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Study of Circumstantial Evidence Theory and Its Implementation in Business Competition Law in Indonesia

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Abstract

Implementation of Law no. 5 of 1999 is quite important to be implemented using circumstantial evidence. This is due to a characteristic that comes from the law in conducting the business competition and acts in anti-competition. However, it is unfortunate that there is uncertainty in the law and controversy when using circumstantial evidence. This study will examine how circumstantial evidence will be used to enforce the law on business competition in Indonesia. This study will use a normative legal study method with a statutory, conceptual, and case approach. The study data fully uses secondary data, both in primary, secondary, and tertiary legal materials collected through library research or document studies and analyzed using abstractive-interpretative-qualitative analysis methods. This study found that law enforcement against Law no. 5 of 1999 through circumstantial evidence (circumstantial evidence) is still characterized by legal uncertainty. The use of circumstantial evidence is very necessary to enforce business competition law. The special characteristics of business competition law and business competition cases cause business competition law enforcement to be illogical if it only relies on the proof process through hard evidence or direct evidence. Therefore, it is necessary to improve Law no. 5 of 1999 is related to the existence of the circumstantial evidence, either by explicitly acknowledging circumstantial evidence as valid evidence or by including it explicitly as part of the guiding evidence.

Keywords

Competition Law, Circumstantial Evidence, Direct Evidence.

A. Introduction

Indonesia has a law that regulates the prohibition of monopolizing a commodity as well as the implementation of business competition that is in an unhealthy form. This law is contained in Law no. 5 of 1999. Furthermore, the Indonesian Competition Commission (KPPU) made various guidelines and new government regulations. Meanwhile, during the tens of years since its establishment, the KPPU has received thousands of reports regarding alleged violations of Law no. 5 of 1999 (Sumirata & Dirkareshzab, 2021). For a dozen years, efforts to enforce the law regarding violations of this law have encountered various problems. The problem that quite often arises in this case is the use of circumstantial evidence when examining cases and giving determinations to decisions carried out by KPPU. These pros and cons are mainly because circumstantial evidence is not regulated in Law no. 5 of 1999. However, the investigators and the Commission Council examining cases of violations of Law no. 5 of 1999 always uses circumstantial evidence to prove violations of the law (Cullen et al., 2020).

There are 5 pieces of evidence that can be used based on article 42 of Law no. 5 of 1999. The five pieces of evidence include: (1) Witness testimony; (2) Expert statement; (3) Letters and or documents; (4); Instruction; and (5) Description of business actors. If you look at Article 42, there is no mention of circumstantial evidence (Elkin-Koren & Netanel, 2020). The problem is that most cases of alleged violations of Law no. 5 of 1999, such as cartel agreements, tenders, and other cases, are very difficult to prove using direct evidence (direct evidence or hard evidence) such as witness statements, letters, and documents or statements of business actors. This is because, in practice in the business world, agreements regarding prices, production, areas (cartels), and other anti-fair competition agreements are often carried out tacitly (Kwan, 2019). This then makes it very difficult to find any evidence that can directly prove the occurrence of events or acts that violate the Business Competition Law. If Law no. 5 of 1999 is only dependent on direct evidence, then the act's enforcement becomes very difficult to do (Shapiro, 2019).

In numerous nations, circumstantial evidence (circumstantial evidence) is frequently employed in the enforcement of competition law. Similarly, in June 2007, the Organization for Economic Cooperation and Development (OECD) published a Policy Brief titled Prosecuting Cartels without Direct Evidence of Agreement. These proposals use both direct and circumstantial evidence to establish the existence of a cartel agreement. The direct evidence reveals a business meeting or discussion and describes the parameters of the parties' agreement (Liljeblom et al., 2019).

The following table illustrates the distinction between direct and circumstantial evidence.

Table 1. Differences between Direct Evidence and Circumstantial evidence

No	Evidence Type	Definition	Example
1	Direct Evidence	Evidence that shows a meeting or communication between business actors and describes the contents of the agreement between these business actors (Carlson & Koremenos, 2021).	Documents showing the contents of the agreement and the parties to the agreement; or verbal or written statements by cartel business actors describing the implementation of the cartel.
2	Circumstantial evidence	Any evidence that does not immediately describe the agreement's terms or the people involved.	Evidence of communication between business actors accused of engaging in a cartel, as well as economic evidence pertaining to the market and the conduct of the cartel business actors involved in proposing the joint action.

Circumstantial evidence is a tool to detect indications of cartel practices carried out by business actors, namely in agreements between business actors that determine the selling price of certain goods or services to consumers (Kumar, 2022).

Unfortunately, problems in the use of circumstantial evidence are still ongoing despite international practice using circumstantial evidence in their trials. This is because international practice in various countries and OECD guidelines are not a source of positive law according to the legal system in Indonesia (Jackson et al., 2020). Likewise, courts in Indonesia have upheld the Commission Council (KPPU) decisions that use circumstantial evidence to the Supreme Court. Based on this background, it is necessary to study circumstantial evidence (circumstantial evidence) in the enforcement of Law no. 5 of 1999 (Sugarda & Wicaksono, 2018).

Through the discussion above, the researcher then intends to examine how the existence of circumstantial evidence can be used in competition procedural law in Indonesia.

B. Literature Review

1. Circumstantial evidence

Evidence that cannot directly indicate the occurrence of a legal event or legal action as stated in the law is circumstantial evidence. Circumstantial evidence, also called circumstantial evidence, is a means of evidence in which the facts and the evidence can only be drawn after certain conclusions are drawn (Cantoni & Pons, 2021). Another definition of circumstantial evidence argues that it is evidence

of a fact that is not itself a fact in an issue, but from which the existence or nonexistence of a fact in an issue can be inferred. Circumstantial evidence functions indirectly by tending to establish a crucial fact (Kapitány et al., 2020). In other words, circumstantial evidence is a fact that is not the only fact related to a case, but the fact comes from facts related or not to the case, which can then be concluded. The conclusion is related to the occurrence of a certain legal event or action (Walter et al., 2020). Furthermore, Munir Fuady stated that circumstantial evidence must have rational relevance, showing that the use of such evidence in court proceedings is more likely to make the proven facts clearer than if the evidence is not used (Sommerstein et al., 2020).

According to the OECD's June 2007 Policy Brief, Prosecuting Cartels without Direct Evidence of Agreement, circumstantial evidence is evidence that does not describe the terms or parties of the agreement directly. Circumstantial evidence consists of evidence of contact between business actors suspected of participating in a cartel and economic evidence concerning the market and the behaviour of cartel-accused business actors who proposed the combined action (Ri et al., 2021). Thus, circumstantial evidence is a tool to detect indications of cartel practices carried out by business actors, namely in the form of agreements between business actors that determine the selling price of certain goods or services to consumers (Van Cleynenbreugel, 2020).

2. Forms of Circumstantial evidence

Udin Silalahi explained that there were several forms of circumstantial evidence. The first form is evidence that the cartel business actors met or communicated but did not describe the content of their communication. This evidence is referred to as communication evidence (Cullen et al., 2020). Evidence of communication consists of:

a. Recording of telephone conversations (but not describing the contents of the conversation) between competing business actors, or records of trips to the same destination or participation in certain meetings such as trade conferences (Campana, 2018);
b. Other evidence in which business actors communicate, among others, minutes or minutes of meetings showing discussions about price, demand, or capacity use; internal company documents that show knowledge or understanding of pricing strategies by competing business actors, such as knowledge about price increases by competing business actors in the future (Guizzardi et al., 2019).

The second form of circumstantial evidence is called economic evidence. Economic evidence consists of two forms, namely structural evidence, and conduct evidence. Structural economic evidence is high market concentration and low market concentration. On the contrary, high barriers to market entry and product homogeneity indicate whether the market structure allows for the formation of a cartel. At the same time, behavioral evidence includes parallel price increases and

suspicious supply patterns that indicate whether competitors in the market are behaving non-competitively (Moreau & Vuille, 2018).

Based on this brief conceptual explanation, a conclusion can be drawn that circumstantial evidence (circumstantial evidence) can only be used accompanied by logical explanations using scientifically acceptable analytical methods (especially economics). Analysis of circumstantial evidence indicates that an anti-competitive act has occurred and who the perpetrator is (Belcher et al., 2020). Therefore, not everyone can accept the use of circumstantial evidence. In addition, it requires a specific understanding of the economic aspect because the evidence does not directly indicate the occurrence of an alleged anti-competitive event or act (West et al., 2020).

3. Per se Illegal Approach and Implementation in Competition Law

Per se illegal and rule of reason are two approaches that can be used to analyze the existence of unlawful acts or anti-competitive actions in business competition law. The difference between these approaches lies mainly in the necessity to prove the consequences of an act against competition law or an anti-competition act by a business actor (Ju & Lin, 2020).

The word "per se" comes from the Latin meaning by itself; in itself; taken alone; utilizing itself, through itself, inherently; isolation; unconnected; with other matters; simply as such; in its nature without reference to its relations. A behavior deemed per se unlawful by the court will be penalized without a costly inquiry procedure (Nadarajah et al., 2022). The type of criminal conduct identified per se will not be enforced until the court has sufficient experience with the conduct, namely that the conduct is almost invariably anti-competitive and rarely produces social advantages (Nagy, 2021).

The party who alleges that an anti-competition act or act has occurred in a per se illegal approach is required to prove that an anti-competitive act or action has occurred without having to prove the consequences of the act. So, in this approach, what must be proven is the occurrence of an act against the law of business competition or anti-competition, while the consequences of the act are not a problem before the law (Wu et al., 2021). This is different from the rule of reason approach, where a party who accuses an act against the law of competition or anti-competition has been required to prove two things: (1) Proving that an anti-competition act has occurred as the elements have been stated by law; and (2) prove that the consequences of the act as stated in the law have occurred. If these two things are proven, the perpetrator can be sentenced (Ramaiah et al., 2019).

In Law Number 5 of 1999, this per se illegal approach is applied to articles that do not require "that result in or may result in monopolistic practices and unfair business competition". In other words, the application of the per se illegal approach is usually used in articles that state the term "prohibited" without the clause "…which can result in…" (Sukarmi et al., 2021).

4. Rule of Reason Approach and Implementation in Competition Law

The rule of reason approach is an approach that determines that even though an act has fulfilled the formulation of the law, if there is an objective reason that can justify the act, then the act is not a violation. The application of the law depends on the consequences, whether the act has given rise to monopolistic practices or unfair business competition because the emphasis is on the material element of the act (Pavlova et al., 2019). The distinguishing characteristic of a rule of reason prohibition first is the form of the rule that states certain requirements must be met so that it meets the qualifications of the potential for monopolistic practices and unfair business competition practices. The second characteristic is if the rule contains the clause "supposedly or considered" (Gavil & Salop, 2019).

5. Evidence in Business Competition Law

Proof is one of the essences of law enforcement for law countries that prioritize the supremacy of law, equality before the law and due process of law. Evidence determines the law of an occurrence, legal action, or legal relationship, including the guilt or innocence of an individual and his subsequent penalty. Therefore, the power of judges to decide cases must be strengthened by valid evidence. It is not justified to impose a decision or sentence on anyone without valid evidence (Shapiro, 2019).

Material law and formal law are part of business competition law. Evidence is an important part of a formal law or business competition procedural law. At the first level, the alleged violation of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition was processed at the Indonesian Competition Commission (KPPU) (Capobianco & Nyeso, 2018). Investigators who work for and on behalf of KPPU have the task of collecting evidence supporting the alleged anti-competition act as regulated in the Law. This evidence is material for the Commission Council to carry out a syllogism process against legal norms and facts to determine whether it has been proven that a prohibited agreement, prohibited activity, or other anti-competition act has been stipulated in the Law (Silalahi & Chrysentia, 2020).

Required to use evidence for the Commission Council in deciding a business competition case as stipulated in a limited manner in Article 42 of Law no. 5 of 1999, namely: (1) witness statements; (2) expert testimony; (3) letters and or documents; (4) Instructions; and (5) information from business actors. This evidence is almost the same as the evidence known in criminal procedural law, as stated in Article 184 of the Criminal Procedure Code (Alsharari et al., 2020). It's just that there is a difference that the suspect's statement is changed to a business actor's statement. The similarities between the evidence in Article 184 of the Criminal Procedure Code and Article 42 of Law no. 5 of 1999 led to various interpretations that the procedural law of evidence used in law enforcement against

Law No. 5 of 1999 is the same as the procedural law of proof in the criminal procedure law (KUHAP) (Hale et al., 2019).

Finding the material truth is the goal of the criminal procedure law and business competition law and both have almost the same evidence. However, this does not necessarily mean that the business competition procedural law related to evidence is entirely the same as the method of proof in the criminal procedural law (KUHAP) (Chopra & Khan, 2020). None of the legal norms in Law no. 5 of 1999 states that the procedural law used in enforcing the law is to use the Criminal Procedure Code. Laws No. 5 of 1999 has its procedural law as regulated in the law and the regulations issued by the Commission (Regulation of the Indonesian Competition Commission) (Završnik, 2021).

Criminal procedural law and business competition procedural law aim to find material truth and have almost the same evidence. However, this does not necessarily mean that the business competition procedural law related to evidence is entirely the same as the method of proof in the criminal procedural law (KUHAP) (Bagley, 2019). None of the legal norms in Law no. 5 of 1999 states that the procedural law used in enforcing the law is to use the Criminal Procedure Code. Laws No. 5 of 1999 has its procedural law as regulated in the law and the regulations issued by the Commission (Regulation of the Indonesian Competition Commission) (Graham & Makowsky, 2021). Another factor relates to actions that violate the Business Competition Law, which are business activities that are always carried out tacitly. The circumstances mentioned above led to the enforcement of Law no. 5 of 1999 cannot be carried out if only direct evidence is used, such as witness statements, letters or documents, and statements of business actors (Pankov et al., 2021).

In the science of business competition law and international practices in enforcing business competition law, circumstantial evidence is known (circumstantial evidence). This circumstantial evidence plays an important role in the evidentiary process in business competition procedural law (Kira et al., 2021). As previously mentioned, Law no. 5 of 1999 does not directly mention the existence of such circumstantial evidence, thus giving rise to many pros and cons among legal experts and practitioners of business competition law (Ferguson et al., 2019).

C. Method

This study uses a normative legal study method with a statutory, conceptual, and case approach. The statutory approach is used by conducting a content analysis on various laws and regulations in business competition. Since circumstantial evidence is not explicitly stated in the business competition laws and other procedural laws in Indonesia, a conceptual approach is used to understand the circumstantial evidence. Furthermore, the study analyzes several decisions in business competition cases that relate to the use of circumstantial evidence. The study data fully uses secondary data, both in primary, secondary, and tertiary legal

materials collected through library research or document studies and analyzed using inductive analysis methods.

D. Result and Discussion

1. The Existence of Circumstantial Evidence (Circumstantial Evidence) in the Business Competition Procedure Law in Indonesia

The evidentiary system adopted in enforcing the Act is not explained by Law no. 5 of 1999. Article 42 of the Law only mentions the evidence used by the Assembly in deciding cases of alleged violations of the Law. This situation gives rise to differences of opinion regarding whether the Commission Council is obliged to only use to prove the types of evidence listed in Article 42 or can use other evidence. Debates also occur concerning the minimum amount of evidence used by the Commission Council in deciding a case. If in the Criminal Procedure Code it is expressly stated that the panel of judges in deciding the case uses at least 2 (two) pieces of evidence plus the judge's conviction, then Law no. 5 of 1999 does not clearly state such a norm.

The Commission's obligation to conduct deliberations of the Commission Council to assess, analyze, conclude and decide cases based on sufficient evidence regarding the occurrence or non-occurrence of violations of the Law revealed in the Commission Council session is stated in Article 58 paragraph (1) of KPPU's Regulation No. 1 of 2010. This provision does not state how much evidence is sufficient for deciding cases. Thus it does not explain whether or not the Commission Council has confidence in deciding cases of alleged violations of the law. Some experts and practitioners believe that the Commission Council, in deciding cases, must still adhere to the evidence that has been stipulated in Article 42 of Law no. 5 of 1999. Regarding the existence of an element of the Assembly's belief, theoretically, that element should be contained in every activity of assessing, analyzing, concluding, and deciding cases as referred to in Article 58 paragraph (1) Perkom No. 1 of 2010. The Commission Council's assessment of the evidence in a Commission Council Deliberation resulted in logical considerations, which of course, these logical considerations were the source of the Council's conviction. While the phrase which states "based on sufficient evidence" is more rational if interpreted with more than 1 (one) evidence.

Regarding the existence of an element of the Assembly's belief, theoretically, that element should be contained in every activity of assessing, analyzing, concluding, and deciding cases as referred to in Article 58 paragraph (1) Perkom No. 1 of 2010. The Commission Council's assessment of the evidence in a Commission Council Deliberation resulted in logical considerations, which of course, these logical considerations were the source of the Council's conviction. While the phrase which states "based on sufficient evidence" is more rational if interpreted with more than 1 (one) evidence. The characteristics of the violation of business competition law and the characteristics of the approach in business competition law make it difficult to obtain direct evidence or be relied upon in proving the

occurrence or non-occurrence of prohibited agreements, prohibited activities, or other anti-competitive acts. Therefore, circumstantial evidence is needed.

Although Article 42 does not explicitly mention circumstantial evidence, it does not mean that the indirect evidence is completely out of touch with the types of evidence as stated in Article 42 of Law no. 5 of 1999. One type of evidence in Article 42 of Law no. 5 of 1999 relating to circumstantial evidence is evidence of guidance.

Then further evidence is also not explained in Law no. 5 of 1999. In Article 72 paragraph (3) Perkom No. 1 of 2010, it is stated that the evidence of instructions is the knowledge of the Commission Council, which is known and believed to be true. The definition of evidence in this Perkom is broader than that of evidence, generally known in criminal procedural law.

R. Soesilo gives meaning to the evidence of instructions as an act or thing which because of its good compatibility between one and another, both with the crime itself, indicates that a crime has occurred and who the perpetrator is. The instructions can be obtained from the testimony of witnesses, letters and statements of the defendant. The value of the instructions is left to the discretion of the judge. M. Yahya Harahap stated that the evidence of guidance is a sign that can be drawn from an act, event, or situation, where the signal has conformity with one another or the signal has conformity with the crime itself, and from this conformity gives birth to or realizing a clue that forms the reality of the occurrence of a crime and the defendant is the perpetrator. In the Criminal Procedure Code, evidence of instructions is further explained in Article 188 paragraph (1), which states that Instructions are acts, events, or circumstances that due to their conformity, both between one and the other or with the criminal act itself, indicate that a crime has occurred and who is the culprit. Furthermore, in Article 184 paragraph (2), it is limitedly stated that Instructions can only be obtained from witness statements, letters, or statements from the defendant.

The difference between criminal procedural law and business competition law can be seen here. If in Article 184 paragraph (2) of the Criminal Procedure Code, evidence of instructions can only be obtained from witness statements, letters, or statements of the defendant, then in Law no. 5 of 1999. Perkom No. 1 of 2010, the formation of evidence of guidance is not limited to witness statements, letters or documents, and statements of business actors. Suppose the evidence of instructions in a business competition case is only hung on evidence of witness statements, letters or documents and evidence of business actors' statements. In that case, law enforcement is very difficult to carry out. Direct evidence in the form of witness statements or letters/documents and business statements indicating that anti-competition events or acts have occurred are often not found in business competition cases. However, from this or circumstantial evidence, several facts were found which, if analyzed carefully, a conclusion would be drawn in the form of strong indications of anti-competitive practices.

2. Examples of Application of Circumstantial evidence in Business Competition in Indonesia

It is unlikely that a written agreement will be found between business actors with the aim of carrying out a cartel in carrying out cartel actions. Likewise, witness testimony stating a cartel agreement was not easy. Especially if you expect recognition from business actors, however, it was found that the business actors met or communicated with each other, although the communication did not directly prove the existence of a cartel agreement. In Perkom Number 4 of 2010, it is stated that several pieces of evidence for handling cartel cases include:

a. Documents or records of price agreements, production quotas, or distribution of marketing areas.
b. Documents or records of price lists issued by individual business actors during several periods (can be yearly or semi-annually).
c. Data on price developments, total production, and sales in several marketing areas over several periods (monthly or annually).
d. Production capacity data.
e. Data on operating profit or operating profit and company profits coordinate with each other.
f. The results of the analysis of data processing show excessive profits.
g. The results of data analysis conscious parallelism on price coordination, production quotas, or distribution of marketing areas.
h. Data on the company's financial statements for each member suspected of being involved in several last periods.
i. Data on the shareholders of each company suspected of being involved and their amendments.
j. Testimonies from various parties on the occurrence of communication, coordination, and exchange of information between the cartel participants.
k. Testimony from customers or other related parties on the occurrence of price changes that harmonize with each other between sellers who are suspected of being involved in a cartel.
l. Testimony from employees or former employees of the company suspected of being involved regarding the occurrence of company policies aligned with the agreement in the cartel.
m. Documents, records, and testimonies strengthen the existence of a cartel driving factor.

A study of market structure and behavior can be carried out to obtain an analysis of economic data. So, it can be concluded whether a joint price increase by business actors is an independent action or an agreement desired with cartel business actors.

Article 22 can then be another example because there was an incident of tender conspiracy. No agreement was found between business actors to conspire to win one of them. However, there are economic data in the form of offers from

business actors that are almost identical and close to the self-calculated price (HPS). There is a fact that there is the same pattern of typing errors in the bidding documents of business actors. Business actors have met even though they cannot directly prove they are conspiring, and economic data is in the form of affiliation between business actors participating in tenders. The circumstantial evidence does not directly prove the existence of a conspiracy. However, suppose these facts are related to one another and complemented by analyzing market structure and behavior. In that case, it can be concluded that there is an indication that the business actors conspired.

The circumstantial evidence, although not directly stated as evidence in Article 42 of Law no. 5 of 1999, however, if this circumstantial evidence is linked to one another and accompanied by an economic analysis using a proven method, it will form one piece of evidence known in Article 42, namely evidence of guidance. This fulfilled one piece of evidence, namely evidence of instructions. This evidence needs to be strengthened with other evidence, such as expert testimony.

3. Use of Circumstantial Evidence in Proving Alleged Violations of Law No. 5 of 1999

The controversy over the application of circumstantial evidence in business competition procedural law has been explained in the previous sub-chapter. This disagreement is mainly because circumstantial evidence is not explicitly stated as evidence in Article 42 of Law no. 5 of 1999. However, examining and deciding the alleged violation of Law no. 5 of 1999 often uses circumstantial evidence. The use of circumstantial evidence is generally applied to cartel cases. Ningrum Sirait said that, with the development of competition law enforcement in Indonesia, it is certain that there will be no hardcore/direct evidence regarding the occurrence of cartels. Therefore, it is very necessary to use circumstantial evidence in the enforcement of Law no. 5 of 1999, especially in cartel cases.

In making its decisions, although the KPPU often uses circumstantial evidence, it turns out that not all uses of circumstantial evidence are accepted by the Supreme Court. There are differing opinions of the Supreme Court justices on circumstantial evidence. There is a Supreme Court decision that rejects the use of circumstantial evidence. A Supreme Court decision also strengthens the KPPU's decision that uses circumstantial evidence to prove the case. Thus, there is still legal uncertainty in the use of circumstantial evidence.

The panel of judges through Decision Number 294 K/PDT.SUS/2012 argued that circumstantial evidence is not the same as evidence in Article 42 of Law Number 5 of 1999 and is not recognized in Law Number 5 of 1999. Circumstantial evidence is not the same as direct evidence as regulated in Article 188 paragraph (2) of the Criminal Procedure Code, considering that business competition cases adhere to the principles of criminal law.17 On the other hand, in Decision Number 221 K/PDT.SUS-KPPU/2016. The panel of judges accepted the use of circumstantial evidence in Decision Number 08/KPPU-I/2014. The consideration of the panel of

judges in the decision is that in practice in the business world, agreements on prices, production, territories (cartels), and other anti-fair competition agreements are often carried out tacitly. This allows indirect/circumstantial evidence to be accepted as acceptable evidence in business competition law as long as the evidence is sufficient and rational and there is no other stronger evidence that can undermine the circumstantial evidence.

Furthermore, Udin Silalahi & Isabella Cynthia Edgina stated: "Acceptance of circumstantial evidence in Decision Number 221 K/PDT. SUS-KPPU/2016 above can be a legal breakthrough for KPPU, judges in district courts, and other judges at the Supreme Court that circumstantial evidence can be accepted as evidence in proving cartel cases. However, it is unfortunate that the panel of judges in Decision Number 221 K/PDT is considered. SUS-KPPU/2016 does not contain the legal basis for receiving circumstantial evidence as evidence to prove the cartel case. In this case, the panel of judges does not link circumstantial evidence with the evidence regulated in Law Number 5 of 1999 so that circumstantial evidence can be accepted as evidence".

4. Solutions for Uncertainty of Circumstantial evidence in Enforcement of Business Competition in Indonesia

Based on the brief explanation above, it is clear that the enforcement of business competition law in Indonesia is still characterized by legal uncertainty related to the use of circumstantial evidence. The legal uncertainty stems from the unclear formulation of Law no. 5 of 1999 and inconsistencies in the decisions of the Supreme Court. In the long term, this problem can certainly be solved by changing Law no. 5 of 1999. Changes can be made by confirming the acknowledgment of circumstantial evidence as one of the legal evidence or at least expanding the meaning of the evidence that includes the judge's knowledge of something known and believed to be true, including using circumstantial evidence to construct instructions. The existence of circumstantial evidence in business competition law enforcement needs to be accommodated with certainty in the formulation of the law, considering it is difficult not to find hard evidence or direct evidence in business competition cases. Meanwhile, in the short term, it is necessary to formulate a clear standard operating procedure by the KPPU regarding the use of circumstantial evidence so that its use in examining and deciding business competition cases can be carried out consistently. In addition, it is necessary to establish a law through the permanent jurisprudence of the Supreme Court to create a legal reality related to the use of circumstantial evidence in deciding business competition cases.

E. Conclusion

Law enforcement against Law no. 5 of 1999 through circumstantial evidence is still characterized by legal uncertainty. This can be seen from the unclear formulation of legal norms in Law no. 5 of 1999 and the differences in the decisions

of the Supreme Court regarding the use of circumstantial evidence. The use of circumstantial evidence is very necessary to enforce business competition law. The special characteristics of business competition law and business competition cases cause business competition law enforcement to be less logical if it only relies on the process of proof through hard evidence or direct evidence. The prolonged debate over the existence of circumstantial evidence should not cause Law no. 5 of 1999 becomes unenforceable. The wider community will receive the adverse effects of this uncertainty. Therefore, it is necessary to improve Law no. 5 of 1999 is related to the existence of the circumstantial evidence, either by explicitly acknowledging circumstantial evidence as valid evidence or by including it explicitly as part of the guiding evidence. In addition, it is necessary to establish a unity of meaning through the formation of legal facts in the decisions of the Supreme Court regarding the existence of circumstantial evidence.

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