

**Comparative Analysis of Resale Price Maintenance under the Australia Competition and Consumer Act 2010 and Law No. 5 of 1999
(Case Analysis of Tooltechnic and Supreme Court Decision No 05K/KPPU/2007)**

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ABSTRACT

This research aims to compare the differences between how the Australia Competition and Consumer Act 2010 (“CCA”) and Law No. 5 of 1999 regulates resale price maintenance. Furthermore, this research will examine the application of resale price maintenance regulation in both the *Tooltechnic* case and the Supreme Court Decision No 05K/KPPU/2007, along with the current Indonesian legal framework concerning guidelines toward resale price maintenance, namely: Indonesian Competition Commission Regulation No. 8 of 2011.

This research uses a combination of juridical normative and comparative case study method. This research will utilize the analysis of legislation and its implementing regulation between Australia and Indonesia, as well as case laws from both jurisdictions. The data used in this research are consist of primary and secondary sources of law data, namely: past judicial decisions, laws /regulations, books, journals, and articles. This research provides an analysis by looking at both the normative and empirical aspects of the CCA and Law No. 5 of 1999.

In light of the above-mentioned research methodologies and objectives, this research concludes the following: *firstly*, though there are some similarities regarding how Australia and Indonesia regulates resale price maintenance in their competition law regime, there are several differences with regards to its scope and application. In this regard, Indonesia employs a rule of reason approach, while Australia prohibits resale price maintenance per se but offers immunity avenues for firms. Indonesia regulates resale price maintenance as agreements between business actors, whereas Australia prohibits various forms of such practices, including unilateral conduct. Additionally, with regard to the assessment to resale price maintenance case, Indonesia focuses on unfair competition, while Australia conducts a public benefit test considering both benefits and detriments to the public. *Secondly*, although most parts of the Indonesian framework is adequate, there are still several inadequacies that is worth to be considered and assessed in comparison to Australian framework, namely: the forms of resale price maintenance recognized in Indonesia, loss leader defense, and the efficiencies of resale price maintenance acknowledged in Indonesia compared to those in Australia.

Keywords: Resale Price Maintenance, Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, Australia Competition and Consumer Act 2010, KPPU Regulation No. 8 of 2011, Tooltechnic Case, Supreme Court Decision No. 05K/KPPU/2007

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Analisis Komparatif tentang Penetapan Harga Jual Kembali di bawah Australia Competition and Consumer Act 2010 dan Undang-Undang Nomor 5 Tahun 1999 (Analisis Kasus Tooltechnic dan Putusan Mahkamah Agung No 05K/KPPU/2007)

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INTISARI

Penelitian ini bertujuan untuk membandingkan perbedaan dalam cara Australia Competition and Consumer Act 2010 (“CCA”) dan Undang-Undang Nomor 5 Tahun 1999 mengatur penetapan harga jual kembali. Selanjutnya, penelitian ini akan menguji penerapan regulasi penetapan harga jual kembali dalam kasus Tooltechnic dan Putusan Mahkamah Agung No 05K/KPPU/2007, beserta hukum Indonesia saat ini mengenai panduan terhadap penetapan harga jual kembali, yaitu: Peraturan Komisi Pengawas Persaingan Usaha Nomor 8 Tahun 2011.

Penelitian ini menggunakan metode gabungan yuridis normatif dan studi kasus komparatif. Penelitian ini akan menggunakan analisis legislasi dan regulasi pelaksanaannya antara Australia dan Indonesia, serta putusan pengadilan dari kedua yurisdiksi tersebut. Data yang digunakan dalam penelitian ini terdiri dari sumber data hukum primer dan sekunder, yaitu: keputusan pengadilan, undang-undang, buku, jurnal, dan artikel. Penelitian ini memberikan analisis dengan melihat aspek normatif dan empiris dari CCA dan Undang-Undang Nomor 5 Tahun 1999.

*Berdasarkan metodologi dan tujuan penelitian yang disebutkan di atas, penelitian ini menyimpulkan hal berikut: **pertama**, meskipun ada beberapa kesamaan dalam cara Australia dan Indonesia mengatur penetapan harga jual kembali dalam hukum persaingan mereka, ada beberapa perbedaan dalam hal cakupan dan penerapannya. Dalam hal ini, Indonesia menggunakan pendekatan rule of reason, sementara Australia melarang secara per se tetapi menawarkan jalur immunity bagi perusahaan. Indonesia mengatur penetapan harga jual kembali sebagai perjanjian antara pelaku bisnis, sedangkan Australia melarang berbagai bentuk praktik tersebut, termasuk tindakan unilateral. Selain itu, dalam hal penilaian kasus penetapan harga jual kembali, Indonesia fokus pada persaingan tidak sehat, sementara Australia melakukan uji manfaat publik dengan mempertimbangkan manfaat dan kerugian bagi masyarakat. **Kedua**, ada beberapa ketidaksesuaian yang perlu dipertimbangkan dibandingkan dengan regulasi Australia, yaitu: bentuk-bentuk penetapan harga jual kembali, pembelaan loss leader, dan efisiensi penetapan harga jual kembali yang diakui di Indonesia.*

Kata Kunci: *Penetapan Harga Jual Kembali, Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat, Undang-Undang Persaingan dan Konsumen Australia 2010, Peraturan KPPU Nomor 8 Tahun 2011, Kasus Tooltechnic, Putusan Mahkamah Agung No. 05K/KPPU/2007*

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