

ABSTRACT

The purpose of this dissertation research is to analyze the problems of business competition law enforcement in the application of tying agreement provisions to bancassurance activities. The practice of tying agreements in business activities conducted by business actors is one of the agreements prohibited by Act Number 5 Year 1999. Bancassurance is a rapidly growing business activity and is often related to the practice of tying agreements. This is due to differences in the interpretation of Article 15 paragraph (2) of Act Number 5 Year 1999 by the Business Competition Supervisory Commission, the Judges of the District Court, and the Judges of the Supreme Court in bancassurance activities, which creates uncertainty in law enforcement. The uncertainty of law enforcement has several implications such as concerns for banks and insurance companies in carrying out bancassurance activities, so the research problem raised in this dissertation is how to enforce competition law related to the application of tying agreement provisions in bancassurance activities and how to reconstruct competition law enforcement in the application of tying agreements in bancassurance from the perspective of legal positivism.

The method used in this dissertation research is to use a normative legal research method with a descriptive and prescriptive. The data used in this study is secondary data which consists of primary, secondary, and tertiary legal materials which are inventoried, identified, and integrated to address business competition law enforcement issues related to dissertation research.

The Result of the dissertation research indicates that the enforcement of competition law regarding the application of tying agreement provisions in bancassurance activities has not provided legal certainty. Based on *per se* illegal approach, legal interpretation of Article 15 paragraph (2) is not needed. When examined from the subject approach to law enforcement, the Commission for the Supervision of Business Competition and the Judges in General Courts have different legal interpretations regarding the application of tying agreement provisions in bancassurance activities. When viewed from the object approach to law enforcement, the application of tying agreement provisions in bancassurance activities cannot be implemented. Based on a preventive approach, law enforcement can be conducted by formulating clear guidelines regarding the principles and limitations related to the application of tying agreement provisions in bancassurance activities. On the other hand, law enforcement through a repressive approach is carried out by law enforcement authorities based on the corridor of legal positivism. The reconstruction of law enforcement regarding the application of tying agreement provisions in bancassurance activities is conducted through the subject and object approaches to law enforcement. The reconstruction of the subject of law enforcement is achieved by enhancing the accurate and objective legal interpretation capabilities of law enforcement officials. The reconstruction of the object of law enforcement is carried out by re-evaluating the legal meanings and concepts of tying agreements as prohibited agreements in the supply of goods/services through a *per se* illegal approach. Additionally, the reconceptualization of the legal meaning and concept of bancassurance activities is based on agency agreements and the principle of *lastgeving*, which are exempted. Therefore, the application of tying agreement provisions in bancassurance activities is inappropriate because bancassurance activities are based on agency agreements that are exempted by Article 50 letter d of Law Number 5 of 1999.

Keyword: Law Enforcement, Tying agreement, Bancassurance

ABSTRAK

Tujuan penelitian disertasi ini adalah untuk menganalisis permasalahan penegakan hukum persaingan usaha dalam penerapan ketentuan *tying agreement* pada kegiatan *bancassurance*. *Tying agreement* merupakan salah satu perjanjian yang dilarang oleh UU Nomor 5 Tahun 1999. *Bancassurance* merupakan kegiatan usaha yang berkembang pesat dan sering kali dikaitkan sebagai praktik *tying agreement*. Hal tersebut disebabkan karena adanya perbedaan pemaknaan dalam penerapan ketentuan Pasal 15 ayat (2) UU Nomor 5 Tahun 1999 oleh Majelis Komisi KPPU, Majelis Hakim Pengadilan Negeri, maupun Majelis Hakim MA pada kegiatan *bancassurance* sehingga menimbulkan ketidakpastian dalam penegakan hukumnya. Rumusan masalah yang diangkat dalam penelitian disertasi ini yaitu bagaimanakah penegakan hukum persaingan usaha terkait penerapan ketentuan *tying agreement* pada kegiatan *bancassurance* dan bagaimanakah rekonstruksi penegakan hukum persaingan usaha dalam penerapan ketentuan *tying agreement* pada kegiatan *bancassurance* menurut perspektif positivisme hukum.

Penelitian disertasi ini menggunakan metode penelitian hukum normatif dengan model studi kepustakaan yang bersifat deskriptif dan preskriptif. Penelitian ini menggunakan data sekunder yang terdiri atas bahan hukum primer, sekunder, dan tertier yang diinventarisasi, diidentifikasi, dan dipadukan untuk menjawab permasalahan penegakan hukum persaingan usaha terkait penerapan ketentuan *tying agreement* pada kegiatan *bancassurance*.

Hasil pembahasan penelitian disertasi ini adalah penegakan hukum persaingan usaha terkait penerapan ketentuan *tying agreement* pada kegiatan *bancassurance* belum memberikan kepastian hukum. Ditinjau berdasarkan pendekatan *per se illegal*, penerapan ketentuan *tying agreement* tidak dapat diterapkan pada kegiatan *bancassurance*. Berdasarkan pendekatan preventif, penegakan hukum dapat dilakukan dengan penyusunan pedoman yang jelas mengenai prinsip dan batasan terkait penerapan ketentuan *tying agreement* pada kegiatan *bancassurance*. Sedangkan, penegakan hukum melalui pendekatan represif dilakukan oleh aparat penegak hukum berdasarkan koridor positivisme hukum sehingga penerapan ketentuan *tying agreement* pada kegiatan *bancassurance* tidak dapat diterapkan. Ditinjau melalui pendekatan penegakan hukum subjektif, Majelis Komisi KPPU dan Majelis Hakim pada Pengadilan Umum memiliki persepsi yang berbeda-beda terkait penerapan ketentuan *tying agreement* pada kegiatan *bancassurance* dan ditinjau dari penegakan hukum objektif, penerapan ketentuan *tying agreement* pada kegiatan *bancassurance* tidak dapat diterapkan. Rekonstruksi penegakan hukum persaingan usaha terkait penerapan ketentuan *tying agreement* pada kegiatan *bancassurance* dilakukan dengan pendekatan subjektif dan objektif. Rekonstruksi penegakan hukum subjektif dilakukan dengan cara meningkatkan persepsi, integritas, dan kualitas yang akurat serta objektif para penegak hukum. Lebih lanjut, rekonstruksi penegakan hukum objektif dilakukan dengan cara mendudukan kembali makna dan konseptual hukum mengenai *tying agreement* sebagai suatu perjanjian yang dilarang dalam kegiatan pasok memasok barang dan/atau jasa melalui pendekatan *per se illegal* dan mendudukan kembali makna dan konseptual hukum kegiatan *bancassurance* yang dilandasi oleh perjanjian keagenan dan bersifat *lastgeving* sehingga dikecualikan oleh ketentuan Pasal 50 huruf d UU Nomor 5 Tahun 1999. Dengan demikian, penerapan ketentuan ketentuan *tying agreement* pada kegiatan *bancassurance* adalah tidak tepat karena kegiatan *bancassurance* merupakan kegiatan yang dilandasi oleh perjanjian keagenan yang dikecualikan Pasal 50 huruf d UU Nomor 5 Tahun 1999.

Kata kunci: Penegakan hukum, *tying agreement*, *bancassurance*