

**ANALYSIS OF ISLAMIC LAW ABOUT KPPU VERDICT
No. 10/ KPPU-I/2015
(Monopoly Practices and Unfair Business Competition Imported
Cattle Trade in JABODETABEK)**

THESIS

**Submitted in Partial Fulfillment of the requirement
For Gaining the Degree For Syaria and Law**



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SYARIA AND LAW FACULTY
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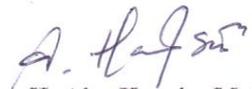
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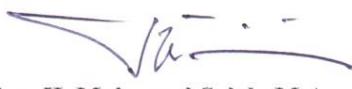
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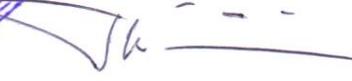
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MOTTO

وَلِكُلِّ وِجْهَةٍ هُوَ مُوَلِّيًّا فَاسْتَبِقُوا الْخَيْرَاتِ أَيْنَ مَا تَكُونُوا يَأْتِ بِكُمْ اللَّهُ
جَمِيعًا إِنَّ اللَّهَ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ ﴿١٤٨﴾

For each (religious following) is a direction toward which it faces.

So, race to (all that is) good. Wherever you may be. Allah will bring you forth (judgement) all together. Indeed, Allah is over all things competent. (*Surah Al-Baqarah*:148)

DEDICATED

This thesis is dedicated to:

My lovely mother and father. The first ones on the earth who give me timeless of love. They have supported me without dissent for the full of my life. Their love is reinforced me. There are no words which can describe my thanks to you and thanks for placing reliance on me. I love you so much.

My beloved sisters and brothers who always trust me. Thanks for their much of love, support, finance, and praying.

THESIS PROJECT STATEMENT

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KPPU-I/2015 (Monopoly Practices and Unfair Business Competition
Imported Cattle Trade in JABODETABEK)**

Is definitely my own work, I am completely responsible for the content of this thesis. Other writer's opinion or finding included in the thesis are quoted or cited in accordance with ethical standards.

Semarang, 26 November 2017

The Writer,



Noor Rosidah
132311016

TRANSLITERATION

Vowel Letters

The transliteration guidance is arabic transliteration system based on the SKB Ministry of Religion RI No. 158/1987 and Ministry of Education and Culture No. 0543b/U/1987.

A. Single Consonant

ء	-
ب	B
ت	T
ث	Ṣ
ج	J
ح	h
خ	Kh
د	D
ذ	Ẓ
ر	R
ز	Z
س	S
ش	Sy
ص	ṣ
ض	d
ط	ṭ
ظ	ẓ
ع	‘
غ	G
ف	F
ق	Q
ك	K
ل	L
م	M

ن	N
و	W
ه	H
ي	Y

B. Short Vocal

َ-	A	كَتَبَ
ِ-	I	سُئِلَ
ُ-	U	يَذْهَبُ

C. Long Vocal

آ	Ā	قَالَ
إِي	Ī	قِيلَ
أُو	Ū	يَقُولُ

D. Diphthong

اي	Ay	كَيْفَ
او	Aw	حَوْلَ

ABSTRACT

Komisi Pengawas Persaingan Usaha (KPPU) has made a decision for the offense of Indonesian Republic Constitution Number 5 of 1999 about Monopoly Practices and Unfair Business Competition Prohibition. This action is against the clause 11 Indonesian Republic Constitution No. 5 of 1999 and 19 (c) Indonesian Republic Constitution No. 5 of 1999. In this case, the accused are PT Sumber Cipta Kencana with fines Rp.71.414.000,- and CV Mitra Agro Sampurna with fines Rp.967.626.000,-.

The writer has an analysis of this decision, both of legal analysis (Formal and Materil Aspects) and Islamic analysis. In Islamic analysis, PT Sumber Cipta Kencana and CV Mitra Agro Sampurna was against the ethical and business principals in Islamic religion with *mu'āmalāt* rules included. The type of this research is library research and the writer focuses on normative juridical approach. The next, the writer analyzed in qualitative.

Based on the writer analysis, it can be concluded that the legal in Formal Aspect has already been appropriate with the rules. But, in the Material Aspect, the punishment is lower than minimum determination. The writer suggestion that the punishment must be more than heaviness, because the easiness factors are relieved the accused and appropriateness with the council facts. Moreover, the clauses are offended by the accused include the principal criminal.

While in Islamic law perspective, that the actions of PT Sumber Cipta Kencana and CV Mitra Agro Sampurna were included to the *Sharia* forbids, because of an offense about the ethical and the business Islam principals. Action by the accused were classified as the forbidden action in Prophet period and include the *Ihtikār*. This action have a similarity and the negative impacts as below 1) make a scarcity things 2) make the prices more expensive 3) across the regulations and of course make discommodity in the society.

The Keywords: KPPU Verdict No. 10/KPPU-I/2015, unfair competition, legal, Islamic law.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

All praises is due to Allah *al-Rahman al-Rahim*, the all-knowing. *Ahamdulillahhirabbil 'alamiin*, First of all, I would like to express my best gratefulness to our greatest God Allah SWT who has given me a great life, a meaningful piece of knowledge and everlasting love and affection. Greater peace and love would always be the greatest prince in Islam, Muhammad SAW, who always inspires me in every single of my days.

The biggest obstacle to finishing my thesis is myself. Fortunately, Allah gives me easiness through His servants. Therefore, I would like to express my gratitude for the support, guidance, advice, help, and encouragement from individual and institute, and I would like to dedicate my best thanks to:

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5. All of my friends at the Sharia Economic Law Department of Sharia and Law Faculty 2013. All of my friends at *Darul Fallah Be-Songo* and all of my friends at Lula Cost. Sorry, the author can not mention one by one, but you all are great friends. Thanks for supporting me during learning in this university, you are amazing.
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Finally, the researcher always expects that this research may be helpful for all.

Semarang, 15 November 2017

The Writer,

Noor Rosidah
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TABLE OF CONTENT

COVER	i
ADVISORS APPROVAL	ii
RATIFICATION	iii
MOTTO.....	iv
DEDICATION	v
THESIS PROJECT STATEMENT	vi
TRANSLITERATION	vii
ABSTRACT	ix
ACKNOWLEDGEMENT	x
TABLE OF CONTENT	xii
BAB I : INTRODUCTION	
A. Research Background	1
B. Research Questions.....	6
C. Aim and Significance of Research.....	6
D. Previous Research.....	7
E. Research Methods.....	10
F. Structure of Writing.....	13
BAB II : ISLAMIC BUSINESS PRINCIPLES	
A. Definition of Islamic Business.....	15
B. The Principles Of Islamic Busness	19
C. Offense Aspects in Islamic Business	21
D. Trading and Marketing in Islamic Business	29
E. Ethics in Islamic Business	31

BAB III : KPPU VERDICT NUMBER : 10/KPPU-I/2015

A. KPPU Profile	39
1. Vision and Mission of KPPU	39
B. Assignment and Authority of KPPU	40
1. Assignment of KPPU	40
2. Authority of KPPU.....	43
C. Unfair Competition	45
1. Definition of Unfair Competition.....	45
2. Prohibited Agreements and Competition	46
3. Prohibited Activities and Competition in Indonesian Republic Constitution Number 5 of 1999	52
4. Definition of Dominant Position	54
D. KPPU Verdict Number: 10/KPPU-I/2015	55
1. General Description of KPPU Verdict Number: 10/KPPU-I/2015 about Monopoly Practices and Unfair Competition Imported Cattle Trading in JABODETABEK Market.....	55
2. Accused Identity.....	56
3. Object and Presumption of offense	60
4. PT Sumber Cipta Kencana and CV Mitra Agro Sampurna Department.....	61
5. Implementation of Agreement Letter	62
6. Cartel Impact.....	63
7. Comission Council Consideration.....	66

8. Decision Declaration and Closing	68
9. Implementation of Decision	70
BAB IV : ISLAMIC LAW ANALYSIS ABOUT KPPU	
VERDICT NUMBER : 10/KPPU-I/2015	
A. Legal Analysis	72
1. Formal Aspect	72
2. Material Aspect	74
B. Analysis Islamic Law about KPPU Verdict Number: 10/KPPU-I/2015	77
BAB V : CLOSING	
A. Conclusion	83
B. Suggestions	83
C. Closing	84
BIBLIOGRAPHY	
THE ATTACHMENTS	
CURRICULUM VITAE	

CHAPTER I

INTRODUCTION

A. Research Background

Indonesia is a country with Muslim population majority, which has rules is the holy Quran and the Sunnah. In the reality, Islam not only manages the role of life in daily activities as a Muslim, but also all aspects in life include the economic activities. Everything in this world is temporary and it will come back to the owner, God. Because all of this will be guaranteed hereafter.¹ In other word, in Islam, there is no separation between the charity in the world and the afterlife charity. No matter how small the human activities in this world, they must agree with the guidance of Allah SWT in order that we will be safe in *dunya* and hereafter.²

Quran and Sunnah are two main sources of Islamic commercial laws. It was revealed when both Makkah and Medina were blooming into trade centre in Arabia. Quran and Sunnah did not totally abolish the pre-Islamic commercial practices. They have approved all those transactions that not be appropriate with the principles of sharia, and forbidden business practices that consist of *gharar* and fraud elements.³

¹ Veithzal Rifai, dkk, *Islamic Economic & Finance*, (Jakarta: Gramedia Pustaka Utama, 2012), p. 1.

² Rachmat Syafei, *Fiqh Muamalah*, (Bandung: Pustaka Setia, 2001), p. 15.

³ Muhammad Yusuf Saleem, *Islamic Commercial Law*, Singapore: Markono Print Media Pte Ltd, 2013, p. 1.

The competition in business world is real, and is inevitably avoided. People are ordered to find the sustenance in good ways, honestly and right ways without injuring other people, such as deceived, manipulation, conspiracy. It has been described in *Surah An-Nisa* (4); 29 that's below:

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ
تَكُونَتْ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ

رَحِيمًا ﴿٢٩﴾

“Who believers, let no one another eat your neighbour's treasures in a *bathil* way, except by way of a business that applies equally to you. Do not kill yourself, Allah is merciful to you.” Q.S An-Nisa (4); 29.

This verse described the general ethics law of transactions, and more trade transactions specifically. Allah SWT prohibits believers to eat using any transactions in a *bathil* (illegal way). Islam forbids illegal way, describes the love of Allah.

There were complaints that the prices of certain items were high and people requested the Prophet to the fix prices. He replied: "Allah is the one who fixes price, who withhold, who gives lavishly, and who provides, and I hope that when I meet him, none of you

would have a claim against me for any injustice with regard to blood or property".⁴

The *hadith* indicates that prices are determined by forces, beyond the human control. Prices are determined by the complex market factors over which no individual actor has any control. Those factors include supply, demand, and competitions. These forces push the market to equalize and determine a fair price for commodities, goods, and labour. The *hadith* also indicates the state should not interfere in the process of price determination. Price determination is harmful by the state or any other state interference that disturbs the normal market conditions and equilibrium. State noninterference in the market is, therefore, a principle.

However, market equilibrium could be disturbed, for instance by hoarding, meeting the seller on his way to the market (*talaqqi al-rukban*), monopolies, underselling, speculation and collusion among otherwise competitive firms. These practices allow market players to manipulate prices and introduce a degree of artificiality into the market. They act as hindrances the natural function of market and distort the existing equilibrium. In these situations, the state responsibility is required in order to stop others from the interferences and restore the balance in the market.

⁴ Sunan al-Tirmidhi, *Babu Ma Jaya fi al-Tassayir*, vol. 5, no. 1362: 278. See also Yusuf al-Qardawi, *The Lawful and the Prohibited in Islam*, trans. Kamal el-Helbawy (Kuala Lumpur: Islamic Book Trust, 1995), 255.

In this way, the true meaning and spirit of the *hadith* are upheld. Indeed the institution of *hisbah*⁵ was established to prevent these hindrances from the market natural function. The *muhtasib* was responsible to supervise markets and common morals. Among his duties were to check irregularities and to ensure that market players were on the right track and did not indulge in malpractices.⁶ Economic modern regulations related with something which is allowed and prohibited have been formulated by the classical Islamic intellectuals.⁷

Komisi Pengawas Persaingan Usaha (KPPU) is a legal entity authorized to supervise and decide an unfair competition case in Indonesia. One of verdict is on offense Indonesian Republic Constitution Number 5 of 1999 about prohibition monopoly practices and unfair competition. Since 4 September 2015 until 22 April 2016, KPPU forum consists of Nawir Messi as a chairman of the council, Syarkawi Rauf and Saidah Sakwan as members organize introduction investigations, continuation the investigations, prolongation the investigations and discuss this case. The case number 10/KPPU-I/2015 about offense clause 11 and clause 19 C Indonesian Republic

⁵ The history of this institution of *hisbah* goes back to the time of the Prophet. It remained is existence throughout that greater part of the Muslim world until the beginning of the twentieth century. The officer in charge of the *hisbah* was called *muhtasib*. For a discussion see Abdul Azim Islahi, "*Economic Concepts of Ibn Taimiyah*", (Leicester: The Islamic Foundation, 1988), 191.

⁶ Muhammad Yusuf Saleem, "*Methods and Methodologies in Fiqh and Islamic Economics*", *Review of Islamic Economics* 14, no. 1 (2010): 123.

⁷ Saidah Sakwan in Economic Syaria Law KKL Syaria and Law Faculty in KPPU Jakarta on 30 August 2016.

Constitution Number 5 of 1999 which is conducted by 32 companies imported cattle trade in JABODETABEK regional market.

This case started from community reports to KPPU about offense clause 11 and clause 19 C Indonesian Republic Constitution Number 5 of 1999. Those offenses were delivered by the society reports to the investigators, presumption of 32 companies were doing unfair competition and abusing the dominant position with imported cattle cartel in JABODETABEK regional market.

This cartel program required the companies in JABODETABEK regional market to walk out during 4 (four) days. The 32 companies held some meeting and produced the agreement letter on 6 August 2015. The 32 companies have an address in JABODETABEK regional claim that they do not the offense by the investigators presumption. After inviting 45 (forty-five) people as witnesses and experts to the council, KPPU analyzed, concluded and decided of this case number 10/KPPU-I/2015. The 32 companies are being proven fault and against the clause 11 and the clause 19 C Indonesian Republic Constitution No. 5 of 1999.

The commission council punished the 32 companies to pay the fines that will become the country incomes. KPPU decision for the 32 companies based on clause 11 and clause 19 C Indonesian Republic Constitution No. 5 of 1999 about monopoly practices prohibition and unfair competition. But in Islamic law, there is no analyses about what 32 companies are doing include in *muamalah*

activity. Point of view for this case is really important in Islamic economics law academic to make a harmonic Islamic law with the modern economy problematic.

From the research background, the writer really interesting to make a research by title **“Islamic Law Analysis KPPU Verdict (Number: 10/KPPU-I/2015 About Monopoly Practices and Unfair Competition in Imported Cattle Trading JABODETABEK Market)”**.

B. Research Questions

Based on the background of the problem above, then there is a main problem that requires deeper discussion. As for the subject matter that be discussed in this thesis, namely:

1. What the KPPU verdict number: 10/KPPU-I/2015 about monopoly practices and unfair competition in imported cattle trading JABODETABEK market?
2. How are the Islamic law review and the civil law about KPPU verdict number: 10/KPPU-I/2015 about monopoly practices and unfair competition in imported cattle trading JABODETABEK market?

C. Aim and Significance of Research

The aims of the research are :

1. To know the substances of the KPPU verdict No. 10/KPPU-I/2015 about monopolistic practices and unfair competition in imported cattle trading JABODETABEK market.

2. To know the Islamic review and the civil law about monopolistic practices and unfair competition in imported cattle trading JABODETABEK market.

This research was conducted to give significance as below:

1. Theoretically: the result of the study is hoped:
 - a. Giving larger knowledge about economics Islamic law for readers and students.
 - b. Offering insight to other institutions.
2. Practically: The result of the study is hoped to be as follows:
 - a. Reference for other researchers to do some related research in deeper, further and better techniques.

D. Previous Research

In this study review, the writer does the research with another researcher that has same topic to avoid duplication of the research.

The first, Fatach Yasin's thesis entitled "Implementasi UU No.5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat serta KEPPRES RI No.7 Tahun 1999 Tentang KPPU terhadap Pasal UUD 1945". This thesis concluded that the implementation of Indonesian Republic Constitution No.5 of 1999 about the economic system is compatible with the spirit of clause Indonesian Republic Constitution 1945 which entrusts the country to regulate the democratic economic system. Of course have a compatible with KEPPRES RI No.75 of 1999 in theory Indonesian Republic Constitution No.5 of 1999 in basically already regulated the

main principles to fair competition. However, have any the weakness.⁸

The second, thesis from Mohammad Fadloly entitled “Komisi Pengawas Persaingan Usaha Dalam Perspektif Ketatanegaraan Islam (Kajian Terhadap Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat)”. This thesis concluded that some different principles, basically the presence of KPPU in Indonesia institution and *Hisbah* regional in Islamic perspectives have some related to make a conducive atmosphere. Actually to create economy sector has succeeded to attract the wider community.⁹

The third, thesis from Abdul Karim entitled “Tinjauan Hukum Islam Terhadap Persaingan Usaha Tidak Sehat Analisis Putusan KPPU Nomor: 14/KPPU-L/2015 Tentang Praktek Persaingan Usaha Tidak Sehat PT. Forisa Nusapersada dalam *Program Pop Ice The Real Ice Blender*”. This thesis concluded that business competition is undertaken by PT. Forisa Nusapersada in *Program Pop Ice The Real Ice Blender*, have an unfair competition as

⁸ Fatach Yasin, *Implementasi UU No.5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat serta KEPPRES No.75 Tahun 1999 Tentang KPPU Terhadap Pasal 33 UUD 1945*, (Yogyakarta: Syaria and Law Faculty, UIN Sunan Kalijaga, 2014).

⁹ Mohammad Fadloly, *Komisi Pengawas Persaingan Usaha Dalam Perspektif Ketatanegaraan Islam (Kajian Terhadap Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat)*, (Jakarta: Syaria and Law Faculty, UIN Syarif Hidayatullah, 2011).

monopolistic. The monopolistic case decided with a lower fine from the applicable regulation.¹⁰

The fourth, Ungki Mitahul Muttaqin's thesis entitled "Peran Komisi Pengawas Persaingan Usaha (KPPU) Perspektif Hukum Islam" has a conclusion that KPPU in those regulations to keep track of economic activity and intend as regulated in Indonesian Republic Constitution No. 5 of 1999. This purpose is suitable with *hisbah* purposes in economic activity, when the market supervised as first *muhtasib* work in beginning Islamic era. So that KPPU characters are implementations from *hisbah* institution function.¹¹

The fifth, Arif Wahyu Ramadhon's thesis entitled "Kewenangan KPPU (Komisi Pengawas Persaingan Usaha) dalam Tinjauan Undang-Undang Nomor 48 Tahun 2009 tentang kekuasaan Kehakiman dan *Maslahah Mursalah*". This thesis has a conclusion that KPPU authority as semi justice legal institutions is giving punishment include *maslahah hajiyah*. KPPU are not only the basic human needs but also its existence can fulfill the basic human needs.¹²

¹⁰ Abdul Karim, "Tinjauan hukum Islam Terhadap Persaingan Usaha Tidak Sehat Analisis Putusan KPPU Nomor: 14/KPPU-L/2015 Tentang Praktek Persaingan Usaha Tidak Sehat PT Forisa Nusapersada Dalam Program Pop Ice The Real Ice Blender", (Semarang: Syaria and Law Faculty, UIN Walisongo Semarang, 2017).

¹¹ Ungki Mitahul Muttaqin, *Peran Komisi Pengawas Persaingan Usaha (KPPU) Perspektif Hukum Islam*, (Yogyakarta: Syaria Faculty UIN Sunan Kalijaga, 2009).

¹² Arif Wahyu Ramadhon, *Kewenangan KPPU (Komisi Pengawas Persaingan Usaha) dalam Tinjauan Undang-Undang Nomor 48 Tahun 2009 tetang kekuasaan*

The sixth, Sri Nawatmi's journal "Etika Bisnis Dalam Islam" has a conclusion that Islam as *the way of life* has complete and universal teaching. The rules are applicative and clear. There is no regulation on one side of human life in Islam including the business system. Unfortunately when companies are doing some unfair competition, they are not applying ethics in their business. It makes unbalance competition between strong financiers and weak financiers. Then, the application of business ethics as the example of the prophet needs to be applied.¹³

From the above literature review, we can conclude that, there was no research in KPPU verdict No.10/KPPU-I/2015 about monopoly practices and unfair competition in imported cattle trading JABODETABEK market.

E. Research Methods

The methods used in this thesis are qualitative research. The methods used in this research are covers data sources, data collection methods, analysis, and location research. Some things that we have to know are explain below:

1. Research type

This research is library research. This research is to review materials from this main decision related with the problem and to support books from other sources related to the

Keehakiman dan Masalah Mursalah, (Malang:: Syaria Faculty, UIN Maulana Malik Ibrahim, 2016).

¹³ Sri Nawatmi, *Etika Bisnis Dalam Prespektif Islam*, (Semarang: Economy Faculty Universitas Stikubank, 2010).

topic research.¹⁴ In this research the writer focuses in normative juridical. The research refers to the legal norms contained in legislation, judgments, live norms and thrive in society.¹⁵

Meanwhile, the object in this research is “KPPU verdict No. 10/KPPU-I/2015 about monopoly practices and unfair business competition imported cattle trade in JABODETABEK”.

2. Data sources

The data sources are all of the informations in the real things, abstract things, events or phenomena quantitatively and qualitatively.¹⁶ This research uses 2 (two) data sources. They are primary data and secondary data.

a. Primary data

The primary data is the data obtained by researchers directly from the KPPU verdict No. 10/KPPU-I/2015, either through interviews, observations and decisions from official documents which are processed by researchers.

b. Secondary data

The secondary data is data obtained by the researchers from official documents, the books related with research

¹⁴ P. Joko Subagyo, *Metode Penelitian Dalam Teori Dan Praktiek*, (Jakarta: Rineka Cipta, 1991), 109.

¹⁵ Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta:Sinar Grafika, 2014), 105.

¹⁶ Sukandarrumidi, *Metodologi Penelitian*, (Yogyakarta:Gadjah Mada University Press, 2012) 44.

object, the results of research from the reports and legislation.¹⁷ Secondary data can be divided into:

1) Primary legal materials

This materials consist of regulations related with the research object. For example, Kitab Undang-Undang Hukum Perdata (KUHPer), Indonesian Republic Constitution No.5 of 1999 about monopoly and unfair competition. The judgments decision has the power of law, but it also becomes the primary legal material.

2) Secondary legal materials

The secondary legal materials are books and journals that have the relation with this research object.

3) Tertiary legal materials

The tertiary legal materials are some instructions or explanations about primary legal materials and secondary legal materials from dictionaries, encyclopedias, newspapers.¹⁸

3. Data collection technique

Data collection technique in this thesis used by the researchers is documentation to get the accurate information and interviews with source who are still alive between the theory with the practices in this decision.

¹⁷ Noor, *Metodologi...*, 136.

¹⁸ Ali, *Metode...*, 106.

The documentation is data collection technique for subject research. The documents can be private records, personal letter with members organize, pictures, etc¹⁹ that related with KPPU verdict No. 10/KPPU-I/2015 about monopoly practices and unfair competition in imported cattle trading JABODETABEK market.

4. Analysis research data technique

After the data has been collected, the next step is to analyze the data. Data analysis is process to find and to compile the data systematically from the interview, observation, documentation by organising into categories, describing and making conclusions that easy to be understood.²⁰

F. Structure of Writing

In this thesis, the writer elaborated every chapter in general:

CHAPTER I: Introduction

This chapter consists of a whole problem research background, limitations problem, the purposes and benefits, the research methods, and the writing systematics used in this thesis.

CHAPTER II: Business Principles in Islam

This chapter consists of about the meaning of Islamic business principles, *muamalah* principles, forbidden in Islamic business, Islamic trading and marketing, and Islamic business ethics.

¹⁹ Sukandarrumidi, *Metodologi...*, 47.

²⁰ Sugiyono, *Memahami Penelitian Kualitatif*, (Bandung: Alfabeta, 2012), p. 89.

CHAPTER III: KPPU Verdict Number: 10/KPPU-I/2015

This chapter consists of general descriptions of object research. They are the description about the profile, the missions, the authority of KPPU, the case unfair competition and the KPPU verdict Number:10/KPPU-I/2015.

CHAPTER IV: Islamic law analysis about KPPU verdict Number: 10/KPPU-I/2015

This chapter has a legal law analysis and Islamic law analysis about KPPU verdict Number: 10/KPPU-I/2015.

CHAPTER V: Closing

This chapter contains a conclusion from the answers of some problems and the suggestions from the writer in this research.

CHAPTER II

ISLAMIC BUSINESS PRINCIPLES

A. Islamic Business Definition

Islam is a rules-based system with a prescribed method for humans and society to achieve material and nonmaterial progress and development grounded in rule compliance and affective institutions. The foundation of Islamic business system were laid down centuries ago in the Quran and practiced by the Prophet Muhammad in Medina during his brief time on his plane of existence. These rules laid down by the Almighty (swt) are at the foundation of Islamic system and provided the required effective institutions. The institutional scaffolding of the Islamic business system is thus formed by the rules of behaviour defined by the Quran.¹

As a result, the content and blueprint of Islamic business are derived from: (1) extracting the rules that define an ideal Islamic economy and their Islamic implications from the Quran and the Sunnah (the teachings and the practice of the Prophet Muhammad sawa); (2) studying these institutions in the contemporary economy and determining the degree and extent of deviation between institutional scaffolding and that of ideal Islamic economy; and (3) prescribing policy recommendations to bridge the gap between the two.

¹ Hossein Askari, Zamir Iqbal, Abbas Mirakhor, *Introduction to Islamic Economics*, (Singapore: C.O.S Printres Pre Ltd, 2015), p. 19.

In Quran and Sunnah, capital is often called *Mal*, a general term for designating material and monetary wealth, as opposed to labor resources.² The arabic word for sale is *Bay'*, which literally means exchange (*mubadalah*) and applies to both sale and purchase. Legally, sale is defined as an exchange of a property for another, one of which is called the object, and the other is the price.³ A sale contract in Quran, Sunnah and *Ijma'* as Allah says in *Surah al-Baqarah* 275:

..... وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا 

“And Allah has justified the sale and purchase, and forbidden usury.”⁴

There are many verses in the Holy Quran that clearly oppose *riba* in particular, *Surah al-Baqarah* (278-279). *Riba* means an increment or increase in Arabic. There are several kinds of *riba*, and the prohibition applies to all forms of it. But *riba* can be different in forms, and it is prohibited in all its forms. Some *fuqaha* have argued that *riba* can also occur when one gets a positive return without taking any risk or putting in commensurate effort. When we evaluate

² For a glossary of the terms used in chapter, you may access: <http://www.yasaar.org/glossaryhtm;or> http://islamic-banking.com/gossary_of_key_terms.aspx. Many other websites provide comprehensive definitions of Islamic finance concepts.

³ Muhammad Yusuf Saleem, *Islamic Commercial Law*, (Singapore: Markono Print Media Pte Ltd, 2013), p. 8.

⁴ Kementrian Agama RI, *Al-Quran dan Tasirnya*, Jilid II, (Jakarta: Sinergi Pustaka Indonesia, 2012), p. 153.

riba in the light of the *Sharia*'s underlying fundamentals, it is easy to see why *riba* is prohibited.⁵

Knowledge about economy in Islam is called *mu'āmalāt*. *Mu'āmalāt* (literally “reciprocal dealings”) come to be used as a classificatory category in Islamic law once comprehensive legal manuals come into use (from the tenth/eleventh century on). *Mu'āmalāt* is sometimes used as a broad category standing in binary opposition to *ibādāt* (ritual worship), and as such encompasses all nonritual legal rulings: family law and commercial law, as well as civil, penal, and international law. Other jurists (particularly the *Shāfi'īs*) use it fourfold rather than twofold schema. For them, *mu'āmalāt* includes only business transactions.

The goal of commercial transactions is to achieve a worldly, material objective, as opposed to the other-worldly, spiritual objective of ritual acts of worship, and hence Muslim jurists have typically allowed more scope for rationalization and flexibility in the *mu'āmalāt*. At the same time, the treatments of *mu'āmalāt* in classical *fiqh* manuals involve discussion of a finite number of unitary contract types. The fixed set of classical nominate contracts is useful even to contemporary Muslim jurists, providing building blocks, principles, and precedents to apply to the analysis of more complex transactions and to the construction of financial instruments.

⁵ Obiyathulla Ismath Bacha. Abbas Mirakhor, *Islamic Capital Markets A Comparative Approach*, (Singapore: John Wiley and Sons Singapore Pte. Ltd, 2013), p. 67.

Modern-era Muslim legal theorists also drew upon the classical law of contracts to extract an abstract Law of Contract.⁶

Islamic commercial is an important component of *al-fiqhal-mu'āmalāt*. Its fundamental principles are provided by the Quran and the Sunnah. In the light of offense principles, Muslim jurists has provided in great detail scholarly work on each individual contract. Islamic contracts are seen as a means that provide various options in order to obtain permissible (*halal*) earnings. Earning in a permissible way is considered an act of worship (*'ibadah*) in Islam. Muslim jurists in their voluminous books on Islamic *fiqh* have discussed together the rules pertaining to worship (*fiqh al-'ibadat*) and the rules pertaining the commerce and business (*fiqh al-mu'āmalāt*) and give them equal treatment and significance.⁷

However, when a contract of such a nature is concluded, all its pillar and conditions concern the offer and acceptance, the contracting parties, and the subject matter the fulfilled. The unlawful purpose itself or the second contract is never referred to in the agreement.⁸ The conclusion, doing business in Islam is no problem. But, this activity must be based on *ihthyath* (carefulness) and avoid anything forbidden by *sharia*.

⁶ Accessed 20/09/2017 from http://www.oxfordislamicstudies.com/article/opr/t349/e0065?_hi=2&_pos=8#match

⁷ Muhammad Yusuf Saleem, *Islamic Commercial Law*, (Singapore: Markono Print Media Pte Ltd, 2013), p. 2.

⁸ Muhammad Yusuf Saleem, *Islamic Commercial Law*, (Singapore: Markono Print Media Pte Ltd, 2013), p. 25.

B. The Principles of Islamic Business

As general guidance, there are any business principles in Islamic law:⁹

1. *Halal* and purity of things

Halal in theological is *masdar* from *halla* that means *abāha* (can do). As firman Allah SWT in *Surah al-An'am* verse 119.

وَمَا لَكُمْ إِلَّا أَنْ تَأْكُلُوا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرَّرْتُمْ إِلَيْهِ ۗ وَإِنَّ كَثِيرًا لَيُضِلُّونَ بِأَهْوَاءِهِمْ بِغَيْرِ عِلْمٍ ۗ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِالْمُعْتَدِينَ ﴿١١٩﴾

“And why should you not eat that on which Allah’s name has been pronounced, when he has clearly spelled out for you in detail what is forbidden except in a case of extreme helplessness? In fact, many do mislead people by their appetites unchecked by knowledge. ou Rabb knows best those who transgress”.¹⁰

From this verse, we know that all of haram in Quran is clear and the overmeasure is *halal*. To find some *halal* is Muslim obligatory.

⁹ Nur Huda, *Fiqh Muamalah*, (Semarang: CV Karya Abadi Jaya, 2015), cet. 1, p. 34-37.

¹⁰ Kementerian Agama RI, *Al-Quran dan Tasirnya*, Jilid II, (Jakarta: Sinergi Pustaka Indonesia, 2012), p. 217-218.

2. The business must be based with a dealing and agreement by the subject.

The agreement by the subjects on contract is very necessary principle. This statement as Allah SWT words in *Surah an-Nisa'* verse 29 :

يَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ
تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۚ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ
بِكُمْ رَحِيمًا ﴿٢٩﴾

“O believers! Do not consume one another’s wealth through unlawful means; instead, do business with mutual consent; do not kill yourself by adopting unlawful means. Indeed Allah is merciful to you”.¹¹

This verse describes that in Islamic business must use the good and right way, the willing sincere between two subjects. The unfair competition in Islam is *haram*.

3. Not harm to self and others

Subjects in Islamic business are prohibited to make harm to self and others. The means of harm with self is be waste and exaggerate. While harm others is in the practice as act to bring down the rivals with the unfair competition.

¹¹ *Ibid*, p. 153.

4. Appropriate with *Syara'*

The aim of Islamic *Syara'* is to make a human welfare included the protection of religion, life, intellect, descent and the treasure. Economy activities must based with them.

C. Offense aspects in Islamic business

Halal is the fundamental of Islamic business. In the principle, anything on Islamic business is permitted, until comes theorem (*dalil*) that forbids them.

الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم

“Everything is basically allowed, unless there is a proposition forbids it.”¹²

Emanating from the earlier underlying fundamentals, there are certain features that financial instruments or transactions must have in order to be *Sharia* compliant. At a primary level, all financial instruments and transactions must be free from at least five items:¹³

1. الربوا / *ar-Riba* / usury

Issue of *riba* in Islamic is the most difficult issues, it concerns for fairness in business dealings its prohibition of business transactions that call for charging *riba*. *Riba* can be roughly translated as “usury” or unjust, exploitive gains made in

¹² Moh. Adib Bisri, *Terjemah Al-Faraidhul Bahiyah*, (Kudus: Menara,1977), p.11.

¹³ Obiyathulla Ismath Bacha. Abbas Mirakhor, *Islamic Capital Markets A Comparative Approach*, (Singapore: John Wiley and Sons Singapore Pte. Ltd, 2013), p. 66-68.

trade or business. *Riba* in Quran means paying money for the use of money. From the Islamic perspective, with its bias towards fair distribution of wealth and social justice, the Quran strictures against *riba*, because it has implications for political economy. The prohibition of *riba* as saying Allah SWT in *Surah al-Baqarah* verse 278-279.

يَتَّيِبُهَا لِلَّذِينَ ءَامَنُوا أَتَّقُوا اللَّهَ وَذَرَوْا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ
 مُؤْمِنِينَ ﴿٢٧٨﴾ فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ ۗ وَإِن
 تُبْتِغُوا فَلَئِنَّكُمْ لَفِي رُءُوسِ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ﴿٢٧٩﴾

“O those who believe fear Allah and give up what still remains of the *riba* if you are believers. But if you do not do so, then be warned of war from Allah and His Messenger. If you repent even now, you have the right of the return of your capital; neither will you do wrong nor will you be wronged”.¹⁴

These verses clearly indicate that the term *riba* in Islamic business means any excess compensation over and above the principal which is without due consideration.

2. الرشوة / *ar-Risywah* / bribe

If the market is no such law or policy on competition in Islamic business situation, it will arise the problems of corruption. As a result, an unhealthy economic activities will

¹⁴ *Ibid*, p. 47.

increase drastically. Islam really condemned these practices and this condemnation is not only to ensure the effectiveness of economic administration, but also as a basis to form a just and fair society in the light of Islamic teaching. The prohibition of *risywah* as saying Allah SWT in *Surah al-Baqarah* verse 188.

وَلَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ

لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ ﴿١٨٨﴾

“And do not consume one another's wealth unjustly or send it (in bribery) to the rulers in order that (they might aid) you to consume a portion of the wealth of the people in sin, while you know (it is unlawful)”¹⁵

3. الغرر / *al-Gharar* / not clear

In Arabic word, الغرر is *isim masdar* from the word غرر that means lack, betting (*al-khatr*), related words would mean cheating. *Gharar* can be defined as unnecessary risk, deception or internationally induced uncertainty. In the context of business transactions, *gharar* could be thought of as looseness of the underlying contract, such that one or oath parties are uncertain about possible outcomes. *Gharar* could also have different connotations across with *madhahib*. The Hanafi consider *gharar* to mean something with unknown outcomes or consequences. Maliki take it to mean suspicion, while the Shafi'i defines *gharar*

¹⁵ *Ibid*, p. 29.

to mean high risks. The prohibition of *gharar* as saying Allah SWT in *Surah al-Anfal* verse 49.

إِذْ يَقُولُ الْمُنَافِقُونَ وَالَّذِينَ فِي قُلُوبِهِمْ مَرَضٌ غَرَّ هَتُؤَلَاءِ دِينُهُمْ ۗ
وَمَنْ يَتَوَكَّلْ عَلَى اللَّهِ فَإِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ ﴿٤٩﴾

“(Remember) when the hypocrites and those in whose hearts was disease said, "Their religion has deluded those (Muslim)." But whoever relies upon Allah - then indeed, Allah is Exalted in Might and Wise”¹⁶

4. الميسر / *al-maisir* / gambling

Maisir in arabic refers to gamble or high speculation. *Maisir*, from a business instrument viewpoint, would be one where the outcome is purely dependent on chance alone as in gambling. *Maisir* literally forbidden in Muslim society and along with gambling, speculation, derivative contracts, is also forbidden in Islam. The prohibition of *maisir* as saying Allah SWT in *Surah al-Baqarah* verse 219.

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ ۖ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعٌ
لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا ۗ وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ
الْعَفْوُ ۗ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ ﴿٢١٩﴾

“They ask you concerning wine and gambling. Say, "In them is great sin and (yet, some) benefit for people. But their sin is

¹⁶ *Ibid*, p. 183.

greater than their benefit." And they ask you what they should spend. Say, "The excess (beyond needs)." Thus Allah makes clear to you the verses (of revelation) that you might give thought".¹⁷

5. الجهل / *al-Jahl* / ignorance

The word of *jahl* its from جهل, وجهالة, جهلا that means ignorance, dumb, moronic¹⁸. From a financial transaction viewpoint, it would be unacceptable if one party to the transaction gains because of the other party's ignorance. Often in financial contracts, informational asymmetry, rather than outright ignorance, could also be caused by *jahl*. The prohibition of *jahl* as saying Allah SWT in *Surah Huud* verse 29.

وَيَقَوْمٍ لَا أَسْأَلُكُمْ عَلَيْهِ مَالًا إِنْ أَجْرِيَ إِلَّا عَلَى اللَّهِ وَمَا أَنَا بِطَارِدٍ
الَّذِينَ ءَامَنُوا إِنَّهُمْ مُلْتَقُوا رَبِّهِمْ وَلَكِنِّي أَرَأَيْتُمْ قَوْمًا تَجْهَلُونَ ﴿٢٩﴾

“And O my people, I ask not of you for it any wealth. My reward is not but from Allah . And I am not one to drive away those who have believed. Indeed, they will meet their Lord, but I see that you are a people behaving ignorantly”.¹⁹

In addition, there are various offense aspects forbidden by Prophet in Islamic business as below:²⁰

1. النجسي / *Najsy* prohibition

¹⁷ *Ibid*, p. 34.

¹⁸ Muhammad Idris Abdul Rauf al-Marbawi, *Kamus Idris al-Marbawi*, (Kuala Lumpur: Darul Nu'man, 1998), cet.III. p. 112.

¹⁹ *Ibid*, p. 225.

²⁰ Nur Chamid, *Jejak Langkah Sejarah Pemikiran Ekonomi Islam*, (Yogyakarta: Pustaka Pelajar, 2010), cet. 1, p. 27-28.

Najsy in epistimology is *al-Istitar* (hide), *al-Khadi'ah* (cheating), *al-Ziyādah* (increase).²¹ Therefore *Najsy* in terminology is business practices when the seller cheating with others to praise, and it makes the price more expensive.

2. *بيع بعض على بعض / Bay' Ba'dh 'Ala Ba'dh* prohibition

The practice of this transaction is by decreasing the price when the subjects is in negotiation. The Prophet forbade this practice, because they increase the price.

3. *تلقى الركبان / Tallaqi al-Rukbān* prohibition

Tallaqi al-Rukban means meeting a seller who is on his way to a market and buying his merchandise before his arrival at the market. It was a common practice in pre-Islamic time that merchants from the cities would go to the outskirts to meet desert sellers, who would come to the city to sell their products and to buy commodities that they needed. The Prophet prohibited people from buying merchandise from traders before their arrival at the market. He has prohibited this practices by saying, “Do not go to meet the caravans on the way”.²²

The reason for prohibition is that the seller who wants to come to the market may not know the actual market price of the commodity. The purchasers would take advantage of his ignorance because the seller has not yet arrived at the market. It

²¹ Enang Hidayat, *Fiqh Jual Beli*, (Badung: PT Remaja Rosdakarya, 2015), cet. I, p.139.

²² M.Muhsin Khan (Translator), *Sahih al-Bukhari*; vol. 3, book 34, no 367 (Riyadh: Darussalam, 1997).

could also be the protection of other traders or purchasers who would be waiting for the arrivals of the sellers and their goods in the market. The reason could also be the protection of the general public.²³

4. احتياز و احتكار / *Ihtināz* and *Ihtikār* prohibition

Ihtināz is hoarding for gold. Meanwhile, *Ihtikār* is hoarding for commodity things. For instance, the case where shortages are created by holding large stocks of goods in warehouses and withholding them from sale. The motive is to keep supply less than the demand and to profiteer this situation. Trader who can afford to block large sums of capital normally does this activity. In hadith narrated by Ibnu Majah Prophet said: “He is a criminal who hoards grain to sell it at higher price”. In another hadith he said: “He also keeps back grain from sale for forty days only to sell it at higher prices, sale it that such a man is not aware of the existence of God or that God has cut himself off from him”.

يَتَأَيُّهَا الَّذِينَ ءَامَنُوا إِنَّ كَثِيرًا مِّنَ الْأَحْبَارِ وَالرُّهْبَانِ لَيَأْكُلُونَ
 أَمْوَالَ النَّاسِ بِالْبَاطِلِ وَيَصُدُّونَ عَن سَبِيلِ اللَّهِ وَالَّذِينَ
 يَكْتَنُونَ الذَّهَبَ وَالْفِضَّةَ وَلَا ينفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ

²³ Muhammad Yusuf Saleem, *Islamic Commercial Law*, (Singapore: Markono Print Media Pte Ltd, 2013), p. 18.

بِعَذَابِ أَلِيمٍ ﴿٣٤﴾ يَوْمَ نُحْمَىٰ عَلَيْهَا فِي نَارِ جَهَنَّمَ فَتَكْوَىٰ بِهَا
 جِبَاهُهُمْ وَجُنُوبُهُمْ وظُهُورُهُمْ هَذَا مَا كَنَزْتُمْ لِأَنفُسِكُمْ فَذُوقُوا مَا
 كُنْتُمْ تَكْنُزُونَ ﴿٣٥﴾

O believers! Indeed most of the rabbis and priests misappropriate the wealth of people and hinder them from the way of Allah. To those who hoard gold and silver and do not spend it in the way of Allah, procalim a painful punishment. The day will surely come when their treasure will be heated up in the fire of hell, and their foreheads, sides and backs branded with it. They will be told: “This is the treasure which you hoarded. ow taste what you were hoarding!”. *Surah at-Taubah: 34-35*.²⁴

These verses describes that hoarding practices are across with Islamic guidance. Impact from these practices is make a scarcity things and make the prices more expensive. This is a despotic to obligation and authority of the seller forbidden in Islam.²⁵

These concepts in Islamic learning abuse that Islam is universal religion and any aspect has regulate. Islam is perfect religion, that the concepts have been formulated to protect everybody. There must be available fairly and fair competition to maximize the walfare an achieve.

²⁴ *Ibid*, p. 192.

²⁵ Lukman Hakim, *Prinsip-Prinsip Ekonomi Islam*, (Surakarta: Gelora Aksara Pratama, 2012), p.169.

D. Trading and Marketing in Islamic Business

A major reason for a contract of exchange is that the parties to the contract wish to improve on their own precontract welfare. In this case, parties must have the freedom to contract. This implies freedom to produce, which calls for clear and well protected property rights to permit production and sale. To be freely and conveniently exchange, the parties need a place to do so, that is, a market.

To operate efficiently, market need rules of behaviour and clear, unambiguous rule-enforcement mechanisms to reduce uncertainty in transaction. Markets also need a free flow of information. To reinforce the efficiency of market operations, trust has to be established among participants, transaction costs must be minimized, and rules must be established to internalize externalities of two party transactions. Andrew Sheng (2009, 9) suggest: “Successful markets all share three key attributes: the protection of property rights, the lowering of transaction costs and the high transparency.” This is a critical factors of efficient markets:



To achieve these attributes, preconditions and infrastructures, some aspects are needed, including:

1. Freedom of market participant to enter and exit the market, to set their own objectives within the prescribed rules, to employ ways and means of their own choosing to achieve their goals and to choose whomever they wish as their exchange partner.
2. An infrastructure for participants to access, organize, and use information.

3. Institutions that permit coordination of market activities.
4. Institutions to regulate and supervise the behaviour of market participations.
5. Legal administrative institution to enforce contracts at reasonable costs.²⁶

E. Ethics in Islamic Business

The ethics has to do with the study of practical justification. It focuses on describing and evaluating the reasons persons and groups give for judgments they make about right and wrong or good and evil, particularly as those terms relate to human acts, attitudes, and beliefs.²⁷ The ethics origin comes from the word *ethos*, in Greek, it means custom or character. In the Webster dictionary, it means “The distinguishing character, sentiment, moral nature, or guiding beliefs of a person, group or institution”.²⁸ While ethics in terminolgy means “The decipline dealing with what is good and bad and with moral duty and obligation, a set of moral principles or values, a theory or system of moral values”.²⁹ In terminology ethics means very close with Quran term *al-Khuluq*. To describe of virtue concept,

²⁶ Obiyathulla Ismath Bacha. Abbas Mirakhor, *Islamic Capital Markets A Comparative Approach*, (Singapore: John Wiley and Sons Singapore Pte. Ltd, 2013), p. 18-19.

²⁷ Accessed 20/09/2017 from http://www.oxfordislamicstudies.com/article/opr/t236/e0224?_hi=3&_pos=3

²⁸ A Team, Webster’s ew Collagiate Dictionary, (USA: G and C Merriam Company, 2007), p. 393.

²⁹ *Ibid.*

and the Quran use many terms are *khair, bir, qist, 'adl, haqq, ma'ruf, and taqwa*.³⁰

The basic axioms have been formulated and developed by Muslim scholars. These axioms are the result of a contemporary translation of the fundamental concepts and Islamic values. These axioms are expected to be reference for moral awareness of Muslim businessmen to determine the principles to conduct their business. The axioms are as follows,³¹

1. The unity

This world, include the humans, have been perfect sovereignty over the believers. Masudul Alam Choudury in his description about ethics in Islamic socio-scientific order state that Ibnu Arabi and any philosopher atomism from Asharites (Qadri: 1988) believe that the meaning of anything in this world means more than the essence of the Oneness of God.³²

2. The equilibrium

In daily activities work and business world, Islam requires to do justice. Fairly close to the piety, therefore in the trade (*tijarah*) Islam forbids to deceive, although it just bring some impact hesitation condition. This condition can make

³⁰ Faisal Badroen. et al, "*Etika Bisnis Dalam Islam*", (Jakarta: Kencana, 2006), p. 6.

³¹ Faisal Badroen. et al, "*Etika Bisnis Dalam Islam*", (Jakarta: Kencana, 2006), p. 88-104.

³² Look: Masudul Alam Choudury paper's, *The Structure of Islamic Economics: A Comparative Perspective on Markets, Ethics, and Economics*, [Http://: islamic finance.net](http://islamicfinance.net).

disruption in market mechanism or unknown asymmetric information by some subject. This situation has disruption impact in offer and demand. Fairly as Allah says in the Quran *Surah al-Maidah* 8:

يَأَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ ۗ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ ءَلَّا تَعْدِلُوا ۗ اَعْدِلُوا هُوَ اَقْرَبُ لِلتَّقْوَىٰ ۗ وَاتَّقُوا اللَّهَ ۗ اِنَّ اللَّهَ خَبِيرٌۢ بِمَا تَعْمَلُونَ ﴿٨﴾

“O believers! Be steadfast for the sake of Allah and bear true witness and let not the enmity of a people incite you to do injustice; do justice; that is nearer to piety. Fear Allah, surely Allah is fully aware of all your actions”.³³

In the trading, fairness is to determine a quality and quantity in every dose as well as weigher. The word of God in the Qu’ran *Surah al-An’am* verse 152:

..... وَأَوْفُوا الْكَيْلَ وَالْمِيزَانَ بِالْقِسْطِ ۗ ﴿١٥٢﴾

“..... and complete dosage and scales fairly”³⁴

3. Free will

Price of commodity (thing and service) is determined by offer and demand, on exchange price too. Islamic concept values

³³ *Ibid*, p. 108.

³⁴ *Ibid*, p. 149.

do not bring intervention space from anywhere to determine the price, except on emergency conditions. This concept determine that Islamic market must guarantee availability of freedom to entry and out some commodity market. It is intended to ensure the distribution of economic power in a proportional mechanism.

4. The responsibility

The responsibility means a duty or obligation to satisfactorily perform or complete a task (assigned by someone, or created by one's own promise or circumstances) that must be fulfilled, and which has a consequent penalty for failure.

5. The benevolence (*Ihsan*)

The benevolence (*Ihsan*) means giving values to each others, without a requirements (Beekun, 1977) or an another word is worship and do better as look at God, if we can not, we can belief that God look at you (Shiddiqi, 1979).

While the requirements for achieving blessings, the businessman must pay attention to ethical principles that have been outlined in Islam:

a. Honest in dosage

“Business ethics build trust, and trust is the basic of modern business. If we accept the view, there are not two moralities –one for individuals and one for business– but a common moral framework for judging both individual and corporate activities. Then, we can gain some guidance for business behaviour by looking at what philosophers have

seen as the morally good life”.³⁵ The honesty is very important as well as in Surah al-Mutaffifin verse 1-3:

وَيْلٌ لِّلْمُطَفِّفِينَ ﴿١﴾ الَّذِينَ إِذَا أَكْتَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ ﴿٢﴾
وَإِذَا كَالُوهُمْ أَوْ وَزَنُوهُمْ يُخْسِرُونَ ﴿٣﴾

“ Who to those who cheating³⁶. (That is) people who, when receiving doses from others are requested to be fulfilled. And if they are measure for others, they reduce it”.³⁷

In all relationship trust is the basic element. Trust is created from honesty. Honesty is one of the most difficult qualities of character to achieve in business, family or other arena where one’s self interest competes with that of other party.

b. Selling goods of good quality

Not transparent in business is a disability, that means ignore a moral responsibility in business world. Even though whereas expected the responsible is responsibility for balance between achieve the profit and the basic norms of society either from of law, and ethics or adat.³⁸ Besides contrary

³⁵ David Stewart, *Business Ethics*, (New York: The Me Grow Hill Companies Inc, 1996), p. 47.

³⁶ Cheating in measuring and weight.

³⁷ *Ibid*, p. 587.

³⁸ George Chryssiders and John EH Kaler, *An Introduction to Business Ethics*, (London: Chapman and Hall, 1993), p. 249.

with norms, pursuing profits by hiding quality is identical with unfair attitude. Even indirectly have conducted the suppression of the buyer.³⁹

c. Prohibited using oath

Oath in business transaction is forbidden. Too much of oath which the aim to ensure the buyers is not justified in Islam, as the word of Prophet: From Abu Huraira r.a, I listened Muhammad sawa said: “The oath is to trade merchandise, but to abolish blessing” (hadith Abu Daud).⁴⁰

d. The Generous

The seller must be friendly and generous to every buyers. With this attitude, the seller gets blessed and favored by buyers too, as *Surah Ali 'Imran* verse 159:

..... وَلَوْ كُنْتَ فَظًّا غَلِيظًا لَّالْقَلْبِ لَأَنفَضُوا مِن حَوْلِكَ^ط

“If you have bad feeling and attitude, they would have distanced themselves from you”.⁴¹

e. Interrelationship with others

Islam requires a constructive relations with everybody, included subject in business. Islam forbids a domination for everythings, such as monopoly, oligopoly, and every unfair competition in business. Such as Prophet

³⁹ Muhammad Nejatullah Siddiqi, *Kegiatan Ekonomi Dalam Islam*, Translate. Anas Sidik, (Jakarta: Bumi Aksara,1991), p. 46.

⁴⁰ Muhammad Djakfar, *Etika Bisnis Dalam Perspektif Islam*, (Malang: UIN-Malang Press, 2007), p. 27-28.

⁴¹ *Ibid*, p. 71.

word by al-Bukhari: Rasulullah sawa said: whoever hopes to be easy of rizki and lengthened his age, let him run the silaturrahim. (by al-Bukhari)

f. Administration deciplines

In business world, it normal of with indeptedness practices. In this case, Quran teaches that administration of debt is necessary. So that, people avoid the mistakes that may occur in the future, as *Surah al-Baqarah* verse 282:

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا اِذَا تَدٰىنْتُمْ بٰدِيْنَ اِلٰى اَجَلٍ مُّسَمًّى
فَاَكْتُبُوْهُ وَاَلِيْكُمۡ بَيِّنٰتٌ مِّنْ كَاتِبٍ بِالْعَدْلِ


“O believers, if you owe tha receivable with the appointed promise of the time, you shall write. And the writer, must be honestly”.⁴²

The substance of this verse is make sure of assumption that modern administration practices it was teach in Quran since 14 century years old. That means teaching businessman to be honest and avoid from cheating.⁴³

g. Transparancy of prices

Untransparancy of prices means contain of fraud. Prices setting with transparant and equitable are really

⁴² *Ibid*, p. 48.

⁴³ Muhammad Djakfar, *Etika Bisnis Dalam Perspektif Islam*, (Malang: UIN-Malang Press, 2007), p. 31.

respectful in Islam and avoid from *riba*. The seller still get profit and the buyer must respect it.⁴⁴

In substantial, these principles are more explain the Islamic axioms ethic. Can make complete in what a must doing by businessman in good and right way, because all of these guidance by God.

⁴⁴ Manuel G.Velasquez, *Business Ethics, Concept and Cases 3rd Edition*, (UK: Englewood Cliffs Nj, Printice Hall, 1992), p. 184.

CHAPTER III

KPPU VERDICT NUMBER: 10/KPPU-I/2015

A. KPPU Profile

KPPU bases in Jakarta Capital but can establish representative office throughout capital cities in Indonesia. Now, KPPU has five representative office that spread through five major islands, namely Medan, Batam, Surabaya, Balikpapan, and Makassar. KPPU in assignment implement and authority need the existence of a clear point of view, so the goals can be formulated carefully and the achievements can be planned with precision and detail.

1. Vision and Mission of KPPU

While the direction of KPPU view then formulated in a vision and mission as follows;¹

a. KPPU vision

KPPU vision as independent institutions has a mandate Indonesian Republic Constitution No. 5 of 1999 is: “To realize an efficient and fair national economy for the people’s welfare”.

b. KPPU mission

To realize the vision, then formulated the following KPPU mission;

- 1) Prevention of presecution
- 2) Internalization of value business competition

¹ Accessed 22/09/2017 from <http://www.kppu.go.id/id/tentang-kppu/visi-dan-misi/>

3) Institutional strengthening.

B. Obligation and Authority of KPPU

1. Obligation of KPPU

The urgency of having a national competition law in Indonesia was addressed at the 80s, to respond major economic reforms. At that stage, Indonesia opened herself to globalization and started to promote foreign investment. It was then the idea for a comprehensive competition policy was elevated. Further, the global crisis hampers Indonesia in 1997-1998. Vulnerable economic structure caused by concentrated industries cracked the backbone of our long-standing and smooth development. The lack of competitive environment caused “the big” to fail.

The competition rules was existed for many years before 1999. In Civil Law, for instance, Article 382 says that for those gain, conduct, or expand their trade or own company or other, by unjust behavior to harm the public or someone, of which the behavior will cause damages to their competitors or competitors of another party because of unjust competition, can be imposed with an imprisonment for one year and four months maximum or to pay fine for nine hundred rupiah. So the concept of competition law did adapt. However, this law did not provide complete arrangement on business competition, since it's pure criminal.

Comprehensive competition law is systematically introduced by the Law No. 5 The year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Komisi Pengawas Persaingan Usaha (KPPU) or the Commission is the only institution dealing with competition law in Indonesia. It introduces through the Law No. 5/1999 and the organization forms by the Presidential Decree No. 75 The year 1999. The Law has been formulated under Pancasila and the 1945 Constitution and on the basis of a democratic economy by taking into account the balance between interests of the business actors and the public with the purposes to maintain the public interest and public consumers. And also to create conducive business climate through the creation of a fair business competition.

KPPU consists of nine Commissioners, including Chairman and Vice Chairman. They elected by the Parliament with a recommendation from the President for five years term. The term is renewable for one time. KPPU has three main tasks from the competition law. They enforce the law, provide advice on competition policy, and review merger and acquisition. Since 2008, the Law No. 20 The year 2008 concerning Micro, Small, and Medium-sized Enterprises (MSME) provide this agency with an additional task to supervise business partnership between MSME and large-sized enterprises. In doing their jobs, KPPU

can receive the complaint, conduct research, and investigation, summon any parties related to the investigation, require assistant from police investigator, issue decision, and impose the sanction.

For the purpose of implanting the Law Number 5/1999, KPPU has duties that mentioned in Article 35 of the Law (Law No. 5 of 1999) as follows:

- a. Evaluate agreements that may result in monopolistic practices and/or unfair business competition;
- b. Evaluate business activities and/or actions of business actors which may result in monopolistic practices and/or unfair business competition;
- c. Evaluate the existence or nonexistence of misuse of dominant position which may result in monopolistic practices and/or unfair business competition;
- d. Undertake actions in accordance with the authority of the Commission;
- e. Provide advice and opinion concerning Government policies related to monopolistic practices and/or unfair business competition;
- f. Prepare guidelines and/or publications related to this Law;
- g. Submit periodic reports on the results of the Commission's work to the President and the People's Legislative Assembly (DPR).

2. Authority of KPPU

The authority is an institutionalized and legal power inherent in a particular job, function, or position that meant to enable its holder to successfully carry out the responsibilities. Power that is delegated formally. It includes a right to command a situation, commit resources, give orders and expect them to be obeyed, it is always accompanied by an equal responsibility for one's actions or a failure to act.

Meanwhile, the KPPU as the Indonesian legal institution to handled the monopoly practices and unfair business activities. The authority of KPPU as mentioned in Article 36 of the Law is as follow:²

- a. Receive reports from the public or business actors regarding allegations of the existence of monopolistic practices or unfair business competition;
- b. Conduct research concerning the possibility of the existence of business activities or actions of business actors which may result in monopolistic practices or unfair business competition;
- c. Conduct investigations or examination on allegations of cases of monopolistic practices or unfair business competition accused by the public or by business actors or discovered by the Commission as a result of its research;

² Accessed 22/09/2017 from <http://eng.kppu.go.id/overview/>

- d. Make conclusions regarding the results of its investigations or hearings as to whether or not there are any monopolistic practices or unfair business competition;
- e. Summon business actors suspected of having violated the provisions of this Law;
- f. Summon and invite witnesses, expert witnesses and any person deemed to have knowledge of violations of the provisions of this law;
- g. Seek the assistance of investigators to invite business actors, witnesses, expert witnesses, or any persons as intended in sub-article E and F, who are not prepared to appear upon the Commission's (KPPU's) invitation;
- h. Request the statements of Government institutions related to the investigations or hearings about business actors who violate the provisions of this law;
- i. Obtain, examine or evaluate letters, documents or other instruments of evidence for investigations or hearings;
- j. Determine and stipulate the existence or non-existence of losses on the parts of business actors or society;
- k. Announce the Commission's (KPPU's) decisions to business actors suspected of having engaged in monopoly practices or unfair business competition;
- l. Impose administrative sanctions on business actors violating the provisions of this law.

C. Unfair Competition

From the KPPU profile both the assignment and authority, we know that KPPU is a legal institution based on Indonesian Republic Constitution 1945 to guard, supervise, and control business activities in Indonesia from monopoly and any unfair competitions.

1. Unfair Competition Definition

Islam has already laid down principles on competition as Islam rejected total monopoly and unfair competition in the system of economy. In Economy Law Dictionary, business competition is competition to influence the buyer or consumer to some product.³ While the means of unfair competition in clause 1 Indonesian Republic Constitution No.5 of 1999 is competition in production activity and or product marketing and or service with dishonest or to against the law or to obstruct the business competition.

Unfair competition is a term applied to dishonest or fraudulent rivalry in trade and commerce. It's a branch of intellectual property law, particularly applied to the practice of endeavoring to substitute one's own goods or products in the market for those of another for the purpose of deceiving the public. Unfair competition can be broken down into two broad categories. First, the term "unfair competition" is sometimes used to refer only to those ports that means to confuse consumers as to

³ Sri Rejeki Hartono dkk, *Kamus Hukum Ekonomi*, (Bogor: Ghalia Indonesia, 2010), cet. 1, p. 141.

the source of the product. The other category, "unfair trade practices", comprises all other forms of unfair competition.

Other practices that include into the area of unfair competition are: false advertising, "bait and switch" selling tactics, unauthorized substitution of one brand of goods for another, use of confidential information by former employee to solicit customers, theft of trade secrets, breach of a restrictive covenant, trade libel, and false representation of products or services. To check the availability of legal law in unfair competition in Indonesia is as below:

- a. Indonesian Republic Constitution No. 5 of 1999 about Monopoly Practices and Forbidden Unfair Competition.
- b. President Verdict No. 75 of 1999 about Komisi Pengawas Persaingan Usaha.
- c. Chairman KPPU's Verdict Number 05/KPPU/IX/2000 about How To Deliver a Report and Completion Offense Guess Indonesian Republic Constitution No. 5 of 1999.
- d. Mahkamah Agung RI Regulation No. 01 of 2003 as changes with Mahkamah Agung RI Regulation No. 03 of 2005 about How To Deliver a Report About an Objection of KPPU Decision.

2. Agreements and Forbidden Competition

In the business world, the businessman can do anything to achieve what they want. But this statement across with Islamic

regulation, that in Islam, a businessman must do it with right and good way. So, it makes any impacts to business activities, such as the agreement. The agreement is permitted and prohibited. In this session the writer will describe the kind of prohibited agreements as set up in Indonesian Republic Constitution Number 5 of 1999 on clause 4 until 16 as below:⁴

a. Oligopoly (clause 4 Indonesian Republic Constitution No.5 of 1999)

Oligopoly is a market condition in which only a few sellers control the entire trade in some product. The market structures are oligopoly when seem the point as below:

- 1) A few market with many buyers, that is partly market offer in some big company and selling to a small seller.
- 2) The homogen product, that offering some product by a middleman, usually the prices will be different between the once and others.
- 3) Independent market, that the markets have any blockages and make its barriers to entry.

b. Price fixing (clause 5-8 Indonesian Republic Constitution No.5 of 1999)

Price fixing is conspiring with other individual or companies or seller in the same business to set the price instead of letting them be set by market forces, usually to

⁴ Undang-Undang RI Number 5 of 1999

restrict the competition. Price fixing agreement has various types as below:

- 1) Price fixing (clause 5 Indonesian Republic Constitution No.5 of 1999)

The price fixing does by seller produce same product or service with price fixing that must be paid by a consumer.

- 2) Price discrimination (clause 6 Indonesian Republic Constitution No.5 of 1999)

Price discrimination in this clause means giving impact to buyers, because the buyers get a different price in each other. This situation makes the markets can do anything what they wants, and make an economy system unstable.

- 3) Predatory pricing (clause 7 Indonesian Republic Constitution No.5 of 1999)

The predatory pricing or pricing under market prices means that the aim of the market is to give risks to the middleman rivals, it is the impact of the unfair business competition.

4) Resale price maintenance (clause 8 Indonesian Republic Constitution No.5 of 1999)

This agreement substantiates the requirement, that receiver items or services do not sell or get stock again with the cheaper prices.

c. Region distribution (clause 9 Indonesian Republic Constitution No.5 of 1999)

Region distribution means that the seller makes an agreement with another seller to divide their region market or market allocation in product and service.

d. Boycott (clause 10 Indonesian Republic Constitution No.5 of 1999)

The boycott is an attempt to stop others from purchasing products, performing services, or otherwise doing business with a company that does business with another company that is in the midst of labor dispute. The purposes of boycott are typical to exert indirect pressure on the employer to resolve the labor dispute by causing its business connections to suffering as result of the dispute.

e. Cartel (clause 11 Indonesian Republic Constitution No.5 of 1999)

A cartel is a group of independent corporations or other entities that join together to fix prices, control distribution, or to reduce the competition. In Black's Law

Dictionary, the cartel is a combination of producers or sellers that join together to control a product's production or price.⁵ However, the cartel offense may acquire a new lease of life. Since its creation is a statutory requirement that a constituent component of the offense is one of 'dishonesty' recognized by the Court of the Appeal as difficulties and 'plainly very significant' hurdle.⁶

The Indonesian proposes now to drop the requirement.⁷ It was suggested from some quarters that another qualifier –the secret cartel or the furtive cartel- ought to take its place, but the governments seems resolved simply to remove it entirely. If it does so, it cannot but it makes the securing of a conviction significantly easier.⁸ The negative effects on consumers include:

- a. Higher prices - cartel members can all raise prices together, which reduces the elasticity of demand for any single member.
- b. Lack of transparency - members may agree to hide prices or withhold information, such as the hidden charges in credit card transactions.

⁵ Bryan A. Garner, *Black's Law Dictionary*, (United State of America: Thomson Reuters, 2009), cet. 9, p.243.

⁶ *I v The Queen* (2009) EWCA Crim 2575, (2009) AII ER (D) 90, at para 27. See also *R v George and ors* (2010) EWCA 1148, determining that the offense did not require mutual dishonesty.

⁷ Department for Business Innovation and Skills, Growth, Competition and the Competition Regime, (2012, Para. 7.711).

⁸ Accessed 15/10/2017 from <http://www.cambridge.org/core/terms>

- c. Restricted output - members may agree to limit output onto the market, as with OPEC and its oil quotas.
- d. Carving up a market - cartel members may collectively agree to break up a market into regions or territories and not compete in each other's territory.
- e. Trust (clause 12 Indonesian Republic Constitution No.5 of 1999)

In Black's Law Dictionary trust is the right enforceable solely in equity, to beneficial enjoyment of property to which another person holds the legal title.⁹

- f. Oligopsony (clause 13 Indonesian Republic Constitution No.5 of 1999)

An oligopsony is a state of the market in which only a small number of buyers exists for a product. Black's Law Dictionary describes the oligopsony is control or domination of a market by a few large buyers or customers.¹⁰

- g. Vertical integration (clause 14 Indonesian Republic Constitution No.5 of 1999)

The vertical integration is a situation to trade at different levels of supply are under the ownership of a single entity.

- h. Closed agreement (clause 15 Indonesian Republic Constitution No.5 of 1999)

⁹ Garner, *Black's...*, p. 1647

¹⁰ Garner, *Black's...*, p.1196

The closed agreement is an admission agreement that permits only those employees who become members or entitled to membership of the LGPS at the point of transfer to remain members or retain eligibility for membership.

- i. Agreement with another country (clause 16 Indonesian Republic Constitution No.5 of 1999)

Agreement with another country means that the businessmen forbid making an agreement such as a monopoly with the bigger scales not limited in a country, but even with another country.

3. Prohibited Activities and Competition in Indonesian Republic Constitution No. 5 of 1999

The business activities are include any activity engaged in the primary purpose of making a profit. This is a general term that encompasses all the economic activities carried out by a company during the course of business. Business activities, including operating, investing and financing activities. Meanwhile, prohibited business activities are imposed through network rules or the requirements of the financial services providers. Prohibited business activities in Indonesia are regulated in Indonesian Republic Constitution No. 5 of 1999 that focus on clause 17-24 as below:

- a. Monopoly (clause 17 Indonesian Republic Constitution No.5 of 1999)

In Black's Law Dictionary, monopoly is control advantage obtained by one supplier or producer over the commercial market within a given region.¹¹

- b. Monopsony (clause 18 Indonesian Republic Constitution No.5 of 1999)

In Black's Law Dictionary monopsony is a market situation in which one buyer controls the market.¹² Another word of monopsony is reverse to the monopoly.

- c. Market mastery (clause 19-21 Indonesian Republic Constitution No.5 of 1999)

The market mastery is the activity to refuse and to prevent some businessman to entry in the same business, or kill the business of rival. It is the effect of monopoly practice and the unfair competition.

- d. Conspiracy (clause 22-24 Indonesian Republic Constitution No.5 of 1999)

The conspiracy is agreement with another businessman to arrange and or to determine the winner of tender.

¹¹ Bryan A. Garner, *Black's Law Dictionary*, (United State of America: Thomson Reuters, 2009, cet. 9), p. 1098

¹² Garner, *Black's...*, p. 1098

4. Dominant Position Definition

A dominant position is an anti-competitive arrangement between one or more competing businesses. The specification is to make a selling requirement to purpose avoid and or to keep from consumer to get something and or to compete service, on prices although on quality; or limit the market and technology progress, or avoid the other potential businessman to join the market.¹³

Anticompetitive agreements, particularly dominant position, harm consumers in urbanized society, as well as in the emerging countries. In adding industrial sectors lack competition which certainly reduces competitiveness in the long run and may have a negative impact on the overall performance of a country's economy. Examples include:

- a. Charging unreasonable high prices.
- b. Depriving smaller competitors of customers by selling at artificially low prices they can not compete with.
- c. Obstructing competitors in the market (or in another related market) by forcing consumers to buy a product which is artificially related to a more popular, in-demand product.
- d. Refusing to deal with certain customers or offering special discounts to customers who buy all or most of their supplies from the dominant company.

¹³ Undang-Undang No. 5 of 1999

- e. Making the sale of one product conditional on the sale of another product.

D. KPPU Verdict Number: 10/KPPU-I/2015

1. General Problem Description of KPPU Verdict Number: 10/KPPU-I/2015 about Monopoly Practices and Unfair Competition Imported Cattle Trading in JABODETABEK Market

With the 3rd biggest population in the world, Indonesian industry market food has a great potential. With 268.074.600 souls estimated in 2019 is a market potential that can be more developed. The food industry especially on domestic products, such as the rice, oil, meat, and sugar. So that human needs must be fulfilled with great.

One of the domestic products in Indonesia is a meat, so the companies are interesting to entry in this market sector. Meanwhile, the Ministry of Agriculture was released the regulations No. 19/Permentan/OT.140/2/2010 that substances, increasing of meat production in Indonesia is 420,3 hundred tons on 2014 or will increase 10,4% in every year. This statement was stimulant for the companies in meat and cattle sectors.

PT Sumber Cipta Kencana and CV Mitra Agro Sampurna are the companies that focus on industry and marketing cattle, of local and imported. On 06 August 2015 PT Sumber Cipta Kencana and CV Mitra Agro Sampurna and the

others companies had been followed the meeting of “agreement letter” in Palmerah Market, Central Jakarta. This agreement letter was released by the cattle seller in JABODETABEK region with the presence of Asosiasi Pedagang Daging Indonesia (APDI) and Asosiasi Pedagang Daging Sejabodetabek (APDS).

The agreement letter was released with the aims to request the Republic Indonesia Government to explicit in taking the decision and positive steps that prefer to the traditional market seller and consistent about cattle stocks and back to the normal price. The agreement letter consists of 3 substances, namely, agreement to walk out for 4 (four) days, inviting the others seller and market to walk out for 4 (four) days, and request the Republic Indonesia Government to explicit intake the decision.

There are a requirements to the companies, Modern Market, Supermarket, Hypermarket, owner of TPH, cattle seller or buffalo, and the meatballs mill are to not sale and stopped the operational activity for the 4 (four) nights, effectively start on Saturday 08 August 2015 until Tuesday 11 August 2015. The action by PT Sumber Cipta Kencana and CV Mitra Agro Sampurna was very potential to make an unfair competition in cattle seller in JABDETABEK region.

2. Accused Identity

In this case, as accused is the 32 companies. They are PT Andini Karya Makmur, PT Agro Giri Perkasa, PT Agrisatwa Jaya Kencana, PT Andini Agro Loka, PT Austasia Stockfeed, PT Bina Mentari Tunggal, PT Citra Agro Buana Semesta, PT Elders Indonesia, PT Fortuna Megah Perkasa, PT Great Giant Livestock, PT Lembu Jantan Perkasa, PT Legok Makmur Lestari, PT Lemang Mesuji Lestary, PT Pasir Tengah, PT Rumpinary Agro Industry, PT Santoso Agrindo, PT Sadajiwa Niaga Indonesia, PT Septia Anugerah, PT Tanjung Unggul Mandiri, PT Widodo Makmur Perkasa, PT Kariyana Gita Utama, PT Sukses Ganda Lestari, PT Nusantara Tropical Farm, PT Karya Anugerah Rumpin, PT Sumber Cipta Kencana, PT Brahman Perkasa Sentosa, PT Catur Mitra Taruma, PT Kadila Lestari Jaya, CV Mitra Agro Sangkuriang, CV Mitra Agro Sampurna, and PT Karunia Alam Sentosa Abadi have an office in JABODETABEK region. But the writer will focus in 2 (two) accused. They are PT Sumber Cipta Kencana as 26's accused and CV Mitra Agro Sampurna 31's accused. The reason why the writer chooses them is to make a diversification both of them. The one is the higher close with the fines minimum, and the other one is the lower from the fines minimum.

a. PT Sumber Cipta Kencana

PT Sumber Cipta Kencana has an address in St. Hilian Biduk, Umbul Bendo, Kejadian Village, Tegineneng, Pesawaran city, Lampung 35363. This company was a legal entity, that found since 2011. This company was doing business activity in imported cattle sector.

1. In the practices, PT Sumber Cipta Kencana is not only sell the cattle import, but also they have a local cattle and buffalo too.
2. PT Sumber Cipta Kencana just imports on sometimes, not continuable in every year.
3. PT Sumber Cipta Kencana has a cattle marketing in Bekasi, Cikampek, Karawang, Tangerang, Bogor, Bandung, Jakarta, and Subang.
4. In their activity on 06 August 2015, PT Sumber Cipta Kencana has joined in an “agreement letter” with Asosiasi Pedagang Daging Indonesia (APDI) and Asosiasi Pedagang Daging Sejabotabek (APDS). This agreement letter has aims:
 - a) To keep a loyalty in imported cattle seller, such as in the supermarket, modern market and traditional market.
 - b) To invite the seller to walk out selling for 4 (four) days.

- c) To request the Republic Indonesia Government to explicit in taking the decision and positive steps that prefer to the traditional market seller and consistent about cattle stocks and back to normal price, with life weight Rp.33.000,-/kg equal with carcass prices Rp.66.000,-/kg.
- b. CV Mitra Agro Sampurna
- CV Mitra Agro Sampurna has an address in Babakan Ngantai, Rt 027/012 Kedawung village, Pabuaran, Subang city. This company was a legal entity, that found on 15 July 2011. This company was doing a business activity as feedlots, stock farmer, cow breeding, buy and sell imported cattle.
1. In the practice, CV Mitra Agro Sampurna is not only sell the cattle import, but also they have a local cattle and buffalo too.
 2. CV Mitra Agro Sampurna import continuable the cattle import in every years, since 2013 until 2015.
 3. PT Sumber Cipta Kencana has a cattle marketing in Bekasi, Cikampek, Karawang, Tangerang, Bogor, Bandung, Jakarta, and Subang.
 4. In their activity on 06 August 2015, PT Sumber Cipta Kencana has joined in an “agreement letter” with Asosiasi Pedagang Daging Indonesia (APDI) and

Asosiasi Pedagang Daging Sejabotabek (APDS). This agreement letter has aims to:

- a) To keep a loyalty in imported cattle seller, such as in the supermarket, modern market and traditional market.
- b) To invite the seller to walk out selling for 4 (four) days.
- c) To request the Republic Indonesia Government to explicit in taking the decision and positive steps that prefer to the traditional market seller and consistent about cattle stocks and back to normal price, with life weight Rp.33.000,-/kg equal with carcass prices Rp.66.000,-/kg.

3. Object and Presumption Offense

In this case, the type is an *a quo* case. An *a quo* case is an action to tie self on once or any seller as a chain of the meeting, that discuss quota and imported cattle prices in the organization. An *a quo* case in this session is imported cattle to the stockpile of cattle needs in region JABODETABEK on 2013-August 2015. Meanwhile, the offense presumption on this *a quo* case is clause 11 Indonesian Republic Constitution No. 5 of 1999 that substances “The subject forbid to make an agreement with another subject, that means to influence the price with set a production and or marketing some product and or service, that

can impact monopoly practices and unfair competition.” And clause 19 (c) Indonesian Republic Constitution No. 5 of 1999 that substances “The subject forbid to do some or any activities, itself or together with another subject, that can impacts monopoly practices and or unfair competition:

- a. Against or prevent the certain subject to do same business activity in the market;
- b. Or kill the rival’s business in the market, so it can impact monopoly practices and or unfair competition;
- c. Limited the distribution and or selling product and or service in the market;
- d. Make a discrimination practice to the certain subject”.

That offense presumption doing by the 32 companies, specifically on PT Sumber Cipta Kencana and CV Mitra Agro Sampurna. That related with an implication of “Agreement Letter” action.

4. PT Sumber Cipta Kencana and CV Mitra Agro Sampurna Department

The declaration was on 06 August 2015 that released by Asosiasi Pengusaha Pematangan Hewan Indonesia (APPHI) located meeting in St. Cilangkap No. 58 Rt.007/008, Cipayung, East Jakarta. The APPHI declaration has substances to request the seriousness of government to Ministry of Commerce and Ministry of Agriculture to make a clear the regulation and

determine the scale of the imported cattle in every year. And the second-one of the substance is abolish Rumah Potong Hewan (RPH) operational activities for 4 (four) days, that start on 08-11 August 2015.

The next of meeting is the agreement letter on 06 August 2015 the places at Palmerah Market Jakarta Centre. Attend by two organizations, Asosiasi Pedagang Daging Indonesia (APDI) and Asosiasi Pedagang Daging Sejabodetabek (APDS). The content of the agreement letter is affective to do by any RPH and cattle seller, proven with the implication of walk out on date 09-12 August 2015. The RPH and cattle seller as an instrument for feedlots impress the government to increase the quota, while in the facts that quota just for feedlots.

Noncompetes are used in the context of a contract for the sale of a business: The owner may agree not to compete with the acquiring business for a certain period of time. In this case, the 32 companies are making an agreement letter to not sale or walk out in 4 (four) days.

5. Implementation of Agreement Letter

An agreement is where one party agrees not to compete with the other party for a specific period of time and within a particular area. The seller, for example, often sign noncompetition agreements that prevent them from using the contacts gained by one employer to benefit another employer,

from selling within a particular area, or even working in the same type of business. Noncompetes are also used in the context of a contract for the sale of a business: The owner may agree not to compete with the acquiring business for a certain period of time.

In this case, the 32 companies are making an agreement letter to walk out in 4 (four) days, on 08-11 August 2015. The walkout (not slaughter) by 32 companies as RPH and cattle seller, doing specifically in JABODETABEK region. This act based on an agreement letter create on 06 August 2015 meeting at Palmerah Market Jakarta Centre. The reason for this walkout is increasing of cattle prices, the impact of this situation making companies lost. The increasing of cattle prices is because of the decreasing of imported cattle quotas.

The imported cattle quota on thus situation is cannot cover the consumer needs. In fact, the availability of local cattle and imported cattle quotas are smaller than market needs, especially in JABODETABEK region. The RPH and cattle seller as an instrument for feedlots impress the government to increase the quota, while in the facts that quota just for feedlots.

6. Cartel Impact

A cartel is a grouping of producers that work together to protect their interests. Cartels are created when a few large producers decide to co-operate with respect to aspects of their market. Once formed, cartels can fix prices for members, so that

competition on price is avoided. In this case, cartels are also called price rings. They can also restrict output released onto the market, and set rules for the members.

Setting rules are especially important in oligopolistic markets, as predicted by game theory. A significant attraction of cartels to producers is that they set rules that members follow, thus reducing risks that would exist without the cartel. But the cartel, in this case, is done by the 32 companies, the big agreement to their purposes. These companies are not considering what they have an impact after thus, and the impact as below;

a. Self impact

A self impact is everything that happens in parties after the cartel implication, especially in a company. In this case, the impacts are the companies can get the high profits that exceed of equitable.

b. The others impact

The others impact is the impact can happen to another company, such as the consumer, the economic system, and the politic system. So the other impacts in this case, as below;

1. On consumer
 - a. Increasing of imported cattle prices

This statement appropriate with the evidence TXX and evidence TXXVII – 17, that substances “If local cattle stock decreases, so the impact of this situation is increasing of cattle prices. Moreover not depended by weather or anything”.¹⁴
 - b. Minim of availability cattle on market

A walkout by the companies on 4 (four) days is make a rare availability of cattle in the market. This situations cannot avoid by consumer, because its some consequence of market distribution.
2. On economic system
 - a. Unfair competition

This situation makes an unfair competition atmosphere, because the companies are making an agreement that against with the economic rules.
 - b. Kill the cattle seller on traditional market

The cattle seller on the traditional market was has a limitation access, because they are just can sale the cattle with limited stock. Moreover, they can not sale again after the walkout by the companies.
 - c. Loss of general needs

¹⁴ KPPU Verdict Transcript No. 10/ KPPU-I/2015, p. 677.

In this case, the impact is very wide. Not limit by the seller, but the consumer is got the impact too. So this impact can impress the economy system in Indonesia, such as increase of dollar exchange rate.

7. Consideration and Recommendation Commission Council

As we know, before the judge makes a decision on the case, surely has a legal considerations. So, in this case, before the commission council make a decision offense of Indonesian Republic Constitution No. 5 of 1999 by the 32 companies, especially PT Sumber Cipta Kencana and CV Mitra Agro Sampurna. The commission council has to consider of aspects that can ease the subjects, that aspects as below:

- a. PT Sumber Cipta Kencana as 26's accused
 - 1) That appropriate with commission council consideration, the comission council have a special assessment for the XXVI accused, so the comission council reduce their respective penalties by 20%.
 - 2) The commission council have a special assessment for the XXVI accused have been kind and cooperative during the trial process. So the commission council reduce their respective penalties by 10%.¹⁵

¹⁵ KPPU Verdict Transcript No. 10/ KPPU-I/2015, p. 960.

- b. CV Mitra Agro Sampurna as 31's accused
- 1) The commission council considers there is affiliation relation between the accused parties, so the commission council gives a fines penalty of 10%. The accused was affiliation relation as below:
 - a. PT Austasia Stockfeed affiliated with PT Santosa Agrindo.
 - b. PT Tanjung Unggul Mandiri affiliated with PT Brahman Perkasa Santosa.
 - c. PT Pasir Tengah affiliated with PT Widodo Makmur Perkasa
 - d. PT Great Giant Livestock affiliated with PT Nusantara Tropical Farm.
 - e. PT Agrisatwa Jaya Kencana affiliated with PT Legok Makmur Lestari.
 - f. CV Mitra Agro Sangkuriang with CV Mitra Agro Sampurna.
 - g. PT Kadila Lestari Jaya affiliated with PT Andini Karya Makmur.
 - h. PT Septia Anugerah affiliated with PT Sadajiwa Niaga Indonesia.¹⁶
 - 2) The commission council have a special assessment for the XXXI accused have been kind and cooperative

¹⁶ KPPU Verdict Transcript No. 10/ KPPU-I/2015, p. 959-960.

during the trial process. So the commission council reduces their respective penalties by 10%.¹⁷

The commission council recommendation for the commission to give some consider the suggestion to:

- a. Ministry of Agriculture Republic Indonesia to create a consistent regulation to realize the self-sufficiency program of cattle, by empowering that starting from the nursery, farmers guidance on increasing the productivity of local cattle.
- b. Ministry of Commerce Republic Indonesia to establish a regulation of approval imported cattle quota within 1 (one) year to the importer.
- c. Ministry of Commerce Republic Indonesia to observe the affiliation relationship among importers in the approval of imported cattle quotas to avoid the unfair competition.¹⁸

8. Decision Declaration and Closing

Based on the facts, assessment, analysis and the conclusions that have been described. As well as remembering of clause 43 (3) Indonesian Republic Constitution No. 5 of 1999, so the commission council:

Decide

- a. Declare that accused: PT Sumber Cipta Kencana and CV Mitra Agro Sampurna are proven in legitimate and

¹⁷ KPPU Verdict Transcript No. 10/ PPU-I/2015, p. 960.

¹⁸ KPPU Verdict Transcript No. 10/ KPPU-I/2015, p. 960-961.

- convince of against clause 11 Indonesian Republic Constitution No. 5 of 1999 about Monopoly Practices and Unfair Competition Offense.
- b. Declare that accused: PT Sumber Cipta Kencana and CV Mitra Agro Sampurna are proven in legitimate and convince of against clause 19 (c) Indonesian Republic Constitution No. 5 of 1999 about Monopoly Practices and Unfair Competition Offense.
 - c. Penalize accused: PT Sumber Cipta Kencana as XXVI's accused, pay the fines as mush as Rp.71.414.000,- (Seventy One Million Four Hundred Fourteen Thousand Rupiahs) that must deposited to country cash as offense income deposited on business competition sector the KPPU unit by government bank with the receipt code 423755 (Offense Fines Income on Business Competition Sector).
 - d. Penalize accused: CV Mitra Agro Sampurna as XXXI's accused, pay the fines as mush as Rp.967.626.000,- (Nine Hundred Sixty Seven Million Six Hundred twenty six Thousand Rupiahs) that must deposited to country cash as offense income deposited on business competition sector the KPPU unit by government bank with the receipt code 423755 (Offense Fines Income on Business Competition Sector).

- e. Order PT Sumber Cipta Kencana as XXVI's accused and CV Mitra Agro Sampurna as XXXI's accused to report and submit the transcript of fines payment testimony for KPPU.

These decisions are set by conference in Commission Council Session on Friday, 01 April 2016 by Commission Council that consists of Dr. Drs. Chandra Setiawan, M.M., Ph.D., as the Commission Council Chairman; Dr. Sukarmi, S.H., M.H., Saidah Sakwan, MA., Drs. Munrokhim Misanam, M.A.Ec, Ph.D., and Prof. Tresna P. Soemardi, S.E., M.S., as member of Commission Council. And read in advance of the trial which is declared open to the public, on Friday 22 April 2016 with help by Ita Damayanti Wulansari, S.E., Rosanna Sarita, S.H., and Sulastri Ambarianti, S.H., as secretary.¹⁹

9. Implementation of Decision

After the investigation process until the judgment, finally the KPPU have a decide of PT Sumber Cipta Kencana as XXVI's accused and CV Mitra Agro Sampurna XXXI's accused with the decision No. 10/ KPPU-I/2015 with clause 11 Indonesian Republic Constitution No. 5 of 1999 and 19 (c) Indonesian Republic Constitution No. 5 of 1999 about Monopoly Practices and Unfair Competition Offense. After this decision, in formil law has some options that can choose by the accused, if PT

¹⁹ KPPU Verdict Transcript No. 10/ KPPU-I/2015, p. 962-970.

Sumber Cipta Kencana and CV Mitra Agro Sampurna have an objection with the KPPU decision they can submit the appeals in the country judiciary. But if they are have not an objection, the judiciary can give an execution determination. In this case, PT Sumber Cipta Kencana and CV Mitra Agro Sampurna have not an objection. So they are accept and implement the decisions.

CHAPTER IV
ISLAMIC LAW ANALYSIS ABOUT KPPU VERDICT NUMBER:
10/KPPU-I/2015

A. Legal Analysis

The walk out action against the clause 11 Indonesian Republic Constitution No. 5 of 1999 and 19 (c) Indonesian Republic Constitution No. 5 of 1999 about Monopoly Practices and Unfair Competition Offense. But in the decision No: 5/KPPU-I/2015, decide with fines Rp.71.414.000,- (Seventy One Million Four Hundred Fourteen Thousand Rupiahs) for PT Sumber Cipta Kencana and fines Rp.967.626.000,- (Nine Hundred Sixty Seven Million Six Hundred twenty-six Thousand Rupiahs) for CV Mitra Agro Sampurna. These fines are lower than minimum fines determination. From the decision of KPPU for PT Sumber Cipta Kencana and CV Mitra Agro Sampurna, it needs an analysis based on positive laws (formal and material aspects) and Islamic law.

1. Formal Aspects

The formal aspects are rules to maintain and implement the material law. In other words, the law which contains the rules concerning the manner in which a case is brought before the court and the ordinance of the judge give a verdict. The formal aspects of Indonesian criminal law are as below:

- a. Accused (clause 38 Indonesian Republic Constitution No. 5 of 1999)

- b. The preliminary investigation (clause 39 Indonesian Republic Constitution No. 5 of 1999)
- c. The advanced investigation (clause 43 verse 1-2 Indonesian Republic Constitution No. 5 of 1999)
- d. The offense decided (clause 43 verse 3-4 Indonesian Republic Constitution No. 5 of 1999)
- e. Decision implementation (clause 44 verse 1 Indonesian Republic Constitution No. 5 of 1999)
- f. Objection submission as optional (clause 44 verse 2 Indonesian Republic Constitution No. 5 of 1999)
- g. Judiciary process as optional (clause 45 verse 1-2 Indonesian Republic Constitution No. 5 of 1999)
- h. The cessation of optional (clause 45 verse 3-4 Indonesian Republic Constitution No. 5 of 1999)

In this case, KPPU received the information from the society. After the clarification has published, the Commission was released the determination No. 29/KPPU/Pen/IX/2015 on 04 September 2015 about the preliminary investigation. The next step is the advanced investigation already called the experts that recommended before by the accused with worthy. The Commission received the oral information from the experts. PT Sumber Cipta Kencana held the advanced investigation on 29 February 2016 (evidence B53) and CV Mitra Agro Sampurna on 18 February 2016 (evidence B39).

In this case, the advanced investigation had an injury time of 30 (thirty) more days. To ensure the *due process of law* and *audit et alteram partem*, the Commission continued the investigation with experts and the reporters. The writer opinion that the formal aspects in this case has been fulfillment, appropriate to the law and there is no deviation.

2. Material Aspects

a. The fulfillment of clause 11 Indonesian Republic Constitution No. 5 of 1999

The clause 11 Indonesian Republic Constitution No. 5 of 1999 that substances “The subject forbid to make an agreement with another subject, that means to influence the price with set a production and or marketing some product and or service, that can impact monopoly practices and unfair competition”. PT Sumber Cipta Kencana and CV Mitra Agro Sampurna in An Agreement Letter classification as a cartel, because they are already proven to make an agreement to walk out for 4 (four) days. So, the setting of market prices element has already completed.

b. The fulfillment of clause 19 (c) Indonesian Republic Constitution No. 5 of 1999

Clause 19 (c) Indonesian Republic Constitution No. 5 of 1999 that substances "The subject forbid to do activities, itself or together with another subject, that can impact

monopoly practices and or unfair competition: (c) Limited the distribution and or selling product and or service in the market". PT Sumber Cipta Kencana and CV Mitra Agro Sampurna in An Agreement Letter is classified as business competition resister, because they are already proven limited the distribution and rescheduling sales. So, the unfair competition element is completed.

c. The fines

The KPPU has an authority to fix the administrative punishment for the accused as describes in clause 36 (I) *jo.* and clause 47 verse 1 Indonesian Republic Constitution No. 5 of 1999. The minimum fines are Rp 1.000.000.000,- (One Billion Rupiah) and the maximum is Rp 25.000.000.000,- (Twenty Five Billion Rupiah). The aims of this clause are to take out the accused profits by the unfair competition. In addition of thus, to wary of the accused in order to not to do this again or not followed by other.

In this case, the Commission has fines by 2 steps; first, the basic denomination, and the second, adaptability of the basic denomination with add and/or cut the basic denomination. PT Sumber Cipta Kencana as 26's accused the commission council has a special assessment and reduce their respective penalties by 20%. The commission council has a special assessment for the cooperative during the trial process

reduce their respective penalties by 10%. Rp.71.414.000,- (Seventy One Million Four Hundred Fourteen Thousand Rupiahs) as their fines.

CV Mitra Agro Sampurna as 31's accused The commission council considers that there is affiliation relation between CV Mitra Agro Sangkuriang with CV Mitra Agro Sampurna, so the commission council gives a fines penalty of 10%. The commission council has a special assessment for the cooperative during the trial process reduce their respective penalties by 10%. Rp.967.626.000,- (Nine Hundred Sixty Seven Million Six Hundred twenty-six Thousand Rupiahs) as their fines.

So, the writer opinion for the material aspects in this case are the accused fines by the Commission just an administrative punishment. The Commission should be more firm in taking punishment with add the criminal principle punishment. Appropriate with clause 48 verse (1) Indonesian Republic Constitution No. 5 of 1999, that substances clause 4, clause 9-14 clause 16-19, clause 25, clause 27, and clause 28 will threat with the minimum fines is Rp 25.000.000.000,- (Twenty Five Billion Rupiah) and the maximum is Rp 100.000.000.000,- (One Hundred Billion Rupiah) or the substitute confinement fines at the longest is 6 (six) month.¹

¹ UU No. 5 of 1999 clause 48 verse (1)

The firmness in fixing the decision is very necessary because it gives prevent impact and will not repeat again by the accused or the other. Especially for the business sector, so, the business subjects will do their business with the fair competition. This condition, KPPU has an added the judiciary facts, that the accused do not claim their offense with not against the clause 11 Indonesian Republic Constitution No. 5 of 1999 and the clause 19 (c) Indonesian Republic Constitution No. 5 of 1999. So, makes the Commission are working harder. The writer opinion is correctness if the reason for the accused had cooperative, can make easier the fines. The punishment or the fines by the Commission should make more than heaviness.

B. Analysis of Islamic Law on KPPU Verdict Number: 10/KPPU-I/2015

From above discussion, on some contemporary ideas on distribution justice affords a perspective on Islam's position on what is a just distribution and thus, government policies. All the above ideas apply to "market economies". In Islam, markets also play a crucial role, but with one major difference.²

The writer has an analyzed that decision of the KPPU No. 10/KPPU-I/2015 about Monopoly Practices and Unfair Competition

² Hossein Askari, Zamir Iqbal, Abbas Mirakhor, *Challenges in Economic and Financial Policy Formulation: An Islamic Perspective*, (New York: Palgrave Macmillan, 2014), p.38.

in JABODETABEK Region cartel by PT Sumber Cipta Kencana and CV Mitra Agro Sampurna. PT Sumber Cipta Kencana and CV Mitra Agro Sampurna in their unfair competition with playing market supply, that is walk out for 4 (four) days based on an agreement letter. This action by PT Sumber Cipta Kencana and CV Mitra Agro Sampurna are forbidden by *sharia*, it is against the *lā tazlimūna wa lā tuẓlamūn* principle. Although in the practices, what are doing by PT Sumber Cipta Kencana and CV Mitra Agro Sampurna there is no in Prophet periods. But these practices have a similarity with Prophet forbids, it is احْتِكَار / *Ihtikār*. *Ihtikār* is welfare saving action, benefit, service and not want to sell to the other. The *Ihtikār* is haram³. The jurists Syafi'iyah, Hanabillah, Malikiyah, Zaidiyah and Zahiriyyah have an opinion that doing *Ihtikār* is haram.

The Malikiyyah opinions, *Ihtikār* is *haram* and must be antidotal by the government with anyways, because this action gives bad impact in many sectors, such as in the society, the economy stabilized, and the government. *Ihtikār* forbids based on the element as below:

1. The hoarding must with things are bought before, not the harvest or receives *hibah* from the other.
2. Hoarding for society needs, not consumed by certain society, and not the seasonal society needs.

³ Al-Jamal, Syaikh Sulaiman, *Hasyiah al-Jamal 'ala al-Manhaj*, juz 5, p. 537 (maktabah asy-Syamilah II).

3. The difficulties by society to get the commodity things as they need.
4. There is previous to sale with the higher prices, not consumed byself or sale with the normal prices.⁴

The jurists Syafiiyyah, Hanabillah, Malikiyah, Zaidiyah and Zahiriyyah have a reason for their opinion about *Ihtikār* forbids. Their reason is based on the verse of Al-Qur'an and Hadith about it. While in *Surah At Taubah* verse 34-35:

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا إِنَّ كَثِيرًا مِّنَ الْأَحْبَارِ وَالرُّهْبَانِ لِيَآكُلُونَ أَمْوَالَ
النَّاسِ بِالْبَاطِلِ وَيُصُدُّونَ عَن سَبِيلِ اللَّهِ ۗ وَالَّذِينَ يَكْتُمُونَ
الذَّهَبَ وَالْفِضَّةَ وَلَا يَنْفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُم بِعَذَابٍ أَلِيمٍ ﴿٣٤﴾
يَوْمَ تَحْمَىٰ عَلَيْهَا فِي نَارِ جَهَنَّمَ فَتَكْوَىٰ بِهَا جِبَاهُهُمْ وَجُنُوبُهُمْ
وظُهُورُهُمْ ۗ هَذَا مَا كَنَزْتُمْ لِأَنفُسِكُمْ فَذُوقُوا مَا كُنْتُمْ تَكْتُمُونَ ﴿٣٥﴾

“O, believers! Indeed most of the rabbis and priests misappropriate the wealth of people and hinder them from the way of Allah. To those who hoard gold and silver and do not spend it in the way of Allah, proclaim a painful punishment. The day will surely come when their treasure will be heated up in the fire of hell, and their foreheads, sides, and backs branded with it. They will be told: "This is the treasure which you hoarded. ow, taste what you were hoarding!"⁵

⁴ Wahbah Zuhaili, *Al-Fiqh al-Islâmy wa Adillatuhu*, juz 4, p. 238 (maktabah asy-Syamilah II).

⁵ *Ibid*, p. 192.

These verses describes that hoarding practices are across with Islamic guidance. Such as the Prophet said:

مَنْ اخْتَكَرَ فَهُوَ خَاطِئٌ

“Whos have hoarding, he will do an offense”. (By. Muslim 1605).

حَدَّثَنَا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ بْنِ عَزْقِ الْجَمِصِيِّ ، حَدَّثَنَا عَمْرُو بْنُ عُثْمَانَ (ح) وَحَدَّثَنَا أَحْمَدُ بْنُ النَّضْرِ الْعَسْكَرِيُّ ، حَدَّثَنَا سُلَيْمَانُ بْنُ سَلَمَةَ الْخَبَائِرِيُّ ، قَالَ : ، حَدَّثَنَا بَقِيَّةُ بْنُ الْوَلِيدِ ، حَدَّثَنَا ثَوْرُ بْنُ يَزِيدَ عَنْ خَالِدِ بْنِ مَعْدَانَ عَنْ مَعَاذِ بْنِ جَبَلٍ قَالَ سَأَلْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْاِخْتِكَارِ مَا هُوَ قَالَ إِذَا سَمِعَ بِرُخْصٍ سَاءَهُ وَإِذَا سَمِعَ بِعَلَاءٍ فَرِحَ بِهِ بِنَسِ الْعَبْدِ الْمُحْتَكِرِ إِذَا رَخَّصَ اللَّهُ الْأَسْعَارَ حَزَنَ وَإِذَا أَعْلَا فَرِحَ⁶

“Narrated from Ibrahim bin Muhammad, narrated from Amr bin Utsman and narrated from Ahmad bin Nadr al-Askariy, narrated from Sulaiman bin Salamah al-Khabairiy, said: narrated from Baqiyyah bin Walid, narrated from Tsauro bin Yazid, from Khalid bin Ma’dan, from Mu’adz bin Jabal said: I have question to Prophet about *Ihtikār*, what is this? Prophet said: if somebody (the seller) hear that the prices are low, he feels worried and if he hears that the prices are increasing, he feels happy. The worst man is if he does the *Ihtikār*, if the God give the low prices he feel worried, and if the God give the high prices, he feels happy”. (by. At-Thobaroniy).

⁶ Al-Albany, Muhammad Nashruddin, *As-Silsilatu Al-Dho’ifah Juz 12*, p. 131.

عن ابن عمر رضي الله عنه قال قال رسول الله صلى الله عليه وسلم من احتكر الطعام أربعين يوماً فقد برئ من الله وبرئ الله منه. (رواه أحمد والحاكم بسند جيد)⁷

Ibnu Umar R.A. said: that the Prophet SAW said: Who has a stockpile the food during forty days, so he will off from Allah and Allah will off for him. (by. Ahmad and Hakim with the good *sanad*).

This hadith describes, that other history a mention that who is a stockpile the food ingredient during 40 (forty) days, and he was given the alms with it. So the reward cannot be a compensation for his *Ihtikār*. This hadith was narrated by Abu Manshur Al-Dailamy in *Musnad Firdaus* book. The other *qawaid fiqhiyyah* describes:

تَصْرُفُ الْأِمَامِ عَلَى الرَّاعِيَةِ مَنُوطٌ بِالْمَصْلَحَةِ

"The priest's actions to his adherent should be linked to the benefit."

The actions and policies pursued by the leaders or authorities must be in line with the public interest not for the categories or oneself. The rule is the guardian and the bearer of people's misery. This rule comes from Imam Ash-Shafii:

مَنْزِلَةُ الْأِمَامِ مِنَ الرَّاعِيَةِ مَنْزِلَةُ الْوَالِيِّ مِنَ الْيَتِيمِ

"The position of the priest to the followers is like the guardian position of the orphan".⁸

The leader is a necessity in an association or an agency, because without a leader then an association will not go well.

⁷ Syekh Abu Hamid Muhammad bin Muhammad bin Muhammad Al-Ghozaly Al-Thusy, *Ihya' Ulumiddin Juz 2*, hlm.370.

⁸ H. Abdul Mudjib, *Kaidah-kaidah Ilmu Fiqh*, Surabaya: Kalam Mulia, p. 61-62.

This is also confirmed by the Prophet in one of his hadith that the essence of every human is lead himself and ask for their accountability. Same with president and *khalifah* be a leader for his society and responsible for what he leads.⁹

One form of power acquired by a ruler is deciding a case or determining a policy. So if we hold to the above rule, what will be decided by a leader or what policy will be taken must have a good orientation, which brings *mashlah* to the regime. Because an impact of unfair competition, especially *Ihtikār* is making a scarcity things and make the prices more expensive. This is despotic to obligation and authority of the seller forbidden in Islam.¹⁰

The wisdom of *Ihtikār* forbids by Imam Nawawi describe is an antidotal difficulties society in general situation. So, that is the reason why the Muslim has a responsibility to find welfare in the right way, and they must compete with the fair competition. Not harm herself and the other, and to get *Ridha* by Allah SWT.

⁹ Muchlis Usman, *Kaidah-kaidah Ushuliyah dan Fiqhiyah*, Surabaya: Kalam Mulia, p.14.

¹⁰ Lukman Hakim, *Prinsip-Prinsip Ekonomi Islam*, (Surakarta: Gelora Aksara Pratama, 2012), p.16.

CHAPTER V

CLOSING

A. The Conclusion

After the discussion and the comprehensive analysis, and was attended to the main of problems research with the title “**Islamic Law Analysis KPPU Verdict (Number: 10/KPPU-I/2015 About Monopoly Practices and Unfair Competition in Imported Cattle Trading JABODETABEK Market)**”. So the writer can take the conclusion as below:

1. The fine for PT Sumber Cipta Kencana and CV Mitra Agro Sampurna by the KPPU is an administrative punishment. The punishment is just light punishment. Therefore, KPPU should more firm in taking punishment, for example a criminal punishment.
2. According to the Islamic law, PT Sumber Cipta Kencana and CV Mitra Agro Sampurna have found guilty in offense احتكار / *Ihtikār* / hoarding commodity things. Therefore, KPPU gave the punishment to them by fining Rp.71.414.000,- for PT Sumber Cipta Kencana and Rp.967.626.000,- for CV Mitra Agro Sampurna. However, the decision has no impact in preventing the same cases in the future.

B. Suggestion

1. The society must know the reason for government's policy that they will not blame it without the good reason.

2. The government and the society should focus on long-term and the public benefit.

C. Closing

By saying thanks to Allah who has been blessing and giving mercies to the researcher, it is a great gift from him through finishing this final project. Although the researcher has worked maximally, yet the researcher is sure that the work is still far from perfectness and also less satisfying. Critiques and comments which are constructive are always and continuously needed by the researcher.

At least, the researcher hopes that this work will be valuable and beneficial for the researcher especially and the others who concern on any other field of study generally. *Aamiin.*

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THE ATTACHMENT

DECLARATION

Skyrocketing of imported cattle live prices in the last month, have an impact on the sharp rise in carcass and cattle prices. This situation make a weakening people purchasing power and make decrease the meatball industry, and even been the impact to out of their business.

This situation as the impact of unpredictable government to determine the imported cattle quota and availability of local cattle, that cannot to sufficient of market needs. Specifically, in 3 (three) region, there is DKI, Banten and West Java as the bigger consumer region in this country. This condition more disorganized with local cattle prices is a continueable increase that coincides with the increase of imported cattle prices.

An observe and review this problem, so the APPHI (Asosiasi Pengusaha Pemotongan Hewan Indonesia) make a general meeting on Tuesday 04 August 2015, and the decision as below:

- a. Request the seriousness of the government in here is Ministry of Commerce and Ministry of Agriculture to make a clear regulation to determine the scale of imported cattle in every year.*
- b. Abolish a Rumah Potong Hewan (RPH) operational activities for the 4 (four) nights, effectively start on Saturday 08 August 2015 until Tuesday 11 August 2015.*

So, this declaration we are release to be attending for all of part.

Jakarta, 06 August 2015

ASOSIASI PENGUSAHA PEMOTONGAN HEWAN INDONESIA

NIKMADI

General Secretary

H.HABUD HADIYANTO, SE

General Chairman

AGREEMENT LETTER

On Thursday date six month August year two thousand and fifteen (06-08-2015) the places at Palmerah Market Jakarta Centre. Already an agreement all of the cattle seller in JABODETABEK, that attend by two organizations, Asosiasi Pedagang Daging Indonesia (APDI) and Asosiasi Pedagang Daging Sejabodetabek (APDS) review, remind and a decide:

- We agree with (decision) together, since from Monday date 09 August 2015 until Wednesday date 12 August 2015, for Walk Out Vending Act on four days.*
- We invite to all of Modern Market, Supermarket, Hypermarket, to have participation to join the act, not vending frozen or fresh cattle.*
- We invite to all owner of TPH to join and have a participation the act and nonactive the slaughter for four days.*
- We invite all of the cattle seller or buffalo to obey the agreement letter, if know the seller does not have a loyalty, so we will give a punishment collaboration with the police.*
- We invite to all owner of meatballs mill to have a participation the act.*
- We request the Republic Indonesia Government to explicit in taking the decision and positive steps that prefer to the traditional market seller and consistent about cattle stocks and back to normal price, with life weight Rp.33.000,-/kg equal with carcass prices Rp.66.000,-/kg.*

- *So thus as our aspirations and inspire to be attention and together decision letter, we create in good condition, health in physical and spiritual too.*

Thank you



P U T U S A N
Perkara Nomor 10/KPPU-I/2015

Komisi Pengawas Persaingan Usaha Republik Indonesia selanjutnya disebut **Komisi** yang memeriksa Perkara Nomor 10/KPPU-I/2015 tentang Dugaan Pelanggaran Pasal 11 dan Pasal 19 huruf c Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat dalam Perdagangan Sapi Impor di Jakarta, Bogor, Depok, Tangerang, dan Bekasi (JABODETABEK), yang dilakukan oleh:-----

1. Terlapor I : **PT Andini Karya Makmur** berkedudukan di Gedung Pesona Lantai II/216 Jalan Ciputat Raya Nomor 20, Kebayoran Lama Utara, Jakarta Selatan; -----
2. Terlapor II : **PT Andini Persada Sejahtera** berkedudukan di Ruko Madison Times Square Blok B.4 Nomor 23-23A, Kelurahan Jatikarya, Kecamatan Jatisampurna, Kota Bekasi;-----
3. Terlapor III : **PT Agro Giri Perkasa** berkedudukan di Jalan Raya Trans Sumatra KM 40 Desa Kota Dalam, Kabupaten Sukabanyar, Lampung Selatan;-----
4. Terlapor IV : **PT Agrisatwa Jaya Kencana** berkedudukan di AJK Center Komplek Bidex Blok F16-17, Jalan Pahlawan Seribu – CBD, BSD City, Tangerang Selatan;-----
5. Terlapor V : **PT Andini Agro Loka** berkedudukan di Komplek Perkantoran Business Park Blok I Nomor 22 Jalan Meruya Ilir Kavling 88 Jakarta Barat;-----
6. Terlapor VI : **PT Austasia Stockfeed** berkedudukan di Wisma Millenia 6th Floor, Jalan M.T. Haryono Kavling

- 16, Jakarta;-----
7. Terlapor VII : **PT Bina Mentari Tunggal** berkedudukan di Jalan Industri Utama Raya Blok RR 2F-2G Jababeka II Cikarang Bekasi;-----
8. Terlapor VIII : **PT Citra Agro Buana Semesta** berkedudukan di Jalan Dipati Ukur Nomor 71, Bandung;-----
9. Terlapor IX : **PT Elders Indonesia** berkedudukan di Wisma Raharja Lantai 8, Jalan T.B. Simatupang Kavling C1 Cilandak, Jakarta Selatan;-----
10. Terlapor X : **PT Fortuna Megah Perkasa** berkedudukan di Jalan Gusti Ngurah Rai Nomor 8D, Jakarta Timur;-----
11. Terlapor XI : **PT Great Giant Livestock** berkedudukan di Chase Plaza Podium Lantai 5, Jalan Jenderal Sudirman Kavling 21, Jakarta;-----
12. Terlapor XII : **PT Lembu Jantan Perkasa** berkedudukan di Jalan Wirajati 7 Blok A4, Komplek TNI AU Waringin Permai Cipinang Melayu, Jakarta;-----
13. Terlapor XIII : **PT Legok Makmur Lestari** berkedudukan di Kampung Bojong Kamal RT 003/002, Desa Bojong Kamal Legok, Tangerang;-----
14. Terlapor XIV : **PT Lemang Mesuji Lestary** berkedudukan di Perumahan Taman Aries Rukan Kencana Niaga Blok AI-3M, Jakarta 11620, Nomor Telepon (021) 58907351, Nomor Faksimili (021) 58907352;-----
15. Terlapor XV : **PT Pasir Tengah** berkedudukan di Kampung Cinangsi RT 04 RW 01 Jalan Citampele, Desa Mentengsari, Kecamatan Cikalong Kulon, Kabupaten Cianjur;-----
16. Terlapor XVI : **PT Rumpinary Agro Industry** berkedudukan di Jalan Cisanggiri V/ No 4, Kebayoran Baru, Jakarta Selatan atau diketahui dengan alamat lain Jalan Raya Kalimalang Blok E Kavling N Nomor 4F, Duren Sawit Jakarta;-----
17. Terlapor XVII : **PT Santosa Agrindo** berkedudukan di Wisma Millenia 6th Floor, Jalan M.T. Haryono Kavling 16, Jakarta;-----

18. Terlapor XVIII : **PT Sadajiwa Niaga Indonesia** berkedudukan di Ruko Kalimalang Square Blok QRS, Jalan K.H. Nur Ali RT 007 RW 003, Kecamatan Bekasi Selatan, Kota Bekasi;-----
19. Terlapor XIX : **PT Septia Anugerah** berkedudukan di Jalan Raya Bambu Apus Nomor 86 RT 003/003, Kelurahan Bambu Apus, Kecamatan Cipayung, Jakarta Timur;-----
20. Terlapor XX : **PT Tanjung Unggul Mandiri** berkedudukan di Jalan Tanjung Burung Nomor 33, Teluk Naga, Tangerang 15510;-----
21. Terlapor XXI : **PT Widodo Makmur Perkasa** berkedudukan di Jalan Raya Cilangkap Nomor 58 RT 007 RW 003 Cilangkap Cipayung, Jakarta Timur;-----
22. Terlapor XXII : **PT Kariyana Gita Utama** berkedudukan di Jalan Raya Pasar Minggu Nomor 49, Jakarta Selatan;-----
23. Terlapor XXIII : **PT Sukses Ganda Lestari** berkedudukan di Menara Thamrin Lantai 3, Jalan M.H. Thamrin Kavling 3, Jakarta 10250;-----
24. Terlapor XXIV : **PT Nusantara Tropical Farm** berkedudukan di Jalan Taman Nasional Way Kambas RT 15/ RW 08, Desa Rajabasa Lama I, Labuhan Ratu, Lampung Timur;-----
25. Terlapor XXV : **PT Karya Anugerah Rumpin** berkedudukan di Jalan Raya Cibodas Nomor 99 RT 06 RW 05 Rumpin, Kabupaten Bogor;-----
26. Terlapor XXVI : **PT Sumber Cipta Kencana** berkedudukan di Jalan Hilian Biduk Dusun Umbul Bendo, Desa Kejadian, Kecamatan Tegineneng, Kabupaten Pesawaran, Lampung 35363;-----
27. Terlapor XXVII : **PT Brahman Perkasa Sentosa** berkedudukan di Jalan Tanjung Burung Nomor 33, Teluk Naga, Tangerang 15510;-----
28. Terlapor XXVIII : **PT Catur Mitra Taruma** berkedudukan di Jalan Condet Raya 23-24 RT 008 RW 012 Baru Pasar

- Rebo, Jakarta Timur 13780;-----
29. Terlapor XXIX : **PT Kadila Lestari Jaya** berkedudukan di Gedung Pesona Lantai II/217, Jalan Ciputat Raya Nomor 20, Jakarta Selatan;-----
30. Terlapor XXX : **CV Mitra Agro Sangkuriang** berkedudukan di Jalan Raya Sukabumi Gang Haji Amin Nomor D 08 RT 002/001, Kecamatan Sawahgede, Kabupaten Cianjur;-----
31. Terlapor XXXI : **CV Mitra Agro Sampurna** berkedudukan di Kampung Babakan Ngantai RT 027/012, Desa Kedawung, Kecamatan Pabuaran, Kabupaten Subang;-----
32. Terlapor XXXII : **PT Karunia Alam Sentosa Abadi** berkedudukan di Jalan Pagar Alam Dusun II Kampung Rengas, Kecamatan Bekri, Lampung Tengah;-----

telah mengambil Putusan sebagai berikut:-----

Majelis Komisi:-----

Setelah membaca Laporan Dugaan Pelanggaran; -----

Setelah membaca Tanggapan para Terlapor terhadap Laporan Dugaan Pelanggaran;-----

Setelah mendengar keterangan para Saksi;-----

Setelah mendengar keterangan para Ahli;-----

Setelah mendengar keterangan para Terlapor;-----

Setelah membaca surat-surat dan dokumen-dokumen dalam perkara ini;---

Setelah membaca Kesimpulan Hasil Persidangan dari Investigator dan para Terlapor; -----

TENTANG DUDUK PERKARA

1. Menimbang bahwa Sekretariat Komisi telah melakukan penelitian tentang adanya Dugaan Pelanggaran Pasal 11 dan Pasal 19 huruf c Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek

- Monopoli dan Persaingan Usaha Tidak Sehat (selanjutnya disebut “**UU Nomor 5 Tahun 1999**”) dalam Perdagangan Sapi Impor di Jakarta, Bogor, Depok, Tangerang, dan Bekasi (JABODETABEK); -----
2. Menimbang bahwa setelah dilakukan penyelidikan, pemberkasan dan gelar laporan maka Komisi menyatakan layak untuk masuk ke tahap Pemeriksaan Pendahuluan; -----
 3. Menimbang bahwa selanjutnya Komisi menerbitkan Penetapan Komisi Nomor 29/KPPU/Pen/IX/2015 tanggal 4 September 2015 tentang Pemeriksaan Pendahuluan Perkara Nomor 10/KPPU-I/2015 (*vide* bukti A1); -----
 4. Menimbang bahwa berdasarkan Penetapan Pemeriksaan Pendahuluan tersebut, Ketua Komisi menetapkan pembentukan Majelis Komisi melalui Keputusan Komisi Nomor 40/KPPU/Kep.3/IX/2015 tanggal 4 September 2015 tentang Penugasan Anggota Komisi sebagai Majelis Komisi pada Pemeriksaan Pendahuluan Perkara Nomor 10/KPPU-I/2015 (*vide* bukti A3); -----
 5. Menimbang bahwa Ketua Majelis Komisi Perkara Nomor 10/KPPU-I/2015 menerbitkan Surat Keputusan Majelis Komisi Nomor 26/KMK/Kep/IX/2015 tentang Jangka Waktu Pemeriksaan Pendahuluan Perkara Nomor 10/KPPU-I/2015, yaitu dalam jangka waktu paling lama 30 (tiga puluh) hari kerja terhitung sejak tanggal 15 September 2015 sampai dengan tanggal 28 Oktober 2015 (*vide* bukti A5); -----
 6. Menimbang bahwa Majelis Komisi telah menyampaikan Pemberitahuan Pemeriksaan Pendahuluan, Petikan Penetapan Pemeriksaan Pendahuluan, Petikan Surat Keputusan Majelis Komisi tentang Jangka Waktu Pemeriksaan Pendahuluan, dan Surat Panggilan Sidang Majelis Komisi I kepada para Terlapor (*vide* bukti A7-A77 dan B1); -----
 7. Menimbang bahwa pada tanggal 15 September 2015, Majelis Komisi melaksanakan Sidang Majelis Komisi I dengan agenda Pembacaan dan/atau Penyerahan Salinan Laporan Dugaan Pelanggaran oleh Investigator kepada Terlapor (*vide* bukti B1); -----
 8. Menimbang bahwa Sidang Majelis Komisi I tersebut dihadiri oleh Investigator, Terlapor I, Terlapor II, Terlapor III, Terlapor IV, Terlapor V, Terlapor VI, Terlapor VII, Terlapor VIII, Terlapor IX, Terlapor X, Terlapor

XI, Terlapor XII, Terlapor XIII, Terlapor XV, Terlapor XVI, Terlapor XVII, Terlapor XVII, Terlapor XIX, Terlapor XX, Terlapor XXI, Terlapor XXII, Terlapor XXIII, Terlapor XXV, Terlapor XXVII, Terlapor XXVIII, Terlapor XXIX, Terlapor XXX, dan Terlapor XXXI, namun Terlapor XIV, Terlapor XXV, Terlapor XXVI, dan Terlapor XXXII tidak hadir dalam Sidang Majelis tanpa memberikan kuasa kepada pihak manapun (*vide* bukti B1);-----

9. Menimbang bahwa pada Sidang Majelis Komisi I, Investigator membacakan Laporan Dugaan Pelanggaran yang pada pokoknya berisi hal-hal sebagai berikut (*vide* bukti I.2): -----

9.1. Bahwa Objek Perkara Nomor 10/KPPU-I/2015 adalah perdagangan sapi untuk memasok kebutuhan daging sapi di wilayah Jakarta, Bogor, Depok, Tangerang dan Bekasi (JABODETABEK) Tahun 2013 – Agustus 2015; -----

9.2. Tentang Pasar Bersangkutan-----

9.2.1. Bahwa Pasar Bersangkutan dalam ketentuan Pasal 1 angka 10 Undang-Undang Nomor 5 Tahun 1999 menyebutkan: "*pasar bersangkutan adalah pasar yang berkaitan dengan jangkauan atau daerah pemasaran tertentu oleh pelaku usaha atas barang dan atau jasa yang sama atau sejenis atau substitusi dari barang dan atau jasa tersebut*"; -----

9.2.2. Bahwa berdasarkan ketentuan tersebut, pengertian pasar bersangkutan mencakup 2 (dua) hal yaitu pasar geografis dan pasar produk; -----

9.2.3. Bahwa pasar produk berkaitan dengan kesamaan, atau kesejensan dan/atau tingkat substitusinya dari produk yang menjadi obyek perkara; -----

9.2.4. Bahwa pasar geografis berkaitan dengan jangkauan dan/atau daerah pemasaran produk yang menjadi obyek perkara; -----

9.2.5. Bahwa produk yang menjadi obyek perkara ini adalah sapi impor; -----

9.2.6. Bahwa produk yang sejenis dengan sapi impor adalah sapi lokal dan kerbau. Namun demikian,

- konsumen sapi impor tidak memilih untuk mengganti produk lain seperti kerbau dan sapi lokal pada saat harga produk sapi impor meningkat. Reaksi konsumen atas peningkatan harga sapi impor adalah dengan berhenti berdagang sebagaimana terjadi pada awal tahun 2013 dan awal Agustus 2015; -----
- 9.2.7. Bahwa dengan demikian, produk sapi impor yang menjadi obyek penyelidikan tidak memiliki tingkat substitusi yang dekat dengan produk sapi lokal dan kerbau;-----
- 9.2.8. Bahwa berkaitan dengan pasar geografis, faktor-faktor yang menentukan ketersediaan produk di pasar seperti: kebijakan perusahaan, biaya transportasi, lamanya perjalanan, tarif dan peraturan-peraturan yang membatasi lalu lintas perdagangan antar kota/antar wilayah;-----
- 9.2.9. Bahwa fakta yang diuraikan di atas menjelaskan terjadinya perilaku pedagang daging sapi dan atau asosiasi rumah potong hewan di wilayah JABODETABEK yang berhenti beroperasi pada awal tahun 2013 dan awal Agustus 2015 sebagai akibat naiknya harga beli produk asalnya yaitu sapi impor;-
- 9.2.10. Bahwa perilaku pedagang daging sapi dan atau asosiasi rumah potong hewan di wilayah JABODETABEK mogok berdagang ini hanya terjadi di wilayah tersebut dan tidak dilakukan oleh pedagang dan asosiasi rumah potong hewan lain di luar wilayah tersebut secara masif; -----
- 9.2.11. Bahwa fakta mogoknya pedagang daging sapi serta rumah potong hewan menyikapi naiknya harga sapi impor membuktikan pasar sapi untuk memasok daging sapi di JABODETABEK terbatas hanya pemasaran sapi hidup ke RPH dan atau belantik yang menggunakan RPH untuk memasok daging ke

melakukan tindakan serupa atau ditiru oleh calon pelanggar lainnya; -----

- 18.4. Bahwa berdasarkan Pedoman Pasal 47, Majelis Komisi menentukan besaran denda dengan menempuh dua langkah, yaitu pertama, penentuan besaran nilai dasar, dan kedua, penyesuaian besaran nilai dasar dengan menambahkan dan/atau mengurangi besaran nilai dasar tersebut; -----
- 18.5. Bahwa dalam menetapkan denda, Majelis Komisi mempertimbangkan aspek keadilan dan kemampuan membayar dari Terlapor baik dalam konteks sosial dan ekonomi. -----

19. Tentang Diktum Putusan dan Penutup; -----

Menimbang bahwa berdasarkan fakta-fakta, penilaian, analisis dan Kesimpulan di atas, serta dengan mengingat Pasal 43 ayat (3) Undang-Undang Nomor 5 Tahun 1999, Majelis Komisi: -----

MEMUTUSKAN

1. **Menyatakan bahwa Terlapor I, Terlapor II, Terlapor III, Terlapor IV, Terlapor V, Terlapor VI, Terlapor VII, Terlapor VIII, Terlapor IX, Terlapor X, Terlapor XI, Terlapor XII, Terlapor XIII, Terlapor XIV, Terlapor XV, Terlapor XVI, Terlapor XVII, Terlapor XVIII, Terlapor XIX, Terlapor XX, Terlapor XXI, Terlapor XXII, Terlapor XXIII, Terlapor XXIV, Terlapor XXV, Terlapor XXVI, Terlapor XXVII, Terlapor XXVIII, Terlapor XXIX, Terlapor XXX, Terlapor XXXI, dan Terlapor XXXII terbukti secara sah dan meyakinkan melanggar Pasal 11 Undang-Undang Nomor 5 Tahun 1999; -----**
2. **Menyatakan bahwa Terlapor I, Terlapor II, Terlapor III, Terlapor IV, Terlapor V, Terlapor VI, Terlapor VII, Terlapor VIII, Terlapor IX, Terlapor X, Terlapor XI, Terlapor XII, Terlapor XIII, Terlapor XIV, Terlapor XV, Terlapor XVI, Terlapor XVII, Terlapor XVIII, Terlapor XIX, Terlapor XX, Terlapor XXI, Terlapor XXII, Terlapor XXIII, Terlapor XXIV, Terlapor XXV, Terlapor XXVI, Terlapor XXVII, Terlapor XXVIII, Terlapor XXIX, Terlapor XXX, Terlapor XXXI, dan Terlapor XXXII terbukti secara sah dan meyakinkan**

melanggar Pasal 19 huruf c Undang-Undang Nomor 5 Tahun 1999; -----

3. Menghukum PT Andini Karya Makmur selaku Terlapor I, membayar denda sebesar Rp 1.943.717.000,00 (Satu Miliar Sembilan Ratus Empat Puluh Tiga Juta Tujuh Ratus Tujuh Belas Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
4. Menghukum PT Andini Persada Sejahtera selaku Terlapor II, membayar denda sebesar Rp 1.224.947.000,00 (Satu Miliar Dua Ratus Dua Puluh Empat Juta Sembilan Ratus Empat Puluh Tujuh Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
5. Menghukum PT Agro Giri Perkasa selaku Terlapor III, membayar denda sebesar Rp 4.051.199.000,00 (Empat Miliar Lima Puluh Satu Juta Seratus Sembilan Puluh Sembilan Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
6. Menghukum PT Agrisatwa Jaya Kencana selaku Terlapor IV, membayar denda sebesar Rp 6.463.537.000,00 (Enam Miliar Empat Ratus Enam Puluh Tiga Juta Lima Ratus Tiga Puluh Tujuh Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
7. Menghukum PT Andini Agro Loka selaku Terlapor V, membayar denda sebesar Rp 1.476.209.000,00 (Satu Miliar Empat Ratus

Tujuh Puluh Enam Juta Dua Ratus Sembilan Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----

8. Menghukum PT Austasia Stockfeed selaku Terlapor VI, membayar denda sebesar Rp 8.826.692.000,00 (Delapan Miliar Delapan Ratus Dua Puluh Enam Juta Enam Ratus Sembilan Puluh Dua Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
9. Menghukum PT Bina Mentari Tunggal selaku Terlapor VII, membayar denda sebesar Rp 2.845.342.000,00 (Dua Miliar Delapan Ratus Empat Puluh Lima Juta Tiga Ratus Empat Puluh Dua Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
10. Menghukum PT Citra Agro Buana Semesta selaku Terlapor VIII, membayar denda sebesar Rp 3.834.886.000,00 (Tiga Miliar Delapan Ratus Tiga Puluh Empat Juta Delapan Ratus Delapan Puluh Enam Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
11. Menghukum PT Elders Indonesia selaku Terlapor IX, membayar denda sebesar Rp 2.137.576.000,00 (Dua Miliar Seratus Tiga Puluh Tujuh Juta Lima Ratus Tujuh Puluh Enam Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan

- denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
12. Menghukum PT Fortuna Megah Perkasa selaku Terlapor X, membayar denda sebesar Rp 856.808.000,00 (Delapan Ratus Lima Puluh Enam Juta Delapan Ratus Delapan Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
13. Menghukum PT Great Giant Livestock selaku Terlapor XI, membayar denda sebesar Rp 9.330.374.000,00 (Sembilan Miliar Tiga Ratus Tiga Puluh Juta Tiga Ratus Tujuh Puluh Empat Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
14. Menghukum PT Lembu Jantan Perkasa selaku Terlapor XII, membayar denda sebesar Rp 3.360.963.000,00 (Tiga Miliar Tiga Ratus Enam Puluh Juta Sembilan Ratus Enam Puluh Tiga Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
15. Menghukum PT Legok Makmur Lestari selaku Terlapor XIII, membayar denda sebesar Rp 3.944.680.000,00 (Tiga Miliar Sembilan Ratus Empat Puluh Empat Juta Enam Ratus Delapan Puluh Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----

16. Menghukum PT Lemang Mesuji Lestary selaku Terlapor XIV, membayar denda sebesar Rp 651.544.000,00 (Enam Ratus Lima Puluh Satu Juta Lima Ratus Empat Puluh Empat Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
17. Menghukum PT Pasir Tengah selaku Terlapor XV, membayar denda sebesar Rp 4.784.893.000,00 (Empat Miliar Tujuh Ratus Delapan Puluh Empat Juta Delapan Ratus Sembilan Puluh Tiga Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
18. Menghukum PT Rumpinary Agro Industry selaku Terlapor XVI, membayar denda sebesar Rp 3.310.043.000,00 (Tiga Miliar Tiga Ratus Sepuluh Juta Empat Puluh Tiga Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
19. Menghukum PT Santosa Agrindo selaku Terlapor XVII, membayar denda sebesar Rp 5.454.925.000,00 (Lima Miliar Empat Ratus Lima Puluh Empat Juta Sembilan Ratus Dua Puluh Lima Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
20. Menghukum PT Sadajiwa Niaga Indonesia selaku Terlapor XVIII, membayar denda sebesar Rp 1.866.289.000,00 (Satu Miliar Delapan Ratus Enam Puluh Enam Juta Dua Ratus Delapan Puluh Sembilan Ribu Rupiah) yang harus disetor ke Kas Negara sebagai

- setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
21. Menghukum PT Septia Anugerah selaku Terlapor XIX, membayar denda sebesar Rp 1.148.677.000,00 (Satu Miliar Seratus Empat Puluh Delapan Juta Enam Ratus Tujuh Puluh Tujuh Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
22. Menghukum PT Tanjung Unggul Mandiri selaku Terlapor XX, membayar denda sebesar Rp 21.398.702.000,00 (Dua Puluh Satu Miliar Tiga Ratus Sembilan Puluh Delapan Juta Tujuh Ratus Dua Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
23. Menghukum PT Widodo Makmur Perkasa selaku Terlapor XXI, membayar denda sebesar Rp 5.866.121.000,00 (Lima Miliar Delapan Ratus Enam Puluh Enam Juta Seratus Dua Puluh Satu Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
24. Menghukum PT Kariyana Gita Utama selaku Terlapor XXII, membayar denda sebesar Rp 1.406.533.000,00 (Satu Miliar Empat Ratus Enam Juta Lima Ratus Tiga Puluh Tiga Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----

25. Menghukum PT Sukses Ganda Lestari selaku Terlapor XXIII, membayar denda sebesar Rp 505.821.000,00 (Lima Ratus Lima Juta Delapan Ratus Dua Puluh Satu Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
26. Menghukum PT Nusantara Tropical Farm selaku Terlapor XXIV, membayar denda sebesar Rp 3.885.473.000,00 (Tiga Miliar Delapan Ratus Delapan Puluh Lima Juta Empat Ratus Tujuh Puluh Tiga Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
27. Menghukum PT Karya Anugerah Rumpin selaku Terlapor XXV, membayar denda sebesar Rp 194.906.000,00 (Seratus Sembilan Puluh Empat Juta Sembilan Ratus Enam Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
28. Menghukum PT Sumber Cipta Kencana selaku Terlapor XXVI, membayar denda sebesar Rp 71.414.000,00 (Tujuh Puluh Satu Juta Empat Ratus Empat Belas Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
29. Menghukum PT Brahman Perkasa Sentosa selaku Terlapor XXVII, membayar denda sebesar Rp 803.682.000,00 (Delapan Ratus Tiga Juta Enam Ratus Delapan Puluh Dua Ribu Rupiah)

- yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
30. Menghukum PT Catur Mitra Taruma selaku Terlapor XXVIII, membayar denda sebesar Rp 1.387.733.000,00 (Satu Miliar Tiga Ratus Delapan Puluh Tujuh Juta Tujuh Ratus Tiga Puluh Tiga Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
31. Menghukum PT Kadila Lestari Jaya selaku Terlapor XXIX, membayar denda sebesar Rp 2.056.428.000,00 (Dua Miliar Lima Puluh Enam Juta Empat Ratus Dua Puluh Delapan Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
32. Menghukum CV Mitra Agro Sangkuriang selaku Terlapor XXX, membayar denda sebesar Rp 852.152.000,00 (Delapan Ratus Lima Puluh Dua Juta Seratus Lima Puluh Dua Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
33. Menghukum CV Mitra Agro Sampurna selaku Terlapor XXXI, membayar denda sebesar Rp 967.626.000,00 (Sembilan Ratus Enam Puluh Tujuh Juta Enam Ratus Dua Puluh Enam Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank

- Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
34. Menghukum PT Karunia Alam Sentosa Abadi selaku Terlapor XXXII, membayar denda sebesar Rp 441.112.000,00 (Empat Ratus Empat Puluh Satu Juta Seratus Dua Belas Ribu Rupiah) yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 423755 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha); -----
35. Memerintahkan Terlapor I, Terlapor II, Terlapor III, Terlapor IV, Terlapor V, Terlapor VI, Terlapor VII, Terlapor VIII, Terlapor IX, Terlapor X, Terlapor XI, Terlapor XII, Terlapor XIII, Terlapor XIV, Terlapor XV, Terlapor XVI, Terlapor XVII, Terlapor XVIII, Terlapor XIX, Terlapor XX, Terlapor XXI, Terlapor XXII, Terlapor XXIII, Terlapor XXIV, Terlapor XXV, Terlapor XXVI, Terlapor XXVII, Terlapor XXVIII, Terlapor XXIX, Terlapor XXX, Terlapor XXXI, dan Terlapor XXXII untuk melaporkan dan menyerahkan salinan bukti pembayaran denda tersebut ke KPPU. -----

Demikian putusan ini ditetapkan melalui musyawarah dalam Sidang Majelis Komisi pada hari **Jumat** tanggal **1 April 2016** oleh Majelis Komisi yang terdiri dari Dr. Drs. Chandra Setiawan, M.M. Ph.D., sebagai Ketua Majelis Komisi; Dr. Sukarmi, S.H., M.H., Saidah Sakwan, M.A., Drs. Munrokhim Misanam, M.A.Ec, Ph.D., dan Prof. Tresna P. Soemardi, S.E, M.S., masing-masing sebagai Anggota Majelis Komisi, dan dibacakan di muka persidangan yang dinyatakan terbuka untuk umum pada hari **Jumat** tanggal **22 April 2016**, dengan dibantu oleh Ita Damayanti Wulansari, S.E., Rosanna Sarita, S.H., dan Sulastri Ambarianti, S.H. masing-masing sebagai Panitera.

Ketua Majelis Komisi,

ttd.

Dr. Drs. Chandra Setiawan, M.M., Ph. D.

Anggota Majelis Komisi,

ttd.

Dr. Sukarmi, S.H., M.H.

Anggota Majelis Komisi,

ttd.

Anggota Majelis Komisi,

ttd.

Saidah Sakwan, M.A.

Anggota Majelis Komisi,

ttd.

Drs. Munrokhim Misanam, M.A.Ec., Ph.D. Prof. Tresna P. Soemardi, S.E., M.S.

Panitera,

ttd.

Ita Damayanti Wulansari, S.E.

ttd.

ttd.

Rosanna Sarita, S.H.

Sulastri Ambarianti, S.H.

Salinan sesuai dengan aslinya,
SEKRETARIAT KOMISI PENGAWAS PERSAINGAN USAHA
Plt. Deputi Penegakan Hukum,

Setyabudi Yulianto, S.H.

CURRICULUM VITAE



I am with the following identity:

Name : NOOR ROSIDAH

Place and date of birth : Kudus, 8 June 1966

Original Address : Rt.3/4 Loram Kulon Kec. Jati Kab. Kudus

Education:

1. SD N 1 Loram Kulon, Jati Kudus
2. MTs NU Mu'allimat Kudus
3. MA NU Mu'allimat Kudus

Semarang, 26 November 2017

Researcher,

Noor Rosidah