the use of indirect evidence as the only evidence used by KPPU. In practice, what KPPU often uses as indirect evidence is the result of economic analysis of the results of data processing which reflects the occurrence of supernormal profits that occur not due to increased efficiency and productivity of the company.

Provisions regarding indirect evidence have been accommodated in Article 57 of the Regulation of the Commission for the Supervision of Business Competition Number 2 of 2019 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition which regulates several points as follows:

1. Instructions are actions, events or circumstances, which due to their conformity, both with one another, as well as with agreements and/or prohibited activities and/or abuse of dominant position according to the provisions of the law, indicate that an agreement has occurred and/or prohibited activities and/or abuse of dominant position and who is the perpetrator.
2. Instructions can be in the form of economic evidence and/or communication evidence which the Commission Council believes to be true.
3. Economic evidence is the use of economic arguments supported by quantitative and/or qualitative data analysis methods as well as expert analysis results, all of which aim to strengthen allegations of monopolistic practices and/or unfair business competition.
4. Evidence of communication is the use of data and/or documents showing the exchange of information between parties suspected of conducting monopolistic practices and/or unfair business competition.

The existence of circumstantial evidence / indirect evidence because direct evidence is becoming increasingly difficult to find because the presence of business competition supervisors has become a factor that has been taken into account so that matters relating to direct evidence have been avoided by business actors. Usually the actions of the cartel are carried out in a secret and secret manner, so proving the cartel is not an easy job. However, the use of economic analysis tools is an important key in the use

of indirect evidence to prove the existence of a proof. Basically, the economic analysis for proving a cartel or a price fixing agreement is to:

1. Proving whether the company's behavior is rational even without any collusion. This is necessary to rule out the possibility of behavior consistent with competitive conditions.
2. Proving whether the market structure supports collusion.
3. Proving whether the characteristics of the market are consistent as a collusion facility.
4. Prove whether performance in the market is conjecture on the pricing agreement.
5. Comparing the conditions arising from the existence of a collusive agreement with the conditions arising from competition.

## 2.2. The Strength of Circumstantial Evidence in Handling Cartels in Indonesia

The legal evidence carried out by the KPPU to obtain direct evidence in the form of an agreement in cartel practice, in fact it is very difficult to obtain, but still must be done because the only way to reveal the behavior of business actors who are against the law is to prove indirectly, but the evidence to obtain it is very limited and is not directly described in the cartel agreement, but can also be in other forms of facilities, or the exchange of information. Referring to Law 5/1999, currently Indonesia has not regulated indirect evidence as evidence to prove the existence of a cartel. KPPU in this case proves by seeking material truth as stipulated in Article 42 relating to evidence, namely witness statements, expert statements, letters and or documents,

Legal norms in the practice of monopoly and business competition in the provisions of Law 5/1999 are included in the scope of civil law. Seeing the interaction between business competitors in the trade market for goods and services, the examination process is also civil in nature, in which the KPPU Panel of Judges only impose a verdict for the business actor as the reported party and also the fine that must be borne. However, in contrast to evidence, the position of evidence sought in the legal process of business competition procedures carried out by KPPU is the same as criminal, namely to seek material truth, in this case KPPU must be active in seeking, finding, analyzing, and considering the evidence presented in the trial. KPPU.[7]

The use of indirect evidence is an alternative if KPPU cannot prove the occurrence of a cartel dispute but proves it with indirect evidence. Broadly speaking, indirect evidence

is divided into 2 types, namely economic evidence and communication evidence. In the evidence of this communication is evidence that shows that there is communication between business competitors, although they do not explain the contents explicitly, they enter into cartel agreements. For example, by recordings of conversations between business competitors, even though they do not directly discuss the cartel's actions, also the existence of the same destination in business trips between entrepreneurs or communication through the same place as for example establishing associations in certain fields. Sometimes entrepreneurs who carry out cartels establish associations to run the cartels so that they hide behind associations or regular meetings held by entrepreneurs in the same field in certain places. This can be categorized as indirect evidence used by KPPU to prove the occurrence of a cartel.[8]

Furthermore, related to economic evidence, economic evidence itself is divided into 2 types, namely structure and behavior. In the behavioral structure to see whether or not cartel practices occur by entrepreneurs, KPPU can also see the behavior of entrepreneurs, such as:[9]

1. *parallel pricing*, when a business actor increases the price of goods or decreases the price of goods, his business competitors also do the same thing;
2. *Abnormally high profit* a very large profit that exceeds the usual limit where no other entrepreneur can compete with the selling price of an entrepreneur or a group of entrepreneurs;
3. There is a history of violations, but this is only a complement because even if a businessman or a group of businessmen has committed a cartel, there must still be other evidence and this evidence is only as support.
4. Facilitating cartel practices is the behavior or actions of these entrepreneurs that will facilitate and trigger the occurrence of these cartel actions.
5. The stability of the market share can also be an indirect evidence that if the market share remains stable while the market continues to grow.

Based on KPPU's regulation No. 4 of 2010, to fulfill the initial indications of the alleged occurrence of a cartel act, there are several initial indicators which can then be used as a reference by the KPPU to determine whether a cartel act has occurred or not. This factor is divided into 2, namely Structural factors and behavioral factors.[2]

1. In this structural factor there is the level of concentration and number of companies, company size, the same or homogeneous product, extensive marketing contacts.

Excess inventory and production capacity, ownership linkages, entry barriers or barriers to market entry, regular demand.

2. The behavioral factor is the transparency of information exchange, by exchanging information between cartel entrepreneurs. It is possible that this exchange of information such as secret production data and selling prices is exchanged and by doing this they can match prices with each other and lead to a price-fixing cartel.

Evidence in the limited business competition procedural law is only regulated in Article 42 of Law 5/1999, so far there is no new rule regarding evidence in the business competition procedural law. More specifically provisions are regulated in the Regulation of the Business Competition Supervisory Commission Number 4 of 2010 concerning Cartels. The KPPU, which is looking for evidence, uses its authority as stipulated in Law 5/1999 to request documents, both softcopy and hardcopy, to present witnesses and to conduct field investigations.

Based on the case handled by KPPU in the case of cartel practice for four-wheeled vehicle tires carried out by several automotive tire companies in the case of KPPU's Decision No. 08/KPPU-I/2014 as well as in the case of cartel practices carried out by two large motor vehicle companies, namely Yamaha and Honda, using circumstantial evidence/indirect evidence because in these 2 (two) cases the business actors practiced a secret monopoly, in the aspect of civil law, a secret agreement can also be carried out by several companies that carry out cartel actions, so the agreement made is a verbal agreement. Verbal agreements are permitted by laws and regulations although it is difficult to prove them.

The position of indirect evidence in Law 5/1999 if according to KPPU it is included in the group of indicative evidence so that it is only additional evidence, in proving allegations of violation of the Business Competition Law. The indirect evidence used by the KPPU must look at other evidence to obtain a conclusion on the alleged cartel. Thus, it does not have legal force if indirect evidence is the only evidence in considering by KPPU that business actors entering into cartel agreements have violated monopolistic practices.[10]

However, if it is traced with a systematic interpretation, the evidence regarding the instructions can be found in the Criminal Procedure Code. In criminal law, evidence of evidence is regulated in Article 188 of the Criminal Procedure Code, which reads as follows:

- i. Instructions are actions, events or circumstances, which because of their correspondence, both between one and the other, as well as with the crime itself, indicate that a crime has occurred and who the perpetrator is.
- ii. The instructions as referred to in paragraph (1) can only be obtained from:
  1. witness testimony;
  2. letter;
  3. defendant's statement.
- i. An assessment of the evidentiary strength of an indication in every particular situation is carried out by a judge who is wise and prudent after he has conducted an examination with great care and thoroughness based on his conscience.

Guiding evidence is evidence "created", in contrast to other evidence (witness evidence, letter evidence, clue evidence) which is valuable and has the power of proof of its own nature, evidence of instructions materialized because of a conformity of actions, events or circumstances with each other as well as with the crime itself.[12] Munir Fuady stated that circumstantial evidence or indirect evidence needs to have a rational relevance by being able to demonstrate the use of such evidence in the court process, to obtain clearer evidence than if the evidence was not used.[11]

With all the dynamics of the evidence model used by KPPU in handling cases of alleged cartel practices, the type of indirect evidence (circumstantial evidence/indirect evidence) in practice is not primary/main evidence that is used as material for consideration in making legal decisions. directly "only" qualified as additional evidence to complement other evidence. This can be seen from several KPPU decisions that use indirect evidence in cartel cases are annulled/cancelled by the Supreme Court's decision because it is not in accordance with the concept of proof adopted in the formal legal system in Indonesia, while the guidelines regulated in the Business Competition Commission Regulation Number 4 of 2010 concerning Cartels are only internal within the KPPU. So that it can be said that the position of indirect circumstantial evidence is only as supporting evidence for judges or KPPU to seek material truth.

### **2.3. The Problem of Using Indirect Evidence in Business Competition Law in Indonesia**

Recognition of indirect evidence in the evidentiary system in Indonesia, which until now has not been clearly and firmly regulated in the law. There is no agreement between



experts and law enforcement regarding what is called indirect evidence (circumstantial evidence). Certain experts and law enforcers argue that instructions are not the same as evidence of suspicion, while other law enforcers express the opposite opinion. [12] This opinion, among others, was held by the former Chief Justice of the Supreme Court, Prof. Subekti and Former Supreme Court Justices, KPPU through Commission Regulation No. 1 of 2010 makes the formulation of the instructions the knowledge of the Commission Council which is known and believed to be true. Furthermore, according to KPPU Regulation No. 4 of 2001 that indirect evidence is evidence of communication and economic evidence. The knowledge of judges as evidence is regulated in Law no. 5 of 1986 concerning the State Administrative Court which has been amended twice through Law no. 9 of 2004 and Law no. 51 of 2009.[13]

Law No. 5 of 1999 and its explanations do not provide an understanding of the guiding evidence. Because the law does not make a formulation of the evidence of instructions, then KPPU interprets the instructions as knowledge of the Commission Council which is known and believed to be true. The meaning of the evidence of instructions as regulated in Law no. 8 of 1981 is not the same as the meaning of guided evidence as regulated in Law no. 5 of 1999. If in Law no. 8 of 1981, instructions can only be obtained from witness statements, letters and statements from the defendant. The definition of evidence of guidance as defined by KPPU is broader than the meaning of instructions in Law no. 8 of 1981. The knowledge of the commissioner can cover many things and the knowledge of the commissioner from one commissioner to another is also not necessarily the same. This includes the commissioner's knowledge of indirect evidence in the form of economic evidence and communication evidence.

KPPU Regulation No. 1 of 2010 in the Ninth Book regulates the evidence. Of the five pieces of evidence regulated in Law no. 5 of 1999, KPPU only regulates further or translates the evidence of instructions. The other four pieces of evidence, namely witness statements, experts, letters and/or documents and the statements of the reported parties have no further regulation. KPPU tries to translate the evidence as a basis for using indirect evidence in dealing with cartel cases.

KPPU in handling cartel cases has used indirect evidence. The handling of cartels by competition agencies in various parts of the world is developing rapidly in line with the increasingly complex cartel problems facing the commission. The existence of competition institutions has been circumvented by business actors by avoiding cartel evidence such as records of regular meetings, agreements to make arrangements and other matters that tend to become evidence for competition law enforcers. In this case, a cartel proof model is developed using indirect evidence, which is carried out, among

others, through the use of various economic analysis results that can prove the existence of a correlation between one economic fact and other economic facts. so that in the end it becomes evidence of a complete cartel with the identification of a number of losses for the people in it. In the decisions of the District Courts and the Supreme Court, the question of whether or not KPPU has the right to use indirect evidence has not been answered. Because it has not been considered by the judge, the question of whether indirect evidence can or cannot be used in a business competition case is essentially unanswered, because it has not been considered by the judge. However, because according to the Supreme Court that KPPU in adjudicating cases exceeds its authority by including directions for Justice Based on the One Godhead in its decision, the use of indirect evidence by KPPU will automatically be invalidated. In the decisions of the District Courts and the Supreme Court, the question of whether or not KPPU has the right to use indirect evidence has not been answered. Because it has not been considered by the judge, the question of whether indirect evidence can or cannot be used in a business competition case is essentially unanswered, because it has not been considered by the judge. However, because according to the Supreme Court that KPPU in adjudicating cases exceeds its authority by including directions for Justice Based on the One Godhead in its decision, the use of indirect evidence by KPPU will automatically be invalidated. In the decisions of the District Courts and the Supreme Court, the question of whether or not KPPU has the right or the right to use indirect evidence has not been answered. Because it has not been considered by the judge, the question of whether indirect evidence can or cannot be used in a business competition case is essentially unanswered, because it has not been considered by the judge. However, because according to the Supreme Court that KPPU in adjudicating cases exceeds its authority by including directions for Justice Based on the One Godhead in its decision, the use of indirect evidence by KPPU will automatically be invalidated. Because it has not been considered by the judge, the question of whether indirect evidence can or cannot be used in a business competition case is essentially unanswered, because it has not been considered by the judge. However, because according to the Supreme Court that KPPU in adjudicating cases exceeds its authority by including directions for Justice Based on the One Godhead in its decision, the use of indirect evidence by KPPU will automatically be invalidated. Because it has not been considered by the judge, the question of whether indirect evidence can or cannot be used in a business competition case is essentially unanswered, because it has not been considered by the judge. However, because according to the Supreme Court that KPPU in adjudicating cases

exceeds its authority by including directions for Justice Based on the One Godhead in its decision, the use of indirect evidence by KPPU will automatically be invalidated.

In accordance with the procedural law that applies in court, that the examination of the subject matter will be carried out by a judge after considering the formalities of a case. In the event that the formalities of the case examination have been fulfilled, only then will the judge consider the main points of the case. Therefore, if in a case, the issue of formality is not fulfilled, the judge will not examine or consider the subject matter of the case. In the case above, because according to the Supreme Court, the KPPU's actions which include references for the sake of justice based on the One Godhead are not authorized to include them, then legally the Supreme Court does not need to consider the main point of the case regarding the use of indirect evidence by KPPU in the case. sale of shares of PT Indomobil Sukses Internasional.

The second case in which KPPU uses indirect evidence is the cooking oil cartel case, through its decision Number 24/KPPU-1/2009 dated May 4, 2010, namely the case of alleged violations of Article 4, Article 5 and Article 11 committed by as many as 21 companies. cooking oil factory. In its legal considerations, KPPU uses indirect evidence, namely price parallelism, economic evidence and communication evidence as the basis for making a decision.

According to KPPU, the similarity of prices, economic evidence and evidence of communication carried out by a number of cooking oil companies are as follows:

"Regarding the response or defense of Reported Party XV which stated that price parallelism was not sufficient to prove the existence of price fixing or price cartels, the Commission Council needs to provide separate considerations or explanations regarding indirect evidence."

In proving competition law, proving the existence of a cartel can be done using only indirect evidence. In this case, indirect evidence is in the form of: Communication evidence (communication evidence) communication can be in the form of the fact that there are meetings and/or communication between competitors even though there is substance from the meeting and/or communication. Direct and direct meetings and/or communications were carried out by the Reported Party on February 2008 dated February 2009. Even in these meetings and/or communications, the discussions regarding prices, production capacity, production cost structure, economy (economic evidence) were discussed. There are two types of evidence. Economics is evidence with structure and behavior. In this case, Cooking oil both packaged in bulk has a market structure that is concentrated in several actors (oligopoly). The economic evidence in the form of behavior is reflected in the existence of price parallelism. Facilitating practices are

carried out through price in promotional activities at the same time as well as meetings or intercommunication through associations.

Against the KPPU's decision, the cooking oil company which was found proven to have violated Law no. 5 of 1999, they filed an objection to the District Court. In accordance with the applicable procedural law in competition cases, that the objection is filed by the business actor through the District Court where the business actor is domiciled. In the event that more than 1 (one) business actor submits an objection to a decision of the KPPU where there is a legal domicile of the business actor, KPPU may submit a written application to the Supreme Court to appoint one of the District Courts accompanied by a proposal from which Court to examine the objection. In the case of the cooking oil cartel, the legal status of the objecting company lies in a different jurisdiction. Based on the KPPU's request to the Supreme Court, the cooking oil cartel case No. 24/KPPU-1/2009 dated May 4, 2010 to be handled by the Central Jakarta District Court.

The consideration of the Panel of Judges of the Central Jakarta District Court which said that the evidence of communication was unknown or not recognized in Indonesian law was not the case. In this cooking oil cartel case, regarding the refusal to use communication evidence, it is not because the legal basis does not exist or has not been regulated, but the Panel of Judges did not consider the provisions of Law no. 11 of 2008 regarding the use of communication evidence. The Panel of Judges of the Central Jakarta District Court failed or failed to use the Law on Information and Electronic Transactions as a basis for deciding cases. In this case, the legal considerations of the Panel of Judges of the Central Jakarta District Court which stated that the evidence of communication was unknown or had not been regulated by law and could no longer be defended.

The Supreme Court also rejects the use of indirect evidence as evidence, and this is a serious challenge for KPPU in uncovering cases of alleged cartel practices. By fully relying on direct evidence, the cartel will experience more and more failures. The difficulty in handling cartel cases revolves around the difficulty of obtaining direct evidence. KPPU's efforts to use indirect evidence did not get approval from the court. KPPU's efforts to uncover cartel cases often fail because they do not receive support from the judge (court).

In fact, the success or failure of competition law enforcement ultimately lies in the court's decision. Even if KPPU tries to use evidence, as long as the court is of the opinion that indirect evidence does not use indirect evidence in handling cartel cases, it can be used on the grounds that it has not been regulated in law, efforts to handle cartel

cases can be expected to end in failure. In other words, when KPPU tries to handle cartel cases by using indirect evidence, it will only succeed within KPPU's environment. Furthermore, when business actors file an objection to the District Court or appeal to the Supreme Court,

There are at least two KPPU decisions that use indirect evidence in cartel cases that are upheld by the Supreme Court, namely Decision Number 12/KPPU-L/2009 related to tenders and Decision Number 09/KPPU-L/2008 regarding the Hajj give away tender conducted by Garuda Indonesia. Among these two things, the evidence presented by the KPPU as indirect evidence is in the form of evidence of communication between business actors, which in the judges' consideration is that this indirect evidence is compatible with several other events that do indicate the existence of a cartel. However,

This problem is considered crucial considering that the legal system adopted in Indonesia is civil law, which places laws and regulations as the main source in deciding a case and places judges only as mouthpieces of the law. Thus, this is more or less the background of the not yet progressive enforcement of business competition law, especially in accommodating indirect evidence as the basis for judges to make a decision.

### 3. CONCLUSION

The cartel is a violation of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, especially those regulated in Article 11, which has a significant impact and is very detrimental to the community as consumers. KPPU as the authority authorized to enforce the law in the field of business competition uses indirect evidence to prove the existence of a cartel carried out by business actors, however, the implementation of the use of indirect evidence as a basis for deciding the existence of a cartel has not yet been accommodated in the procedural law system in Indonesia. .

Therefore, there are at least two things that can be a solution to this problem, namely efforts to strengthen procedural law in handling business competition cases and clarify the institutional status and authority of KPPU. Efforts to strengthen procedural law in handling business competition cases and clarify institutional status and authority can be carried out by revising Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition with more and more rigid procedural law arrangements in the law. as well as clarifying the institutional status of KPPU, especially in carrying out its authority to handle a case, especially a cartel. [12]

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