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## POWER OLIGARCHY: THE GAME OF CARTEL IN COOKING OIL SCARCITY

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### ABSTRACT

Allegations related to the cartel arise every time Indonesia experiences a shortage of cooking oil. The study aims to discuss the causes of the scarcity of cooking oil in Indonesia. Is it because of Permendagri Number 06 of 2022 or because of a cartel or is it caused by an artificial scarcity made by a syndicate? And whether this cartel and scarcity have anything to do with it. The study used qualitative research. The study uses normative or socio legal by analyzing relevant sources and news related to the scarcity of cooking oil. The results showed that the cause of the scarcity of cooking oil was the highest retail price which was marked by the issuance of Permendagri No. 6 of 2022, the law of one price which causes arbitrage, artificial scarcity by businessman, panic buying among the public, conditional sales and distribution problems. The relationship between the cartel and the scarcity of cooking oil lies in its complex and non-transparent distribution to consumers. The cartel group restrains the widely circulated cooking oil products with HRP because the businessman will lose out automatically if sold at HRP. Therefore, businessman withdraw products from the market and resulting in scarcity.

**Keywords:** Cartel; Cooking Oil; Scarcity

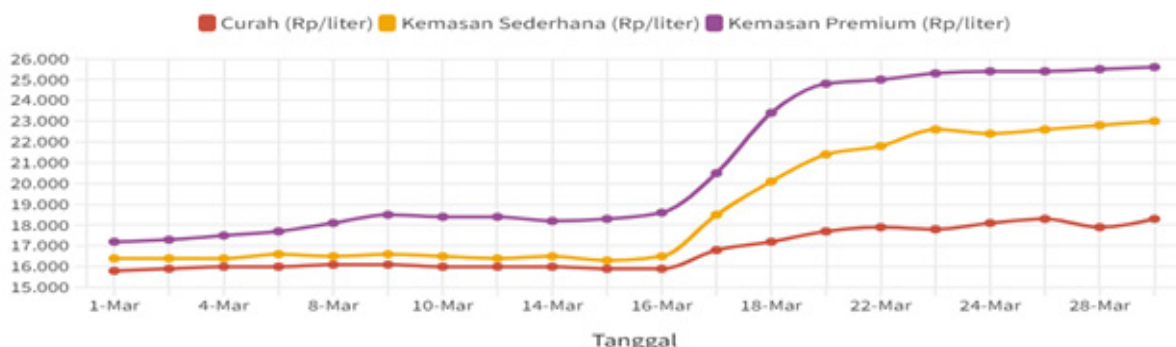
### INTRODUCTION

The one price policy issued by the Government through the Regulation of the Minister of Trade of the Republic of Indonesia Number 06 of 2022 concerning the Determination of the Highest Retail Price of Palm Cooking Oil on January 19, 2022, has become a polemic in the community. The Permendagri, that was initially expected to maintain stability and certainty at the price of palm cooking oil and the affordability of palm cooking oil prices at the consumer level, has

caused scarcity and even disappearance of cooking oil from circulation. People, especially mothers, have to rack their brains to find other alternatives to cooking oil which is suddenly scarce in early 2022.

The scarcity is due to protests by cooking oil traders against the Permendagri, which is considered detrimental to traders. In March 2022, cooking oil reappeared on supermarket shelves and shops, but still in limited quantities and at prices that are not in line with the Permendagri.

Figure 1 is the trend of increasing palm cooking oil prices in March 2022



Sumber: Sistem Pemantauan Pasar dan Kebutuhan Pokok (SP2KP) Kementerian Perdagangan

Source: Market Monitoring System and Basic Needs of the Ministry of Trade, 2022

A Flourish chart

Scarcity is a condition where a person experiences a shortage. Recently, there has been a lot of news circulating that cooking oil is scarce not due to Highest Retail Price or in Indonesian called ‘*Harga Eceran Tertinggi*’ (HET) but because the intervention of cartel by eight business groups engaged in oil palm plantations in producing cooking oil. Indonesia Competition Commission is currently investigating these eight cartel business groups. This scarcity is made as if it was a natural factor that, when investigated, turned out to be a human factor. Ironically, the scarcity is deliberately reduced in number in the market to manipulate the item’s availability.

To date, most studies have investigated cooking oil scarcity. As we know, The scarcity of cooking oil is not only something that has just happened in 2022. Hastuty Sri Hartoyo described that cooking oil is in short supply due to rising oil prices<sup>1</sup>. Furthermore, Putry Anggraini sees the other side of using bulk cooking oil in households due to household income factors<sup>2</sup>. Recent research by Asrindah Nasution states that the scarcity of cooking oil causes panic buying in the community<sup>3</sup>. No previous research has critically examined the community’s causes of the 2022 cooking oil scarcity.

The study contributes to the cause of the scarcity of cooking oil in Indonesia, which is the largest palm oil producer in the world. Departing from the real issues mentioned above, it questions the cause of the scarcity of cooking oil in Indonesia. Is it because of the highest retail price regulated in Permendagri Number 06 of 2022 or because of the intervention of cartel or is it caused by an artificial scarcity made by a syndicate? And does this cartel and scarcity have anything to do with it?

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<sup>1</sup> Hastuty Sri Hartoyo, Eka Intan K.P., Novindra, “Dampak Kenaikan Harga Minyak Bumi Terhadap Ketersediaan Minyak Goreng Sawit Domestik,” *Jurnal Ekonomi Dan Pembangunan Indonesia*, 2011.

<sup>2</sup> Basuki Sigit Priyono dan Melly Suryanty Putry Anggraini, “Faktor – Faktor Yang Mempengaruhi Tingkat Pembelian Minyak Goreng Curah Pada Rumah Tangga Di Kota Bengkulu,” *Jurnal Agrisep* 16, no. 1 (2017): 97–108.

<sup>3</sup> Asrindah Nasution, “Panic Buying Masyarakat Terhadap Kenaikan Harga Dan Kelangkaan Minyak Goreng Di Kota Medan Denai,” *Jurnal Bisnis Corporate* 6, no. 2 (2022): 113–120.

The study’s argument departs from the argument that the highest retail price is the leading cause of the scarcity of cooking oil in Indonesia. However, along with the development of the investigation carried out by the Indonesia Competition Commission, new facts emerged that the cartel and the scarcity were interrelated.

## RESEARCH METHOD

The study used qualitative research. The type of this study is normative or socio legal. Socio legal is research that works at the analytical level and *perspective emic*<sup>4</sup>. So, the research is not based on the authors’ assumptions but on conceptual and theoretical facts. The data source is primary legal materials from Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition and Permendagri No. 6 of 2022. The second primary legal are from journals, books, and news.

Technique and data collection procedure is a documentary study from the journal, book, and news about the cartel. Documentary studies can explore relevant information that occurred in the past, present, and future<sup>5</sup>. The method of data analysis are: first, the data analyzed is diverse that has different basic properties from one data to another. Second, the nature of the data analyzed is that it is entirely unity. It is characterized by a diversity of data and requires in-depth information<sup>6</sup>.

## DISCUSSION AND ANALYSIS

### A. The Causes of Scarcity of Cooking Oil

The first science learned when studying economics is about scarcity. When resources are limited, human needs are not limited. Moreover, the number of people worldwide continues to

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<sup>4</sup> Amir Hamzah, *Metode Penelitian Kepustakaan Library Research Kajian Filosofis, Aplikasi, Proses, Dan Hasil Penelitian*, ed. Febi Rizki Akbar, Edisi Revisi. (Malang: Literasi Nusantara, 2020).

<sup>5</sup> Amir Hamzah, *Metode Penelitian Kualitatif Rekonstruksi Pemikiran Dasar Serta Contoh Penerapan Pada Ilmu Pendidikan, Sosial & Humaniora*, ed. Amina Divina P (Malang: Literasi Nusantara, 2019).

<sup>6</sup> Evi Djuniarti, “The Legal Position of Sumang Child According to Customary Law in Kopong Village of East Nusa Tenggara,” *Jurnal Penelitian Hukum De Jure* 22, no. 1 (2022): 135–144.

increase, which in 2022 will reach 7.9 billion people. By 2050, population growth is expected to reach 9.4 billion people. That's why humans must continuously innovate. It is often said that nothing can satisfy all human beings because the need is unlimited. It was the first lesson in Economics.

However, Political Science ignores all that. The scarcity event is seen from a political perspective. According to Rhenald Khasali, this cooking oil was eventually used to seize power, cooking oil was used for campaigns, and cooking oil was used to influence people's minds, causing disappointment and even toppling the government.

The following will discuss the causes of the shortage of cooking oil in 2022 in Indonesia:

### 1. Highest Retail Price (HRP)

HRP is the most substantial cause of the scarcity of fried oil. Since the enactment of the Minister of Home Affairs Regulation for the Determination of HRP, cooking oil has disappeared from the market. The implementation of HRP causes entrepreneurs to withdraw their products from the market. The HRP then caused panic buying in the community.

The different distributions of consumers' prior beliefs about the future shortage rate will result in different consumer stockpiling behaviors. The distribution of consumers' prior beliefs plays a vital role in determining consumers' stockpiling behavior, which will further influence total social welfare. For example, when Hurricane Dorian was approaching, some supermarkets announced that they were sufficiently stocked and ready for the hurricane to ease consumers' panic<sup>7</sup>. This example can be used as a step by the government to overcome panic buying instead of asking questions and wondering why cooking oil is scarce in the market. Government policies have become a boomerang for the people themselves.

The revocation of the Permendagri does not necessarily stabilize the existence of cooking oil. Scarcity has already occurred;

<sup>7</sup> Rui Zheng, Biying Shou, Jun Yang, "Supply Disruption Management under Consumer Panic Buying and Social Learning Effects," *Omega (United Kingdom)* 101, no. June (2021): 1–38, <https://doi.org/10.1016/j.omega.2020.102238>.

entrepreneurs have been smuggling and exporting to other countries, willing to buy at a higher price. Worse yet, the Prosecutor's Office has just announced that four suspects of cooking oil corruption are the masterminds of the shortage of cooking oil. The four suspects are Direktur Jenderal Perdagangan Luar Negeri Kementerian Perdagangan (Kemendag) Indrasari Wisnu Wardhana, Manager Corporate Affairs Permata Hijau Stanley MA, Komisararis PT Wilmar Nabati Indonesia Parulian Tumanggor, and General Manager General Affairs PT Musim Mas Togar Sitanggang.

### 2. The Law of One Price

The government has set the price of cooking oil in Indonesia at Rp. 14,000. However, overseas the price of cooking oil is Rp. 80,000 and above Rp. 100,000. This significant price difference gives rise to an event called Arbitrage.

Arbitrage allows the trader to take the opportunity to ship to a country that sells more expensively. The law of one price does not allow for two prices. The price will shift to the side that pays the most. Meanwhile, consumers always look for low prices for identical products (same goods). In such an event, cooking oil will move to rich countries with higher purchasing power than Indonesia. So entrepreneurs may approach the government, in this case, the Ministry of Trade, to obtain goods export permits. If you don't get a permit, then a smuggling phenomenon emerges.

### 3. Artificial Scarcity

Strategies to create artificial scarcity include vertical integration of industry to facilitate the centralization of control over aspects of production, the development of copyright (juridical approaches to exclude access), and limiting easy access by regulating the production of the good or by regulating access to technologies<sup>8</sup>. As the name suggests, some created artificial scarcity to create rarity. Scarcity is created

<sup>8</sup> Rachel O'Dwyer, "Limited Edition: Producing Artificial Scarcity for Digital Art on The Blockchain and Its Implications for The Cultural Industries," *Convergence* 26, no. 4 (2020): 874–894.

by adding additional costs and barriers to the circulation of goods and/or services so that goods and/or services become scarce in society.

Artificial scarcity makes a product rare in society and results in a limited number. Entrepreneurs use this strategy to make people have no choice but to buy at a high price even though it is not cooking oil that is packaged at a premium (without a brand).

This theory predicts that the value of raw materials will increase due to the perception of ongoing unavailability<sup>9</sup>. In a sense, the more scarce the goods, the more raw materials to production costs will increase due to greater demand which will automatically provide benefits for those who conceptualize this artificial scarcity.

#### 4. Panic Buying

Panic shopping or what is generally termed “panic buying” can be explained as consumer behavior in the form of people buying products in large quantities to avoid shortages in the future. This behavior is also referred to as hoarding behavior by consumers<sup>10</sup>. To anticipate and prevent panic buying, one of the subjects stated that the public certainly needs clear information from the authorities<sup>11</sup>. Panic buying can be categorized as hoarding which can cause scarcity.

#### 5. Conditional Sale

There are at least three forms of conditional sale of cooking oil found by the Indonesia Competition Commission. First, it requires a minimum shopping value (Rp. 10,000, - to Rp. 75,000, -). Second, it requires

certain memberships/members. Third, it requires the purchase of certain products. These forms of conditional sales make people lose the opportunity to reasonably get cooking oil following government regulations<sup>12</sup>.

#### 6. Distribution Problem

The Ministry of Trade said that the scarcity of cooking oil occurred at the irrigation or distribution level, which led to hoarding practices by several individuals, resulting in a scarcity phenomenon. Even though fried noodles are available, HRP causes some parties to distribute them in small quantities and withhold distribution, some distribute them not on target<sup>13</sup>. As of April 28, 2022, Joko Widodo has banned the export ban on cooking oil to ensure the availability of domestic cooking oil. Can this policy reduce the price and supply dilemma?

Figure 2. CPO Price



Chart: Annisa Alfaha • Source: Refinitiv

Source: CNBC Indonesia, September 5<sup>th</sup>, 2022

<sup>9</sup> Mustafa Aksu, Güzide Öncü E. Pektaş, and Kazım Karaboğa, “Concepts of Fast Fashion and Artificial Scarcity in Marketing in The 21th Century: TCHIBO Example,” *Journal of Naval Sciences and Engineering* 7, no. 1 (2011): 48–70.

<sup>10</sup> Muhammad Abdan Shadiqi et al., “Panic Buying Pada Pandemi COVID-19: Telaah Literatur Dari Perspektif Psikologi,” *Jurnal Psikologi Sosial* 19, no. 2 (2020): 131–141.

<sup>11</sup> Agung Minto Wahyu et al., “Perilaku Panic Buying Mengiringi Kemunculan COVID-19? Sebuah Studi Pada Awal Pandemi Di Indonesia,” *Humanitas (Jurnal Psikologi)* 5, no. 1 (2021): 76–98.

<sup>12</sup> KPPU, “Kanwil IV KPPU: Hentikan Praktek Penjualan Minyak Goreng Bersyarat,” *Kppu.Go.Id*, last modified 2022, accessed May 24, 2022, <https://kppu.go.id/blog/2022/03/kanwil-iv-kppu-hentikan-praktek-penjualan-minyak-goreng-bersyarat/>.

<sup>13</sup> Fetry Wuryasti, “Soal Polemik Minyak Goreng, Kemendag Sebut Banyak Hambatan Distribusi,” *Media Indonesia*, last modified 2022, <https://mediaindonesia.com/ekonomi/476567/soal-polemik-minyak-goreng-kemendag-sebut-banyak-hambatan-distribusi>.

The ban on exporting cooking oil made CPO prices drop drastically. This ban then also affects the shares of cooking oil companies which have fallen since the emergence of this export ban. Figure 2 shows the CPO price which fell drastically after this ban. Astra Agro Lestari and Triputra Agro Persada suffered share losses of more than 6 percent, while Salim Invomas Pratama fell 5.5 percent and Sinar Mas Agro Resources and Technology fell 2.75 percent immediately after Monday's market open.

CPO shares fell, resulting in rising cooking oil prices. This prohibition actually contradicts Joko Widodo's original goal that the ban on exporting cooking oil is expected to guarantee the availability of cooking oil in the country, it becomes a dilemma.

### B. The Relation between Cartel and Cooking Oil Scarcity

A cartel is the cooperation of several competing companies to coordinate their activities to control the amount of production and the price of a good and/or service to obtain a profit above a reasonable profit level. Cartels force people to buy expensive things because of the inefficiency in allocating goods and/or services.

This allocation inefficiency is due to the agreement between businessman to regulate production, horizontal pricing, tender collusion, regional division, non-territorial distribution of consumers, and market share distribution. The impact caused by a cartel is hazardous for consumers because the price will be high, and there will be limited goods and/or services in the market or what is often referred to as scarcity. Scarcity occurs due to a lack of resources while the need is increasing.

To see if there is a relationship between scarcity and the cartel, it is necessary to first examine the facts by outlining the elements contained in Article 11 of Law No. 5 of 1999 concerning Business Competition. The art states that "businessman are prohibited from entering into agreements, with rival businessman, which intends to influence prices by regulating the production of funds or marketing of goods or services, which may result in monopolistic practices and unfair business competition."

1. Elements of businessman  
The element of a businessman in question is a person or business entity, both a legal entity and a non-legal entity conducting business<sup>14</sup>. The businessman in this case is a cooking oil entrepreneur who is suspected of carrying out cartel practices by the Indonesia Competition Commission. Indonesia Competition Commission is currently investigating eight cartel business groups.
2. Elements of Agreement  
Prohibited agreements are agreements used to influence prices 'only if' the agreement can result in monopolistic practices of funds or unfair business competition<sup>15</sup>. In this case, an agreement between the cartel groups must exist, because the agreement is an important element in determining this cartel. Considering that a cartel is an agreement that is prohibited in the Business Competition Law.
3. Elements of Competing Businessman  
The elements of businessman Agreements are made with competing businessman to eliminate competition. Businessman and competitors will promise to regulate the production or marketing of goods and/or services to create an agreement on the amount of production or marketing so that competition is avoided<sup>16</sup>. This act is very 'evil' considering the parties who promised to plan to commit crimes against the wider community. Considering that currently, the economic crisis is everywhere after the Covid-19 pandemic, entering into an agreement to play with the price of cooking oil so that it causes a crisis is an act that violates humanity. Not much different

<sup>14</sup> Gaby Levina Ayal, Rinsofat Naibaho, Kasman Siburian "Tinjauan Yuridis Terhadap Kasus Kartel Minyak Goreng Di Indonesia (Studi Putusan Kppu Nomor 24/Kppu-1/2009)," *Jurnal Hukum PATIK* 07, no. 03 (2017): 229–240.

<sup>15</sup> Yuniar Hayu Wintasari, "Analisis Pertimbangan Hukum Kasus Kartel Minyak Goreng Di Indonesia," *Jurnal Lex Renaissance* 5, no. 4 (2020): 895–911.

<sup>16</sup> Fatria Hikmatiar Al Qindy, "Kajian Hukum terhadap Kasus Kartel Minyak Goreng di Indonesia (Studi Putusan KPPU Nomor 24/KPPU-1/2009)," *Jurnal Hukum Bisnis Bonum Commune* 1, no. 1 (2018): 39–52.

from the corruption case<sup>30</sup> in the midst of the Covid-19 pandemic.

#### 4. Elements of Intent to Influence The Price

The price agreement can be a margin agreement (the difference between the price and production costs). As a result, the prices in the market are different for companies with different production classes, but the margins earned by companies in the market will be the same<sup>17</sup>. The next important element that must be proven by the Indonesia Competition Commission<sup>8</sup> in the case of the cooking oil cartel is the cartel group's efforts to influence prices. Efforts to influence prices can be proven by the existence of price fixing, conditions for production, or marketing arrangements in the act of influencing the price. In order for price fixing to be effective, it is followed by consumer allocation or regional division, or production allocation. Usually, the cartel will set production cuts. This reduction in production then caused scarcity. Thus, scarcity was created by the cartel group or we called it Artificial Scarcity. Artificial Scarcity forces the government to revoke the Permendagri for the sake of the survival of the people.

#### 5. Elements of Regulating<sup>21</sup> the Production and Marketing of Goods and/or Services

Competition from businessman and competitors in unfair business competition makes specific policies to agree on the number of production goods to keep market supply low so that high prices can be set. The cartel is carried out to eliminate business competition, determine the same price, divide product marketing areas, and regulate the amount of production of goods. So the business competition will not be conducive due to price volatility that will affect the purchasing power of consumers<sup>18</sup>.

<sup>17</sup> Udin Silalahi dan Isabella Cynthia Edgina, "Pembuktian Perkara Kartel Di Indonesia Dengan Menggunakan Bukti Tidak Langsung (Indirect Evidence)," *Jurnal Yudisial* 10, no. 3 (2017): 311–330.

<sup>18</sup> Lunita Jawani, "Prinsip Rule of Reason Terhadap Praktik Dugaan Kartel Menurut Pasal 11 Undang-Undang Nomor. 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat," *HUMAYA: Jurnal Hukum, Humaniora, Masyarakat, dan Budaya* 1, no. 2 (2021): 99–106.

Agreements were made to regulate<sup>20</sup> the production and marketing of goods and/or services. This arrangement aims to limit supply and eliminate competition. Not infrequently, this arrangement results in scarcity in the community.

#### 6. Elements Can Lead to Monopolistic Practices and Unfair Business Competition

The power is in the hands of businessman to influence prices so that inevitably the market is transformed according to the wishes of businessman and consumers are like clowns who are forced to follow the rules set by the businessman. As a result, monopolistic practices and unfair business competition occur in the market.

The cartel in the Business Competition Law is categorized as a Rule of Reason. Proof of a cartel through the Rule of Reason<sup>12</sup> can be proven if there is a negative effect or hinders fair business competition. Articles of the Rule of Reason in the Business Competition Law may be marked with the words "which may result in" and/or "should be suspected." Rule of Reason means whether the reasons of businessman can be accepted rationally (reasonable) or only fabricated (unreasonable resistant) to cover the violations committed<sup>19</sup>.

The reasons can be categorized as reasonable or unreasonable resistance if<sup>20</sup>:

1. The activities of businessman show signs of a reduction in production or an increase in the price of goods and/or services<sup>24</sup>
2. Are the activities of businessman direct (naked) or ancillary? If the activity is direct, then it is an act that is against the law, while if it is additional, then it is allowed
3. Businessman have market power. If businessman have market power, then there is a possibility that they will abuse that power
4. Are there high barriers to entry into the market, even though businessman have market power? Still, if there are no significant

<sup>19</sup> Lunita Jawani, "Prinsip Rule Of Reason Terhadap Praktik Dugaan Kartel Di Indonesia," *Jurnal Lex Renaissance* 7, no. 1 (2022): 31–40.

<sup>20</sup> Made Prasasta Primandhika and I Gede Artha, "Analisis Penerapan Pendekatan Rule Of Reason Dan Per Se Illegal Terhadap Kasus Kartel Di Indonesia," *Kertha Semaya: Journal Ilmu Hukum* 6, no. 7 (2018): 1–15.

market entry barriers, will it be easy for a new businessman to enter?

5. The actions of businessman whether to create substantial efficiencies and create product or service quality improvements or innovations. If these reasons are not proven, then the act is illegal
6. The actions of businessman are indeed necessary to achieve efficiency and innovation. It means that it must be proven whether the actions of the businessman are the best alternative to achieve this goal
7. There is a need for a “balancing test,” which means measuring the benefits obtained from the actions of a businessman compared to the negative consequences. The act is justified if the gain is greater than the loss.

Without a cartel, the phenomenon of supply reduction will increase prices, especially if there is a cartel. If the quantity of supply is sufficient to respond to demand, then there will be no fluctuation in price increases, let alone scarcity. This scarcity is a highly organized economic crime.

The scarcity of cooking oil associated with the cartel can be seen in the cooperation of several companies competing to coordinate activities to control the production and the price of cooking oil on the market to gain profits above a reasonable level. It is this cartel practice that creates scarcity.

According to the Indonesia Competition Commission, four big cooking oil producer groups currently control 46.5% of the market. These producers control upstream and downstream businesses, from plantations and CPO processing to cooking oil factories. This oligopolistic market allows the group of entrepreneurs to dictate the market. Therefore, it is not surprising that even on February 1, 2022, the Government has set 3 policies to overcome the scarcity and increase in oil prices, namely increasing the mandatory domestic market obligation (DMO) of CPO, and mandatory domestic price obligation (DPO). ), and cooking oil HRP, the state remains powerless to control the availability and price of cooking oil. The policy should be able to collect 720,612 tons from 3.5 million tons of CPO exports. With this amount, the market should be flooded with cooking oil. However, this did not happen. Cooking oil was “lost in the market” because the market structure of the cooking oil industry was

far from perfect. As soon as the HRP was revoked or the price of packaged cooking oil (simple and premium) was released to the market as of March 16, 2022, packaged cooking oil suddenly flooded. It means that when the triple policy (DMO, DPO, and HRP) is enforced on February 1, 2022, there are parties who hold stock.

## CONCLUSION

The scarcity of cooking oil in Indonesia that occurred in 2022 is not the first time. Previously in 2009, Indonesia had experienced the same thing. The results of the analysis of this study found that there were six causes of the scarcity of cooking oil. The three causes are in accordance with what Rhenald Khasali conceptualized. The cause of the scarcity of cooking oil were the highest retail price which was marked by the issuance of Permendagri No. 6 of 2022, the law of one price which causes arbitrage, artificial scarcity by businessman, panic buying among the public, conditional sales by shops and supermarkets as well as distribution problems.

This study also shows a close relationship between cartels and scarcity. It is an artificial scarcity that was created by businessman through cartel agreements and then a shortage appears as if CPO is experiencing a shortage so that cooking oil becomes scarce in the market. Even though the scarcity occurred because of cartel agreements and smuggling by businessman so that the government had no other choice but to withdraw Permendagri Number 6 of 2022.

## SUGGESTION

This research is inseparable from several limitations known through observations throughout the study methodologically and conceptually. Methodologically, this research data is limited, still around information from up-to-date news because research related to the scarcity of cooking oil is very lacking. Conceptually, is related to the scarcity of cooking oil in Indonesia. Therefore, further research is expected to discuss cases related to the scarcity of cooking oil, ranging from corruption of state officials, and smuggling, to cartel cases.



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