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The Urgency of Leniency Program Against Cartels in Indonesia: Lesson Learned from Singapore Competition Law

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ABSTRACT

Globalization is characterized by a process where the economy becomes more tightly integrated and manifested in the form of free trade. Free trade forced by economic globalization has brought adverse effects. Some of the harmful effects of free trade include the rise of international cartels, for instance, those involved in price-fixing, bid-rigging, output limitation, and market sharing. This normative legal research aims to examine the application of leniency programs in the enforcement of Competition Law in Singapore and how Indonesia can learn from Singapore. The research indicates that one particular method is commonly used in several countries in the context of law enforcement against cartels, which is known as the leniency program or the Whistleblower. Singapore, as one of the neighboring countries of Indonesia, also applies for the leniency program. As a result, Singapore has successfully resolved many international cartel issues. Consequently, the leniency program gives benefits for providing evidence for related cases. In conclusion, Indonesia should learn from Singapore's experience in implementing the leniency program to prevent the negative effect of free trade, including the proliferating international cartels..

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1. Introduction

Nowadays, we are experiencing an era of increasingly widespread and penetrating economies between countries and commonly known as the era of globalization. Globalization also refers to the process by which various economies and societies become closely integrated and concurrent with increasing worldwide globalization, and much research has been done into its consequences (Irani & Noruzi, 2011, p.216).

The disappearance of borders between countries has a significant economic impact. As a result of trade liberalization, import restrictions or trade and investment regulations have decreased significantly, and cross-border business activities are less exposed to obstacles (Kojima, 2002, p. 1). These changes have an impact on the laws that govern the economy. In the area of commercial law, for example, the actions of each country are restricted by international treaties, particularly under the GATT / WTO regime. While in the area of competition law, the national laws of each country regulate the commercial restrictions of the private sector in the relevant markets (Kojima, 2002, p. 1).

Also, in competition law, which is part of commercial law. The development of competition law is also influenced by trade liberalization. Competition regulation was driven by the union of two forces. First, the economy and trade are becoming more global, which means that the national economy is highly dependent on international trade; Second, the business conduct of economic actors in one country (and indeed) can have profound effects in another (Sweeney, 2009, p. 58).

One negative impact of free trade between countries in the competition is the rise of international cartels. One example of an international cartel case involving Indonesia is the alleged cartel case regarding an agreement to fix a higher Singapore dollar exchange rate against another country's currency. This agreement was carried out by Singapore banks on five currencies, namely Rupiah, Malaysian Ringgit, Vietnamese Dong, Thai Baht, and Australian Dollar (Ariyanti, 2014).

The leniency program is known as one method in order to reveal and resolve a cartel case. Unfortunately, at present, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Indonesian Antimonopoly Act) has not yet regulated the leniency program. Singapore is a country that has already applied leniency programs to enforce competition law and is quite successful in the example in revealing the case of the Panasonic cartel by using a leniency program (Hong, 2018). In dismantling the cartel, Indonesia can learn from Singapore's experience in implementing the leniency program.

Therefore, this article explores the following research questions; what is the urgency of applying leniency in law enforcement against cartels? And how the application of leniency in Singapore's competition law can be learned for Indonesia?

2. Method

This research used normative juridical methods. Normative research was to examine secondary data sources for legal materials from various laws, i.e., Indonesian Competition Law and Singapore's Competition Law, and other legal documents. Besides, this study also used conceptual and statutory approaches.

3. Results and Discussion

3. 1. Cartel Case and The Urgency of Leniency Programme

Competition or "competition" in English by Webster is defined as "... a struggle or contest between two or more persons for some objects" (Siswanto, 2004, p. 13). One form of competition in the economic field is business competition, which can be simply defined as competition between sellers in 'grabbing' buyers and market share (Siswanto, 2004, p.

13). Ningrum Natasya Sirait defines competition as an individualistic action and is only oriented towards one-sided interests by carrying out various methods and efforts as much as possible to achieve maximum profits (Sirait, 2003, p. 15).

Indonesian Antimonopoly Act does not explicitly explain the definition of competition. In contrast, the definition of unfair competition is regulated in Article 1 number 6, namely "competition between business actors in carrying out production and or marketing activities of goods and or services conducted dishonestly or illegally or inhibiting business competition."

The forms of unfair business competition, according to the Anti-Monopoly Act, include:

a. Prohibited agreements are regulated in Antimonopoly Law Article 4 to Article 16;

b. Prohibited activities are regulated in Antimonopoly Law Article 17 to Article 24, and;

c. Abuse of a dominant position.

Competition law around the world has specifically prohibited economic operators from entering into cartels, but it continues to grow and occur in large numbers (Aubert, et.al., 2006, p. 1241). A cartel is basically an agreement between business actors to eliminate competition between themselves. The classic cartel can be done through three things, namely price, production, and marketing area (Nasution & Wiranti, 2008, p. 4). Cartels often grow up in a market of oligopolies. An oligopoly is a form of market in which there are several sellers. Therefore, the actions of each seller affect other sellers. There are two extreme possibilities in an oligopoly market: first, market participants may attempt to coordinate their behavior to act collectively as a single monopoly, or other extreme actions in which commercial players can compete fiercely for a price war to emerge (McEachern, 2009, p. 328). Cartel is an example of corporate and white-collar crimes that involve collusion between competitors to fix prices, divide markets, or manipulate bidding processes (Jaspers, 2017, p. 319).

Connor (2008) defined a cartel as "*an association of two or more legally independent firms that explicitly agree to coordinate their prices or output for the purpose of increasing their collective profits*." Based on this definition, the purpose of a cartel is to control the market with the aim of restricting competition (Na'aim et al., 2019, p. 1). Hence, cartels are likened to cancer in an open economic system, and it only works to rob consumers' money (Monti, 2000, p. 11).

Cartel is a secret agreement between its members, which is very difficult to prove, as it is only implicitly known for its behavior in the oligopoly market (Gaspers, 1999, p. 325). Companies that cooperate secretly in the oligopoly market that does not involve an explicit agreement (tacit collusion).[1] Tacit collusion is an agreement that is not openly disclosed among companies, i.e., to share the marketing area. This confidentiality makes

[1] Philips,Louis. (1998).“*Applied Industrial Economics*”. United Kingdom: Cambridge UniversityPress. p.18. “I define tacit collusion as a collusive outcomes that are sustained asequilibria of a non-cooperative repeatd game. A repeated game is such that the same one-periodgame is repeated period after period and represents the circumstances when the same firms meetover and over again in the market place. In such a game, an equilibrium that implies profitsbetween the Cournot profit and the Joint-profit-maximizing profit can be sustained, although thereis no cooperation between the players. Game Theory thus offers an answer to the vexing question,which arises to often in antitrust proceedings, of how firms can collude without makingagreements and even without contacting each other.”

it difficult for the competition authorities to collect the evidence that allows them to prove the existence of cartels and, if necessary, sanction the companies involved. Among the critical challenges faced by competing authorities around the world is in exposing the existence of cartels since they act in secrecy (Chen & Harrington, 2007, p. 59).

In Indonesia, a cartel is one of the prohibited agreements and regulated in Article 11 Indonesian Antimonopoly Act, which reads that business actors are prohibited from making agreements with business competitors, who intend to influence prices by regulating the production and or marketing of goods and or services, which can result in monopolistic practices and or unfair business competition.

The tacit collusion of the cartel made difficult evidence gathering by KPPU as the national competition authority. The KPPU also lacks sufficient powers compared to the competition authorities of other countries, so one of the efforts that must be made to eradicate the cartels is the leniency program. The Leniency Program provides remission for those who voluntarily are willing to reveal the cartel's behavior to the competition authorities and give severe penalties to other members.

Leniency program, firstly introduced by the United States, then its use has increasingly extended to countries of the European Union (EU) and other countries such as Korea and Japan (Park, 2014, p. 326). European competition law applies for leniency programs with the objective to increase the effectiveness of cartel precaution and prosecution (Smuda, 2012, p. 63).

The occurrence of leniency programs has totally transformed the way competition authorities around the world detect, investigate, and prevent cartels (Scott, 2008, p. 4). Leniency (KPPU, 2009, p. 18) is an offer to be exempt from prosecution and/or reduce penalties for one of the cartel actors who first confess and inform the cartel. The purpose of the leniency program is to reduce the penalties against the perpetrators of the collusion if the perpetrators of the collusion voluntarily acknowledge their actions or participate in the examination procedure by the authorities. (Park, 2014, p. 326) Leniency programs can crack secret codes between cartel actors. The leniency program uncovers conspiracies that may go unnoticed and also makes subsequent investigations more efficient and effective (OECD, 2001).

There are two types of penalty reduction. The first is a reduction for companies that spontaneously report collusion before the initiation of an investigation by the authorities, and the second type of penalty reduction is for companies that cooperate during the investigation, for example, by providing evidence. substantiated to the authorities (Aubert, et.al., 2006, p. 1241).

At present, in several countries, the application of leniency in competition law is considered quite successful in eradicating cartels. The Leniency Notice is implemented by providing the competition authority with a very effective key tool for companies to detect and enforce competition law against cartels (Sundaja, 2007). Experience proves that the country has implemented the leniency program has succeeded in increasing its success in efforts to eradicate the cartel. For example, in the United States, the rate of cartel reports increases by 20 percent annually (Putra, 2017).

Japan is one of the countries that apply for leniency program, where applicants for the 1st leniency program will receive a 100% penalty reduction, applicants for the 2nd leniency program receive a 50% penalty reduction, and applicants for the 3rd to 5th leniency programs before or when the investigation starts gets a 30% penalty reduction.

In Japan, this program was proven effective, wherein in 2008 alone, 85 leniency applicants occurred as part of 264 applicants for the period of 2006-2009 (KPPU, 2009).

In Indonesia, the number of cases of violations of Law Number 5 of 1999, especially cartel cases, has become a wake-up call for policymakers in the realm of business competition law to create effective business competition regulations immediately. Various efforts can be made, and one of them is by implementing the leniency program in business competition law in Indonesia. Reflecting on the effectiveness of the program in many countries and violations of existing business competition laws in Indonesia, the application of a leniency program is a crucial thing to do.

3.2. Leniency Program in Singapore and Indonesia

For many years, the competition authorities of many countries have tried to encourage efforts to entangle their conspiracy with direct internal evidence that will lead to the dissolution of the cartels. The competition authorities have done this through the introduction of a leniency program. A leniency program is a system of partial or total release from penalties for the Whistleblower or 'Informant', for example, the cartel member who comes out with information about the cartel activities to the competition authorities. Leniency programs have proven to be effective.

In Singapore, the Competition Act ("Act") enacted by the Singapore Competition Commission ("CCS", now CCCS Competition and Consumers Commission). Article 34 of the Law of January 1, 2006, prohibits anti-competitive agreements, including cartels. To encourage efforts to provide inside information about cartel activity, the CCS has introduced guidelines for the mild treatment of cartel members who post information (Jun-Informants, 2017).

The leniency program established by the CCS forms part of Singapore's competition enforcement strategy. The CCS' 'Guideline on Lenient Treatment for Undertakings Coming Forward with Information On Cartel Activity Cases' ('Lenient Guidelines') establishes that a company that has been involved in a cartel can be granted full exemption from fines or a reduction of the fine of up to 100%.

CCCS's Leniency Program is only available to companies that are part of a cartel agreement or concerted practice or trade associations that participate in or facilitate cartel activity (CCCS, 2018). Cartel agreements are the most serious violation of section 34 prohibition. Cartel activities include agreements between companies to fix prices, manipulate bidding processes, share markets and restrict production. Cartels activity is detrimental to consumers (businesses and end-users) as it restricts or eliminates competition among market participants and also removes the incentive for market participants to be efficient or innovate. Therefore, it is the policy of the CCCS that companies that have violated the Section 34 prohibition by entering into antitrust agreements should incur substantial penalties (CCCS, 2018).

Cartel members are likely to be reluctant to contact and report their activities. Since cartels are, by their very nature, shrouded in secrecy and therefore difficult to detect, international experience has shown that leniency programs are effective in incentivizing companies involved in cartel activities to provide information and evidence about the cartel to the CCCS.

The Leniency Programme offers different levels of benefits to businesses depending on:

a. Whether the business is the first to come forward with information about the cartel; and

b. Whether CCCS has already commenced investigations when the business comes forward.

If the Informant is the first to provide evidence of cartel activity to CCCS and this occurs before CCCS has initiated an investigation into the cartel, they will be entitled to immunity from fines subject to the following conditions (among others) under the following conditions:

a) The informant provides CCCS with all the information, documents, and evidence about the cartel activity he had;

b) The informant will maintain continuous and full cooperation throughout the investigation and until CCCS completes all actions resulting from the investigation;

c) The informant refrains from participating in the cartel activity from the moment the cartel is disclosed to the CCCS, unless the CCCS orders otherwise;

d) The informant is not the initiator of the cartel and did not compel any other party to participate in the cartel activity;

e) The informant unconditionally admits the conduct for which leniency is requested; and

f) The informant grants CCCS an appropriate confidentiality waiver in relation to any foreign country where your company has also requested leniency or in relation to a regulatory authority with which your company has reported cartel activities.

If the Informant is the first to apply for the leniency program at CCCS and meets all the requirements but only steps forward after CCCS has initiated an investigation, the Informant is not entitled to immunity. However, a reduction of up to 100% of fines can still be granted. If the Informant does not come out first, if the Informant initiated cartel activity, or if the Informant coerced another party to participate in cartel activity, the Informant can still be awarded a reduction of up to 50% in fines. However, it only applies if the Informant files a request before CCCS issues a notice of a proposed violation decision under Section 68 (1) of the Act.

CCCS also runs a Leniency Plus program. Leniency plus offers companies that cooperate with CCCS in a cartel investigation in one market (the first market) an incentive to inform CCCS of their participation in a completely separate cartel in another market (the secondary market). To qualify for the Leniency Plus, the informant would have to comply with CCCS. First, the information and evidence that the company provides regarding the cartel in the secondary market is a completely different cartel than the cartel in the first market. Secondly, the company will be the first to provide CCCS with information and evidence about the cartel in the secondary market and will therefore be eligible for a fine or a reduction of up to 100% of the fines.

If CCCS is satisfied with it, then the companies will be granted leniency (either immunity or a reduction of up to 100% of the fines) in relation to the cartel in the secondary market, and it will also be granted a reduction in fines, if any, imposed against it in the investigation in the cartel in the first market. This reduction in fines will be in addition to any reduction it would have received for its cooperation in the investigation in the first market.

If business actors are willing to apply for a leniency program, the business actor or its attorneys should contact the CCCS in person, by phone, email, or via the online form and will remain anonymous. There are two options for the companies may take, the first being to apply directly for leniency or the second being to apply for a leniency marker. Whichever option a company chooses, it often depends on how much information or evidence it has (CCCS, 2018).

The prohibition of Article 34, which came into force on January 1, 2006, prohibits anti-competitive agreements, and cartels also apply to agreements made outside Singapore, or where the parties to the agreement are outside Singapore, as long as the agreement has the object or effect of preventing, limiting, or distorting competition in Singapore (CCCS, 2016).

Between 1 January 2006, when the Section 34 Prohibition came into effect, and 15 December 2020, 16 cartel infringement decisions have been issued by the CCCS, part of them involving international cartels. (Violation of Prohibition, art. 34) There was already, at least in one instance, the coordinated "dawn raid" [2] carried out by CCCS with other competition authorities in the case of international cartels. The case and financial penalties are shown in the table1 (Jun-Informants, 2017).

Indonesian Antimonopoly Act, the newly born law after the reform period in Indonesia (Simbolon, 2019, p. 1) that regulates the behavior of business actors in conducting business activities properly and correctly in accordance with the regulations available so as to create a conducive business climate has not yet regulated the use of the leniency program as an alternative to the reveal Cartel case. KPPU still relies on indirect evidence (De León, 2009, p. 313).[3] In proving the cartel case. The business actors have also anticipated the proof of the cartel by KPPU based on the existence of written and oral agreements between the business actors. They will not actually make a written agreement or record their conversation containing the agreement to arrange a cartel.

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[2] An unannounced inspection by a competition or criminal investigatory authority, known as a dawn raid, is a major disruption to any business. It may also signal the start of protracted proceedings, potentially leading to fines, damages actions and, in some jurisdictions, criminal prosecutions and imprisonment for individuals and the disqualification of directors, https://www.eversheds-sutherland.com/global/en/what/practices/anti-trust-competition-eu-trade/dawn-raids.page, accessed 12 Februari 2020.

[3] De León, Ignacio. (2009). *An Institutional Assessment of Antitrust Policy: The Latin AmericanExperience*. BV, Netherlands: Kluwer Law International, p.313. The Jurisprudenceshows that CADE admits indirect evidence as proof to punish a cartel. Nonetheless, somequalifications are appropriate: First, in all previous cases, CADE has indicated that it is importantto exclude the price leadership explanation for the price parallelis; and second, although theindirect evidence avalialbe in the cases were important to indicate the existence of legalbehaviour,CADE didn‟t punish the firms exclusively based on that. In the cases referred above, in addition to the economic evidence, some circumstantial event was associated to the price parallelism.

Some cartel cases that have occurred and are considered large cartel cases in Indonesia can be seen through the table 2 (BP Lawyers, 2017).

Table 1.

Penalties imposed by CCCs from January 1, 2006, to December 15, 2020 (Shiau et al, 2021)

Cartel case	Fines (S$ millions)	Cartel case	Fines (S$ millions)
Fresh Chicken Distributors cartel	26.95[2]	Maintenance Services for Water Features cartel	0.42
Capacitor Manufacturers cartel	19.55	Modeling Agencies cartel	0.36
Ball Bearings cartel	9.31	Ferry Operators cartel	0.29
Freight Forwarders cartel	7.15	Pest Control Operators cartel	0.26
Express Bus Operators cartel	1.70	Electric Works cartel	0.19
Hotel Operators cartel	1.52	Motor Vehicle Traders cartel	0.18
Financial Advisers cartel	0.91	Employment Agencies cartel	0.15
Electrical Services and Asset Tagging Services cartel	0.63	Building, Construction, and Maintenance Services cartel	0.03

Table 2.

Cartel Cases in Indonesia (Lubis et al, 2009)

No	Case	Brief Chronology
1.	Kartel Garam (Salt Cartel)	This case occurred in 2005. In this case, it was alleged that a supply of raw materials for sale in North Sumatra. In its handling, the Commission ordered PT Garam, PT Budiono, and PT Garindo to open and provide equal opportunities to other business actors, namely PT

		Graha Reksa, PT Sumatera Palm, UD Jangkar Waja, UD Sumber Samudera, to conduct marketing of raw materials in North Sumatra. In this case, the KPPU also prohibited PT Graha Reksa, PT Sumatera Palm, UD Jangkar Waja, UD Sumber Samudera from making efforts to deter other business actors from obtaining supplies of raw salt from PT Garam, PT Budiono, PT Garindo; Sanctions imposed by KPPU on PT Garam, PT Budiono, PT Garindo, PT Graha Reksa, PT Sumatra Palm, UD Jangkar Waja, UD Sumber Samudera in each case to pay a fine of Rp 2,000,000,000.00 (two billion rupiahs)
2.	Short Message Service Tariffs Cartel (SMS)	In this case, six cellular companies conducted cartels by setting SMS tariff rates of Rp 350/SMS. This cartel practice was carried out during the period of 2004-2008. As a result, consumers experience losses estimated at Rp 2.827 trillion As a reward, the KPPU imposed sanctions on the six cellular operator companies that carried out the cartel practices, including PT Excelcomindo Pratama Tbk (XL), PT Telkomsel, PT Telkom, PT Bakrie Telecom Tbk, PT Mobile-8 Telecom Tbk, and PT Smart Telecom which had been fined by KPPU.
3.	Fuel Surcharge Cartel	Nine airlines consisting of PT Sriwijaya, PT Metro Batavia (Batavia Air), PT Lion Mentari Airlines (Lion Air), PT Wings Abadi Airlines (Wings Air), PT Merpati Nusantara Airlines, PT Travel Express Aviation Service, and PT Mandala Airlines was proven and convicted by KPPU for having agreed to avtur benchmark prices from 2006-2009. As a result of the agreement made by the nine airlines, consumers suffered losses of up to Rp.13.8 trillion. As a punishment, the KPPU charged the nine airlines with total compensation of Rp.586 billion. Nevertheless, the airline that was charged with filing an objection to the court and managed to reap maximum results. At that time, the court considered many factors that determined the price of fuel surcharge, for example, international prices and the rupiah exchange rate. Still, they bought it from one producer, Pertamina. So it cannot be ascertained as an agreement that meets the elements of monopoly as stipulated in Article 5 of Law No. 5/1999.
4.	Cooking Oil Cartel	In this case, 20 cooking oil producers were reported during the April-December 2008 period due to the price cartel. KPPU decides to 20 producers because it is indicated to conduct price parallelism at the prices of packaged and bulk cooking oil. As a result of the 20 companies' actions, the community suffered a loss of Rp. 1.27 trillion for branded packaged cooking oil products and Rp. 374.3 billion for bulk products. Even so, the Supreme Court (MA) overturned the KPPU's decision after being filed an objection by producers who were found guilty by KPPU.
5	Hypertension drug Cartel	In this case, the KPPU sentenced members of the Pfizer business group to pay a fine of Rp. 25 billion for the proven cartel. In addition, another pharmaceutical company, Dexa Medica, was convicted by

KPPU because it was proven guilty of carrying out a price-setting cartel with a sentence of Twenty billion Rupiahs to the state treasury. In addition, Dexa Medica was also ordered to reduce the price of Tensivask by 60 percent from the pharmacy's net price.

In the end, the KPPU's decision was canceled by the Supreme Court because it was considered to lack evidence. The reason is that many other business actors also produce hypertension drugs, but the KPPU is not questioned by the KPPU.

The cartel cases, as described in the table above, are only a few stories of violations of competition law in Indonesia. There are still many other cartel cases that occur in Indonesia. The existence of a leniency program is expected to break the secrecy among cartel perpetrators. Leniency programs can open up and veil conspiracies and can also make investigations carried out more effectively and efficiently.

As a form of Prohibited Agreement, cartels cannot be underestimated. This is because cartels have an impact that is almost certain to be detrimental to the business competition (KPPU, 2011, p. 104). Therefore, the majority of countries regulate cartels using an illegal per se approach (Anggraini, 2003, p. 212).

Another reason why the leniency program is essential to apply, especially in the case of cartels, is that proof of the cartel is extremely difficult. In practice, finding evidence of an agreement made by business actors in the cartel case is not easy. In competition law, the evidence is divided into two groups, namely direct evidence and indirect evidence. Direct evidence is observable elements and shows the existence of an agreement along with the substance of the agreement between companies in the market. As opposed to direct evidence, indirect evidence does not directly state the existence of an agreement between companies in the market. Indirect evidence can be used as proof of allegations of the enforcement of an agreement (Lubis, 2013, p. 390).

KPPU has its own regulations in handling cartel cases with the existence of guidelines for Article 11, Commission Regulation No.4 of 2010, which serves as a guideline for KPPU in investigating cartel cases. These guidelines are also further regulated in Perkom No.1 / 2019 regarding procedures for handling competition cases. The regulation clearly states and creates a new way of resolving cartel cases, namely by using indirect evidence in the form of economic evidence and communication evidence. (Peraturan Komisi, 2019)

In the draft of the new Indonesian Antimonopoly Act, there are several articles that are proposed to be regulated and applied to the leniency program. These articles can be seen among others through the table 3 (Peraturan Komisi, 2019).

Table 3.

Comparison between the draft of New Antimonopoly Act and the Existing Antimonopoly Act (DPR RI, 2016 see also Putra, 2017).

Provision	Reference Article
	Article 4 (Oligopoly) (1) Business Actors are prohibited from entering into an Agreement with a competing Business Actor to jointly control the production and/or marketing of Goods and/or Services so as to result in the occurrence of Monopolistic Practices and/or Unfair Business Competition. (2) Business Actors should be suspected to jointly control the production and/or marketing of Goods and/or Services, as referred to in paragraph (1) if 2 (two) or 3 (three) Business Actors or Business Actors groups control more than 75% (seventy-five percent) of the market share of certain types of goods or services.
	Article 5 (Price Fixing) (1) Business Actors are prohibited from entering into an Agreement with their Business Actors to determine the price of a Goods and/or Service that must be paid by a Consumer in the same Related Market. (2) The provisions referred to in paragraph (1) do not apply to: a. an agreement made in a joint venture; or b. an agreement that is based on applicable law.
Article 70 (Leniency) (1) KPPU may grant remission and/or punishment reduction for Business Actors who admit and/or report their actions suspected of violating the provisions of Article 4, Article 5, Article 7, Article 9, Article 10, Article 11, Article 12, Article 13, Article 15, Article 16 and Article 18. (2) (Provisions regarding remission and/or punishment reduction as referred to in paragraph (1) shall be regulated in the KPPU Regulation.	Article 7 Business Actors are prohibited from entering into an Agreement with a competing Business Actor to set a price below the Market Price, which may result in Monopolistic Practices and/or Unfair Business Competition. Article 9 (Division of Territory) Business Actors are prohibited from entering into an Agreement with a competing Business Actor whose purpose is to divide the marketing area or Market allocation for Goods and/or Services so as to result in the occurrence of Monopolistic Practices and/or Unfair Business Competition. Article 10 (Boycott) (1) Business Actors are prohibited from entering into an Agreement with their competing Business Actors, which may prevent other Business Actors from conducting the same business, both for domestic and foreign markets. (2) Business Actors are prohibited from entering into an Agreement with a competing Business Actor, from refusing to sell any Goods and/or Services from other Business Actors so that the said acts: a. is detrimental or can be suspected to be detrimental to other Business Actors; or b. limit other Business Actors in selling or buying any Goods and/or Services from the Market concerned.

Article 11 (Cartel)

Business Actors are prohibited from entering into an Agreement with a competing Business Actor, which intends to influence prices by regulating the production and/or marketing of Goods and/or Services so as to cause Monopolistic Practices and/or Unfair Business Competition.

Article 12 (Trust)

Business Actors are prohibited from entering into agreements with other Business Actors to collaborate by forming a joint company or a larger company while maintaining and maintaining the viability of each company or its member companies, which aims to control the production and/or marketing of the Goods and/or Services so as to result in Monopolistic Practices and/or Unfair Business Competition.

Article 13 (Oligopsoni)

(1) Business Actors are prohibited from entering into an Agreement with a competing Business Actor that aims to jointly control the purchase or receipt of supply in order to control the prices of Goods and/or Services in the Related Market so as to result in Monopolistic Practices and/or Unfair Business Competition.

(2) Business Actors should be suspected of jointly controlling the purchase or receipt of supply as referred to in paragraph (1) if 2 (two) or 3 (three) Business Actors or Business Actors groups control more than 75% (seventy-five percent) Market share of a specific type of Goods or Services.

Article 15 (Agreement with Foreign Parties)

Business Actors are prohibited from making agreements with other parties abroad that contain provisions that may result in the occurrence of Monopolistic Practices and/or Unfair Business Competition

Article 16 (Conspiracy)

Business Actors are prohibited from engaging in collusion with other parties to regulate and/or determine the winner of a tender or auction.

Article 18

Business Actors are prohibited from engaging in collusion with other parties to inhibit the production and/or marketing of Goods and/or Services of their Business Actors with the intention that the Goods and/or services offered or supplied in the Market concerned will be reduced in terms of quantity, quality, and timeliness.

The Draft of New An Antimonopolyct still needs further review because it has not regulated in detail who can apply for the leniency program, the procedure for the leniency program, amount of fine reduction, a form of evidence needed to submit by the informant for leniency program, and form of legal protection for cartel Informants.

4. Conclusion

In order to enhance the enforcement of Competition Law, leniency policies were introduced in nearly all industrialized countries. (Blum et al, 2008, p. 209) These programs aim at deterring and eliminating cartels and revealing secrecy conspiracies that may be undetected and makes investigations more efficient and effective. The rise of the Cartel case in Indonesia made the implementation of the leniency program is urgent in Indonesia's competition law.

Proposals regarding articles included in the planned coverage of the leniency program in Draft of Indonesian Anti Monopoly Act still need further details, as follows:

a. The scope of the leniency program for cartels is still too extensive

b. The regulation of the leniency program for an oligopoly (Competition Law does not describe what practices are prohibited by oligopolies. Because in essence, oligopoly economic conditions are not wrong unless certain agreements are made, such as territorial division, production arrangements, or price-fixing).

c. The registration system includes the first applicant and evidence that can be submitted by business actors.

d. Strict regulation that the leniency program can be given to business actors as long as they admit their mistakes and are willing to help the authorities before the case goes to the trial stage. If it has entered the trial stage, whether it is a preliminary examination or a follow-up examination, then the leniency program does not apply to business actors. (Putra, 2017)

e. Sanctions arrangements such as fines and also rewards that will be given to the Informants

f. The party who has the right to be a part of the leniency program, both individual and corporation.

Indonesia can consider and take lessons learned from the implementation of the leniency program in Singapore, among others, by issuing guidelines that regulate in detail procedures, legal protection, sentence relief, and other technical matters, and of course, the role of KPPU is needed.

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