

LEGAL ANALYSIS ON THE IMPLEMENTATION OF PRIVATE ENFORCEMENT AS A WAY TO GET COMPENSATION FOR CONSUMERS AS VICTIMS OF ANTI COMPETITIVE-PRACTICES BETWEEN INDONESIA AND NETHERLANDS COMPETITION LAW

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ABSTRACT

This Legal Research aims to analyze challenges faced by the consumers as victims of anti-competitive practices in filing a damage claim based on Article 1365 of the Civil Code and to find solutions by looking at how the Netherlands Competition Law overcomes it.

This is normative-empirical research that uses primary and secondary data through interviews as well as library and online research where this is done with a legal, case, and comparative approach.

This Legal Research found that there is a legal vacuum regarding the authority of the district court or commercial court and the power of proof of the KPPU's decision which absolutely fulfils the four elements of Article 1365 when used as evidence, the burden of proof is heavy because it is difficult to obtain evidence, and the absence of regulations regarding the limitation period are challenges faced by consumer. However, the Netherlands, was able to overcome these challenges through the Implementation Act in which it will be used as reference to regulate private enforcement in Indonesia Competition Law.

Keywords: Private Enforcement, Consumer, Law No. 5 of 1999, the Implementation Act

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*Analisis Hukum Penerapan Penegakan Swasta Sebagai Cara Mendapatkan
Kompensasi Bagi Konsumen Sebagai Korban Praktik Anti Persaingan Antara
Hukum Persaingan Indonesia dan Belanda*

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INTISARI

Penelitian Hukum ini bertujuan untuk menganalisis tantangan yang dihadapi konsumen sebagai korban praktik anti persaingan dalam mengajukan gugatan ganti rugi berdasarkan Pasal 1365 Kitab Undang-Undang Hukum Perdata dan mencari solusi dengan melihat bagaimana Hukum Persaingan Usaha Belanda mengatasinya.

Penelitian Hukum ini merupakan penelitian normatif-empiris yang menggunakan data primer dan sekunder melalui wawancara serta penelitian kepustakaan dan daring dimana hal ini dilakukan dengan pendekatan undang-undang, kasus, dan perbandingan.

Penelitian Hukum ini menemukan bahwa adanya kekosongan hukum mengenai kewenangan pengadilan negeri dan kekuatan pembuktian putusan KPPU yang mutlak memenuhi keempat elemen Pasal 1365 apabila digunakan sebagai barang bukti, beban pembuktian yang berat karena sulit mendapatkan bukti, serta tidak adanya peraturan mengenai periode pembatas merupakan tantangan yang dihadapi konsumen. Namun, Belanda mampu mengatasi tantangan tersebut melalui Undang-Undang Implementasi dimana undang-undang tersebut akan digunakan sebagai acuan untuk mengatur penegakan swasta dalam Hukum Persaingan Usaha Indonesia.

Kata Kunci: *Penegakan Hukum Swasta, Konsumen, UU No. 5 Tahun 1999, Undang-Undang Implementasi*

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