

COMPETITION LAW AND SECTORAL REGULATION: EFFORTS TO OVERCOME CONFLICT OF INTEREST BASED ON KPPU DECISION NUMBER 15/KPPU-I/2022

^{1,*} Putu George Matthew Simbolon and ²Oktavani Yenny

¹University of Indonesia, Jakarta, Indonesia

²Tanjungpura University, Pontianak, Indonesia

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Abstract

This research aims to explain how business actors can carry out their obligations under sectoral laws and regulations without violating the Law on Prohibition of Monopoly. This objective is achieved by analyzing the findings in the cooking oil case in 2022 based on the Decision of the Business Competition Supervisory Commission (KPPU) Number 15/KPPU-I/2022. This research is a doctrinal study that applies the Monopoly Prohibition Law, Trade Law, Industry Law and KPPU Decision regarding the cooking oil cartel in 2022. This research is also the result of a comparative study of the cooking oil case in Indonesia and the rice cartel case in the Philippines. The first discussion of this research is the KPPU's view of business actors who allegedly violated Article 5 and Article 19 letter c. of the Monopoly Prohibition Law in the decisions discussed. While the second discussion suggests how the government and KPPU can work together to overcome conflicts of interest caused by the implementation of sectoral regulations. Based on the first discussion, it can be understood that KPPU views that compliance with sectoral regulations is not a violation of the Monopoly Prohibition Law. While the second discussion shows that KPPU should invite government representatives at the preliminary examination so that a case can be resolved more efficiently and effectively.

Keywords: Law on Monopoly Prohibition, KPPU, Sectoral Regulation, Cooking Oil.

INTRODUCTION

Competition law is a legal regime whose implementation often overlaps with sectoral regulations. This situation underlies the enactment of Article 50 letter a. of Law of the Republic of Indonesia Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Monopoly Prohibition Law). This provision excludes acts or agreements that aim to implement applicable laws and regulations.¹ The enactment of this provision may negate accusations against business actors who commit monopoly and unfair business competition in the context of implementing laws and regulations (*regulatory compliance*). The general elucidation of the Monopoly Prohibition Law states that this law was established in order to balance the interests of business actors and the public interest.² The specific objectives of this law are to protect consumers, create fair business competition, and ensure fair business competition and prevent monopolistic practices and unfair business competition practices.³ The Monopoly Prohibition Law was basically established to resolve conflicts of interest between competing business actors.⁴

Such conflicts generally have an impact on small business actors who are less able to compete with their larger rivals.⁵ This multidimensional problem is clearly seen in the case of cooking oil in 2022 which was decided by the Business Competition Supervisory Commission (KPPU) through KPPU Decision Number 15/KPPU-I/2022. In this case, there were 7 business actors who were proven legally and convincingly to have carried out cooking oil cartel activities.⁶ KPPU investigators accused the companies of having entered into a price-fixing agreement prohibited in Article 5 of the Law on Monopoly Prohibition.⁷ In addition, the investigator also accused the companies of restricting the circulation or sale of goods or services as prohibited in Article 19 letter c. of the Monopoly Prohibition Law.⁸ In their defense, the business actors accused of violating these provisions stated that the cooking oil trade sector is a *heavily regulated* sector by the Indonesian government. In deciding this case, KPPU stated that the 27 business actors were not proven to have entered into a price fixing agreement.⁹ Only 7 of the 27 business actors were proven to have violated the provisions in Article 19 letter c. of the Law on Prohibition of Monopoly.¹⁰ In addition to deciding the case, KPPU also provided recommendations to

*Corresponding Author: Putu George Matthew Simbolon,
University of Indonesia, Jakarta, Indonesia.

¹Republic of Indonesia, "Law of the Republic of Indonesia Number 5 of 1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition," Pub. L. No. 33, 5 Law of the Republic of Indonesia (1999), 5.

²Republic of Indonesia, 5.

³Republic of Indonesia, Law of the Republic of Indonesia Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

⁴Enjum Jumhana and Achmad Nashrudin Priatna, "Legal reform (trade) special review of the need for an anti monopoly or unfair competition law after the copyright law | Journal of Res Justitia: Journal of Legal Science," *Journal of Res Justitia: Journal of Legal Science* 3, no. 2 (2023): 382–402, <https://doi.org/10.46306/rj.v3i2.78>.

⁵Jumhana and Priatna.

⁶Tira Santia, "KPPU Decides 7 Companies Proven to Limit Sales of Cooking Oil - Bisnis Liputan6.Com," Media, Liputan 6, May 2023, <https://www.liputan6.com/bisnis/read/5299312/kppu-putuskan-7-perusahaan-terbukti-batasi-penjualan-minyak-goreng>.

⁷KPPU, "KPPU Renders Decision on Edible Oil Case in Indonesia | KOMISI PENGAWAS PERSAWAN USAHA," Government Institution, *Business Competition Supervisory Commission of the Republic of Indonesia* (blog), May 26, 2023, <https://kppu.go.id/blog/2023/05/kppu-jatuhkan-putusan-atas-perkaraminyak-goreng-di-indonesia/>.

⁸ICC.

⁹KPPU, Decision of the Competition Supervisory Commission Case No. 15/KPPU-I/2022, No. 15 (Competition Supervisory Commission May 26, 2023).

¹⁰ICC.

the government. KPPU recommends the government to provide incentives for cooking oil producers and distributors so that they do not only concentrate on certain business actors, establish policies that are able to create new *Crude Palm Oil* business actors, and conduct supervision so that distribution can be carried out in a targeted manner.¹¹ This article argues that although these recommendations are relevant in the cooking oil sector, they are not sufficient to overcome the problems of conflicts arising from the enactment of competition rules and laws and regulations governing certain sectors of trade in goods and services. As such, this article applies the findings of the cooking oil cartel case as a basis for suggesting an appropriate regulatory model to address this conflict between rules and conflict between interests. For comparison, this article also applies the facts to the ongoing rice cartel case in the Philippines. This case is closely related to President Ferdinand Marcos' policy of setting a large price ceiling by 2023.¹²

The previous research used as the basis for writing this article. The first previous research applied is an article entitled "Analysis of Law Enforcement with the Use of Evidence in the Examination of Cooking Oil Hoarding Case No. 15/KPPU-I/2022" by Anggriani and Adam. Both the previous research and this article discuss the adverse impact of this cooking oil cartel practice on the middle to lower class community.¹³ Unlike the previous research, this article does not discuss the role of *circumstantial evidence* in competition law.¹⁴ Nevertheless, this article applies the facts regarding the cooking oil case in this previous study, as supporting material for the facts found in the analyzed KPPU decision. The second research is a journal article entitled "Problematics of the Implementation of the Principles of Fair Business Competition Case Study of Scarcity and Price Increases of Cooking Oil" by Muin, Wahyu, Ayuningtyas, Abdurachman, and Lubis. This article and previous research both analyze the effect of government intervention in the cooking oil sector on cooking oil producers' compliance with the Monopoly Prohibition Law.¹⁵ However, this study does not discuss the obstacles of KPPU investigators in collecting evidence. The collection of evidence showed that the business actors involved in this case were proven to have committed cartel practices.¹⁶ This previous research will be used as a reference to describe the policies at issue in this cooking oil case. Finally, this article applies the article entitled "Analysis of Factors Causing Indonesian Cooking Oil Scarcity in 2022" by Pratiwi, Arkusi, and Wardani. This previous study analyzed the factors that led to the scarcity of cooking oil so that the 27 business actors were accused of a cartel agreement.¹⁷ In contrast to this

previous research, this article is prescriptive because it is written with the aim that KPPU and the government together are able to overcome similar problems in the future. The factors of cooking oil scarcity in the previous study are applied as the analysis material of this article. Based on this background, this article intends to raise two issues as follows. The first problem is how KPPU views sectoral policies related to the cooking oil case from the perspective of competition law. The second problem is how the government and KPPU can work together to overcome conflicts of interest caused by the intersection between sectoral regulations and the Monopoly Prohibition Law. These two problems are answered by applying the research method below.

RESEARCH METHODS

This research is prescriptive doctrinal research conducted by applying written legal rules (*law in the books*) to the two problems above. In answering these two problems, this research applies the substance of the Monopoly Prohibition Law and laws and regulations in the fields of trade and industry. In addition, this research is also conducted by examining the findings in KPPU Decision Number 15/KPPU-I/2022 relating to government intervention in the cooking oil trade and KPPU recommendations. Finally, this research is conducted by comparing the practice of monopoly prohibition and sectoral regulation in the Philippines with the practice of monopoly prohibition and sectoral regulation in Indonesia. This research was conducted by collecting secondary data consisting of primary legal materials and secondary legal materials. Based on the search conducted, the primary legal materials used are the Monopoly Prohibition Law, the Trade Law, and the Industry Law. KPPU Decision Number 15/KPPU-I/2022 is also the primary legal material used in writing this article. The secondary legal materials applied in this research are books and journal articles that provide explanations of the primary legal materials applied in writing this article.

DISCUSSION

C.1. Views of the Indonesian Business Competition Supervisory Commission on Sectoral Regulations on Cooking Oil Trade in KPPU Decision Number 15/KPPU-I/2022

Based on the Alleged Violation Report (LDP) prepared by the KPPU investigator, the 27 reported parties in this cooking oil case are accused of violating Articles 5 and 19 letter c of the Law on Monopoly Prohibition.¹⁸ The Alleged Violation Periods of the reported parties are October 2021 to December 2021 and March 2022 to May 2022.^{19,20} In examining this case, the KPPU Panel did not find any price fixing as prohibited by Article 5 of the Business Competition Prohibition Law.²¹ However, 7 out of 27 business actors were proven to have restricted distribution and sales so that they fulfill the elements in Article 19 letter c. of the Law on Prohibition of Monopoly.

(December 14, 2023): 3688–96, <https://doi.org/10.55681/economina.v2i12.1061>.

¹⁸KPPU Investigator, "Report on Alleged Violations: Alleged Violation of Article 5 and Article 19 Letter C of Law Number 5 Year 1999 Related to the Sale of Packaged Cooking Oil in Indonesia," Investigation Letter, 2022.

¹⁹ICC Investigator.

²⁰KPPU, *Decision on Cooking Oil Case*.

²¹ICC.

¹¹ICC.

¹²Agence France-Presse and Reuters, "President Marcos Caps Rice Prices in Philippines Inflation Fight, Blames 'Cartels and Hoarders' for Surge | South China Morning Post," SCMP, September 1, 2023, <https://www.scmp.com/news/asia/southeast-asia/article/3233134/indonesian-rice-prices-surge-drought-crimps-harvest-we-dont-know-whats-going-happen>.

¹³Meylani Anggraini and Richard C. Adam, "Analysis of Law Enforcement with the Use of Evidence in the Examination of Cooking Oil Case No. 15/Kppu-I/2022," *UNES Law Review* 6, no. 1 (November 1, 2023): 3194–3200, <https://doi.org/10.31933/unesrev.v6i1.1110>.

¹⁴Anggraini and Adam.

¹⁵Harli Muin et al., "PROBLEMATICS OF PRACTICING THE PRINCIPLE OF HEALTHY COMPETITION A CASE STUDY OF SHORTAGE AND PRICE INCREASE OF CHICKEN OIL," *Journal of Law and Business (Selisik)* 9, no. 2 (2023): 91-108.

¹⁶Muin et al.

¹⁷Destiananda Suksesta Pratiwi, Faradetra Arkusi, and Kusuma Hastuti Jaya Wardani, "ANALYSIS OF THE FACTORS THAT CAUSE INDONESIA'S FRUIT OIL SHORTAGE IN 2022," *JOURNAL ECONOMINA* 2, no. 12

²² The wording of the prohibition of price fixing as ordered in Article 5 of the Law on Prohibition of Monopoly is as follows:

"(1) Business actors shall be prohibited from entering into agreements with their business competitors to fix the price for the quality of goods and or services to be paid by consumers or customers in the same relevant market. (2) The provisions as referred to in paragraph (1) shall not apply to: a. an agreement made in a joint venture; or b. an agreement based on applicable laws." (Italics by the author).²³

Meanwhile, the prohibition of sales and distribution restrictions carried out individually or jointly in Article 19 letter c. of the Law on Prohibition of Monopoly reads as follows:

"Business actors are prohibited from carrying out one or several activities, either alone or in conjunction with other business actors, which may result in monopolistic practices and or unfair business competition in the form of: ... c. Restricting the circulation and or sale of goods and or services in the relevant market;" (Italics by the author).²⁴

KPPU's findings regarding Article 5 of the Law on Prohibition of Monopoly are explained in this paragraph. Article 5 of the Law on Prohibition of Business Competition is a provision consisting of the following elements: 1.) Elements of Business Actors; 2.) Elements of Competing Business Actors; 3.) The element of goods or services; 4.) Consumer element; 5.) The relevant market element; 6.) The element of agreement; and 7.) The element of price fixing.²⁵ In explaining the element of "price fixing" in the article, the KPPU Panel stated that this agreement is prohibited because, with the jointly determined price, the business actors who are members of the agreement can obtain profits that exceed the amount they could obtain if they competed with each other.^{26,27,28.}

This article needs to explain that 2 of the 7 elements above were not fulfilled based on the results of the panel's examination during the trial. The KPPU Panel considers that the agreement element in Article 5 of the Competition Law is not fulfilled in this case.²⁹ This view is based on the results of the analysis which shows that the results of the GIMNI association meeting as described in the LDP do not show any agreement on price fixing between the reported parties.³⁰ In addition, the KPPU Panel is also of the view that the element

of "price fixing" in Article 5 is not fulfilled.³¹ This finding is based on the assessment that the significant increase in cooking oil prices was influenced by the input variable of the increase in *Crude Palm Oil* (CPO) prices.³² The price is calculated based on the price of PT Kharisma Pemasaran Bersama Nusantara (KPBN) and the real price of each reported party.³³ By examining the ratio between input variables and output variables, the Commission Panel did not find any excessive profits set by each of the reported parties during the period of the alleged violation.³⁴

In stating its findings regarding violations of Article 19 letter c of the Law on Monopoly Prohibition, the KPPU Panel made the following findings. The Panel of Commissioners is of the view that not all CPO from the reported parties is allocated to the production of cooking oil processed into "cooking oil products" due to the withholding of palm oil raw material management.³⁵ Furthermore, by comparing the sales volume of premium packaged cooking oil in the violation period and before the violation period, the Commission Panel found that there was a decrease in the production and/or sales volume of premium packaged cooking oil and/or simple packaging for the 7 reported parties.³⁶ Thus, not all reported parties are proven to have violated this provision. This cooking oil case cannot be separated from the real intervention carried out by the government during the period of violation.³⁷ In assessing the government policies in force during the period, the KPPU Panel considered the statement in the conclusion submitted by the XIX Respondent. The conclusion states that the cooking oil market in Indonesia, especially packaged cooking oil, is *heavily regulated* by the government.³⁸ In addition, the Witness on behalf of Isy Karim stated that various government policies were issued based on the President's directives to the Ministry of Trade aimed at ensuring the availability of sufficient cooking oil at affordable prices in the community.³⁹ The directive was based on the significant increase in the price of cooking oil in the market.⁴⁰

The government policies established during the violation period were the Highest Retail Price (HET), *Domestic Market Obligation* (DMO), and *Domestic Price Obligation* (DPO) policies. The three policies were issued in the context of issuing export licenses, export bans, lifting export bans, and policies on the availability of bulk cooking oil and people's packaged cooking oil.⁴¹ These policies are outlined in the laws and regulations below:

1. Regulation of the Minister of Trade of the Republic of Indonesia Number 1 of 2022 concerning the Provision of Simple Packaged Cooking Oil for Community Needs in the Framework of Financing by the Palm Oil Plantation Fund Management Agency;
2. Regulation of the Minister of Trade of the Republic of Indonesia Number 2 of 2022 concerning Amendments to Regulation of the Minister of Trade of the Republic of

²²KPPU, "KPPU Ruled on the Case of Edible Oil in Indonesia | KOMISI PENGAWAS PERSAWAN USAHA."

²³Republic of Indonesia, Law of the Republic of Indonesia Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

²⁴Republic of Indonesia.

²⁵Republic of Indonesia.

²⁶KPPU, *Decision on Cooking Oil Case*.

²⁷Lunita Jawani, "The Principle of Rule of Reason Against Alleged Cartel Practices According to Article 11 of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition," *Humaya Journal: Journal of Law, Humanities, Society, and Culture* 1, no. 2 (December 5, 2021): 99–106, <https://doi.org/10.33830/humaya.v1i2.2215.2021>.

²⁸Amalia Hasanah, "Jurisdictional analysis of law enforcement on predatory pricing officers in e-commerce applications reviewed by understanding the law no 5 year 1999 on the prohibition of monopoly practices and unfair business competition," *At-Tanwir Law Review* 4, no. 1 (March 5, 2024): 46–61, <https://doi.org/10.31314/atlarev.v4i1.2917>.

²⁹KPPU, "KPPU Ruled on the Case of Edible Oil in Indonesia | KOMISI Pengawas Persawau Usaha."

³⁰KPPU, *Decision on Cooking Oil Case*.

³¹ICC.

³²ICC.

³³ICC.

³⁴ICC.

³⁵ICC.

³⁶ICC.

³⁷ICC.

³⁸ICC.

³⁹ICC.

⁴⁰ICC.

⁴¹ICC.

- Indonesia Number 19 of 2021 concerning Export Policy and Regulation;
3. Regulation of the Minister of Trade of the Republic of Indonesia Number 3 of 2022 concerning the Provision of Packaged Cooking Oil for Community Needs in the Framework of Financing by the Palm Oil Plantation Fund Management Agency;
 4. Regulation of the Minister of Trade of the Republic of Indonesia Number 6 of 2022 on the Determination of the High Retail Price (HET) of Palm Cooking Oil;
 5. Regulation of the Minister of Trade of the Republic of Indonesia Number 8 of 2022 concerning the Second Amendment to Regulation of the Minister of Trade Number 19 of 2021 concerning Export Policy and Regulation;
 6. Decree of the Minister of Trade of the Republic of Indonesia Number 129 of 2022 concerning the Determination of Amounts for the Distribution of Domestic Needs (*Domestic Market Obligation*) and Domestic Sales Prices (*Domestic Price Obligation*);
 7. Decree of the Minister of Trade of the Republic of Indonesia Number 170 of 2022 concerning the Determination of Amounts for the Distribution of Domestic Needs (*Domestic Market Obligation*) and Domestic Sales Prices (*Domestic Market Obligation*);
 8. Regulation of the Minister of Trade of the Republic of Indonesia Number 11 of 2022 concerning the Determination of the Highest Retail Price of Bulk Cooking Oil;
 9. Regulation of the Minister of Trade of the Republic of Indonesia Number 12 of 2022 concerning the Third Amendment to Regulation of the Minister of Trade Number 19 of 2021 concerning Export Policy and Regulation;
 10. Regulation of the Minister of Industry of the Republic of Indonesia Number 8 of 2022 concerning the Provision of Bulk Cooking Oil for the Needs of the Community, Micro Enterprises, and Small Enterprises in the Framework of Financing by the Palm Oil Plantation Fund Management Agency;
 11. Regulation of the Minister of Industry of the Republic of Indonesia Number 10 of 2022 concerning Amendments to Regulation of the Minister of Industry Number 8 of 2022 concerning the Provision of Bulk Cooking Oil for the Needs of the Community, Micro Enterprises, and Small Enterprises in the Framework of Financing by the Palm Oil Plantation Fund Management Agency;
 12. Regulation of the Minister of Industry of the Republic of Indonesia Number 12 of 2022 concerning the Second Amendment to Regulation of the Minister of Industry Number 8 of 2022 concerning the Provision of Bulk Cooking Oil for the Needs of the Community, Micro Enterprises, and Small Enterprises in the Framework of Financing by the Palm Oil Plantation Fund Management Agency;
 13. Regulation of the Minister of Trade of the Republic of Indonesia Number 22 of 2022 concerning the Temporary Ban on the Export of *Crude Palm Oil, Refined, Bleached and Deodorized Palm Oil, Refined, Bleached and Deodorized Palm Olein, and Used Cooking Oil*;
 14. Regulation of the Minister of Trade of the Republic of Indonesia Number 30 of 2022 concerning the Program to Accelerate the Distribution of *Crude Palm Oil, Refined (CPO), Bleached and Deodorized Palm Oil (BDPO), Refined, Bleached and Deodorized Palm Oil (RBDPO), and Used Cooking Oil (UCO)* through Export;
 15. Regulation of the Minister of Industry of the Republic of Indonesia Number 26 of 2022 concerning the Third Amendment to the Regulation of the Minister of Industry Number 8 of 2022 concerning the Provision of Bulk Cooking Oil for the Needs of the Community, Micro Enterprises, and Small Enterprises in the Framework of Financing by the Palm Oil Plantation Fund Management Agency;
 16. Regulation of the Minister of Trade of the Republic of Indonesia Number 33 of 2022 concerning the Governance of the People's Bulk Cooking Oil Program;
 17. Regulation of the Minister of Industry of the Republic of Indonesia Number 27 of 2022 concerning the Bulk Cooking Oil Information System (Simirah);
 18. Regulation of the Minister of Trade of the Republic of Indonesia Number 38 of 2022 concerning the Program to Accelerate the Distribution of *Crude Palm Oil, Refined (CPO), Bleached and Deodorized Palm Oil (BDPO), Refined, Bleached and Deodorized Palm Oil (RBDPO), and Used Cooking Oil (UCO)* through Export;
 19. Regulation of the Minister of Trade of the Republic of Indonesia Number 39 of 2022 concerning Amendments to Regulation of the Minister of Trade Number 30 of 2022 concerning the Program to Accelerate the Distribution of *Crude Palm Oil, Refined (CPO), Bleached and Deodorized Palm Oil (BDPO), Refined, Bleached and Deodorized Palm Oil (RBDPO), and Used Cooking Oil (UCO)* through Export; and
 20. Regulation of the Minister of Trade No. 41 of 2022 on the Management of People's Packaged Cooking Oil (MGKR).⁴²
- The Commission considers this series of policies to be government intervention due to a market failure in cooking oil.^{43,44} The market failure was caused by the continuous increase in the price of cooking oil.^{45,46} In this case, the government has the authority to determine the highest or lowest price due to the price increase through the price ceiling program.^{47,48} The price ceiling has caused bulk cooking oil consumers to switch to packaged cooking oil. The switch is due to the better quality of packaged cooking oil compared to bulk cooking oil.^{49,50} The high demand for packaged cooking oil then results in a scarcity of this type of cooking oil.^{51,52,53}

⁴²ICC.

⁴³Delima Afriyanti, "The impact of the increase in price of chicken oil on community wellbeing in the city of pekanbaru," *Journal of Khazanah Ulum Syariah Banking (JKUPS)* 6, no. 2 (February 21, 2022): 1–16, <https://doi.org/10.56184/jkupsjournal.v6i1.151>.

⁴⁴KPPU, *Decision on Cooking Oil Case*.

⁴⁵ICC.

⁴⁶Andi Nova Bukit et al., "The Increase in Cooking Oil Prices in the Perspective of Business Competition Law and Economics," *Justisia Journal: Journal of Law, Legislation and Social Institutions* 7, no. 1 (2022): 61–82.

⁴⁷KPPU, *Decision on Cooking Oil Case*.

⁴⁸Bukit et al., "The Increase in Cooking Oil Prices in the Perspective of Competition Law and Economics."

⁴⁹Muhammad Irsyad Kamal, Benny Rusly, and MahliAdriaman, "Problematics of the het policy of chicken oil in traditional markets and modern ritels," *PALAR (Pakuan Law Review)* 9, no. 3 (September 30, 2023): 101–19, <https://doi.org/10.33751/palar.v9i3.9004>.

⁵⁰KPPU, *Decision on Cooking Oil Case*.

⁵¹Pratiwi, Arkusi, and Wardani, "Analysis of the factors that cause indonesia's fruit oil shortage in 2022."

⁵²Anggraini and Adam, "Analysis of Law Enforcement with the Use of Evidence in the Examination of Cooking Oil Case No. 15/Kppu-I/2022."

⁵³KPPU, *Decision on Cooking Oil Case*.

The scarcity after the issuance of the price ceiling is considered a failure of the government to intervene in the Indonesian cooking oil market.⁵⁴⁵⁵ This failure has resulted in reduced economic welfare.⁵⁶ In overcoming this failure, the government then took steps by establishing DMO and DPO policies, even temporarily banning the export of CPO and its derivative products.⁵⁷⁵⁸⁵⁹ A series of these policies were taken in order to fulfill the needs of the domestic market.⁶⁰⁶¹ As this policy had a negative impact on CPO exporters, the government then lifted the export ban and returned the pricing and supply of packaged cooking oil to the market mechanism.⁶² This return resulted in the price of packaged cooking oil being higher than the price increase that occurred before the price ceiling period.⁶³

In addition to the findings on government intervention, this article also argues that *price signaling* by KPBN is an essential element in this cooking oil case. KPBN is a company engaged in the distribution, buying, and selling agent of CPO, Rubber, and Sugar.⁶⁴⁶⁵ KPBN's business activities are carried out through domestic CPO tenders. The tender price is often used as a reference for CPO prices for business actors engaged in the production and/or sale of these products and their derivative products.⁶⁶⁶⁷ Furthermore, the auction price is determined by KPBN by referring to the international CPO market price, in this case, the price on the Malaysia Derivatives Exchange and CPO Rotterdam.⁶⁸⁶⁹ The behavior of the reported parties who followed the KPBN price resulted in a price increase of 6% which previously amounted to Rp. 15,482.79 to Rp. 16,434.32. The *price signaling* also resulted in a price decline in April 2022 to 15,921.16.⁷⁰ The KPPU Panel responded to the facts of the trial by understanding that the reported parties referred to the CPO tender price as issued by KPBN. The price as set by KPBN was used as one of the input variables in conducting the test.⁷¹ The KPPU Panel expressed this view by referring to KPPU Regulation Number 4 of 2011 concerning Guidelines Article 5. The provision states that price setting is a consequence of determining the

amount of production or output.⁷²⁷³ The output is determined at a certain level so that the company can obtain maximum profits.⁷⁴⁷⁵ The achievement of profit is done by considering the production cost of demand and demand conditions.⁷⁶⁷⁷ The condition will be achieved when the additional sales of one unit of output is equal to the additional cost of producing one unit of output.⁷⁸⁷⁹ Thus, production efficiency can be achieved so that pricing lower than its competitors can also be done.⁸⁰⁸¹ With this decrease, the business actors do not engage in price competition but instead enter into an agreement to set prices jointly to maintain or increase mutual profits.⁸²⁸³ The members of this agreement will benefit more than their competitors.⁸⁴⁸⁵ The KPPU Panel then applies these provisions in finding whether the reported parties set prices based on the KPBN price or not.⁸⁶ The assessment is carried out by calculating the input-output ratio which will show that if the ratio result is closer to 1, the profit margin obtained is smaller and if the ratio exceeds 1, the company experiences a loss.⁸⁷ The results of the calculation show that the profit margin obtained by the Reported Party I up to the Reported Party XXVII is getting smaller in the period of the alleged violation when compared to the ratio during the period before the alleged violation.⁸⁸ In other words, the Commission Panel is of the view that the Reported Party I up to the Reported Party XXVII is proven not to conduct price fixing.⁸⁹ The findings in this cooking oil case show that price-fixing agreements and restrictions on sales and distribution are not only carried out in order to gain profits, which is contrary to the Monopoly Prohibition Law. However, there are other factors such as government policies that cause business actors to uniform their actions. Furthermore, the role of the international market is also another factor that causes business actors to adjust, but on the other hand, such adjustments have the potential to violate the Monopoly

⁵⁴ Arya Putra Rizal Pratama et al., "Urgency of leniency program regulation on dugaankartel over the shortage of holy growing oil in Indonesia," *UNES Law Review* 5, no. 4 (June 13, 2023): 2267–83, <https://doi.org/10.31933/unesrev.v5i4.479>.

⁵⁵ KPPU, *Decision on Cooking Oil Case*.

⁵⁶ ICC.

⁵⁷ Ayu Arianti, "Juridical review of cpo policy and frych oil with dmo and dpo schemes," *Darma Agung Journal* 31, no. 5 (October 13, 2023): 26–36, <https://doi.org/10.46930/ojsuda.v31i5.3681>.

⁵⁸ Bukit et al., "The Increase in Cooking Oil Prices in the Perspective of Competition Law and Economics."

⁵⁹ KPPU, *Decision on Cooking Oil Case*.

⁶⁰ Arianti, "Juridical overview of cpo and fat oil policy with dmo and dpo schemes."

⁶¹ KPPU, *Decision on Cooking Oil Case*.

⁶² ICC.

⁶³ ICC.

⁶⁴ Kharisma Pemasaran Bersama Nusantara, "Line of Business - Kharisma Bersama Pemasaran Nusantara (KPBN)," Company Website, [kpbn.co.id](https://www.kpbn.co.id/id/lini-bisnis.html), 2024, <https://www.kpbn.co.id/id/lini-bisnis.html>.

⁶⁵ KPPU, *Decision on Cooking Oil Case*.

⁶⁶ Nuri Ma'rifatul Laily, "Comparative Study of the Indonesian Government's Policy with Umar Bin Khattab in Pricing," *Islamic Economics Scientific Journal* 9, no. 3 (November 28, 2023): 4679–83, <https://doi.org/10.29040/jiei.v9i3.10264>.

⁶⁷ KPPU, *Decision on Cooking Oil Case*.

⁶⁸ Felippa Amanta and Nisrina Nafisah, "Palm Oil Productivity Remains Limited as Cooking Oil Prices Surge in Indonesia," February 8, 2022, <https://doi.org/10.35497/355798>.

⁶⁹ KPPU, *Decision on Cooking Oil Case*.

⁷⁰ ICC.

⁷¹ ICC.

⁷² KPPU, "Regulation of the Business Competition Supervisory Commission Number 4 of 2011 on the Guidelines for Article 5 (Price Fixing) of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition," Pub. L. No. 4, 4 KPPU Regulation (2011).

⁷³ KPPU, *Decision on Cooking Oil Case*.

⁷⁴ KPPU, Regulation of the Business Competition Supervisory Commission Number 4 of 2011 on Guidelines for Article 5 (Price Fixing) of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

⁷⁵ KPPU, *Decision on Cooking Oil Case*.

⁷⁶ KPPU, Regulation of the Business Competition Supervisory Commission Number 4 of 2011 on Guidelines for Article 5 (Price Fixing) of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

⁷⁷ KPPU, *Decision on Cooking Oil Case*.

⁷⁸ KPPU, Regulation of the Business Competition Supervisory Commission Number 4 of 2011 on Guidelines for Article 5 (Price Fixing) of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

⁷⁹ KPPU, *Decision on Cooking Oil Case*.

⁸⁰ KPPU, Regulation of the Business Competition Supervisory Commission Number 4 of 2011 on Guidelines for Article 5 (Price Fixing) of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

⁸¹ KPPU, *Decision on Cooking Oil Case*.

⁸² KPPU, Regulation of the Business Competition Supervisory Commission Number 4 of 2011 on Guidelines for Article 5 (Price Fixing) of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

⁸³ KPPU, *Decision on Cooking Oil Case*.

⁸⁴ KPPU, Regulation of the Business Competition Supervisory Commission Number 4 of 2011 on Guidelines for Article 5 (Price Fixing) of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

⁸⁵ KPPU, *Decision on Cooking Oil Case*.

⁸⁶ ICC.

⁸⁷ ICC.

⁸⁸ ICC.

⁸⁹ ICC.

Prohibition Law. This situation does not only occur in Indonesia but also in the neighboring country of the Philippines. The rice cartel case was caused by a large price cap issued by President Ferdinand Marcos.⁹⁰ This price cap resulted in businesses entering into cartel agreements and restrictions on the amount of rice sold in the Philippines.^{91,92} On the other hand, this policy made it difficult for the Philippine Competition Commission to investigate the ongoing large cartel case as it made it difficult for the authority to find evidence to support the alleged violation.⁹³ With reference to the cooking oil case in this discussion, the policy set by President Marcos has similarities with the price ceiling program.^{94,95} The similarities are evident in the maximum and minimum prices set so that businesses must jointly set the same price.

This stance of rice producers in the Philippines is also based on the following foreign trade policies. Based on *Republic Act No. 11203 Year 2019*, the Philippine government established a tariff policy on imported rice and removed quantitative barriers to the import of the product.⁹⁶ This tariff allows importers to import rice freely, but they must pay a 35% levy on rice imported from countries that are not members of the *Association of Southeast Asian Nations (ASEAN)*.⁹⁷ The tariff is planned to be applied to subsidize the Philippine domestic industry.⁹⁸ This policy had a negative impact in the form of rice prices not declining as expected by the Philippine Government and the decline was not in line with the purchasing power of Filipino farmers.⁹⁹ Similar to the CPO export ban policy that was later revoked by the Indonesian Government in the case of cooking oil,¹⁰⁰ this policy can be classified as a foreign trade policy that distorts the domestic market. The implementation of the large price-fixing policy and the large import tariff policy has resulted in a lack of *checks and balances* between the *Philippine Competition Commission* and the Philippine Government.¹⁰¹ While the Philippine government is certainly trying to review its policies, the Philippine Competition Commission is continuing its investigations to protect the interests of small farmers.¹⁰² Cagahastian stated that one of the root causes of this protracted case is the lack of public knowledge about Philippine competition law.¹⁰³ In contrast to the Philippine case, this article views the lack of coordination between the government

and the KPPU as the root cause of the conflict of interest in Indonesia's competition law regime. Based on the comparison, this article argues that Indonesia should have a legal instrument that makes it easier for KPPU and the government to coordinate. Through such coordination, the litigation process at the KPPU does not need to take a long time. This efficiency can be achieved because the government can be present in order to explain the *rationale* of the policies it issues. The idea of the need for coordination is explained in the second discussion of this article. This discussion is presented by first explaining the authority of KPPU and the authority of the relevant ministries.

Ideas on Efforts to Harmonize the Law on Prohibition of Monopoly with Sectoral Regulations in the Field of Production, Distribution, and Sale of Goods Affecting the Needs of the Public

The adjustment of the price and quantity of cooking oil caused by the enactment of sectoral policies is a conflict of interest caused by the limited ability of legislators. HLA Hart states that humans have limitations in compiling a rule of law.¹⁰⁴ This limitation is seen in the inability of humans to anticipate the consequences that arise as a result of the formation and enactment of a rule of law.¹⁰⁵ HLA Hart views this phenomenon as vagueness or *open texture*.¹⁰⁶ Waismann, the author on whom Hart's notion of open texture is based, illustrates this doctrine as follows. If someone tells you that there is a cat in the next room, is checking the next room sufficient to prove the messenger's statement is true?¹⁰⁷ Or does the person inspecting the room have to prove that the object in the room is really a cat by touching and looking at it?¹⁰⁸ Another example of the relevance of this doctrine is the existence of a rule that prohibits anyone from parking his vehicle in an area.¹⁰⁹ Due to the vagueness of the text, is a bicycle thus also classified as a vehicle?¹¹⁰ In applying the concept of open texture, this article certainly understands that Article 50 letter a. of the Monopoly Prohibition Law states that the implementation of certain laws and regulations is an exception. However, with the gap between the violation periods in the cooking oil case, namely from October 2021 to December 2021 and March 2022 to May 2022, the exception provision cannot be implemented. This situation is in line with HLA Hart's view, which is explained by Huala Adolf as human limitations in forming a legal rule.¹¹¹ HLA Hart also believes that every legal norm has a penumbra or formulation of certain words or phrases in its substance that are vague so that the

⁹⁰Chay Hofilena, "[In This Economy] Bogeymen Spawned by Marcos' Rice Price Caps," *RAPPLER* (blog), September 19, 2023, <https://www.rappler.com/voices/thought-leaders/in-this-economy-bogeymen-cartels-tariffs-spawned-bongbong-marcos-rice-price-caps/>.

⁹¹Hophylene.

⁹²Kamal, Rusly, and Adriaman, "Problematics of the het policy of chicken oil in traditional markets and modern retails."

⁹³Hofilena, "[In This Economy] Bogeymen Spawned by Marcos' Rice Price Caps."

⁹⁴Kamal, Rusly, and Adriaman, "Problematics of the het policy of chicken oil in traditional markets and modern retails."

⁹⁵Hofilena, "[In This Economy] Bogeymen Spawned by Marcos' Rice Price Caps."

⁹⁶Ralf Rivas, "'Naloloka Ako': Cynthia Villar Slams Agriculture Officials over Rice Cartels," *RAPPLER* (blog), October 22, 2020, <https://www.rappler.com/business/cynthia-villar-slams-agriculture-officials-rice-cartels-philippines/>.

⁹⁷Rivas.

⁹⁸Rivas.

⁹⁹Rivas.

¹⁰⁰Arianti, "Juridical overview of epo and fat oil policy with dmo and dpo schemes."

¹⁰¹David Cagahastian, "PCC Zeroes in on Rice-Industry Cartels | David Cagahastian," *Business Mirror*(blog), December 24, 2016, <https://businessmirror.com.ph/2016/12/24/pcc-zeroes-in-on-rice-industry-cartels/>.

¹⁰²Cagahastian.

¹⁰³Cagahastian.

¹⁰⁴Huala Adolf and An An Chandrawulan, *Introduction to Legal Philosophy* (Bandung: KENI Media, 2019).

¹⁰⁵Luana Sion Li, "The influence of linguistic philosophy on analytical jurisprudence through the perspective of h. l. a. hart," *pólemos - Revista de Estudantes de Filosofia Da Universidade de Brasília* 9, no. 18 (August 31, 2020): 315–30, <https://doi.org/10.26512/pl.v9i18.30465>.

¹⁰⁶Ana Escher, "The Concept of Open Texture in 'The Concept of Law,'" *SSRN Scholarly Paper* (Rochester, NY, August 3, 2023), <https://doi.org/10.2139/ssrn.4530348>.

¹⁰⁷Escher.

¹⁰⁸Escher.

¹⁰⁹Michael Weinberger, "La DifférenceBarthésienne Entre "écrivains et Écrivants" et La "The Open Texture of Law" Décrite Par H. L. A. Hart," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique*34, no. 2 (April 1, 2021): 409–19, <https://doi.org/10.1007/s11196-019-09654-z>.

¹¹⁰Weinberger.

¹¹¹Huala Adolf, *Philosophy of International Law: A Developing Country Perspective* (Bandung: KENI Media, 2020).

enforcer experiences confusion in applying the norm.¹¹² In order to prevent these complex and protracted problems, this article suggests a solution by referring to the following laws and regulations. Article 35 letter e. states that KPPU has the duty to provide advice and considerations on government policies relating to monopolistic practices and unfair business competition.¹¹³ On the other hand, Article 93 of Law No. 7/2014 on Trade (Trade Law) does not formulate a provision that requires the government to coordinate with non-governmental institutions, in order to formulate and determine policies in the field of trade.¹¹⁴ Similar to the Trade Law, Law No. 3/2014 on Industry (Industry Law) also does not contain provisions for such cooperation.¹¹⁵

In the practice of competition law, the KPPU usually provides recommendations to the government in the excerpts of the decisions issued by the KPPU Panel. The introduction of this article has explained that KPPU provides recommendations as follows: 1.) The government must provide incentives for producers and distributors of cooking oil so that they do not only concentrate on certain business actors; 2.) The government must establish policies that are able to create new *Crude Palm Oil* business actors; and 3.) The government must conduct supervision so that distribution can be carried out in a targeted manner.¹¹⁶ While this article does not dispute these recommendations, it is of the view that they are not sufficient to ensure that problems such as the cooking oil case do not recur. The responses to this article are outlined below. This article suggests that KPPU established a regulation that gives it the authority to request specific information from the government regarding the policies it applies to certain sectors. This suggestion is based on the provisions in Article 3 of KPPU Regulation Number 2 Year 2023 which does not include information by the government as evidence.¹¹⁷ In practice, information provided by the government is qualified as witness testimony. This practice can be seen in the testimony given by a witness on behalf of Oke Nurwan as a representative of the Director General of Domestic Trade of the Ministry of Trade of the Republic of Indonesia.¹¹⁸ The witness has provided testimony regarding the impact of the price ceiling policy on consumer behavior which results in scarcity.¹¹⁹ The classification of government testimony as witness testimony is certainly not appropriate. The inaccuracy is described based on the literature on criminal procedure in Indonesia. This article applies the findings of the criminal procedure law literature because both criminal procedure law

and competition procedure law aim to seek material truth.¹²⁰,¹²¹ In the practice of Indonesian criminal procedure law, testimony by witnesses only plays a complementary role in uncovering a criminal offense and witnesses have rights that are not regulated in the KUHP.¹²² Furthermore, the assumption in Indonesian criminal procedure practice is that witnesses are the object of examination and are often examined with uncertainty of schedule and emphasis.¹²³ Although the practice of competition law is not identical to the violation of witness rights, the literature above at least shows that witnesses are weak evidence in practice. The placement of testimony by the government as witness testimony is also not appropriate based on the doctrine of *division of power*. Friedrich Julius Stahl stated that this doctrine originates from constitutionalism.¹²⁴ Also known as the principle of separation of powers, this principle must be attached to the rule of law.¹²⁵ The doctrine of the division of powers in principle limits the powers held by the government because government itself is a set of activities that should not be abused by power holders.¹²⁶ Based on the concept of horizontal division of powers, the state must be divided into branches of executive power, legislative power, and judicial power.¹²⁷ This doctrine is associated with the position of the KPPU in the Indonesian legal order through the following description. KPPU is a complementary institution (*state auxiliary organ*) based on the Monopoly Prohibition Law.¹²⁸ This type of institution is formed outside the constitution and serves as an auxiliary to the main tasks of the state, namely legislative, executive, and judicial duties.¹²⁹ KPPU can also be seen as an administrative institution that functions to oversee the implementation of the Monopoly Prohibition Law and impose administrative sanctions on business actors who do not comply with this law.¹³⁰ Although it has the authority as a quasi-judicial institution,¹³¹ KPPU is in principle an executive institution.¹³² By understanding that the government *in concreto* the relevant ministries representing in the examination process at KPPU

¹²⁰Masyelina Boyoh, "Independence of judges in deciding *criminal*4, no. 4 (June 30, 2015), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/8936>.

¹²¹Donny W. Tobing, "Legal review of the law of competition procedures in the perspective of due process of law," *Journal of Private and Commercial Law* 1, no. 1 (November 19, 2017): 1–28, <https://doi.org/10.15294/jpcl.v1i1.12344>.

¹²²Joko Sriwidodo, *The Development of the Criminal Justice System in Indonesia* (Yogyakarta: KEPEL Press, 2020).

¹²³Ruslan Renggong, *Criminal Procedure Law: Understanding Human Rights Protection in the Detention Process in Indonesia* (Jakarta: KENCANA, 2024).

¹²⁴Buhar Hamja, "Separation and division of power in the concept of states of law and democracy," *Justisia - journal of law* 7, no. 14 (December 1, 2020): 975-1000.

¹²⁵Adinda Thalia Zahra, Aditia Sinaga, and Muhammad Rafli Firdausi, "Problematics of judge independence as executor of judicial power," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 2 (May 5, 2023): 2009–25, <https://doi.org/10.53363/bureau.v3i2.303>.

¹²⁶Hamja, "The separation and division of power in the concept of states of law and democracy."

¹²⁷Sherlock Halmes Lekipiouw, "Construction of Regional Arrangement and Government Affairs Division Model," *SASI* 26, no. 4 (December 30, 2020): 557–70, <https://doi.org/10.47268/sasi.v26i4.414>.

¹²⁸Rusmini Rusmini and Hartikasari Hartikasari, "The position of the commission for conserving business competition in the civil system in Indonesia," *Tri Pantang Law Journal* 7, no. 2 (2021): 165–161, <https://doi.org/10.51517/jhtp.v7i2.328>.

¹²⁹Rusmini and Hartikasari.

¹³⁰Connie Pania, "The position of the commission for competition oversight in Indonesia's country system," *Justicia* 13, no. 2 (June 1, 2020): 1-7.

¹³¹Pania.

¹³²Rusmini Rusmini and Juniar Hartika Sari, "The Position of the Business Competition Supervisory Commission in the Indonesian State System," *Tri Pantang Law Journal* 7, no. 2 (2021), <https://doi.org/10.51517/jhtp.v7i2.326>.

¹¹²Oshaba Gabriel Itodo, "H.L.A Hart on Legal Positivism: Implications for Contemporary Nigerian Legal," *Journal of International Relations Security and Economic Studies* 1, no. 1 (April 29, 2021): 50-54.

¹¹³Republic of Indonesia, Law of the Republic of Indonesia Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

¹¹⁴Republic of Indonesia, "Law of the Republic of Indonesia Number 7 of 2014 Concerning Trade," Pub. L. No. 45, 14 Law of the Republic of Indonesia (2014).

¹¹⁵Republic of Indonesia, "Law of the Republic of Indonesia Number 3 of 2014 Concerning Industry," Pub. L. No. 4, 3 Law of the Republic of Indonesia (2014), 3.

¹¹⁶KPPU, *Decision on Cooking Oil Case*.

¹¹⁷KPPU, "Regulation of the Business Competition Supervisory Commission of the Republic of Indonesia Number 2 of 2023 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition," Pub. L. No. 293, 3 KPPU Regulation (2023).

¹¹⁸KPPU, *Decision on Cooking Oil Case*.

¹¹⁹ICC.

and KPPU itself are both executive institutions, it is time for KPPU not to equate government testimony with witness testimony. As an idea for reform, this article suggests that information by the government regarding applicable policy regulations should be placed as separate evidence. This evidence should be taken into consideration by the KPPU to determine whether the allegedly violating business actor actually acted unlawfully, or only acted to implement sectoral regulations. This evidence must be used by the KPPU Panel conducting the examination at the preliminary examination stage. Article 1 point 11 of KPPU Regulation Number 2 Year 2023 states that preliminary examination is a series of examinations aimed at proceeding to the stage of rapid examination, changes in behavior, and to determine whether further examination is required or not.¹³³ By inviting the government as a third party to provide information at this stage, the examination at KPPU can be carried out more objectively, effectively, and does not take a lot of money or longer time. By updating the rules of business competition procedural law based on the above ideas, the KPPU can be present as a counterweight to the interests of conflicting parties. This idea is in line with the doctrine of balance by Roscoe Pound, which states that the law must be present to balance the interests of conflicting parties.¹³⁴ The presence of law is thus expected to be able to bridge the gap that arises as a consequence of conflicts that arise in society.¹³⁵ Thus, this article views conflicts arising from efforts to comply with sectoral regulations and the Monopoly Prohibition Law simultaneously as not a phenomenon of conflict between rules that must be resolved by changing the applicable material legal rules. This phenomenon must instead be addressed by updating the rules of procedural law or procedural law.

Conclusion

The conflict that arises as a consequence of the enactment of the Monopoly Prohibition Law and sectoral regulations simultaneously is a problem that must be addressed through legal reform. This conflict is evident in the cooking oil case involving 27 reported parties who allegedly violated Article 5 and Article 19 letter c. of the Monopoly Prohibition Law. From the case, all reported parties were proven not to have violated the provisions of Article 5 of the Monopoly Prohibition Law which prohibits price fixing and most of the business actors did not violate Article 19 letter c. which prohibits quantity limitation. The findings in this case prove that price fixing and quantity limitation cannot always be classified as agreements and acts that violate the Monopoly Prohibition Law. In order to prevent protracted case examinations, this article puts forward the following ideas. The idea is to place government testimony as the formulator and implementer of sectoral regulations as independent evidence. This update can improve the rules of business competition procedural law which currently places government testimony as witness testimony. The main reason for the classification of this evidence is that government

testimony cannot be equated with witness testimony. In addition, the KPPU and the government are two organs that have equal positions. Through the renewal of competition procedural law, the law can be present as a counterweight to the conflicts that arise as a result of the enactment of the Monopoly Prohibition Law and sectoral regulations simultaneously.

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