ERIA Discussion Paper Series

Challenges of Indonesian Competition Law and Some Suggestions for Improvement

Manaek SM PASARIBU [#§]

Commission For The Supervision of Business Competition (KPPU)

January 2016

Abstract: *This paper discusses the problems in the implementation of Law No. 5 of 1999, the Indonesian Competition Law, explains the substance of the law, and provides recommendations for amending the Indonesian competition law. Existing loopholes in the enforcement of competition law in Indonesia, both in substantive and procedural terms, have created difficulties in practice. One way to solve this problem would be to amend the competition law.*

Our suggestions for the amendment of the Indonesian Competition Law relate to institutional status, dawn raid authority, indirect evidence, leniency programme, procedural law, private litigations, legal aspects of cross border enforcement, and merger notification. We expect that amending said law will result in a balance between procedural and substantive law and that implementing the competition law will finally create legal certainty regarding competition law enforcement in Indonesia.

Keywords: competition law, Indonesia, amendment, dawn raid authority, indirect evidence, leniency programme, procedural law, private litigations.

JEL classification: L40

Corresponding author. Manaek SM Pasaribu, S.H., LL.M, address: Jalan Melati Tirta II No. FA. 16 RT 003 RW 008, Sawangan Depok, Jawa Barat, Phone: 081317861776. Office Address, Commission For The Supervision of Business Competition (KPPU), Jalan Juanda No. 36, Jakarta Pusat, Indonesia phone: 081317861776. E-mail: manaekpasaribu@gmail.com

[§] This paper was conducted as a part of the project of Economic Research Institute for ASEAN and East Asia (ERIA). The author is deeply indebted to the members of this project for their invaluable suggestions. The opinions expressed in this paper are the sole responsibility of the author and do not reflect the views of the ERIA.

1. Introduction

In 1999, Indonesia enacted the Indonesian Competition Law, Law No. 5 of 1999, concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, which came into force in 2000. The law has the dual objective of safeguarding the public interest and improving national economic efficiency. After its enactment, constraints began to become apparent in the enforcement aspects of the law as the provisions in some of its articles are difficult to carry out and many of its articles are ambiguous.[1]

This paper takes a comprehensive review of the implementation of Indonesian competition law. Section 2 briefly explains the key components and features of Indonesian competition law, and gives an overview of the implementation record. Section 3 discusses the eight challenges that KPPU (the Indonesian competition commission) has faced in 15 years of enforcement. These eight issues cover (1) institutional status, (2) dawn raid authority, (3) indirect evidence, (4) leniency program, (5) procedural law, (6) private litigation and class action law suit, (7) legal aspects of cross-border enforcement, and (8) merger notification. Section 4 concludes with concrete policy recommendations.

2. Competition Law in Indonesia

2.1. Background Competition Law in Indonesia

Prior to the enactment of the Indonesian Competition Law, the Indonesian government did not pay much attention to the development of competition law.[2] In the 1980s, internal discussions on competition and consumer protection had been conducted several times among officials at the Department of Industry, but no comprehensive legal regime was adopted.[3]

[1] Sirait (2009), p. 23.
[2] Juwana (2002), p.186.
[3] Ibid.

The desire to have a comprehensive antimonopoly law in Indonesia dates back to around 1990. Many scholars, political parties, non-governmental organisations, and even certain government institutions discussed and proposed developing an antimonopoly law.[4] In 1995, the Indonesia Democratic Party (PDI) proposed a competition draft in the House of Representatives (DPR), but did not elicit a positive response from other members of the house, which at the time was still dominated by the government party.[5]

Similarly, the Indonesia Department of Industry (now the Ministry of Trade Republic of Indonesia), in cooperation with the University of Indonesia's Faculty of Law, produced a draft law entitled 'Healthy Business Competition'. Unfortunately, the political elites did not pay serious attention to the draft law. The political and economic environment was not conducive to such an initiative, and political will was insufficient to eradicate monopolies.[6]

The proposal to introduce antimonopoly legislation gained momentum when the government signed a letter of intent with the International Monetary Fund (IMF) on 29 July 1998. Under the IMF programme, Indonesia was required to pass a number of laws and regulations to ensure fair competition and consumer protection as well as on governance.[7] The government became serious about introducing an antimonopoly law at this point due in part to public demand for an end to monopolistic practices.

Unlike usual practice in Indonesia, the bill was formally initiated by the DPR. The Minister of Trade and Industry then prepared an alternate draft and finally the DPR sent forward a draft that became the official draft.[8] The DPR as a legislative body had rarely used its right to propose a bill in the preceding 30 years, even though such a course of action was possible under the constitution.[9]

The objectives of the Indonesian Competition Law are stated in Article 3: (i) safeguarding the public interest and increasing national economy efficiency to increase people's welfare; (ii) establishing a conducive business climate through the arrangement of fair business competition, thus guaranteeing equal business

[4] Ibid.
[5] Pangestu *et al.* (2002), p.213.
[6] Juwana (2002), p.3.
[7] Pangestu *et al.* (2002), p.186.
[8] Ibid. p.215.
[9] Hansen *et al.*, p.2.

opportunities for large, middle, and small business actors in Indonesia; (iii) preventing monopolistic practices and unfair business competition caused by business actors; (iv) creating effectiveness and efficiency in business activities.

2.2. Commission for the Supervision of Business Competition (KPPU)

KPPU is an independent institution with judicial authority to conduct investigations, evaluate alleged violations, hear and decide a case, impose administrative sanctions, and provide advice and opinions regarding government policies.[10] In the context of the structure of the Indonesian state, KPPU is an auxiliary organ and is a quasi-judicial body given the task of supervising the competition law.[11] Quasi institutions carry out the authority already accommodated at an existing state institution. Due to public distrust of the existing state institution, it is considered necessary to form an independent institution.[12]

KPPU commissioners are appointed and dismissed by the President with the approval of the DPR. Members of the commissions are appointed for a term of office of five years and are eligible for reappointment for one subsequent term of office. The KPPU Secretariat General supports the commissioners in carrying out their duties. Based on Article 35 of the Indonesian Competition Law, the duties of the KPPU are to (i) evaluate the agreements, business activities, and abuses of dominant market positions that may result in monopolistic practices and unfair business competition; (ii) provide advice and opinions concerning government policies in competition law; (iii) prepare guidelines for the Indonesian Competition Law; and (iv) submit periodic reports to the President and DPR.

Based on Article 36 of the Indonesian Competition Law, KPPU has the authority to (i) receive reports regarding violation of the Indonesian Competition Law, (ii) conduct investigations including inviting witnesses and any person deemed to have knowledge of violations of the law, (iii) determine and stipulate the existence or non-existence of losses on the parts of business persons or society (iv) decide on the case, and (v) impose administrative sanctions.

---

[10] Articles 35, 36, and 47, Law No. 5 of 1999.
[11] Jentera Jurnal Hukum (*Jentera Law Journal*) 12 editions, April–June 2006, p.37.
[12] Lubis *et al.* (2009), p.312.

2.3. The Substance of Law No. 5 of 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition

The Indonesian Competition Law distinguishes three categories of restrictions: restricted agreements (Article 4 to 16), restricted conducts (Article 17 to 24), and abuse of dominant position (Article 25 to 29). The other parts of the Indonesian Competition Law deal with the establishment of the KPPU as an independent agency for implementing the provisions of Law No. 5 of 1999 (Article 30 to 37); the procedures of case handling (Article 38 to 46); sanctions and criminalisation (Article 47 to 49); general exemptions (Article 50), exemptions of statutory monopolies (Article 51); and transitional and adjustment periods (Article 52 and 53).

The Indonesian Competition Law has two approaches to defining violations – per se illegal and rule of reason. Per se illegal means an agreement or activity that is considered inherently anti-competitive and injurious to the public without any need to determine whether it has actually injured market competition. Rule of reason means an agreement or activity that is considered anti-competitive only if the practice is unreasonable restraint of trade, based on economic factors, and has actually harmed market competition.[13]

The per se are the following: agreements leading to price fixing, price discrimination, agreements aimed at boycott, and exclusive agreements. The agreements prohibited under the rule of reasons are agreements leading to oligopoly, agreements leading to predatory pricing, agreements leading to market portioning and market allocation, cartels, trusts, agreements leading to oligopsony, agreements leading to vertical integration, and agreements with foreign parties.[14]

[13] Lubis *et al.* (2009), p.82.

[14] Article 4 (1) of the law stipulates that oligopoly agreements are prohibited if they are detrimental to competition. Article 4 (2) contains the assumption that a market share of 75 percent held by two or three businesspersons could be interpreted as those business persons having control over production and marketing.
Article 5 (1) prohibits business persons from entering into agreements with their competitor to set the price for certain goods or services. Such an agreement would eliminate any competition, which should exist among those businesspersons **(Price Fixing).**
Article 9 stipulates businesspersons are prohibited from concluding any contracts with other businesspersons with the intention of dividing marketing areas or market allocation of goods and/or services that can cause monopolistic practices and unfair business competition **(Market Allocation).**
Article 11 of the law states that business persons are prohibited from making any contract with other businesspersons with the intention to influence the price by determining production and/or

Article 50 of the Indonesian Competition Law excludes the following from the provisions of the law:

1. Actions and/or agreements intended to implement applicable laws and regulations;
2. Agreements related to intellectual property rights, such as licences, patents, trademarks, copyright, industrial product design, integrated electronic circuits, and trade secrets as well as agreements related to franchise;
3. Agreements for the stipulation of technical standards of goods and or services that do not inhibit or impede competition.
4. Agency agreements that do not stipulate the resupply of goods and or services at a price level lower than the contracted price;
5. Cooperation agreements in the field of research for the upgrading or improvement of living standards of society at large;
6. International agreements ratified by the Government of the Republic of Indonesia;
7. Export-oriented agreements or actions not disrupting domestic needs and or supplies;
8. Business actors of the small-scale group;
9. Activities of cooperatives aimed specifically at serving their members.

KPPU may impose sanctions in the form of administrative measures. The sanctions include the following:

1. Declarations that anti-competitive agreements be null and void;
2. Orders to stop vertical integration, monopolistic practices, unfair business competition, misuse of dominant position;
3. Declaration that mergers or consolidation of business entities or acquisition of shares are null and void;
4. Stipulation of compensation payments;

---

marketing of goods and/or services that can cause monopolistic practices and unfair business competitions (**Cartel).**
Boycotts are horizontal agreements between competitors to refrain from business transactions with other competitors, suppliers, or certain consumers. This article is described in Article 10 of Law No. 5 of 1999 (**Boycotts).**

5. Fines between Rp1 billion and Rp25 billion.

Article 48 of the Indonesian Competition Law stipulates basic criminal sanctions that can be imposed by the courts. The most serious infringements are subject to fines of between Rp25 billion and Rp100 billion or imprisonment for up to six months. Additional criminal sanctions may be imposed in the form of revocation of business licences, prohibition from holding positions of director or commissioner for a period between two and five years, or an order to stop certain activities or actions resulting in damage to other parties.

Regarding implementation of the Indonesian Competition Law, the KPPU has issued 36 guidelines, such as those concerning intellectual property rights, relevant markets, abuse of dominant position, interlocking directorates, collusive tendering, cartels, and mergers and acquisitions.

2.4. Case Handling Procedure in KPPU

Figure 1 describes the procedure of competition law in Indonesia. The process is initiated based on (i) a report from a party that made a complaint based on a violation of the Indonesian Competition Law, (ii) an initiative of KPPU, and (iii) the report of a reporting party with compensation request. The process of the case based on the report of the reporting party consists of the report, clarification, investigation, filing, commission council hearing, and commission decision. The process of the case based on the report of the reporting party along with the compensation request consists of the report, clarification, commission council hearing, and decision of the commission council. The process of the case based on the initiative of the commission consists of the report, research, monitoring of businesspersons, investigation, filing, commission hearing, and commission decision.

Any individual who has information on a violation of Law No. 5 of 1999 may submit a report to KPPU. The work unit in charge of report handling will follow up the report. The clarification process is to examine the administrative completeness of the report and to verify the address and identity of the reporting party and the reported party.

The work unit, which handles the investigation, appoints an investigator to look into the results of the clarification, research, and monitoring report. The report of the reporting party with compensation request does not need to be investigated further. The investigation is conducted to obtain sufficient evidence. The result of the investigation will be presented in the form of an investigation report, which at least contains the identity of the business person who has allegedly committed the violation, the provisions of the law that have allegedly been violated, and at least two pieces of evidence. The investigation report is submitted to the filing and case handling unit.

The person in charge of filing and case handling will assess whether there are sufficient grounds for proceeding with the case. If not, he will return the report to the unit of investigation. The person in charge of filing and case handling will present the draft of the investigation report in the commission meeting, which will revise or approve the draft.

The Council hearing is divided into three stages – the primary council hearing, the advance council hearing, and the commission's decision. The primary council hearing stage is the obligation of the investigator to read the report on alleged violation. The reported party will provide the response to the alleged violation, the name of the witness and expert, and the document related to the case. Regarding the report to demand compensation, the council hearing gives the reporting party an opportunity to read the report on the alleged violation of the reported party and the losses suffered by the reporting party. The primary council hearing is to be completed within 30 days.

The advance council hearing will examine the evidence from the investigator, the reporting party, and the reported party. The commission council hearing will summon the witness, language expert, expert, and government to be present at the advance council hearing. The process is conducted within a maximum of 60 days and can be extended for 30 days at most.

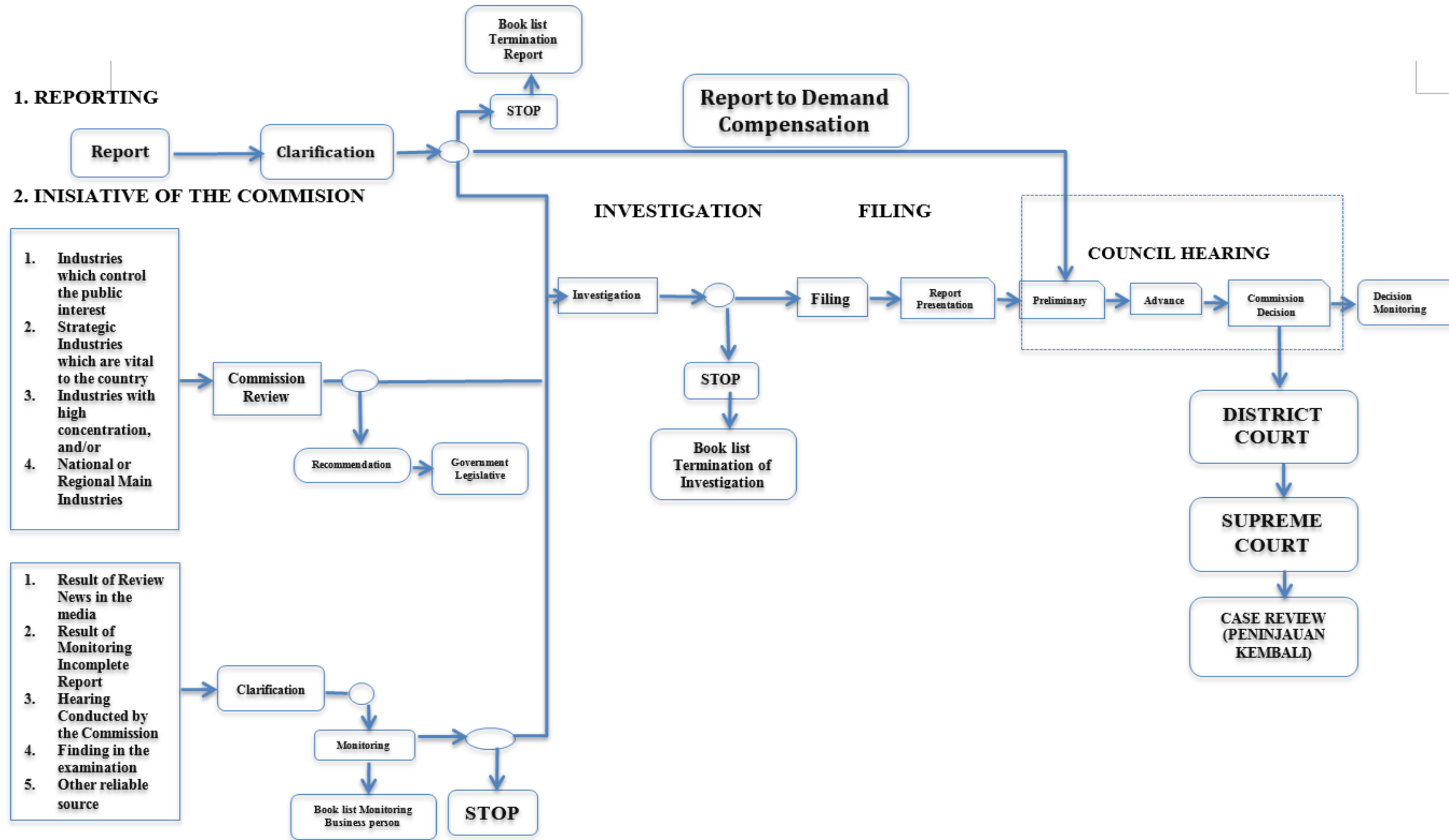
The commission holds a series of meetings to assess, analyse, and decide on the case based on whether there is sufficient evidence of a violation of the Indonesian Competition Law. It will also announce its decision. The commission council hearing also gives its advice and opinion about the case to the government. If a commission member has a dissenting opinion, his/her opinion and the reasoning behind it will be provided in the decision.

The announcement of the commission decision is open to the public. The decision contains the name of the reported party, the domicile, the name of reporting party in case of a demand for compensation, a summary of the case, a consideration and assessment, the article of the law that has allegedly been violated, an analysis, and an injunction.

2.5. Procedure for Filing an Objection to a KPPU Decision

The Indonesian Competition Law does not regulate in detail the procedure for objecting to a KPPU decision. If the businessperson does not object to the KPPU's decision, the decision becomes legally enforceable and binding (*inkracht van gewijsde*). However, a businessperson may file an objection against a KPPU decision to the district court, based on Article 44 (2) of the Indonesian Competition Law. The objection is to be filed where the party has a legal domicile within 14 days after receiving notification of a decision, which is announced through the KPPU website.

Figure 1: Indonesian Competition Law Procedure



Source: KPPU Regulations No. 1 of 2010, http://www.kppu.go.id/id/peraturan/peraturan-kppu/

Based on Article 44 (1), within 30 days from the date a businessperson is notified of the decision, he is required to report on the implementation of the decision. Article 44 (4) stipulates that the KPPU will submit the decision to a criminal investigator (police investigator) when the businessperson does not carry out the decision within 30 days of receiving notification. The use of police investigators in enforcing the competition law becomes the last remedy (*ultimum remedium*) in case the administrative decision cannot in itself be the solution for settling a competition law case.[15]

Article 45 of Law 1999 sets a time limit on the examination of competition law cases in the district court and the Supreme Court. The district court must render its judgment within 30 days after it has started to examine an objection. The Supreme Court should decide within 30 days.

The Indonesian Competition Law has shortcomings in terms of procedural law in court proceedings. As mentioned above, only three articles regulate the procedure for filing an objection to a KPPU decision, which in practice creates problems. For example, there is no clear procedure when businesspersons file an objection to the decision of KPPU with a district court or the Supreme Court. Neither does the law clearly stipulate a time limit.[16]

To address this shortcoming, on 18 July 2003 the Supreme Court of the Republic of Indonesia enacted Regulation No. 1 of 2003 concerning the Procedure for Filing an Objection to a KPPU Decision.[17] This regulation clarified the interpretation of the Indonesian Competition Law. The Supreme Court subsequently amended Regulation No. 1 of 2003 through Supreme Court Regulation No. 3 of 2005 concerning the Procedure for Filing an Objection to a KPPU Decision (Supreme Court Regulation No. 3 of 2005).

---

[15] Reza, 'Kerjasama KPPU dengan Penyidik dalam Penanganan Tindak Pindana Hukum Persaingan Usaha' [KPPU in Corporation with National Police in Handling Criminal Case of Competition Law], *KPPU Competition Law Journal* (2011), p.92.

[16] Lubis *et al.* (2009), p.332.

[17] Ibid.

2.6. Summary of the Supreme Court Regulation No. 3 of 2005

Article 2 of Supreme Court Regulation No. 3 of 2005 stipulates that the reported party has the exclusive right to file an objection to a decision by the KPPU. Such cases are handled by the district court and the decision must be taken by a panel of judges. That a single judge cannot decide the case is very important for reaching a fair decision.

The registrations of a KPPU case at the district court use a civil case type. Usually, a case is registered using a special code. For example, at the Central Jakarta, District Court, the code usually consists of the case number, includes the name of the KPPU, and the year it was decided on, i.e. Central Jakarta District Court decision No. 02/KPPU/2007/PN.JKT.PST (*Temasek case*).

If more than one applicant object to the same KPPU decision at the same district court, the case should be registered under the same number. This registration number is important to avoid confusion among the judge and the parties involved in the case. If more than one applicant from different legal domiciles file an objection to the same decision, the KPPU may submit a written application to the Supreme Court to appoint one of the district courts to examine the appeal.

Based on Article 5 (2), the KPPU is obliged to submit a decision and the case file to the district court on the first day of trial. As specified in Article 5(4), the examination of objections is based only on KPPU decisions and case files.

Article 6 (1) of Supreme Court Regulation No. 3 of 2005 stipulates that supplementary examination can be undertaken on the initiative of the panel of judges to clarify any issues in the KPPU decision. In such a case, the panel of judges would order the KPPU to conduct a supplementary examination through an interlocutory injunction. Article 6 (2) of Supreme Court Regulation No. 3 of 2005 provides for an interlocutory injunction to conduct a supplementary examination. Supplementary examination is an effort to further examine the KPPU decision and the case file to gain a clearer and more thorough understanding of the issues involved to make correct decisions.

2.7. Mergers, Consolidations, and Acquisitions

The KPPU is authorised to review and decide on mergers, consolidations, and acquisitions. The legal basis for merger control can be found in Articles 28 and 29 of the Indonesian Competition Law. Article 28 prohibits mergers or consolidation of business entities and acquisition of shares in another company that may result in a monopoly or unfair business practices. Article 29 stipulates that the KPPU shall be notified of mergers that would result in combined assets, sales, or both exceeding certain thresholds.

Detailed regulations about mergers are provided in Government Regulation No. 57 of 2010 on Merger and Acquisition, as well as the implementing regulations issued by the KPPU, namely:

1. Commission Regulation No. 10 of 2010 concerning Merger Notification (Post Merger Notification) Form, Consolidation of Business Entities, and Company Acquisition;
2. Commission Regulation No. 11 of 2010 concerning Merger Consultation (Pre Merger Notification) or Consolidation of Business Entities and Company Acquisition;
3. Commission Regulation No. 4 of 2012 concerning the Guidelines for the Penalties Imposition of Merger Delay Notification or Consolidation of Business Entities and Company Acquisition. This regulation stipulates that the KPPU be authorised to impose fines of Rp1,000,000,000 per day of delay with a maximum of Rp25,000,000,000 for failure to notify the KPPU of a merger, consolidation, or share acquisition that exceeds the threshold.
4. Commission Regulation No. 2 of 2013 concerning the Guidelines for the Merger Implementation or Consolidation of Business Entities and Company Acquisition that might result in Monopoly and Unfair Business Competition Practices. The regulation provides that a new limit merger assessment process may be conducted only if all the data needed in the assessment, including market data and structure of market, are already declared complete. The notification process will take a quite long time.

Businesspersons are prohibited from merging or consolidating business entities or acquiring shares in companies if these actions may cause monopolistic practices and/or unfair business competition. The law requires that the businesspersons should notify mergers, acquisitions, or consolidations that exceed certain asset or sales values within 30 working days after the date of the consolidation, merger, or share acquisition.

Government Regulation No. 57 of 2010 stipulates the notification thresholds as follows:

1. The combined value of the assets exceeds Rp2,500,000,000,000 or Rp20,000,000,000,000 for banks.
2. The combined value of the assets exceeds Rp,500,000,000,000

The KPPU will review and issue an opinion on the competitive impact of the merger, consolidation, or acquisition within a maximum of 90 working days. Government Regulation No. 57 of 2010 provides an opportunity for parties to voluntarily notify the KPPU prior to concluding a merger, acquisition, or consolidation. This provision is meant to prevent the parties involved from suffering losses if the KPPU decides to annul a merger, acquisition, or consolidation. There was the first fine where the KPPU fines the businesspersons for late filing of merger notification. The KPPU imposed fines of Rp4.6 billion on PT. Mitra Pinasthika Mustika for the late filing of its notification on the acquisition of PT. Austindo Nusantara Jaya Rent.

2.8. Foreign Merger, Consolidation, and Acquisition

The KPPU, in principle, is authorised to control mergers, consolidations, and acquisitions that affect competition conditions in Indonesia's domestic market. Foreign mergers, consolidations, and acquisitions that occurred outside Indonesia's jurisdiction are a concern of the KPPU if they affect competition conditions in Indonesia. Foreign mergers, consolidations, and acquisitions are those that meet the following conditions:

1. Conducted outside the jurisdiction of Indonesia,
2. Have a direct impact on the Indonesian market,
3. Meet the threshold.
4. Those between companies that are not affiliated

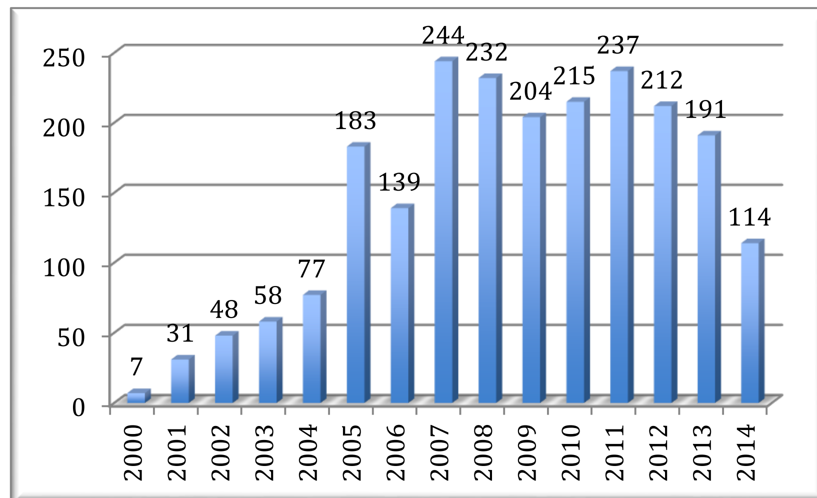
The foreign businessperson has a legal obligation to notify the merger, consolidation, or acquisition. For merger, consolidation, and acquisition by a foreign country, the KPPU will conduct a case-by-case assessment to determine whether the

merger, consolidation, and acquisition concerned have an impact on competition in the domestic market.

2.9. Case Handling

Figure 2 shows the number of Reports on Alleged Violation of the Indonesian Competition Law received from 2000 to 2014. Table 1 represents the Recapitulation of Case Handling in KPPU in 2000–2014. The KPPU handled 302 cases, with 250 decisions (*putusan*) from the reported cases and 46 from the initiative cases handed down. The number of 'guilty' decisions was 203, and 'not guilty', 35. In 2012, for the first time the KPPU handled merger cases due to the failure of businesspersons to give proper merger notification as stipulated in Government Regulation Number 57 of 2010.

Figure 2: Number of Reports on Alleged Violation of the Indonesian Competition Law Received by KPPU, 2000–2014



Source: KPPU Annual Report 2012, http://eng.kppu.go.id/publications/annual-report/ (accessed 22 September 2014).

Table 1: Recapitulation of Case Handling in KPPU, 2000–2014

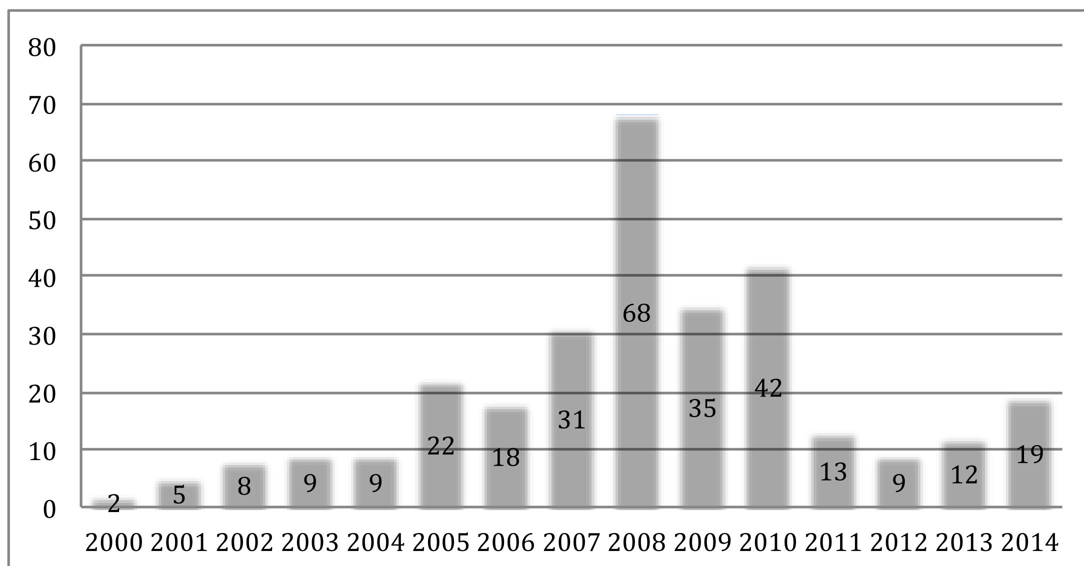
		Reported Cases														
Year		00	01	02	03	04	05	06	07	08	09	10	11	12	13	14
Verdicts Decisions	No Indication	0	1	4	2	1	4	2	1	15	3	4	0	0	0	0
	Behavioural Changes	0	0	0	0	0	0	1	2	4	0	0	0	0	0	0
	Guilty	1	0	1	2	6	11	6	24	41	26	28	6	2	8	2
	Not Guilty	0	2	0	1	0	3	6	1	6	1	7	3	1	0	1
	Recommendations and Considerations	0	1	0	0	0	0	0	0	0	0	0	0	0	0	
Ongoing Cases		0	0	0	0	0	0	0	0	0	0	0	0	3	0	6
Total		1	4	5	5	7	18	15	28	66	30	39	9	6	8	9
		250														

		Initiative Cases															Merger Case		Total Cases
Year		00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	12		
Verdicts Decisions	No Indication	0	0	0	0	1	0	0	0	1	0	1	0	0	0	0	0	0	40
	Behavioural Changes	0	0	0	0	0	0	3	1	0	0	0	0	0	0	0	0	0	11
	Guilty	0	1	1	4	1	4	0	1	1	5	2	4	0	4	2	1	4	203
	Not Guilty	0	0	1	0	0	0	0	1	0	0	0	0	1	0	0	1	0	35
	Recommendations and Considerations	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Ongoing Cases		0	0	0	0	0	0	0	0	0	0	0	0	1	0	4	0	0	10
Total		1	1	3	4	2	4	3	3	2	5	3	4	2	**4**	**6**	**2**	**4**	**302**
		46															**6**		

Source: Legal Enforcement Bureau Report and Annual Report of KPPU 2010, 2011, and 2012, http://eng.kppu.go.id/publications/annual-report/ (accessed 22 September 2014).

KPPU handled 12 cases in 2013 and 19 cases in 2014. Figure 3 shows the number of cases handled by the KPPU from 2000 to 2014.

Figure 3: Number of Cases Handled by KPPU 2000–2014



Source: Annual Report of KPPU 2010, 2011, 2012, 2013, http://eng.kppu.go.id/publications/annual-report/ (accessed 28 December 2014), and Hearing Bureau Report 2014.

Table 2: Recapitulation of Tender and Non-tender Cases from 2000–2014

Year	Consideration		Decision		Ongoing Case		Total		Percentage, %	
			Tender	Non-Tender	Tender	Non-Tender	Tender	Non-Tender	Tender	Non-Tender
2000	0	0	1	1	0	0	1	1		
2001	0	1	3	1	0	0	3	2		
2002	4	0	1	3	0	0	5	3		
2003	2	0	1	6	0	0	3	6		
2004	1	1	3	4	0	0	4	5		
2005	1	3	10	8	0	0	11	11		
2006	3	3	8	4	0	0	11	7		
2007	1	3	22	5	0	0	23	8		
2008	16	4	36	12	0	0	52	16		
2009	3	0	23	9	0	0	26	9		
2010	3	2	31	6	0	0	34	8		
2011	0	0	11	2	0	0	11	2		
2012	0	0	7	2	0	0	7	2		
2013	0	0	7	5	0	0	7	5		
2014	0	0	3	6	6	4	6	8		
TOTAL	34	17	167	74	6	4	207	95	**68,33**	**21,77**

Source: KPPU Legal Enforcement Bureau Report 2014.

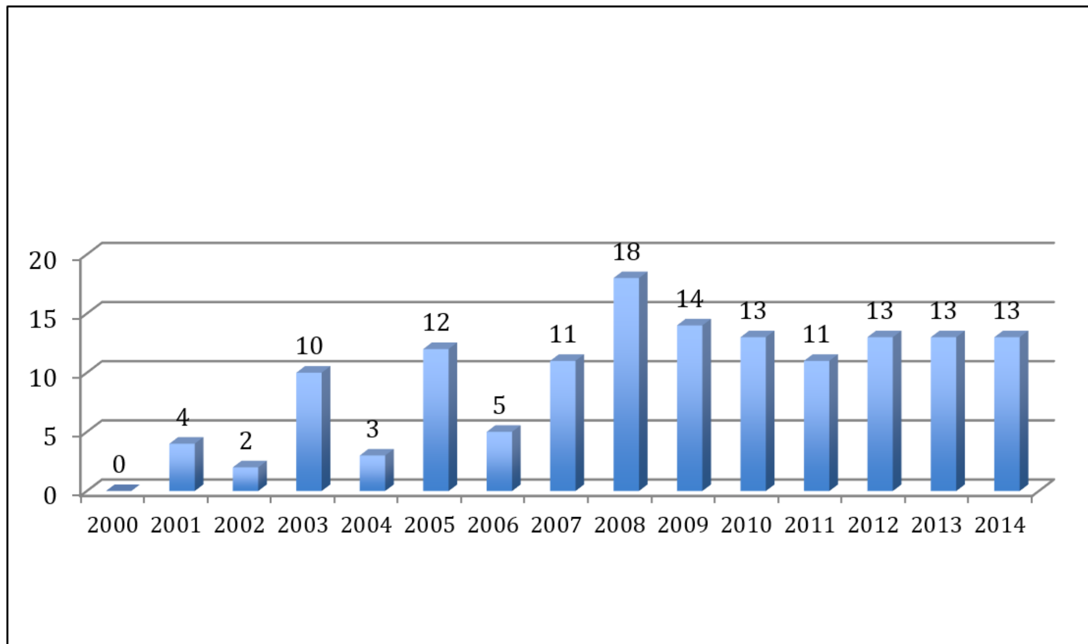
During the 14 years of its existence, KPPU has contributed to state revenues. The amount that has a legal force (*incracht*) over the imposition of fines and compensation is Rp217,736,753,457. The total amount of fines in 2012 amounted to Rp58,747,262,790. For 2013, the party already paid to the State Treasury (*kas negara*) Rp15,661,247,840.[18]

In relation to legal enforcement, for 2013, 106 KPPU decisions were appealed to the district court and 92 appealed decisions were summoned to the Supreme Court. The percentage of KPPU's win at such level was various. The percentage of KPPU's win was 70 percent. The Supreme Court upheld 59 of KPPU's decisions.[19]

One of KPPU's duties is to provide advice and opinion for government policies related to monopolistic practices and unfair business competition. In budget year 2014, the KPPU issued 13 advices and opinions to the government.

[18] KPPU Annual Reports 2010, 2011, 2012, 2013.
[19] Ibid.

Figure 4: Number of Advices and Opinions to the Government, 2000–2014



Source: KPPU, Annual Report 2012, 2013, http://eng.kppu.go.id/publications/annual-report/ (accessed 28 December 2014), and Hearing Bureau Report in 2014.

3. Discussion

The KPPU is still relatively new to the implementation of the Indonesian Competition Law. Many problems arise in its implementation due to loopholes that include substantive and procedural aspects. To avoid differing interpretations between judges, the KPPU, and businesspersons, the law should be amended; this has not happened so far.

In relation to the amendment, the following subjects require attention as the material for the amendment includes issues concerning institutional status, dawn raid authority, indirect evidence, adoption of leniency programmes, procedural law, private litigation, and cross-border enforcement and merger notification issues.

3.1. Institutional Status

The 1945 Constitution does not have provisions regarding state agency; rather state agency terms are contained in MPRS Decision No. XX/MPRS/1966 on the Hierarchy of Laws and Regulations. The annex contain provisions on the hierarchy of state power structure that puts the Assembly/MPR as the highest state institution under the 1945 Constitution and the President, DPR, BPK, DPA, MA as high state institutions under the Assembly.[20]

Many state organs in Indonesia are new forms of 'democratic products'. Their hierarchy positions depend on the degree of regulation in accordance with applicable law – the 1945 Constitution, the Law, and the Decree of the President. Examples of organs established by the 1945 Constitution are the Constitutional Court and the Judicial Commission. Examples of state agencies established by law are the National Human Rights Commission and the Corruption Eradication Commission/KPK.

Asshidiqie divides state organs into main state organs and state auxiliary organs. Main state organs are separated into legislative, executive, and judicial powers. Examples are the MPR, the DPR, the Regional Representative Council/DPD, President, Supreme Court/MA, and Constitutional Court/MK. State auxiliary organs are state agencies or commissions formed outside the Constitution whose primary task is to help strengthen basic state institutions such as the KPK and the Ombudsman.[21]

The KPPU, an initiative of the DPR, was established during the era of reform. Article 30 of the Indonesian Competition Law clearly mentions the KPPU as an independent institution formed by virtue of law and is responsible to the President.

One crucial issue in the Indonesian Competition Law is the status of the KPPU as an independent institution. The KPPU has a duty to supervise and enforce the competition law in Indonesia. However, Law No. 5 of 1999 does not state that the KPPU is a state agency, even though the Indonesian Competition Law mandates the task to be performed by a state agency. This resulted in the KPPU's inability to

[20] MPR Decision No. XX/MPRS/1966 on the Hierarchy of Laws and Regulations,

[21] Jimly Asshiddiqie (2006), 'Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi', [Development and Consolidation of State Institutions after the Reformation], S*ecretary General* of the *Constitutional Court*.

optimally exercise its authority. In practice, therefore, it is difficult for the KPPU to gather evidence; it often could not obtain the necessary data due to confidentiality. Although it has the authority to request information from government agencies, until now it has not established good cooperation with government agencies in investigations related to the Indonesian competition law. Thus, the KPPU often has difficulty in performing its duties.

For comparison, Article 3 of Law No. 30 of 2002 on the Corruption Eradication Commission (KPK) explicitly mentions the position of the KPK as a state agency. This makes it easier for the KPK to carry out its tasks. It is authorised to perform dawn raids (*penyidikan*) or conduct investigatory searches and seizures.

The other problem of the KPPU is the unclear status of its secretariat in accordance with customary governance, which implies KPPU's unclear employment status. This problem has not been resolved. This lack of clarity has implications for the system of remuneration and career path of its staff. It also affects the performance and strategic objectives of the Commission. To compare, other state agency employees are considered civil servants. Examples are staff members of the Constitutional Court of Indonesia, Judicial Commission of Indonesia, National Commission on Human Rights, General Election Commission, and Indonesian Broadcasting Commission.

This problem can be overcome by strengthening KPPU's status as a state agency and make KPPU employees civil servants. An amendment to the Indonesian Competition Law should clarify that KPPU is a state agency. The Secretariat General of the KPPU would then have a status similar to that of secretariat generals of other institutions.

3.2. Dawn Raid Authority

The Indonesian Competition Law in its current form does not give the KPPU the authority to perform dawn raids (*penyidikan*) or investigatory searches and seizures including criminal investigations, as only the Indonesian Police has the authority to investigate criminal cases. Regarding criminal investigation, the KPPU and Indonesian Police signed a memorandum of understanding in the fields of coaching

and information exchange, with the purpose of cooperation in enforcing the competition law.

This cooperation is effective because the KPPU has no authority in criminal investigation. However, this cooperation is specifically used to implement Article 44 (4), which stipulates that the KPPU will submit a decision to the criminal investigator (police investigator) in cases where the businessperson does not carry out the decision within 30 days of receiving notification.

That authority given to the KPPU as stipulated in Article 36 is not adequate to conduct an effective investigation. In practice, KPPU's limited authority makes it difficult to find evidence concerning violations. The authority to carry out dawn raids (*penyidikan*) or investigatory searches and seizures is very important. This authority could be used to obtain and keep related documents, conduct examinations at the local office, and check documents.

The authority to conduct dawn raids would result in much better enforcement of the competition law. An amendment to the competition law, therefore, should give the KPPU the authority to conduct dawn raids, carry out investigatory search and seizure orders, and conduct criminal investigations.

3.3. Indirect Evidence

There are two types of indirect evidence – communication and economic evidence. Economic evidence consists of structural evidence and behavioural evidence. Indirect evidence is one way of enhancing direct evidence. The use of indirect evidence is necessary in competition law because it is difficult to find direct evidence to make a competition law case. However, the use of indirect evidence depends on the country's legal system.

Article 42 of the Indonesian Competition Law determines what can be used as evidence in KPPU's investigations – witness testimonies, expert testimonies, letters and/or documents, information or circumstantial evidence, and statements by businesspersons. According to Knud Hansen *et al.*, circumstantial evidence (*bukti petunjuk*) can definitely help advance an investigation. Whether circumstantial evidence can be considered proper evidence is decided on a case-by-case basis. If

substantial evidence can be in the form of written evidence, it can be categorised as a letter or a document.[22]

Circumstantial evidence in the Indonesian Competition Law cannot be categorised as indirect evidence. Said law does not clearly define circumstantial evidence. Since 2010, the KPPU has brought three cartel cases based on indirect evidence. In these cases – of a fuel surcharge cartel, a cooking oil cartel, and a hypertension drug cartel – there was no direct evidence, e.g. written agreement; yet the KPPU decided that the cartel was proven. In the appeal process, however, the central Jakarta District Court and the Supreme Court dismissed KPPU's decisions for lack of direct evidence.

One example of a cartel case handled by the KPPU was the *Fuel Surcharge Case (28 February 2011)*. KPPU ruled on the case in decision No. 25/KPPU-I/2009. This case was related to the violation of Articles 5 and 21 of the Indonesian Competition Law concerning price fixing in the domestic aviation system industry by 13 airlines in Indonesia. During examination, the KPPU found the facts and evidence to be as follows:

1. There was a written agreement about the fuel surcharge on 4 May 2006, which was signed by the Board Chairman of the Indonesian National Air Carriers Associations (INACA) and nine commercial air transport companies (airlines). This agreement was formally cancelled on 30 May 2006 and the airlines are free to set their own fuel surcharge.
2. Although there was consensus to cancel the agreement, each airline company still carried out the agreement.
3. Nine airline companies that set the airline fuel surcharge was coordinated (concerted actions) in the flight zone 0 hour to 1 hour, 1 hour to 2 hours, and 2 hours to 3 hours.
4. There was a fuel surcharge enjoyed by nine airlines in 2006–2009, which resulted in consumer welfare losses ranging from Rp5 trillion to Rp13.8 trillion.[23]

Based on this indirect evidence, the KPPU decided that 11 of the 13 airline companies were guilty of engaging in a price fixing cartel of fuel surcharges on commercial flights in Indonesia. However, the Central Jakarta District Court and the

[22] Hansen, *et al.* (2002), p.395.
[23] KPPU decision No. 25/KPPU-I/2009.

Supreme Court revoked KPPU's decision, with the judge stating that many factors affected the setting of the amount of the fuel surcharge and that the same trend in fuel surcharge changes between airlines could not be legally confirmed as an agreement between airlines.[24]

A cartel involves important issues as it is categorised as a serious violation of competition law and has a strong impact on society. Companies that form cartels try to hide the agreement and are able to avoid the law because participants in a cartel are able to engage in secret agreements without leaving any evidence. Comprehensive evidence is needed to prove the cartel. Allegations of price fixing by competitors based merely on price parallelism are unfounded, as there are other factors that cause price parallelism. In other words, parallel prices do not necessarily prove the existence of a cartel agreement.

Indirect evidence such as economic analysis, communications, minutes of meetings, and recordings show the possible existence of a cartel in support of direct evidence. The judges in district courts should recognise that competition law is a specific case that concerns not only analysis of the law but also economic analysis. The panel of judges in the district court in Indonesia should also accept indirect evidence.

Competition law in many other countries uses the indirect evidence approach to prove a violation of the law, if there is no direct evidence. An example of a case that used indirect evidence in another country is the Steel Cartel Case in Brazil. Brazil's Council for Economic Defense (CADE) discovered a cartel without direct evidence that the companies were coordinating to raise prices.[25] Another example is the Thosiba Chemical Case and Kyowa Exeo Corporation Case (1996) in Japan. Although there was no direct evidence, accumulation of indirect evidence proved that there had been a cartel.[26]

[24] Central Jakarta District Court Decision No. 02/KPPU/2010/PN.Jkt.Pst. 28 February 2011.
[25] Global Forum on Competition, Roundtable on Prosecuting Cartels Without Direct Evidence of Agreement. Contribution from Brazil, 3 February 2006.
[26] Best Practice Roundtables on Competition Policy, Prosecuting Cartels Without Direct Evidence of Agreement',
http://www.oecd.org/document/38/0,3746,en_2649_40381615_2474918_1_1_1_1,00.html, (accessed 24 December 2014).

The use of indirect evidence is very closely related to the problem related to the time limit imposed on the KPPU to investigate a case, which makes it difficult for the KPPU to gather sufficient evidence. Most evidence presented is based on evidence submitted by businesspersons. The judges in Indonesia should understand very well that authorities, in applying competition law case, commonly use indirect evidence. The amendment of the Indonesian Competition Law should explicitly state that indirect evidence is a common type of evidence in competition law cases, so there is legal certainty.

3.4. Leniency Programme

Leniency by antitrust enforcer can help fight the cartel agreement, the most egregious competition law violation. Leniency programmes can break the code of silence among cartel conspirators. The programmes have been most successful when they give amnesty to the first conspirator to come forward and reveal the inner workings of the cartel.[27] An applicant for leniency may provide information that the antitrust enforcer does not have. Leniency might also be granted to a firm making a confession, which makes it easier for the antitrust enforcer to produce proof.[28] Leniency programmes could reveal conspiracies that may otherwise not be detected by the antitrust authority and make the investigation more efficient and effective.

Many countries have implemented a leniency programme as an incentive for companies or individuals to become whistle-blowers. Application of the leniency programme has been proven effective in many countries. Since the US programme was revised in 1993 to make the scope of amnesty clearer and somewhat broader, the number of applications has multiplied to more than 20 per year and has led to dozens of convictions and to fines totalling well over US$1 billion. In the US investigation of the vitamins cartel, the amnesty applicant's cooperation led directly to guilty pleas and fines of US$500 million and US$225 million against two other firms. The European Commission in 1996 announced conditions under which cooperation may lead to

---

[27] 'Using Leniency to Fight Hard Core Cartels'. http://www.oecd.org/document/3/0,2340,en_2649_201185_1890435_1_1_1_1,00.html (accessed 17 October 2014).
[28] Ibid.

significant reductions or exemptions from fines, and leniency has been invoked in more than 20 cases[29]

A leniency programme was introduced in Japan in 2005. Under the programme, a violator of the anti-cartel legislation may be able to enjoy a reduction in or exemption from the surcharge when they voluntarily report their violation and submit relevant documents.[30] The leniency programme has produced significant results since its introduction. By the end of fiscal year 2009, JFTC had received 349 applications.[31]

The leniency policy has proven to be very successful in fighting cartels. The incentives are obtained in the form of fine reduction and even elimination of penalties entirely. With this programme, definitely cartel members compete to get immunity elimination of fines.

Indonesian competition law does not have a leniency programme yet. Meanwhile cartel is a form of agreement prohibited by Law No. 5 of 1999. Almost all countries punish cartels, these being illegal. However, Law No. 5 of 1999 defines a cartel as a rule of reason that business persons are prohibited from making agreements with the competitor to influence the price 'only if' the agreement may result in monopolistic practices and unfair business competition. This requires a more in-depth investigation, unlike the price fixing stipulated in Article 5, Law No. 5 of 1999.

Cartels in business practices in Indonesia frequently occur in trade association and even facilitated by the government. The association meets regularly every month, exchange information then agree to set prices. The agreement is generally conducted in private and secretly. This is what makes proving the existence of a cartel by the KPPU difficult. Moreover, the KPPU is not authorised to conduct a search or seizure of documents related to the agreement. The KPPU deals with cartel cases through the conventional way – based on the evidence as set forth in Article 42 of Law No. 5 of 1999 – which is certainly very difficult to prove.

---

[29] 'Using Leniency to Fight Hard Core Cartels'. http://www.oecd.org/document/3/0,2340,en_2649_201185_1890435_1_1_1_1,00.html (accessed 17 October 2014).

[30] Inoe (2007), pp.112–113. This programme is based on AMA Article 7 (2), paragraphs 10–18.

[31] Recent Enforcement Trends of Surcharge Payment Orders and Criminal Penalties Against Cartels and Bid Rigging Activities in Japan. Kiyoshi Hosokawa, Commissioner of JFTC. http://www.jftc.go.jp/en/policy_enforcement/speeches/110428.html (accessed 17 October 2014).

Table 3 lists the different cartel-related cases and the corresponding decisions on these.

Table 3: Cartel Cases

No.	KPPU Decision	Concerning	District Court Decision	Supreme Court Decision
1.	No. 08/KPPU-I/2005	Cartel Sugar Import Technical Verification Services	Decision No. 01/KPPU/2006/PN.Jak.Sel, 3 March 2006 Revoked the KPPU decision	Decision No. 03K/KPPU/2006, 22 January 2007 Revoked the KPPU decision
2.	No. 11/KPPU-L/2005	Distribution of Semen Gresik Cartel	Decision No. 237/Pdt.G/2006/PN.Sby, Revoked the KPPU decision	Decision No. 05/KPPU/2007, 4 April 2008 Strengthened the KPPU's decision
3	No. 24/KPPU-I/2009	Cooking oil cartel	Decision No. 03/KPPU/2010/ PN.Jkt.Pst, 23 February 2011. Revoked the KPPU decision	Decision No. 582K/PDT.SUS/2011, 25 November 2011 Revoked the KPPU decision
4	No.25/KPPU-I/2009	Fuel Surcharge Domestic Flight Services cartel	Decision No. 02/KPPU/2010/ PN.Jkt.Pst, 28 Februari 2011. Revoked the KPPU decision	Decision No. 613K/PDT.SUS/2011, 27 February 2012. Revoked the KPPU decision
5	No/17/KPPU-I/2010	Pharmaceutical Drug Cartel Amlodipine Therapeutic Class	Decision No. 05/KPPU/2010/ PN.Jkt.Pst, 7 September 2011. Revoked the KPPU decision	Decision No. 294 K/Pdt.Sus/2012, 28 June 2012 Revoked the KPPU decision
6	No. 02/KPPU-L/2013	Loading Service of PT Pelindo	Decision No. 01/Pdt.KPPU/2013/PN.Jkt.Ut. Revoked the KPPU decision	Decision No 01/PDT.KPPU/2013/PN.JKT.UT. Revoked the KPPU decision

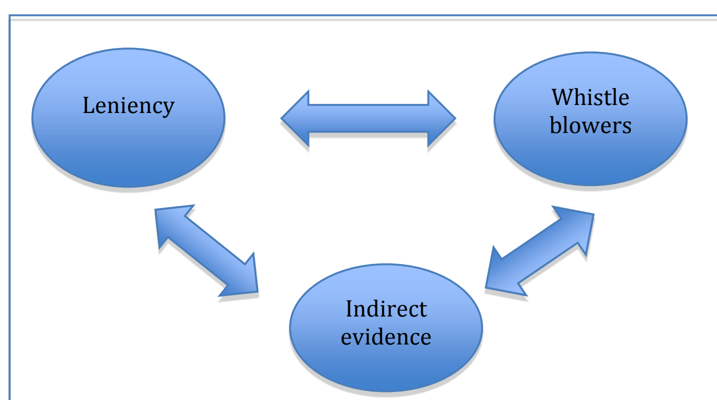
Source: KPPU Legal Enforcement Bureau Report 2014.

Clearly, many cartel cases handled by the KPPU were cancelled at the district court or the Supreme Court. The Supreme Court, in majority of the cases, decided that the KPPU did not succeed in proving the cartel agreement. One reason is the absence of written evidence of the existence of a cartel. The judge ruled that indirect evidence, such as communications between businesspersons, could not be a basis for the existence of the cartel. Thus, a cartel conducted secretly, and where businesspersons are not careless, does not make arrangements unlawful under the competition law.

It is inevitable the confidentiality cartel become a barrier for the KPPU in disclosing the existence of a cartel. The KPPU is not also authorised to search and seize evidence, causing difficulty of proof. For this reason, competition authorities adopt a leniency programme.

Friederiszick and Rigaud (2007) described the ideal cartel policy, as shown in Figure 5.[32] They argued that proactive economic methods are part of an ideal enforcement policy and can complement existing, more passive tools of cartel detection. First, triggering successful inspections based on an economic methodology is the only tool available to detect cartels outside the reach of the competition authority if full deterrence cannot be achieved for institutional or regulatory reasons. Second, in some instances, leniency is little more than terminal care for cartels, limiting the consumer benefits of cartel detection in those instances. Third, cartel detection based on economic methods also adds to cartel deterrence. Finally, cartel detection based on economic methods and leniency programmes exhibit strong complementarities with respect to cartel deterrence.[33]

Figure 5: Ideal Cartel Policy, the Role of Economics in Cartel Detection in Europe



Source: Hans W. Friederiszick and Frank P. Maire Rigaud (2007), *The Role of Economics in Cartel Detection in Europe*.

[32] Friederiszick and Maire Rigaud (2007).
[33] Ibid

Despite the KPPU's strong authority to conduct investigations of alleged violations of Law No. 5 of 1999, issue administrative sanctions, and decide if said law has been violated, the essence or purpose of the competition law is not punishment for the business persons but their behavioural change in running their business, specifically internalising the values of fair competition.

Based on the explanation above, it is difficult to obtain direct evidence in cartel agreement cases. One solution to this problem is the adoption of a leniency programme. Based on other countries' experience as antitrust enforcer, it is necessary to consider adopting said leniency programme as a means of proving the existence of cartels in Indonesia.

3.5. Procedural Law

One problem relates to the procedure for objecting to a KPPU decision. There is no clear procedure for the filing of an objection to a decision by the KPPU in a district court or with the Supreme Court.[34] Pardede pointed out that the problem with the implementation of the competition law in Indonesia is related to the unavailability of a standard procedural mechanism during the appeal process in court. Although the Supreme Court enacted Regulation No. 3 of 2005, the courts still demand clearer instructions from standard procedural laws. The problem also relates to ambiguities in interpreting and enforcing the Indonesian Competition Law.[35]

Procedural law in court proceedings is important in enforcing the competition law. Regulation of procedural law should be clear to avoid multiple interpretations. Procedures for objections to KPPU decisions should be treated like other judicial procedural provisions, such as the criminal procedure code (*hukum acara pidana*) and the civil procedural law (*hukum acara perdata*).

[34] Lubis *et al.* (2009), p.332.

[35] Pardede, 'Development of Competition Policy and Recent Issues in East Asian Economies (The Indonesian Experience)', The 2nd East Asia Conference on Competition Law and Policy, Bogor, 3–4 May 2005. Available http://www.jftc.go.jp/eacpf/06/6_02_06_02.pdf, Soy M Pardede is the former KPPU's Commissioner from 2000 up to 2005 (accessed 10 January 2015).

3.5.1 Jurisdiction of Appeal Process

The KPPU since 2003 has conducted an assessment on the need to amend Law No. 5 of 1999. One of the proposed amendments relates to the submission of the objection to the KPPU decision to the High Court (*Pengadilan Tinggi*).[36] The amendment for the filing of an objection from the district court to the High Court is very positive considering the judges understand that the competition law is very limited. Based on Article 5 (1) Supreme Court Regulation No. 3 of 2005, a judge should have knowledge in the field of competition law. In practice, judges are required to be knowledgeable not only of procedure but also of the substance of and the economics related to the competition law. As the High Court in Indonesia is located in the provincial capitals, filing objections with the High Court rather than the district courts would also make sense in view of the time limit on examining competition law cases. It would make it easier for the KPPU to attend the examination process, making the process more efficient.

3.5.2 Case Review

There are three appeal processes in Indonesia: from a district court to the High Court and the Supreme Court. However, the Indonesian legal system also recognises extraordinary remedies that include case review (*peninjauan kembali*). Case review is a legal remedy against court decisions that are legally binding. Civil procedural law in Indonesia acknowledges case review as extraordinary legal effort.[37] The application for a case review is based on two reasons: the mistake of a judge and new evidence (*novum*).[38]

In Indonesia, businesspersons may file objections to KPPU decisions with the district court and the Supreme Court. The Indonesian Competition Law does not regulate case review as an extraordinary remedy. However, Article 8 of Supreme Court Regulations No. 3 of 2005 mentions that unless otherwise stipulated in said court regulations, the applicable law in the Civil Code also applies to the district court.

---

[36] Annual Report of KPPU 2010.

[37] Article 385, Reglement op de Burgerlijke Rechtsvordering (Rv).

[38] Article 67 of Law No. 14 of 1985 as amended by Law No. 5 of 2004 concerning Supreme Court.

The existence of such transitional article enables businesspersons to ask the Supreme Court to adopt a case review should they have different interpretations with the KPPU. Whereas the Indonesian Competition Law does not regulate case review as an extraordinary legal effort, with the existence of this article, it is possible to file a case review.

In practice, the KPPU does not use case review when its decision is annulled by the Supreme Court. For example, in the *Multiyear Riau Case (2005)*, the district court and the Supreme Court overturned KPPU's decision, but KPPU did not file a case review.[39]

The amendment in the law should make it clear that competition law cases should have no case review. This would be in accordance with the spirit of the Indonesian Competition Law, namely that the House of Representatives want verdicts to be rendered through a fair, efficient, fast, low-cost, and transparent process – which businesspersons expect – to provide legal certainty in the business process. The existence of the case review provision will lengthen the duration of cases.

3.5.3 Extension of Time Limit

The Indonesian Competition Law and Supreme Court Regulation No. 3 of 2008 set a time limit on the examination of cases both in the district court and the Supreme Court; a decision must be reached within 30 days. This time limit is very short and is a constraint for the judges in deciding on cases. Because the district courts and the Supreme Court examine not only competition cases, an amendment to increase the time limit is highly necessary. Sound judgments cannot be arrived at within 30 days.

Maarif points out that provisions for a flexible time limit, which would enable the commission and the courts to examine cases in a more comprehensive way, are needed. He also mentions the time constraints as the court does not have much time to thoroughly examine the substance of cases. He suggests, therefore, that within the time

[39] KPPU Decision No. 06/KPPU-I/2005, East Jakarta District Court Decision No. 01/Pdt/KPPU/2006/PN.Jkt.Tim, Supreme Court Decision No. 02 K/KPPU/2006 concerning Tender Conspiracy Case of Government Procurement of Goods and Services for Multi-years Road Construction Programme in Riau Province.

limit the court could examine the procedural rather than the substantive law aspects of competition cases.[40]

Extending the existing time limit would give the judge, the KPPU, and bussiness persons greater legal certainty. It would give the court sufficient time to examine the procedural law and the substance of the violation. We suggest extending the period of examination in the district court as well as the Supreme Court to 90 days.

3.6. Private Litigation and Class Action Lawsuit

The Indonesian Competition Law does not clarify damages in a suit. However, Article 1365 of the Civil Code says that a person who violates the law and causes harm to others may be held accountable in the form of compensation. A damage lawsuit should be taken to the district court. KPPU Regulation No. 1 of 2010 concerning Procedure for Case Handling in KPPU provides a report of the reporting party with compensation request. Implementation of the case is relatively new. However, KPPU Regulations No. 1 of 2010 does not regulate the procedure for objections to KPPU decisions related to compensation requests.

Since the KPPU enacted the regulations, there has not been any case in which compensation was claimed. There is also still debate among scholars about whether to recognise a class action lawsuit filed against a decision of the KPPU. Sukarmi pointed out that a decision by the KPPU can be used as basis for class action lawsuit against the infringer of competition law.[41] A KPPU decision has implications for other parties who have a legal relationship with entrepreneurs found guilty. The other parties in particular are the consumers who feel harmed by the actions of the entrepreneurs that are in violation of the Indonesian Competition Law.

As a comparison, the Japanese Anti-Monopoly Act (AMA) provides lawsuits based on Article 25. Persons who were injured by another in violation of the AMA can file a lawsuit based on either Article 709 Civil Code or Article 25 of the AMA. Article 25 of AMA stipulates that any entrepreneur who has committed an act in violation of the provision of Articles 3, 6, or 19 and any trade association that has committed an

[40] Hwang and Chen (2004), pp.272–73.
[41] Sukarmi (2009).

act in violation of the provision of Article 8 are liable for damages suffered by another party.

Applicants make the filing of a lawsuit based on Article 25 of AMA only after the JFTC has rendered a decision.[42] The Tokyo High Court has exclusive jurisdiction over claims and the court can ask the opinion of the JFTC concerning estimation of damages. As a consequence of filing claims for compensation under Article 25, the injured party must wait for the examination process carried out by the JFTC. In cases where a lawsuit is based on Article 709 of the Civil Code, the plaintiff does not need to wait for JFTC's issued order to become conclusive. However, the burden of proof is initially on the plaintiff[43] as it would be very difficult to satisfy the burden of proof.

In Korea, the right to claim for damages is provided in Article 56 of the Monopoly Regulation and Fair Trade Act (MRFTA). A common view is that the party incurring damages may choose one of the two provisions when filing a claim for damages.[44] The plaintiff is required to prove the amount of damages caused by the violation of the MRFTA by the enterprise. Under the MRFTA, the amount of damages is calculated based on the actual damages incurred. Punitive damages, as adopted in the treble damages system of the United States, are not allowed.[45] The law also stipulates that in situations where it is extremely difficult to determine the amount of damages, the court may recognise a reasonable amount of damages based on the gist of entire arguments and the results of investigation.[46]

KPPU's decisions have an impact on entrepreneurs, society, and consumers. So the proposed amendment must clearly define private litigation and class action lawsuit procedures. Japan's AMA regulation and Korea's MRFTA regulation could be adopted as an example to overcome the problem of an injured person filing an objection due to a violation of the Indonesian Competition Law. It would complement the existing regulation.

---

[42] Article 26 (1) Japanese Anti-Monopoly Act.
[43] Wakui (2008), p.298.
[44] http://globalcompetitionreview.com/know-how/topics/72/jurisdictions/35/korea/
[45] Ibid.
[46] Article 57 of the MRFTA, http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP3/WD%282015%2922&docLanguage=En

3.7. Legal Aspect of Cross Border Enforcement

Law No. 5 of 1999 has no specific provisions governing cross-border competition issues. Article 1 (5) of the Indonesian Competition Law defines a business person as any individual or business entity, either incorporated or not incorporated as a legal entity, established and domiciled or conducting activities within the jurisdiction of the state of the Republic of Indonesia, either individually or jointly based on agreement, conducting various business activities in the field of economy.

An example of Indonesian Competition Law having been applied to a company established and conducting business outside Indonesian territory is case No. 07/KPPU-L/2007 (Temasek case). The reported party was a company domiciled in Mauritius Singapore – Singapore Temasek Holdings Pte. Ltd., Singapore Technologies Telemedia Pte. Ltd., STT Communications Ltd., Asia Mobile Holding Company Pte. Ltd., Asia Mobile Holdings Pte. Ltd., Indonesia Communications Limited., Indonesia Communications Pte. Ltd., Singapore Telecommunications Ltd., Singapore Telecom Mobile Pte. Ltd (Temasek Group).

The KPPU was authorised to conduct an examination of the Temasek Group, which is based on the principle of 'single economic entity doctrine'. Said doctrine states that the parent company's relationship with its subsidiaries means that the subsidiaries are not independent in determining the policy direction of the company. The implication of this principle is that the businessperson can be liable for acts committed by other businesspersons in the economic union, even though only one businessperson operates outside the jurisdiction of Indonesia; so competition law can be extraterritorial.

Article 16 of the Indonesian Competition Law stipulates that businesspersons shall be prohibited from entering into agreements with foreign parties that may result in monopolistic practices and/or unfair business competition. The forces of globalisation are inducing companies to merge with foreign parties to expand their business, so that competition issues need to be tackled at the global level.

The number of countries implementing competition laws has increased dramatically and businesspersons operating in the global market find themselves subject to complex national and international legislation. Differences in the implementation of competition law in each country have become an obstacle to

business persons involved in cross-border business. An example is the implementation of the legal systems in the United States, the European Union, and Asia. Implementation of the three legal systems in the region differs, making it difficult to engage in international cooperation in competition law and policy, particularly cross-border cooperation.

To overcome these problems, cooperation in the investigation of anti-competitive cases is very important. For example, Indonesia has so far only officially cooperated with Japan and Korea on enforcing competition law. Cooperation with Japan in the framework of economic relationship is under the Indonesia–Japan Economic Partnership Agreement (IJEPA). This agreement was implemented in August 2007 and includes a special section on competition policy, particularly concerning notification of law enforcement, information exchange, and technical assistance.[47] This partnership agreement helps the JFTC and the KPPU to enforce competition law in both countries.

In 2014 the KPPU also established bilateral cooperation with the Korea Fair Trade Commission (KFTC). This cooperation constitutes a follow-up to the bilateral meeting between the two leaders of the two institutions in Jakarta in May 2009.[48] The cooperation aims to contribute to the effective implementation of the competition laws of each party by promoting cooperation in the field of competition law and policy between Indonesia and Korea.[49]

---

[47] 'Economic Partnership Agreement (competition chapter only)', http://www.jftc.go.jp/en/int_relations/agreements.html (accessed 1 October 2014).

[48] KPPU Annual Report 2013.

[49] Cooperation arrangement between KPPU and KFTC, November 2013.

Scope and content of cooperation, namely:

a. Notification of law enforcement against anti-competitive activities that may have an effect on any substantial interest of the other party;
b. Regular joint dialogue between the parties to share information on recent enforcement efforts and key issues regarding each party's competition laws and/or economic and policy issues of mutual interest;
c. Direct communication in exchanging available information on major issues of mutual interest, including sectoral study, experiences and activities in competition law enforcement, new institutional and regulatory development, and multilateral competition–related issues; and
d. Technical assistance to enhance each competition authority's competition law and policy enforcement capacity through exchange of personnel, secondment of experts, capacity building programmes, support for competition advocacy and public outreach, contact to certain international aid agencies, research collaboration and other forms mutually agreed upon by the parties.

Matsushita (2014) pointed out that bilateral agreements have proven to be the most successful for several reasons. First, it is easier for two parties to reach agreement than for many parties to do so. Second, a bilateral agreement can address issues that are important to the two parties concerned. Third, a proliferation of bilateral agreements will create a network of such agreements and could pave the way for a plurilateral or multilateral agreement through the accumulation of experience in international cooperation in competition law matters, thereby creating a spirit of cooperation among officials of enforcement agencies.[50]

Bilateral agreement is definitely very important in enforcing the competition law. This partnership agreement facilitates the enforcement of the competition law by authorities in both countries.

3.8. Merger Notification

Indonesian competition law adopts post-merger notification. However, businesspersons may voluntarily consult with the KPPU before a merger is concluded. One problem arising from enacting post-merger notification is the possibility of the cancellation of a merger that has become effective since the KPPU assessed an anti-competitive effect.

So far, the KPPU has never nullified a merger that has become effective. Nevertheless, as a preventive measure, to minimise the chances of the KPPU cancelling a merger, post-merger notification should be changed to pre-merger notification.

Based on best practices, pre-merger notification is preferable to post-merger notification as it is more difficult for the KPPU to prohibit an accomplished merger than to prevent one. A pre-merger notification regime tends to induce businesspersons to seek greater cooperation with the competition agency.

[50] Matsushita Mitsuo, International Cooperation in the Enforcement of Competition Policy, http://www.worldtradelaw.net/articles/matsushitacompetition.pdf (accessed 5 October 2014).

4. Conclusion

The Commission for the Supervision of Business Competition (KPPU) has been trying to carry out its duties and functions and use its powers in an optimal fashion. It has issued 302 decisions, with many of the cases receiving public attention, such as the Temasek Case, the Cooking Oil Cartel Case, and the SMS Cartel case. The KPPU has also provided 142 opinions and advices to the government during 2000–2014. Their impact on several sectors, such as telecommunications and transportation, has been positive.

However, the Indonesian Competition Law contains some loopholes, both in terms of substance and procedures, which are particularly apparent in the enforcement of the law. This has created difficulties in practice, which would be best resolved by amending the competition law.

We have the following suggestions and recommendations for the amendment of the Indonesian Competition Law:

1. Strengthen the KPPU by giving it the status of a state agency and make KPPU employees as civil servants.
2. Give the KPPU the authority to conduct dawn raids (*penyidikan*) or investigatory search and seizure orders to be able to obtain, keep, and check relevant documents and conduct examinations at local offices.
3. State in the amendment to the Indonesian Competition Law that indirect evidence is to be considered as evidence in competition law cases.
4. Adopt a leniency programme as a means of proving cartels.
5. Clarify regulations about procedural law to avoid multiple interpretations. Procedures for lodging an objection to a KPPU decision should be treated like other judicial procedural provisions, such as the criminal procedure code (*hukum acara pidana*) and the civil procedural law (*hukum acara perdata*). We suggest the following amendment to the procedural law:
   - Objections to be filed with the High Court due to the time limit on the examination of cases;
   - Clearly emphasise there is no case review for competition law cases;
   - Extend the time limit to give greater legal certainty to the judge, the KPPU, and businesspersons.
6. As KPPU decision affects entrepreneurs, the society, and consumers, the amendment must be clearly defined. A decision by the KPPU can be used as basis for a class action lawsuit against the infringer of the competition law

We expect that amending the Indonesian Competition Law will create a better balance between procedure and substance. So in implementing the law, there will no longer be ambiguity in the interpretation of judges, the KPPU, lawyers, or businesspersons. It will likewise finally create legal certainty for competition law enforcement in Indonesia. Considering the importance of the amendment to the Indonesian Competition Law, Indonesia's government and parliament should give it full political support so that its effective enforcement can be achieved.

References

Regulations:

Law No. 5 of 1999 Concerning the Prohibition on Monopolistic Practices and Unfair Business Competition.

Act No. 54 of April 14, 1947 Concerning Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.

Civil Code (KUHPerdata), Rv.

Supreme Court Regulations No. 3 of 2005 Concerning Procedure for Filing Objection to Decision of KPPU.

Books:

Hansen, K., P.W. Heermann, W. Kartte, H.-W. Micklitz, W. Pletschinger, F.J. Sacker and H. Sauter (2002), *Law Concerning Prohibition of Monopolistic Practices and Unfair Business Competition.* Jakarta: Katalis Publishing Media Service.

Hwang, T.L. and C. Chen (2004), *The Future Development of Competition Framework,* Volume 15. Alphen aan den Rijn, Netherlands: Kluwer Law International.

Inoe, A. (2007), *Japanese Antitrust Law Manual Law, Cases and Interpretation of Japanese Antimonopoly Act*. Alphen aan den Rijn, Netherlands: Kluwer Law International.

Lubis, A.F. *et al.* (2009), *Hukum Persaingan Usaha Antara Teks & Konteks* [Competition Law between Text and Context], Bonn: Germany: Deutsche Gesellschaft fur Technische Zusammenarbeit.

Wakui, M. (2008), *Antimonopoly Law: Competition Law and Policy in Japan*. Suffolk, UK: Arima Publishing.

Journal articles:

Juwana, H. (2002), 'An Overview of Indonesia's Antimonopoly Law', *Washington University Global Studies Law Review*, 1(185).

Jentera Jurnal Hukum (Jentera Law Journal), 12 editions, April–June 2006.

Pangestu, M., H. Aswicahyono, T. Anas, and D. Ardyanto (2002), 'The Evolution of Competition Policy in Indonesia', *Review of Industrial Organization* 21(2), pp.205–24.

Reza, M. (2011), 'Kerjasama KPPU dengan Penyidik dalam Penanganan Tindak Pindana Hukum Persaingan Usaha' [KPPU in Corporation with National Police in Handling Criminal Case of Competition Law], *KPPU Competition Law Journal*. 5th edition, p.85

Sirait, N.N. (2009), 'The Development and Progress of Competition Law in Indonesia', *The Antitrust Bulletin*, Vol. 54, No. 1/Spring 2009:15

Sukarmi, P. (2009), 'KPPU Sebagai Dasar Gugatan Perwakilan Kelompok di Pengadilan' [KPPU Decision as a Basis Class Action in Court], *Competition Law Journal*, second edition. p.135

Internet and others:

'Best Practice Roundtables on Competition Policy, Prosecuting Cartels Without Direct Evidence of Agreement', http://www.oecd.org/document/38/0,3746,en_2649_40381615_2474918_1_1_1_1,00.html

'Using Leniency to Fight Hard Core Cartels' http://www.oecd.org/document/3/0,2340,en_2649_201185_1890435_1_1_1_1,00.html

Article 385 Reglement op de Burgerlijke Rechtsvordering (Rv).

Article 67 of Law No. 14 of 1985 as amended Law No. 5 of 2004 concerning Supreme Court.

Asshiddiqie, J. 'Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi', [Development and Consolidation of state institutions after the Reformation], Secretary General of the Constitutional Court, (2006)

Central Jakarta District Court Decision No. 02/KPPU/2010/PN.Jkt.Pst. 28 February 2011.

Friederiszick, H.W. and F.P. Maire Rigaud (2007), 'The Role of Economics in Cartel Detection in Europe', Working paper.

Global Forum on Competition, Roundtable on Prosecuting Cartels Without Direct Evidence of Agreement. Contribution from Brazil 3 February 2006.

Japan Fair Trade Commission, 'Economic Partnership Agreement' (competition chapter only), Tokyo: JFTC. http://www.jftc.go.jp/en/int_relations/agreements.html

KPPU Annual Reports 2010, 2011, 2012, 2013.

KPPU Decision No. 06/KPPU-I/2005.

KPPU Decision No. 25/KPPU-I/2009.

Matsushita M., 'International Cooperation in the Enforcement of Competition Policy', http://www.worldtradelaw.net/articles/matsushitacompetition.pdf

Recent Enforcement Trends of Surcharge Payment Orders and Criminal Penalties Against Cartels and Bid Rigging Activities in Japan. Kiyoshi Hosokawa, Commissioner of JFTC http://www.jftc.go.jp/en/policy_enforcement/speeches/110428.html

ERIA Discussion Paper Series

No.	Author(s)	Title	Year
2016-04	Manaek SM PASARIBU	Challenges of Indonesian Competition Law and Some Suggestions for Improvement	Jan 2015
2016-03	VO Tri Thanh and NGUYEN Anh Duong	Promoting Rural Development, Employment, and Inclusive Growth in ASEAN	Jan 2015
2016-02	Venkatachalam ANBUMOZHI	Convergence of Opportunities: Resilience and the ASEAN Community	Jan 2015
2016-01	Lili Yan ING, Shujiro URATA and Yoshifumi FUKUNAGA	How Do Exports and Imports Affect the Use of Free Trade Agreements? Firm-level Survey Evidence from Southeast Asia	Jan 2015
2015-87	Venkatachalam ANBUMOZHI and HAN Phoumin	Tracking Clean Energy Progress in ASEAN Member States and Analysis of Implementation Deficits	Dec 2015
2015-86	Phan Cong THANH	Competition Law Enforcement of Viet Nam and the Necessity of a Transparent Regional Competition Policy	Dec 2015
2015-85	Vince Eng Teong SEE	The Competition Act 2010— Issue and Development since Coming into Force	Dec 2015
2015-84	Hank LIM	Investing in Workers and Firms as Learning Centres for Industrial Upgrading	Dec 2015
2015-83	Oscar F. PICAZO	Engendering Concerted National Efforts towards Improved Health Outcomes in the ASEAN: Status, Challenges, Targets, and Ways Forward	Dec 2015
2015-82	Apichai SUNCHINDAH	Transboundary Haze Pollution Problem in Southeast Asia: Reframing ASEAN's Response	Dec 2015

No.	Author(s)	Title	Year
2015-81	Percy E. SAJISE	Empowering Communities and Countries to Conserve Biodiversity	Dec 2015
2015-80	Rene OFRENEO and Kun Wardana ABYOTO	Managing Labour Adjustments in an Integrating ASEAN	Dec 2015
2015-79	NGUYEN Anh Tuan	Neutralising the Advantages of State-Owned Enterprises for a Fair Playing Field	Nov 2015
2015-78	Hwang LEE	Development of Competition Laws in Korea	Nov 2015
2015-77	Farish A. NOOR	Shared Cultures and Shared Geography: Can There Ever Be a Sense of Common ASEAN Identity and Awareness	Nov 2015
2015-76	Naomi HATSUKANO	Improving the Regulatory and Support Environment for Migrant Workers for Greater Productivity, Competitiveness, and Social Welfare in ASEAN	Nov 2015
2015-75	Jose Miguel R. de la ROSA	Engendering ASEAN Identity: The Role of Film	Nov 2015
2015-74	Mely CABALLERO-ANTHONY, Paul TENG, Goh TIAN, Maxim SHRESTHA, Jonatan LASSA	Linking Climate Change Adaptation and Food Security in ASEAN	Nov 2015
2015-73	Patarapong INTARAKUMNERD	Thai Automotive Industry: International Trade, Production Networks, and Technological Capability Development	Oct 2015
2015-72	VO Tri Thanh, NGUYEN Anh Duong, BUI Trinh	Trade in Value Added: The Case of Viet Nam	Oct 2015

No.	Author(s)	Title	Year
2015-71	Javier LÓPEZ–GONZÁLEZ and Przemyslaw KOWALSKI	Global Value Chain Participation in Southeast Asia-Trade and Related Policy Implications	Oct 2015
2015-70	Lili Yan ING and Miaojie YU	Intensive and Extensive Margins of South–South–North Trade: Firm-Level Evidence	Sep 2015
2015-69	Mari PANGESTU and Lili Yan ING	ASEAN: Regional Integration and Reforms	Sep 2015
2015-68	Toshitaka GOKAN, Ikuo KUROIWA, Nuttawut LAKSANAPANYAKUL and Yasushi UEKI	Spatial Patterns of Manufacturing Agglomeration in Cambodia, Lao People's Democratic Republic, and Thailand	Sep 2015
2015-67	Phoumin HAN and Venkatachalam ANBUMOZHI	Policy Effects on Total System Energy Efficiency: Comparisons of Advanced and Developing Economies in the EAS region	Sep 2015
2015-66	Venkatachalam ANBUMOZHI and Ponciano S. INTAL, Jr.	Can Thinking Green and Sustainability Be an Economic Opportunity for ASEAN?	Sep 2015
2015-65	Tereso S. TULLAO, Jr., Miguel Roberto BORROMEO, Christopher James CABUAY	Framing the ASEAN Socio-Cultural Community (ASCC) Post 2015: Quality and Equity Issues in Investing in Basic Education in ASEAN	Sep 2015
2015-64	Han PHOUMIN	Renewable Energy Policies and the Solar Home System in Cambodia	Sep 2015
2015-63	Sudarno SUMARTO and Sarah MOSELLE	Addressing Poverty and Vulnerability in ASEAN: An Analysis of Measures and Implications Going Forward	Sep 2015
2015-62	Rafaelita M. ALDABA	The Philippines in the Electronics Global Value Chain: Upgrading Opportunities and Challenges	Sep 2015
2015-61	Olivier CADOT and Lili Yan ING	Non-tariff Measures and Harmonisation: Issues for the RCEP	Sep 2015
2015-60	Jacob KUMARESAN And Suvi HUIKURI	Strengthening Regional Cooperation, Coordination, and Response to Health Concerns in the ASEAN Region: Status, Challenges, and Ways Forward	Sep 2015
2015-59	Kaliappa KALIRAJAN, Kazi Arif Uz ZAMAN,	Strengthening Natural Resources Management in ASEAN: National and Regional Imperatives, Targets, and Opportunities	Sep 2015

No.	Author(s)	Title	Year
	Gaminiratne WIJESEKERE		
2015-58	THAM Siew Yean and Andrew KAM Jia Yi	Trade in Value Added: The Case of Malaysia	Sep 2015
2015-57	S. KUMAR	Engendering Liveable Low-Carbon Smart Cities in ASEAN as an Inclusive Green Growth Model and Opportunities for Regional Cooperation	Sep 2015
2015-56	Shandre THANGAVELU	Services Productivity and Trade Openness: Case of ASEAN	Aug 2015
2015-55	Lili Yan ING and Chandra Tri PUTRA	Imported Inputs in Indonesia's Product Development	Aug 2015
2015-54	Cassey LEE	The Objectives of Competition Law	Aug 2015
2015-53	Burton ONG	Competition Law and Policy in Singapore	Aug 2015
2015-52	Robin SAKAMOTO	Investing in Higher Education, and Its Potential Impact on Research and Development for Technological Upgrading, Innovation, and Competitiveness	July 2015
2015-51	Xiao JIANG and Jose CARABALLO	The Employment Effects of GVCs on Asian Countries and the Phenomenon of Value-Added Erosion	July 2015
2015-50	Mun-Heng TOH	Singapore's Participation in Global Value Chains: Perspectives of Trade in Value-Added	July 2015
2015-49	Ben SHPEHERD	Developing Domestic and Export Markets and Levelling Up Trade in Value-Added: Lessons Learnt	July 2015
2015-48	Siwage Dharma NEGARA	How Labour Market Policies Affect Innovation and Trade Competitiveness	July 2015
2015-47	Hank LIM, Bernard AW, LOKE Hoe Yeong	AEC Scorecard Phase IV: Furthering the Implementation of the AEC Blueprint Measures The Singapore Country Report	June 2015
2015-46	Saowaruj RATTANAKHAMFU Sumet ONGKITTIKUL Nutthawut LAKSANAPUNYAKUL Nichamon THONGPAT Natcha O-CHAROEN	Thailand Country Study ASEAN Economic Community Blueprint Mid-term Review Project	June 2015
2015-45	Koji KUBO	Evolving Informal Remittance Methods of Myanmar Migrant Workers in Thailand	June 2015
2015-44	Philippa DEE	Monitoring the Implementation of Services Trade Reform towards an ASEAN Economic Community	May 2015

No.	Author(s)	Title	Year
2015-43	Shandre THANGAVELU	FDI Restrictiveness Index for ASEAN: Implementation of AEC Blueprint Measures	May 2015
2015-42	Rully PRASSETYA and Ponciano S. INTAL, Jr.	AEC Blueprint Implementation Performance and Challenges: Standards and Conformance	May 2015
2015-41	Ponciano INTAL Jr.	AEC Blueprint Implementation Performance and Challenges: Trade Facilitation	May 2015
2015-40	Fukunari KIMURA, Tomohiro MACHIKITA, and Yasushi UEKI	Technology Transfer in ASEAN Countries: Some Evidence from Buyer-Provided Training Network Data	May 2015
2015-39	Dionisius NARJOKO	AEC Blueprint Implementation Performance and Challenges: Services Liberalization	May 2015
2015-38	Kazunobu HAYAKAWA, Nuttawut LAKSANAPANYAKUL, Shujiro URATA	Measuring the Costs of FTA Utilization: Evidence from Transaction-level Import Data of Thailand	May 2015
2015-37	Kazunobu HAYAKAWA, Nuttawut LAKSANAPANYAKUL, Pisit PUAPAN, Sastra SUDSAWASD	Government Strategy and Support for Regional Trade Agreements: The Case of Thailand	May 2015
2015-36	Dionisius A. NARJOKO	AEC Blueprint Implementation Performance and Challenges: Non-Tariff Measures and Non-Tariff Barriers	May 2015
2015-35	Kazunobu HAYAKAWA, Tadashi ITO, and Fukunari KIMURA	Trade Creation Effects of Regional Trade Agreements: Tariff Reduction versus Non-tariff Barrier Removal	Apr 2015
2015-34	Kazunobu HAYAKAWA, Tadashi ITO	Tarrif Pass-through of the World-wide Trade: Empirical Evidence at Tarriff-line Level	Apr 2015
2015-33	Kazubobu HAYAKAWA, Nuttawut LAKSANAPNYAKUL, and Shujiro URATA	Firm-level Impact of Free Trade Agreements on Import Prices	Apr 2015
2015-32	Ponciano INTAL, Jr.	AEC Blueprint Implementation Performance and Challenges: Investment Liberalization	Apr 2015
2015-31	Emily Christi A. CABEGIN	The Challenge of China and the Role of Deepening ASEAN Integration for the Philippine Semiconductor Industry	Apr 2015
2015-30	Venkatachalam ANBUMOZHI, Alex BOWEN and	Market-Based Mechanisms to Promote Renewable Energy in Asia	Apr 2015

No.	Author(s)	Title	Year
	Puthusserikunnel Devasia JOSE		
2015-29	Venkatachalam ANBUMOZHI	Low Carbon Green Growth in Asia: What is the Scope for Regional Cooperation?	Apr 2015
2015-28	Tan LI and Larry D. QIU	Beyond Trade Creation: Free Trade Agreements and Trade Disputes	Mar 2015
2015-27	Mai Anh NGO	Exporting and Firm-Level Credit Constraints – Evidence from Ghana	Mar 2015
2015-26	Sunghoon CHUNG, Joonhyung LEE, Thomas OSANG	Did China Tire Safeguard Save U.S. Workers?	Mar 2015
2015-25	Esther Ann BØLER, Beata JAVORCIK, Karen Helene ULLTVEI-MOE	Globalization: A Woman's Best Friend? Exporters and the Gender Wage Gap	Mar 2015
2015-24	Tristan Leo Dallo AGUSTIN and Martin SCHRÖDER	The Indian Automotive Industry and the ASEAN Supply Chain Relations	Mar 2015
2015-23	Hideo KOBAYASHI and Yingshan JIN	The CLMV Automobile and Auto Parts Industry	Mar 2015
2015-22	Hideo KOBAYASHI	Current State and Issues of the Automobile and Auto Parts Industries in ASEAN	Mar 2015
2015-21	Yoshifumi FUKUNAGA	Assessing the Progress of ASEAN MRAs on Professional Services	Mar 2015
2015-20	Yoshifumi FUKUNAGA and Hikari ISHIDO	Values and Limitations of the ASEAN Agreement on the Movement of Natural Persons	Mar 2015
2015-19	Nanda NURRIDZKI	Learning from the ASEAN + 1 Model and the ACIA	Mar 2015
2015-18	Patarapong INTARAKUMNERD and Pun-Arj CHAIRATANA and Preeda CHAYANAJIT	Global Production Networks and Host-Site Industrial Upgrading: The Case of the Semiconductor Industry in Thailand	Feb 2015
2015-17	Rajah RASIAH and Yap Xiao SHAN	Institutional Support, Regional Trade Linkages and Technological Capabilities in the Semiconductor Industry in Singapore	Feb 2015
2015-16	Rajah RASIAH and Yap Xiao SHAN	Institutional Support, Regional Trade Linkages and Technological Capabilities in the Semiconductor Industry in Malaysia	Feb 2015
2015-15	Xin Xin KONG, Miao ZHANG and Santha Chenayah RAMU	China's Semiconductor Industry in Global Value Chains	Feb 2015
2015-14	Tin Htoo NAING and Yap Su FEI	Multinationals, Technology and Regional Linkages in Myanmar's Clothing Industry	Feb 2015

No.	Author(s)	Title	Year
2015-13	Vanthana NOLINTHA and Idris JAJRI	The Garment Industry in Laos: Technological Capabilities, Global Production Chains and Competitiveness	Feb 2015
2015-12	Miao ZHANG, Xin Xin KONG, Santha Chenayah RAMU	The Transformation of the Clothing Industry in China	Feb 2015
2015-11	NGUYEN Dinh Chuc, NGUYEN Ngoc Anh, NGUYEN Ha Trang and NGUYEN Ngoc Minh	Host-site institutions, Regional Production Linkages and Technological Upgrading: A study of Automotive Firms in Vietnam	Feb 2015
2015-10	Pararapong INTERAKUMNERD and Kriengkrai TECHAKANONT	Intra-industry Trade, Product Fragmentation and Technological Capability Development in Thai Automotive Industry	Feb 2015
2015-09	Rene E. OFRENEO	Auto and Car Parts Production: Can the Philippines Catch Up with Asia	Feb 2015
2015-08	Rajah RASIAH, Rafat Beigpoor SHAHRIVAR, Abdusy Syakur AMIN	Host-site Support, Foreign Ownership, Regional Linkages and Technological Capabilites: Evidence from Automotive Firms in Indonesia	Feb 2015
2015-07	Yansheng LI, Xin Xin KONG, and Miao ZHANG	Industrial Upgrading in Global Production Networks: Te Case of the Chinese Automotive Industry	Feb 2015
2015-06	Mukul G. ASHER and Fauziah ZEN	Social Protection in ASEAN: Challenges and Initiatives for Post-2015 Vision	Feb 2015
2015-05	Lili Yan ING, Stephen MAGIERA, and Anika WIDIANA	Business Licensing: A Key to Investment Climate Reform	Feb 2015
2015-04	Gemma ESTRADA, James ANGRESANO, Jo Thori LIND, Niku MÄÄTÄNEN, William MCBRIDE, Donghyun PARK, Motohiro SATO, and Karin SVANBORG-SJÖVALL	Fiscal Policy and Equity in Advanced Economies: Lessons for Asia	Jan 2015
2015-03	Erlinda M. MEDALLA	Towards an Enabling Set of Rules of Origin for the Regional Comprehensive Economic Partnership	Jan 2015
2015-02	Archanun KOHPAIBOON and Juthathip JONGWANICH	Use of FTAs from Thai Experience	Jan 2015
2015-01	Misa OKABE	Impact of Free Trade Agreements on Trade in East Asia	Jan 2015

Previous year of ERIA Discussion Paper, can be downloaded at:

http://www.eria.org/publications/discussion_papers/FY2014/
http://www.eria.org/publications/discussion_papers/FY2013/
http://www.eria.org/publications/discussion_papers/FY2012/
http://www.eria.org/publications/discussion_papers/FY2011/
http://www.eria.org/publications/discussion_papers/FY2010/
http://www.eria.org/publications/discussion_papers/FY2009/
http://www.eria.org/publications/discussion_papers/FY2008/