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THE THIRD INTERNATIONAL MULTIDISCIPLINARY CONFERENCE ON SOCIAL SCIENCES

5 - 7 JUNE 2015

BANDAR LAMPUNG UNIVERSITY
INDONESIA

PROCEEDINGS

Hosted by :
- Faculty of Teacher Training and Education
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3rd IMCoSS 2015

THE THIRD INTERNATIONAL MULTIDISCIPLINARY CONFERENCE ON SOCIAL SCIENCES

5, 6 June 2015
Bandar Lampung University (UBL)
Lampung, Indonesia

PROCEEDINGS

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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the **The Third International Multidisciplinary Conference on Social Sciences (The 3rd IMCoSS) 2015** organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participans. It is noteworthy to point out that about 112 technical papers were received for this conference.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also gratefull to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

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COMPARATIVE LAW OF CARTELS BETWEEN INDONESIA AND JAPAN (REVIEW OF ACT NO. 5 OF 1999 CONCERNING PROHIBITION OF MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS COMPETITION AND THE ACT CONCERNING PROHIBITION OF PRIVATE MONOPOLY AND MAINTENANCE OF FAIR TRADE (ACT NO. 54 OF 14 APRIL 1947))

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ABSTRACT - *The decision of Act No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition is expected to create healthy competition and efficient markets. Indonesia as a country has a new Anti-Monopoly Act need to learn the countries who first implemented similar legislation. The legal reform is important, because at present the current Asian countries have been in the process of legal reform a new competition and firm. It research about comparative law in regarding the form and type of cartel, the scope of proving cartel, and than sanctions imposed from the both of Act No. 5 of 1999 (Indonesia Anti-Monopoly Act) and Act No. 54 of 14 April 1947(Japan Anti-Monopoly Act). Japan Anti-Monopoly Act in the scope of forms and types of cartels is more clearly because in directly it is expressed as a violation of antitrust laws and as per se rule. While the Act No. 5 of 1999 must be proven in monopolistic practices and unfair business competition, then it see as reasonable restraint*.

keywords: Cartel, Antitrust laws, Monopolistic Practices and Unfair Competition

1. INTRODUCTION

The excellent function of competition practice resulted in decentralization of economic power. An economic order will be able to give satisfaction to all parties, if there are not businesses whose the economic force capable of replacing a balancing mechanism in the interests of bargaining agreements with unilateral determination. In this case businesses get the balance of maximum benefit from the production and processing factors. Competition will lead the sovereignty of consumer choose the products with the best quality and price for them. This competition serves as consumer Protection. Finally the increasing competition will result lower prices for consumers. This is in accordance with economic principles. That is the agreement restricts competition by businesses. That will create cartel profits which finally it can harm consumers[1].

The assigned of Act Concerning The Prohibition of Monopolistic Practices and Unfair Competition (Act No. 5 of 1999) is expected to create fair competition and efficient markets. The establishment of a conducive business climate through the rule of fair competition, then the certainty of the same business opportunities for all businesses will be able to secure and create a spirit of healthy competition among national business operators. It make to be able to compete in international markets. And than it will realize an efficient national economy in order to improve the welfare of the community.

Based on antitrust law, cartels are prohibited in almost all countries in the world . *Therefore*, almost every country in the world has antitrust laws. In Asia, Japan is the first country that has most of the law. The second country 's of economic power in the world has had a competition law , called *Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade" (Act No. 54 of 14 April 1947)* or *Japanese Anti-monopoly Act* (AMA) in 1947. *Japanese Anti-monopoly Act* (AMA) is intended as a way to restore the Japanese economy after the defeat in World War II . Until now, The Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade" (Act No. 54 of 14 April 1947) still remain valid , even become an important reference in the Japanese economy moving [2].

Cartel is a very important issue and phenomenal in the practice of competition law in many countries. Cartels are a particularly damaging form of anti-competitive activity. Because of its impact on decline in social welfare. Cartels also have a damaging effect on the wider economy as they remove the incentive for businesses to operate efficiently and to innovate.

Based on the background that has been in the mentioned above, then had been formulated problems to be studied in more detail. As for some of the issues to be discussed in this paper are*:*

1. What is comparison about the shape and type of cartel, the verification scope of cartel, sanctions that are applied from Act Concerning of monopoly and unfair competition trade (Act No 5 of 1999) and *Act Concerning Prohibition of*

[1] Joachim Bornkamm dan Mirko Becker, Hukum Kartel Indonesia (gtz-ICL Judiciary Seminar.2006), hlm. 3

[2] *Ibid*

Private Monopoly and Maintenance of Fair Trade" (Act No. 54 of 14 April 1947)?

2. How did apply with the results of law comparative in cartel evidence by *Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade" (Act No. 54 of 14 April 1947)* against the rules of cartel in Indonesia?

2. MATERIALS AND METHODS

The type of research is a normative legal research, and comparative law study, which is the ratio of competition law in this case is devoted to the cartel arrangements between Act Concerning of monopoly and unfair competition trade (Act No 5 of 1999) and Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade" (Act No. 54 of 14 April 1947).

Analysts data in this paper use content analysis. The activities of content analysis in this study was to classify the articles of sample documents into the proper categories. Then the data analysis is complete, the results will be presented descriptively that describe what it is in accordance with the problems studied and the data obtained.

3. RESULT

A. The comparison about the shape and type of cartel , the verification scope of cartel, sanctions that are applied from Act Concerning of monopoly and unfair competition trade (Act No 5 of 1999) and *Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade" (Act No. 54 of 14 April 1947)*

That based on the scope of the restrictions in accordance with the ratio of the problems . The comparison can be described as follows:

1. Indonesia (Act Concerning of monopoly and unfair competition trade (Act No 5 of 1999)**)**

a. Forms and types of cartel behavior

As defined in Article 11 , is:

"Pelaku usaha dilarang membuat perjanjian, dengan pelaku usaha pesaingnya, yang bermaksud untuk mempengaruhi harga dengan mengatur produksi dan atau jasa, yang dapat mengakibatkan terjadinya praktek monopoli dan/atau persaingan usaha tidak sehat"

Prohibition of cartel insists an agreement to regulate the production and / or marketing of goods and / or services that are intended to affect the price.

b. Cartel verification process

The cartel started with the report received by the Commission from the people who know the party or the person who is suspected violation of competition law with a clear statement that there have been violations, which further by the Commission will conduct a preliminary investigation after receiving the report.

The process of proving the cartel started the report received by the Commission from the people who know the party or the person who is suspected violation of competition law. It need a clear statement that there have been violations, which further by the Commission will conduct a preliminary investigation after receiving the report. This is as described Article 39.

In the investigation of Commission is authorized to instruct and business agent or other party examined shall submit the necessary evidence in the investigation or inspection.

In obtaining evidence, the authority of Commission will be used as stated in Act No. 5 of 1999 in the form of requests for documents either in hard copy or soft copy, to present witnesses and conduct an investigation into the field. If it necessary will be done in cooperation with the authorities. It is the police to overcome obstacles in obtaining evidence in question.

In certain cases, the Commission can get evidence through collaboration tools with a Company personnel who involved Cartel with a specific compensation. That is formulated in Article 42.

According with formulation of Article 11 of Act No. 5 of 1999 that is Rule of Reason, then how to prove whether Prohibited Cartel has Occurred. Accordingly the depth investigation has been doing with the reason of business had done. The Enforcement of competition law must check what the reason of the business can be accepted (reasonable restraint).

c. The Commission's authority of cartel law enforcement

The authority of the Commission is governed by Article 36 of Act No. 5 of 1999. That the Commission's authority is so great, there are other provisions of article that makes the authority / power limited that Article 44 paragraph (2).

Business can appeal to the District Court with no later than 14 days after receiving notification of the decision. In Article 44 paragraph (4) that businesses voluntarily can not run against the Commission's decision, the Commission shall refer the decision to the investigator to be held investigations, and Article 44 paragraph (5) The Commission decision states that only the initial evidence for investigation by the investigator.

That the provisions is a violation of article 11 of Act No. 5 of 1999 can be, for administrative action as provided for in Article 47, Criminal Principal as stipulated in Article 48, Criminal Supplement as stipulated in Article 49 A

Criminal sanctions (principal and additional) will be charged to businesses , if entrepreneurs are not willing to execute the decision of the Commission and subsequently the Commission will submit the decision to the investigator to conduct the investigation. Furthermore, the Commission 's decision will serve as a sufficient preliminary evidence for investigators to conduct investigations at this stage be granted authority to impose criminal sanctions on law enforcement officials, namely the police as investigators, using general provisions as stipulated in the Criminal Code.

Commission in draft pedomen cartel sought for a leniency program or leniency program , but the program

does not have a clear legal framework, exist only in draft guidelines prepared by the Commission .

2. Jepang (*Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade" (Act No. 54 of 14 April 1947)*)

a. Form and type Cartel Conduct

In Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade "(Act No. 54 of 14 April 1947), hereinafter referred to Act No. 54 of 14 April 1947 setting about the shape and type of cartel was not formulated in the light, but only implicitly formulated in the purpose of establishing Act No. 54 of 14 April 1947, namely in Article 1.

In principle, Act No. 54 of 14 April 1947 has 3 basic prohibition, namely (1) private monopolization (private monopolization), (2) Cartels or unreasonable restraint of trade / URT (cartels or trade control not feasible), and (3) unfair trade practices / UTP (unfair trade practices). In the setting of unreasonable restraint of trade, the discussion is getting a significant portion is a discussion of the cartel. The term "unreasonable restraint of trade" as used in this Act means that a company's activities, namely employers who make contracts, agreements or other with no heed to his name, in planning with other companies, mutually restrict or conduct their business activities so as to establish, maintain, or to raise the price, or limit production, technology, products, facilities or obstructing causing, contrary to the public interest, and the existence of competition in a particular field of trade.

In Act No. 54 of 14 April 1947, unreasonable restraint of trade is prohibited under Article 3 (Article 3), namely that reads, "No entrepreneur shall effect private monopolization or unreasonable restraint of trade." In the opinion of Fumio Sensui that are included in ban Unreasonable restraint of trade (Section 3) is a price cartel, the cartel quotas, the cartel zoning, tender offers, boycott.

b. The process of proving cartel

JFTC (Japan Fair Trade Commision) is a law enforcement agency, who be in charge in investigations and hearings concerning about potential violations of Anti Monopoly Act (AML). The hearing procedure majority of people from the open trial of conventional session and used to ensure procedural fairness in reaching a decision JFTC. JFTC may issue one of three types of decisions:

The recommendation of decision, (2) the approval of the decision, or (3) the trial decision. JFTC could initiate investigations breaches of anti-monopoly legislation is suspected, because the authority or in response the reports of violations from general public or the public prosecutor. JFTC will lead the investigation in a separate letter if it detects activity that is considered suspicious or potentially anti-competitive. Otherwise, the JFTC usually brings a consumer or competitor actions following reports of anti-competitive activity. The every writing report accordance with the rules set facts and JFTC decided to take or not, appropriate steps to the cases referred to in this report, the JFTC must immediately notify the results to the person making the report. Article 45 (3), however JFTC must immediately notify the results of the investigation in connection with the case to the person who made the report.

Everyone is dissatisfied with the decision of dismissal and stop orders can be requested , under the provisions of Regulation JFTC and within sixty days from the date of the written transcript dismissal were included (in the case of natural disasters or other causes inevitable result in the request for examination was not carried out in the period such that, in one week days after the date when the reasons cease to apply), JFTC to start hearing about the dismissal order . If the request is not made in accordance with the provisions in the preceding paragraph within the period specified in the paragraph that says , stops and orders, will be final and binding

a. The authority of law enforcement agencies cartel

AML legislation has established the Japan Fair Trade Commission (JFTC) as an institution / agency inspectors on the application of the law (Article 27 paragraph 1) as well as administratively responsible to the Prime Minister (Article 27 paragraph 2) Although administratively responsible to the Prime Minister, but the independence of the JFTC in making decisions can not be influenced by any party. In carrying out supervision of the implementation of the AML, JFTC has three powers at once . The authority isWewenang administratif *(adminsitrative power)*, sebagaimana ada dalam Pasal 27.

1). the authority to issue regulations (quasi - legislative power), as explained in Article 27-2 , Article 76.
2). the authority to conduct investigations and inquiries (quasi - judicial power). Namely in Article 45, 47 and the investigation of criminal case on Article 101 to Article 118 Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade" (Act No. 54 of 14 April 1947). As well as about the decision to be heard or not, namely in Article 96 paragraph (1) ;

Article 96

(1) Any crime under Articles 89 to 91 inclusive shall be considered only after an accusation is filed by the Fair Trade Commission.

b. Sanction and prevention programs cartel

Criminal sanctions for perpetrators of unreasonable restraint of trade is one of the cartel in the Act No. 54 of 14 April 1947 has increased imprisonment of 5 years previously only three years, as formulated in Article 89 .

That in Article 89 paragraph (1) is said to every person who has committed acts that include one of the following items should be sentenced to work for no more than five years or a fine of not more than ¥ 5,000,000 (five million yen), which is;

1). Person violating the provisions of Article 3 , has a monopoly of private or trade restrictions unreasonable (*unreasonable restraint of trade*)

2). Person who , violating the provisions of paragraph (i) of Article 8, has made substantial restraint of competition in any particular field of trade.

In addition to administrative and criminal fines , Anti-Monopoly Act, provides for sanctions for acts of damage inflicted on his actions to the person affected by his actions.

Related to the program applied for leniency for perpetrators Japan cartel who participated in the investigation into the case described in the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade " (Act No. 54 of 14 April 1947) of Article 7-2 paragraph 11 , and 12. In the case of paragraph (1) , JFTC will reduce additional costs relevant to the amount calculated by multiplying fifty percent (50%) surcharge .

B. Implementation of the comparison of the cartel law in Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade " (Act No. 54 of 14 April 1947) of the rules and regulations concerning cartel in Indonesia

In the second discussion, the writer will analyze the chances of implementation of the results of comparative law in the cartel Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade " (Act No. 54 of 14 April 1947) to the legislation regarding the cartel in Indonesia. The analysis is as follows :

1. Forms and types of cartel

The form and type of cartel between “Act No. 5 of 1999 on the prohibition of monopolistic practices and unfair business competition and the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade "(Act No. 54 of 14 April 1947) is equally categorize the regulation of production, price fixing, tender collusion, cartel zoning, the consumer division of non-territorial, and the distribution of market share.

Differences of categorization forms and types of actions cartel is Article 11 that the cartel is an agreement that can affect prices by adjusting production and services which may result in monopolistic practices and unfair business competition (Rule of Reason), in the sense that an act can be categorized as cartel conduct should be seen first whether such actions affect the market and lead to unfair competition and therefore had to be found, nor evidence of the existence of the cartel agreements. On the categorization of Article 2 (6) Act No. 54 of 14 April 1947, that the cartel is an agreement to raise the price / transaction is unfair restriction acts contrary to the public interest (Per se rule). In this case there is not for things that affect the market, because it would immediately be followed by the JFTC when indicated. it has occurred cartel, whether it comes from public statements as well as an indication of the JFTC.

2. The verification process of cartel

Equality of both antitrust regulations exist at the beginning of the process of proving that with the receipt of the report of the public to conduct a preliminary examination and can also be of indications from the Commission or JFTC to businesses suspected . It is there in Article 39 of Law No. 5 of 1999 on the prohibition of monopolistic practices and unfair business competition, the preliminary investigation (either from the public or suspicion Commission report). Article 45 of Act No. 54 of 14 April 1947. Investigation of public reports / suspicion JFTC. As well as the submission of evidence in order to bring down the cartel decision, namely Article 41, submitted evidence.

The different of verification process regulations is there are in Article 43 of Law No. 5 of 1999 on the prohibition of monopolistic practices and unfair business competition, proving cartel with reasonable restraint can decide whether it is really happening in the cartel, which for the next Article 44 (5), Decision of the Commission as sufficient preliminary evidence for the investigator to conduct the investigation there is no transparency of the reporting process and the alleged party. Although Article 45 of Act No. 54 of 14 April 1947, an investigation into public reports / suspicion JFTC, JFTC notify the results of the investigation to the person who made the report, and the investigation carried out in a conventional trial hearings open on JFTC investigation (Article 45 (3)). And the process of investigation by the JFTC also includes a criminal investigation (Article 89-100). It can be concluded that the JFTC has the authority more independent and powerful in the proof and combating cartels.

There is not notification in the investigation process and there is not gaven the opportunity of proving the Cartels for business agent considers the presumption of innocence. Article 49 of Act No. 54 of 14 April 1947 that based on the fact Happen That Cartel JFTC issued a verdict "cease and desist order" To person who accused, however he has opine opportunities and submit the evidence. This is important thing to be considered as the renewal of law in the proving cartel process, so that balance between business interests and the interests of public will be achieved. Futhermore the transparency process of proving on Act No. 54 of 14 April 1947 is more, because of notice about investigations for people and do in Open Conventional Session. Then it applied in Cartel evidentiary process in Indonesia.

3. Cartel law enforcement authority Institutions

The equation of the two anti-monopoly legislation exists in Article 36 of Law No. 5 of 1999 on the prohibition of monopolistic practices and unfair business competition, the authority of the Commission include, receive reports, conduct research, investigation, calling the perpetrators, witnesses, expert witnesses, ask for help investigator, requesting information from Government agencies, obtain, research, or assessing letters, documents or other evidence, decide and establish the presence or absence of social disadvantage, informing the Commission's decision, impose sanctions in the form of administrative measures. Article 27, an administrative authority (adminsitrative power), Article 27-2, the authority to issue regulations (quasi-legislative power), namely Article 45, 47.

But the authority of the Commission was limited to the imposition of administrative fines which are then used as evidence of the instructions by law enforcement officials, which means authority to impose criminal sanctions and criminal investigations are in the process of law enforcement officials, namely the police as investigators, using general provisions as stipulated in the Criminal Procedure Code , While the criminal case investigation process in Article 101 to Article 118 Act No. 54 of 14 April 1947 the authority to conduct investigations and inquiries, as well as judicial authorities to prosecute (quasi-judicial power) is a collaboration between the Public Presecutor General and JFTC, even every crime under Article 89-91 inclusively can be tried only after the indictment filed by the JFTC.

Japanese JFTC authority possessed more independent and more powerful / wide in performing acts of inquiry, and anti-monopoly investigation of criminal cases, not only stopped in providing sufficient preliminary evidence.

4. Sanctions and leniency program

In terms of sanctions in Act No. 5 of 1999 on Prohibition of Monopoly and Unfair Competition under Article 47 of the determination of cancellation of the agreement, stop the vertical integration, the activities that are proven, the determination of compensation, the imposition of a minimum fine of Rp 1,000,000,000,00 and a maximum of Rp 25,000,000,000.00. Article 48 of the Basic Criminal, criminal penalties of at least Rp 25,000,000,000.00 and maximum Rp 100,000,000,000.00, imprisonment or a fine substitute for ever 6 (six) months. Article 49 of the Criminal Supplementary form of revocation ban violates this law to occupy the position of director or commissioner of at least 2 (two) years and a maximum of 5 (five) years, cessation of certain activities or actions that cause losses to the other party. The application of sanctions need to be reviewed and too small, because besaranya are not in accordance with the losses incurred and the profits of the cartel offenders.

Considering Act No. 54 of 14 April 1947 in Japan has experienced amandemnen on the magnitude of sanctions in 2009, Article 89 was sentenced to imprisonment with work for not more than five years or a fine of not more than ¥ 5,000,000 (five million yen). It is likely to be material pembaharuah competition law is the existence of strict sanctions stipulated Act No. 54 of 14 April 1947 which is imprisonment for five years and no minimum threshold for criminal penalties that is not more than ¥ 5,000,000 (five million yen). Surely this will be a deterrent effect and keeping in view the values of justice, it is seen also in Article 25 sanctions on damages actions for cartel affected 15% of the affected sales to companies other than retailers and wholesalers (and 4.5% for retailers and 3% for wholesale). This shows the protection of the injured party / public interest is harmed. Besides, administrative fines are calculated as a percentage of that will be comparable to the profit made by the perpetrators that exist in Article 7-2 paragraph (1), Administrative Fines (additional fee) 50% of the 10% maximum administrative fine today (3% for retailers and 2% for wholesale). In the Act No. 54 of 14 April 1947 no distinction imposition of sanctions for retailers and wholesalers.

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The leniency program between Indonesia and Japan have a program that is almost the same concept, namely the reduction of penalties for businesses that participated in the investigation , only in Japan already listed in the Act No. 54 of 14 April 1947 so it has had a clear legal basis , while in Act No. 5 of 1999 Indonesia does not have the legal certainty because it is still in the Commission's draft guidelines cartel.

4. CONCLUSION

Comparative law regarding the form and type of cartel, the scope of the evidentiary cartel, as well as sanctions that are applied from Act No. 5 of 1999 concerning monopolies and unfair competition and the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade "(Act No. 54 of 14 April 1947) based on the description of the comparative analysis has examined the author in this case can be look at that within the scope of forms and types of cartels in the Act No. 54 of 14 April 1947 is more obvious because immediately declared a violation of antitrust laws because it is per se rule. Japanese JFTC authority possessed more independent and more powerful / comprehensive in conducting issued a regulation (quasi-legislative power), conduct investigations and inquiries (quasi-judicial power) to decide on filing charges against the perpetrators of anti-monopoly pelanggraan.

Sanctions are applied in Act No. 54 of 14 April 1947 bolder namely imprisonment for five years and not criminal sanctions with a minimal amount that is directly maximum ¥ 5,000,000 (five million yen). Leniency program in Japan is already listed in the Act No. 54 of 14 April 1947 so it has had a clear legal umbrella, while in Act No. 5 of 1999 Indonesia does not have the legal certainty because it is still in the Commission's draft guidelines cartel.

REFERENCE

[1] Andi Fahmi Lubis, dkk, 2009, Hukum Persaingan Usaha anatar Konteks dan Teks, Jakarta, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH.

[2] Joachim Bornkamm dan Mirko Becker, 2006, Hukum Kartel Indonesia.gtz-ICL Judiciary Seminar.

[3] Undang-Undang Dasar Republik Indonesia Tahun 1945

[4] UU No 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat

[5] Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade" (Act No. 54 of 14 April 1947)

[6] Fair Trade Commission Rule No 7 of 2005, Rules On Reportingand Submission Of Imaterials Regarding Immunity From or Reduction of Surcharges

[7] The Fair Trade Commission's Policy on Criminal Accusation and Compulsory Investigation of Criminal Cases Regarding Antimonopoly Violations

[8] Summary of The Amendment to The Antimonopoly Act, June 2009, Japan Fair Trade Commission

[9] Draf Pedoman Kartel KPPU

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