Cartel Enforcement as a Form of Unfair Competition in Indonesia, the United States, and Japan: A Comparative Analysis

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Abstract. Using normative juridical approaches to study legal norms and principles, this paper explores the type of regulation and procedure of law enforcement against business players who practice cartel under competition law in Indonesia, the United States, and Japan. Statutory approach, comparative law approach, and case approach are employed. Between Indonesia, the United States, and Japan, there are substantial disparities in the manner and method of law enforcement, the legal remedies pursued, the use of evidence in revealing cartel behaviors, and the sanctions applied. America is extremely resolute in imposing criminal consequences on commercial actors who engage in cartel practices, but Indonesia is extremely hesitant to do so. Administrative punishments imposed on business actors who breach the Antimonopoly Law and engage in unfair business competition are rarely adhered to in some instances.

Keywords: cartel · competition · law enforcement

1 Introduction

In a market economy, competition law is one of the most essential legal mechanisms. Through corporate competition law, the government aims to safeguard fair competition among market participants. Fair competition, according to Khemani (1998), will encourage business players to be more efficient and offer a wider variety of goods and services at cheaper rates. Experience in numerous recently industrialized East Asian nations, particularly South Korea and Taiwan, demonstrates that fair economic competition compels business players to enhance efficiency, product quality, and innovation. Competition in the business sector has prompted American manufacturing companies to spend more in technology to boost their competitiveness. Conversely, businesses that are inefficient, uncompetitive, and inattentive to consumer needs will be eliminated from the market [1].

Antitrust Law is compared to the Magna Carta for economic liberty in the United States. Where economic freedom and the system of business freedom are as important as the Bill of Rights which protects human rights in the United States [2]. Gellhorn and Kovacic also argue that this law can serve as a tool to control the abuse of economic power by preventing monopolistic practices, punishing cartels, and protecting competition [3].

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Meanwhile, economic competition in Indonesia is governed by Law No. 5 of 1999 concerning the Prohibition of Monopolies and Unfair Competition (Law No. 5 of 1999). This legislation prohibits business actors from entering into agreements with business competitors to influence pricing by restricting the production of money or marketing of goods or services, which could lead to monopolistic behaviors and unfair competition. These regulations, as specified in Article 11 of Law No. 5 of 1999, stipulate that:

"Business actors are forbidden from entering into agreements with their business competitors that aim to influence prices by limiting the production and/or marketing of goods and/or services, which could lead to monopolistic tactics and/or unfair business competition".

According to these regulations, horizontal agreements that are deemed to have a negative impact on business competition by determining prices, assigning consumers or regions, or manipulating offers are referred to as cartel acts. By endangering a nation's ability to engage in free commerce, the actions of the cartel have a direct impact on its competitive culture. The practice of cartels is also extremely destructive to the well-being of customers and the overall economy of a nation. Former European Union Competition Commissioner Maria Monti remarked that, "In a free-market economy, cartels are cancerous [4].

In the context of criminal law, a cartel is a type of white-collar crime that violates morals and is considered a disgraceful act that must be punished [5]. Therefore, cartel action, which is a prohibited form of agreement, is governed by Article 11 of Law no. 5 of 1999, which classifies anti-competitive actions into prohibited forms of agreement, prohibited activities, and dominant positions and their abuse.

Article 48 paragraph 1 outlines the principal cartel-related offenses, including: (1) A violation of Article 4, Article 9 to Article 14, Article 16 to Article 19, Article 25, Article 27, and Article 28 is punishable by a minimum fine of Rp. 25,000,000,000.00 and a maximum fine of rupiah.

Based on these provisions, it is clear that the main punishment imposed is a fine and a substitute confinement, where the substitute confinement is grossly disproportionate to the fine imposed. In contrast, criminal sanctions against cartels are more severe in other countries, such as the United States and Japan [6]. Behind the severity of the criminal sanctions imposed by the two countries, namely the leniency policy, they have implemented policies to deal with cartels [7]. Based on the preceding description of the problem's background, it is evident that Indonesia, the United States, and Japan have different regulations regarding cartels, which are classified as forms of agreements that are prohibited in antitrust law and unfair business competition. Therefore, the purpose of this paper is to compare the form of regulation and process of law enforcement against business actors who practice cartel in business competition law in Indonesia, the United States, and Japan.

2 Method

This study employs a normative juridical method to analyze legal norms and principles. The approaches used include a statutory approach, a comparative law approach, and

a case approach. The data used in this normative research is secondary data used as primary data, including Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, Regulation of the Supreme Court of the Republic of Indonesia Number 03 of 2021 concerning Procedural Rules, and Law Number 5 of 1999 concerning the Prohibi.

3 Result and Discussion

3.1 Cartel - Definition

The definition of cartel may be found in Black's Law Dictionary, which defines cartel as: "A group of producers of each product who band together to control production, sales, and prices in order to achieve a monopoly in a specific industry or commodity. Also, associations based on agreements between companies or parts of companies with shared interests, designed to prevent extreme or unfair competition and allocate markets, and to promote the exchange of knowledge resulting from scientific and technical research, patent exchange, and product standardization [8]. A cartel is, in general, a group of firms, entities, and the business community that agree to cooperate and not compete in order to influence market prices by controlling the market in terms of producing and selling a particular commodity [9].

The practice of cartels is one of the methods employed by business operators to affect prices by restricting their production volume. They believe that if their market production is reduced but demand for their items remains unchanged, this will result in a price increase. And conversely, if their product is abundant on the market, it will have an effect on the price of their goods. Therefore, corporate players attempt to develop horizontal collaboration (pools) in order to set the cost and quantity of the production of goods or services. However, the establishment of this cooperation is not always successful, as members frequently attempt to cheat for their own gain [10].

A cartel typically exhibits a number of features. Initially, a conspiracy exists between multiple business actors. Secondly, fix prices. Third, for successful pricing, the allocation of consumers, production, or areas must also be performed. Fourth, there are disparities in the interests of business players, as a result, for instance, of cost disparities. Therefore, there must be a compromise among cartel members, such as compensation from the larger cartel members to the smaller ones [11]. Cartels can also be international or domestic [12]. An international cartel is a cartel that operates on a global level between two or more countries, which has a direct and detrimental impact on international markets and is geographically wider than a local cartel [13]. Meanwhile, a domestic cartel is a form of agreement between competing companies in a country that deals with similar businesses.

The practice of a cartel can be successful if the business actors participating in the cartel agreement constitute the vast majority of the market's business participants. Because if only a small number of business actors are involved in the cartel agreement, the cartel agreement is typically ineffective in influencing the supply of products on the market, as the shortage of supply on the market will be covered by supply from business actors not involved in the cartel agreement.

3.2 Indonesian Cartel Law Enforcement and Enforcement Method

In Indonesia, provisions regarding cartels are governed by Law No. 5 of 1999, which classifies a cartel as a sort of arrangement that is illegal for corporate actors to enter into. Article 11 of 1999's Law No. 5 stipulates:

> *"Business actors are forbidden from engaging into agreements with their competitors for the purpose of influencing prices by limiting the production and/or marketing of goods and/or services, which could lead to monopolistic activities and unfair business competition".*

The formulation of the cartel by the rule of reason by the authors of Law no. 5 of 1999 can be interpreted to mean that business actors can enter into agreements with business competitors to influence prices by regulating the production or marketing of goods or services, so long as they do not result in monopolistic practices and unfair competition.

In the context of law enforcement actions against corporate operators suspected of engaging in cartel activity. The Competition Supervision Commission's (KPPU) Regulation No. 4 of 2010 on Cartels (Guidelines Article 11) describes how the rule of reason is to be used. This regulation requires an in-depth investigation into the reasons why the reported business actors have formed a cartel. KPPU must determine if the motives of corporate parties make this cartel acceptable (reasonable restraint). KPPU must take the following into consideration:

1. Are there indications that the production of goods and/or services is decreasing, or that prices are rising? If not, then the activities of the business actors are not in violation of competition law.
2. Is the conduct naked (simply, directly intended at eliminating or lowering competition) or is it tangential? (not the purpose of collaboration but only as a follow-up). It will be illegal if the collaboration is not concealed.
3. That the cartel controls the market. If the cartel has sufficient market strength, they have the ability to exploit it. However, if there is no market power, it will be difficult for the cartel to exert market influence.
4. There is compelling evidence that the cartel generates substantial efficiencies that exceed the ensuing losses. The cartel only results in losses if it does not increase efficiency.
5. The necessity is reasonable. This implies that cartel actors must act sensibly. In other words, in order for business actors to acquire competitive advantages, the cartel's acts must be implemented, as there is no other means or option.
6. Test of balance After examining the aforementioned elements, it is vital to compare the cartel's profits and losses. If the profits obtained exceed the resulting losses, then the conduct or activities of the business actors are justifiable.
7. In the instance of the imported beef cartel, the KPPU's application of the rule of reason must have adhered to KPPU Regulation No. 4 of 2010. It was proved that the cartel had a negative effect, hence the Reported Parties were found in violation of Article 11, which forbids cartels.

Various provisions involving the banning of cartels may be found in other articles of Law No. 5 of 1999, including: Article 5 of Law No. 5 of 1999 relates to price fixing by stating:

(a) Businesses are forbidden from entering into arrangements with their competitors to determine the price of goods or services that consumers or customers in the same relevant market must pay.
(b) The provisions mentioned in subsection (1) do not apply to:

   a. agreement agreed into in a joint venture; or
   b. a contract based on the law that applies.

The distinction between the cartel requirements outlined in Article 11 and those outlined in Article 5 is that business actors agreed to establish prices under Article 5 of Law No. 5 of 1999. Whereas under Article 11, the cartel agreed upon by the members is to influence prices by regulating the production and/or marketing of goods or services. So, the cartel governed by Article 11 indicates that the players agree on the quantity of production and/or marketing of goods or services, which would affect the price of the commodities they create.

Moreover, Article 7 of Law No. 5 of 1999 states: "Business actors are forbidden from engaging into agreements with competing business actors to establish prices below the market price, which could lead to unfair business competition." This article demands the establishment of a price below the market price, whereas Article 11 contains an agreement addressing the quantity of products or services produced and marketed. The requirements of article 7 are intended to eliminate or diminish competition.

Further provisions in Article 9 regarding the division of territory state: Business actors are prohibited from entering into agreements with competing business actors for the purpose of dividing marketing areas or market allocations for goods and/or services so as to result in monopolistic business practices and/or unfair business competition. Similarities exist in the formulations of articles 9 and 11. The goal of article 9 of the agreement is to divide the marketing area or market allocation for goods or services. Article 9 does not require an agreement on the production of goods and services, as required by Article 11.

Moreover, with regard to the principle of proof regarding the existence of a violation in Law No. 5 of 1999 concerning cartel practices, it is the same as the principle of proof in criminal cases that applies in the Criminal Procedure Code, namely by referring to Article 183 of the Criminal Procedure Code, which states that determining a person's guilt must be based on at least two valid pieces of evidence, and a conviction is obtained if a criminal act has actually occurred [14].

At this level of the examination procedure, KPPU wants proof that the concerned business actor has broken Law No. 5 of 1999 and its accompanying rules. The KPPU's use of evidence differs from that of civil procedural law, but is comparable to that of the Criminal Procedure Code. Article 42 of Law No. 5 of 1999, jo. In accordance with Article 72 of KPPU Regulation No. 1 of 2010, the KPPU's examination evidences consist of: (1) Witness testimony; (2) Expert testimony; (3) Letters and/or papers; (4) Instructions; and (5) Description of business actors.

The aforementioned evidence is identical to the evidence utilized in the enforcement of criminal law. This means that the process and use of evidence in the investigation and prosecution of business actors who break Law No. 5 of 1999 in cartel cases and other violations are identical to the process and use of evidence in the investigation and prosecution of other general offenses. In the context of cartel practices and unfair business competition, the Organization for Economic Cooperation and Development (OECD) Policy Brief June 2007, Prosecuting Cartels without Direct Evidence of Agreement classifies the evidence to prove the existence of a cartel agreement as direct evidence and indirect evidence [15].

Direct evidence is evidence that demonstrates a meeting or conversation between business actors and describes the content of the agreement between these business actors. The kinds of indirect evidence are: a) papers (both printed and electronic) that reveal the agreement's terms and parties; and b) oral and written comments by cartel business participants outlining the cartel's implementation. While indirect evidence is evidence that does not directly identify the agreement's terms or the participants to the agreement, direct evidence does. Indirect evidence comprises of evidence of communication between business actors accused of participating in a cartel and economic evidence on the market and the behavior of the cartel business actors involved in proposing the joint action. Indirect evidence is a tool for detecting indications of cartel actions conducted by business actors, particularly agreements between business actors that set the selling price of certain goods or services to customers.

There are a number of types of circumstantial evidence. The first form provides evidence that cartel business actors met or communicated, but does not specify the nature of their conversation. Communication evidence describes this type of proof. Records of telephone talks (but not the content of the discussions) between competing business actors, or records of trips to the same destination or participation in particular gatherings such as trade conferences. Then, additional evidence in which business actors communicate, such as minutes or meeting notes depicting discussions about prices, demand, or capacity use; internal company documents demonstrating knowledge or understanding of pricing strategies by competing business actors, such as knowledge of future price increases by competing business actors.

The second indirect evidence type is known as economic evidence. Economic evidence comprises two types: structure evidence (structural evidence) and conduct evidence (behavioural evidence). Structural economic evidence, such as high market concentration, low market concentration on the other hand, high barriers to market entry, and product homogeneity, indicates whether the market structure permits the formation of a cartel [16]. Behavioural evidence, such as parallel price increases and suspicious supply patterns, indicates whether competitors in the market are behaving in an anticompetitive manner [17].

3.3 The American Legal System and the Enforcement of Cartel Laws

Multiple regulations control competition law in the United States, including the Federal Trade Commission Act, Sherman Antitrust Act, Wilson Tariff, Clayton Act, Hart-Scott-Rodino Antitrust Improvement Act, International Antitrust Enforcement Assistance Act, and Antitrust Civil Process Act. Prior to this law, the source of competition law in the

United States was jurisprudence [18]. At that time, courts in the United States had the principle that perpetrators of price fixing, boycotts, and land division would be declared unlawful regardless of whether there was a reasonable reason or not [19].

The Sherman Antitrust Act consists of seven articles that control various prohibitions and law enforcement activities carried out by business entities. In this instance, business actors include persons, corporations, and associations based in or allowed by the laws of the United States, a U.S. territory, a state, or any foreign nation [20].

In The Sherman Antitrust Act, there are three primary restrictions. Article 1 regulates the prohibition of collusion that hinders the occurrence of fair business competition, article 2 regulates the prohibition of monopoly, and article 3 regulates the prohibition on territorial division [21]. It can be seen that the actions regulated by Articles 1 and 3 require at least two business actors, while the actions regulated by Article 2 require only one business actor [22].

The Sherman Antitrust Act also applies under two conditions to overseas trade. This activity must have a direct, substantial, and predictable effect on U.S. commerce. The second criterion is the ability to give effect to additional Shermant Antitrust Act requirements [23].

The Clayton Act of 1914 regulates later prohibitions pertaining to conduct or conduct that leads to unfair business competition. Four prohibited acts are governed under the Clayton Act. The first act is about price discrimination, in which business actors sell the same goods to different consumers at different prices under identical conditions. The second act prohibits parties from entering into binding or exclusive contracts, such as a vendor offering a buyer a set price on the condition that the buyer does not purchase from a competing business actor. The third act prohibits enterprises from acquiring rival firms. The fourth act prohibits directors or management of a corporation from holding the same job at other companies.

If the United States is hurt in business or property by an antitrust-prohibited act, it may file a claim in the district court where the defendant or his agent resides. Regardless of the amount in dispute, the state can charge a fee to recover three (three) times the damage sustained [24].

With the computation of illegal overcharges, the competent authority may utilize statistical or sample evidence to substantiate the defendant's guilt. Additionally, other suitable approaches may also be utilized to estimate the losses incurred. The competent authority is not required to produce evidence of specific claims or the amount of damages sustained by the plaintiff [25].

Several United States district courts are charged with preventing and prosecuting violations of The Sherman Antitrust Act and The Clayton Act. In the context of preventing and taking action against such infractions, it is the prosecutor's responsibility, under the guidance of the Attorney General, to commence the legal process in accordance with his jurisdiction. By presenting a petition, this can be accomplished.

As soon as the plaintiffs have been formally notified of the petition, the court will expeditiously move forward with the procedures and case determination. Prior to the decision, the court may at any time issue a temporary restraining order or prohibition that it deems appropriate in that location [26]. Even for business actors who violate The

Sherman Antitrust Act, the competent authority can confiscate their property based on violations of articles 1–3 of The Sherman Antitrust Act [27].

United States corporate competition law enforcement is unique in that it is carried out by two competent authorities: the Federal Trade Commission (FTC) and the Department of Justice (DOJ). As a corporate competition regulator, there is no apparent separation between the FTC and the Justice Department. The Federal Trade Commission is an administrative agency intended to enforce competition law and safeguard consumers [28].

The FTC has the jurisdiction to undertake investigations throughout the whole United States. The FTC is vested with the following authorities [29]:

a. Perform some research. The FTC may gather information about alleged infractions. Except for banks and other savings and loan institutions, investigations are conducted on companies, corporations, habits, individuals, partnerships, and other sorts of businesses that can impact trade.
b. As a follow-up to the inquiry, conduct administrative and judicial law enforcement and render administrative adjudications.
c. Implementing the law on business competition and consumer protection with implementing regulations.

The FTC is entrusted with preventing and taking action against individuals, partnerships, and businesses who engage in unfair business competition that has an impact on commerce. If the FTC has cause to believe that there has been unfair commercial competition, it will investigate based on public interest or complaints from individuals or businesses.

The trial will take place at least thirty days following the filing of the lawsuit. The purpose of the trial is to hear the complainant's statements, while the reported party has the right to appear and defend. The FTC must base its decisions on solid evidence. The FTC may request confirmation from a court in order to reinforce its decision.

Within sixty days of receiving or becoming aware of the FTC's decision, business actors who disagree with it can file an appeal with the Court of Appeals. In accordance with the Federal Rules of Appellate Procedure, the requirements and procedures applicable to the appeal process are identical to those applicable to submitting an appeal in general.

Unless the Supreme Court decides to reconsider the ruling, court decisions are final. The conduct or practice must cause or be likely to cause considerable harm to the consumer in order to be deemed unfair. Such colossal losses are unavoidable for customers to avoid, and they are not worth the consumer or competitive gain they would provide.

3.4 Japan's Legal Structure and Antitrust Enforcement

The Anti-Monopoly Act (AMA) of Japan forbids monopoly activities, limitations on unfair commerce, and other fraudulent conduct. Japan forbids actions that impede healthy competition in trade [30]. Prohibition of holding corporations where foreign firms cannot form holding companies that regulate domestic companies in Japan [31]. Restrictions on owning shares, management, mergers, and business transfers. Cartels (including bid

rigging) and other activities to avoid competition among competitors are outlawed as "unfair trade control [32]. Article 3 of the AMA provides "Unfair Trade Restrictions", which states that cartels are prohibited [33]. Here the cartel is defined in Article 2 paragraph (6) as "a business activity, in which each entrepreneur, by contract, agreement, or any other means regardless of his name, together with other entrepreneurs, restricts each other or carries out their business activities in such a way as to fix, maintain, or increase prices, or limit production, technology, products, facilities, or partners, which ar[s] likely to have an adverse effect on [34].

Under the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Antimonopoly Act), the Japan Fair Trade Commission (JFTC) is an independent and administrative authority under the Prime Minister [34]. JFTC has the authority to handle cases relating to private monopolies, cartels and bid rigging, unfair trading practices, and mergers. The JTFC is a quasi-judicial institution with the authority to investigate, adjudicate, and make regulations [35].

Generally, the JFTC begins an investigation with a dawn raid. The JFTC may also conduct investigations using the following steps: I order persons to be interrogated, and collect their opinions or reports; (2) order expert witnesses to provide opinions; (3) order people to submit books and documents, and to keep those documents at the JFTC; and (4) enter and inspect company premises and other necessary locations" [32].

Article 39 of the AMA requires the JFTC to maintain the confidentiality of any information confiscated, provided, or made, including witness statements. However, prosecutors can use the signed statement as evidence during criminal proceedings, and the company can obtain copies of its employees' statements to challenge or appeal administrative orders [36].

In terms of criminal sanctions, the JFTC is only authorized to submit criminal charges to the Public Prosecutor [37]. With regard to cartel criminal enforcement, the JFTC has adopted a policy that outlines what cases may be considered for criminal enforcement [38].

Under the Anti-Monopoly Act ("AMA"), cartel enforcement can be achieved through administrative or criminal means. In practice, Stop orders are one of the main and most common methods of sanctioning unreasonable trade restrictions, and/or orders for payment of surcharges (or administrative fines) have become the primary method of enforcement by the JFTC [39].

Criminal penalties are available for violation of final and binding termination orders. The AMA of 2009 stipulates that the JFTC may issue termination orders to employers who commit infringement and to employers who acquire business related to infringement, and extends the statute of limitations for termination from three to five years. The JFTC also imposes additional administrative fees on companies involved in cartel activities [40].

The AMA governs criminal penalties for individuals and businesses who violate unreasonable trade restrictions. The Public Prosecutor has sole authority over criminal cases involving cartels. Companies that commit cartel violations may be subject to a criminal fine of up to 500 million (approximately $5 million) and the top management of a company that violates may be subject to a criminal fine of up to 5 million. The AMA neither imposes civil fines nor brings criminal charges against the officers, employees,

or other individuals of the first applicant to obtain immunity. $50,000) [41]. In the identification of multiple offenses, the crime is consolidated and weighted, the maximum term of imprisonment with work is extended to a maximum of seven years and six months, and the maximum fine for individuals and legal entities is increased to the maximum amount. Multiplied by the number of violations multiplied by the number of laws and regulations violated.

3.5 Comparison of Indonesian, American, and Japanese Competition Law

Based on the preceding description, this section explains the significant differences between Indonesia, the United States, and Japan with regard to antimonopoly and business competition, specifically cartels as a form of agreement that is prohibited by competition law in Indonesia, the United States, and Japan.

3.5.1 Regulation

The law on antitrust and unfair business competition in Indonesia is relatively new, having been enacted in 1999 as part of reform-related regulations. Unlike in the United States and Japan. On July 2, 1890, the Sherman Anti-Trust Act of the United States went into effect. While Japan's Anti-Monopoly Act (AMA) came into effect on April 14, 1947.

Generally speaking, the legal rules regarding cartels in Indonesia, the United States, and Japan are similar, pertaining to the prohibition against business actors entering into agreements with business competitors to influence prices by regulating the production and/or marketing of goods and/or services, which may result in monopolistic practices and unfair business competition. According to Article 11 of the Law No. 5 of 1999. However, in the United States, prohibitions on conduct or conduct that leads to unfair business competition are regulated by The Clayton Act of 1914. The Clayton Act regulates four prohibited acts. The first act is concerned with price discrimination, in which business actors sell the same product under identical conditions to different consumers at different prices. The second act prohibits parties from entering into exclusive or binding contracts, such as a seller offering a certain price to a buyer on the condition that the buyer does not purchase from a competing business actor. The third act addresses the prohibition on acquiring competing companies. The fourth act prohibits directors or management from holding the same position in multiple competing businesses. Article 3 of the AMA in Japan relates to cartels or tender collusion, which includes price fixing, production restrictions, and customer allocation.

3.5.2 Law Enforcement Process

Unique to the United States is the fact that the Federal Trade Commission (FTC) and the Department of Justice are responsible for enforcing business competition law (DOJ). There is no clear division of labour between the FTC and the DOJ in the performance of their respective responsibilities as business competition authorities. The Federal Trade Commission is an administrative agency created to enforce competition law and safeguard consumers [42]. Among the FTC's powers is the ability to conduct an investigation. Except for banks and other savings and loan institutions, the FTC can investigate

organizations, businesses, behavior, individuals, partnerships, and other types of businesses that can affect trade. As a follow-up to its investigation, the FTC enforces the law administratively and judicially and issues an administrative adjudication.

The FTC is tasked with preventing and taking action against individuals, partnerships, and businesses that engage in unfair business competition that has a negative impact on trade. Individuals or companies can file complaints against unfair business competition. After thirty days of processing the complaint, the FTC has conducted a trial. The trial is conducted to hear the complainant's statements, while the accused has the right to attend and defend. FTC decisions must be supported by substantial evidence. In order to bolster its decision, the FTC may seek confirmation in the form of a court ruling.

Business actors who disagree with the FTC's decision may file an appeal to the Court of Appeals within sixty days of receiving or becoming aware of the FTC's decision. The provisions and procedures for filing an appeal are identical to those for filing an appeal in general, which refers to the Federal Rules of Appellate Procedure.

In contrast to Japan, the Japan Fair Trade Commission (JFTC) is an independent administrative authority under the Prime Minister. JFTC has the authority to handle cases involving private monopolies, cartels and bid rigging, unfair trading practices, and mergers. The JTFC is a quasi-judicial institution with the authority to investigate, adjudicate, and make regulations.

The JFTC investigates by I ordering people to be questioned and collecting their opinions or reports; (ii) ordering expert witnesses to provide their opinions; (iii) ordering people to submit books and documents, and storing them at the JFTC; and (iv) entering and inspecting the company's premises or other necessary locations "In addition to seizing documents and materials, the JFTC may also require individuals to voluntarily participate in interviews following on-site inspections. The JFTC may require an obligatory interview in the event of a refusal. Participants in an interview do not have the right to legal representation. Administrative orders can only be enforced by the JFTC. However, with regard to criminal penalties, the JFTC is only permitted to file criminal accusations with the Public Prosecutor.

The jurisdiction to enforce the legislation on unfair business competition, including cartels, resides with the Business Competition Supervisory Commission in the United States and Japan, whereas in Indonesia this authority resides with the Attorney General (KPPU). In contrast to the United States and Japan, the KPPU handles cartel matters in a slightly different manner. The KPPU has the greatest authority to conduct investigations, exams, and impose administrative sanctions. If there are signs of criminal infractions, such as examples of tender conspiracy that result in financial damages to the state, KPPU is powerless. The power resides with other institutions, such as the Prosecutor or the Corruption Eradication Commission.

Legal remedies against administrative decisions or punishments issued by the KPPU differ from those in the United States and Japan. Business actors that are subject to administrative sanctions file an objection with the commercial court as a court of first instance, and the examination procedure at the commercial court transforms its status to a civil examination. Objections to the decision of the court of first instance may be brought to the level of cassation for further proceedings.

3.5.3 Evidence-Based Use

Almost every government recognizes the presence of indirect evidence in cartel investigation in the current state of cartel law enforcement development. The question therefore arises whether indirect evidence may stand alone as proof or whether it must be supported by other evidence. Provisions in Indonesia pertaining to the use of evidence in the course of law enforcement against cartel acts still refer to Article 42 of Law Number 5 of 1999 jo. In accordance with Article 72 of KPPU Regulation No. 1 of 2010, the KPPU's examination evidences consist of: (1) Witness testimony; (2) Expert testimony; (3) Letters and/or papers; (4) Instructions; and (5) Description of business actors.

In the United States, in contrast to Indonesia, indirect evidence can be used to prove Antimonopoly Law violations, as in the case of High Fructose Corn Syrup, which proved conspiracy using only indirect evidence, whereas in the cases of Baby Food, Blomkest Fertilizer, and Williamson Oil, direct evidence is insufficient to prove the existence of a conspiracy [43]. The use of economic and communication indicators as proof of cartel violations is not accepted by Law No. 5 of 1999 and the Indonesian procedural law system, including civil and criminal procedural law, in general. As a result, there are varying perspectives on the admissibility of indirect evidence in court practice. In many of its decisions, the District Court rejects the existence of indirect evidence, but the Supreme Court has both those who reject and those who accept it.

3.5.4 Sanctions

In addition to being administrative in nature, the fines enforced against commercial actors who engage in cartel activities in Indonesia are relatively modest. According to Article 48 of Law No. 5 of 1999, the principal cartel-related criminal consequences consist of a fine and a replacement detention that is grossly disproportionate to the fine. In contrast to the United States and Japan, both administrative and criminal consequences are comparatively severe. Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108-237, section 213(b)), which has been in effect since June 22, 2004, contains restrictions regulating cartels. This law raises the number of criminal penalties by increasing the maximum prison sentence from three to ten years and increasing the maximum fine for people from $350,000 to $1,000,000 and for businesses from $10,000,000 to $100,000,000.

In Japan, the Antimonopoly Law criminal sanctions for corporations can take the form of a maximum fine of 500 million yen, while for individuals, in addition to a maximum fine of 5 million yen, imprisonment with work for a maximum of 5 (five) years can be imposed either cumulatively or as an alternative.. For violations of termination orders that are final and binding, criminal consequences are available. In 2009, the AMA provides that the JFTC may issue termination orders to employers who commit violations or acquire businesses related to violations, and it also extends the statute of limitations for termination from three to five years. The JFTC also charges additional administrative fines on enterprises participating in cartel activity.

These laws demonstrate that the application of punishment against commercial actors who engage in cartel activity varies between Indonesia, the United States, and Japan.

The lightest sanctions undermine the effectiveness of law enforcement on business competition, which is consequently unable to discourage corporate players that frequently engage in activities that violate the Antitrust Law and unfair competition.

4 Conclusion

In essence, the regulation on cartels as a prohibited form of agreement under business competition law in Indonesia, the United States, and Japan has the same objective: to create a healthy and perfect market free from the practices or actions of fraudulent and unhealthy business actors around the world. Commerce and industry. However, there are substantial disparities in the manner and method of law enforcement, the legal remedies pursued, the use of evidence in exposing cartel tactics by the competent authorities, and the sanctions applied by Indonesia, the United States, and Japan. The United States is extremely resolute when it comes to imposing criminal punishment on commercial actors who engage in cartel actions, whereas Indonesia has a fairly lax approach. In certain instances, administrative sanctions imposed on business actors who breach the Antimonopoly Law and engage in unfair business competition are rarely adhered to.

In many countries, indirect evidence tends to be supported by other evidence, such as direct evidence, despite the fact that there are differences of view concerning evidence in various nations. Considering that the economic method is diametrically opposed to legal theory, this becomes particularly essential for indirect evidence in the form of economic proof. The economic method is based on models and hypotheses and may provide varying outcomes. While the legal technique to revealing a fact relating to the practice of cartel is material, hypotheses and models are not permitted because material truth is sought.

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3. Ernest Gellhorn and William E. Kovacic, Antitrust Law and Economics in a Nutshell, West Publishing Company, 1994, p. 1.
4. J.S. Lee, Strategies to Achieve a Binding International Agreement on Regulating Cartels, (Springer Nature Singapore, 2016).
5. Patrick Gunsberg, (2015), as quoted by, Ahmad Sofian, Tafsir Terhadap Delik Kartel dalam UU No. 5/1999, https://business-law.binus.ac.id/2018/04/30/tafsir-terhadap-delik-kartel-dalam-uu-no-5-1999/
6. Hersen Monarchy, Ismail Navianto, dan Nurini Aprilianda Reformulasi Sanksi Pidana Dalam Tindak Pidana Kartel, Fakultas Hukum Universitas Brawijaya, Malang.
7. Leniency is a system of acquittal, both partial and total punishment, which should be applied to cartel members. Leniency is given to cartel members who complain or testify to the practice of cartel activities to the competition authority.
8. BA Garner, Black's Law Dictionary, (2nd pocket ed., 2003).

9. "Fighting Cartels - Why and How?", Swedish Competition Authority, (2001) at http://www.konkurrensverket.se/globalassets/english/publications-and-decisions/fighting-cartels.pdf.
10. Herbert Hovenkamp, Federal Antitrust Policy: The Law of Competition and It's Practice, Second ed., 1995, p. 144.
11. William R. Andersen and C. Paul Rogers III, Antitrust Law: Policy and Practice, Mattew Bender, Third ed., 1999, p. 349.
12. See John M. Connor, "Private Recoveries in International Cartel Cases Worldwide: What do the Data Show?", 3, AAI Working Paper No. 12-03 (2012).
13. Some famous cartel cases around the world are the International Cartel in which all leading manufacturers of vitamins located in Belgium, Canada, France, Germany, Japan, the Netherlands, Switzerland and the United States were included or the Rockefeller Foundation, which influenced the U.S. and Europe in the early 20th century. After the U.S. Supreme Court ordered dismantling of Rockefeller-controlled Standard Oil Trust in 1911, the Rockefeller Foundation went on to control the US healthcare sector or finally, the OPEC, one of the best known cartel that is almost impossible to break, for the simple reason that it controls world's crude oil production and it can, at will, choose to cut output to get the desired price for its produce.
14. Nugroho, Hukum persaingan Usaha di Indonesia dalam teori & praktik serta penerapan hukumnya, Kencana Prenadamedia Group, Jakarta: 2012, p. 603.
15. Organisation for Economic Cooperation dan Development (OECD) Policy Brief June 2007: p. 1–3.
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18. Suyud Margono, Hukum Anti Monopoli, Sinar Grafika, Jakarta, p. 36–39.
19. Suyud Margono, Hukum Anti Monopoli, Sinar Grafika, Jakarta, p. 40.
20. The Sherman Antitrust Act of 1890, Section 7.
21. The Sherman Antitrust Act of 1890, Section 1–3.
22. Suyud Margono*, Op.cit,* p. *44.*
23. The Sherman Antitrust Act, op. cit., article 6a.
24. Suyud Margono, op.cit, p. 44–45.
25. Suyud Margono, op.cit, p. 44–45, Section 4d.
26. The Sherman Antitrust Act, Op.cit., section 4 dan Section 15.
27. The Sherman Antitrust Act, Op.cit., section 6.
28. Federal Trade Commission, "Commisioners", diakses dari https://www.ftc.gov/about-ftc/commissioners, pada tanggal 14 Agustus 2022 at; 20:00.
29. Federal Trade Commission, "A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority", diakses dari https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority#N_1_ pada tanggal 14 Agustus 2022 at; 20.30.
30. Margono, op.cit, p. 43.
31. Ishikawa, in Udin Silalahi and Isabella Cynthia Edgina, Proving Cartel Cases in Indonesia Through Indirect Evidence The Study of KPPU's Decisions 17/KPPU-I/2010 and 08/KPPU-I/2014, and Decisions 294 K/PDT.SUS/2012 and 221 K/PDT.SUS-KPPU/2016, Judicial Journal Vol. 10 No. 3 December 2017: 311–330.
32. A translation of the AMA", JFTC website at http://www.jftc.go.jp/en/legislation_gls/amended_ama09/index.html.
33. Article 3 of the AMA 1947 provides in pertinent part as follows: "No entrepreneur shall effect ... unreasonable restraint of trade." See https://www.jftc.go.jp/en/legislation_gls/amended_ama09/index_files/The_Antimonopoly_Act.pdf.

34. Article 2 (6) of AMA 1947.
35. Ishikawa, *Op.cit*.
36. See Id. Art. 39.
37. Article 96 (1) of the AMA provides in pertinent part as follows: "Any crime under Articles 89 ... inclusive shall be considered only after an accusation is filed by the Fair Trade Commission." See AMA 1947.
38. Atsushi Yamada, "Recent Developments in Japanese Cartel Enforcement – Time For A Change?", Competition Policy International, (October 2016) at https://www.competitionpolicyinternational.com/wp-content/uploads/2016/10/CPI-Chronicle-Yamada-FINAL.pdf.
39. A cease and desist order means "the measures necessary to eliminate the violation or to ensure that the violation is eliminated".
40. Summary of Issues Concerning the Modality of the Administrative Surcharge System", The Study Group on the Antimonopoly Act, July 13, 2016.
41. Article 89(1): "Anyone who violates any of the following provisions shall be punished by imprisonment with work for up to five years or a fine of up to five million yen: I Any person who, in violation of Article 3's provisions, has engaged in... unreasonable trade restraint..." Article 92 states, "Anyone who has committed any of the offenses outlined in Article 89... may, depending on the circumstances, be punished by the cumulative imposition of both imprisonment with work and a fine."
42. Federal Trade Commission, "Commisioners", diakses dari https://www.ftc.gov/about-ftc/commissioners, pada tanggal 14 Agustus 2022 at 20:00.
43. Riris Munadiya, "Bukti Tidak Langsung (Indirect Evidence) dalam Penangganan Kasus Persaingan Usaha", Jurnal Persaingan Usaha, Komisi Pengawas Persaingan Usaha, Edisi 5, 2011, p. 188–189.

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