

Kedudukan *Indirect Evidence* Dalam Hukum Persaingan Usaha Sebagai Upaya Pembuktian *Tying Agreement* Pada Sektor Ekonomi Digital (Studi Komparasi Negara Indonesia dan Jerman)

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INTISARI

Penelitian dalam tesis ini bertujuan untuk menganalisis dan mengetahui perbandingan pengaturan Hukum Persaingan Usaha Indonesia dengan pengaturan Hukum Persaingan Usaha Jerman terkait *tying agreement* pada sektor ekonomi digital serta kedudukan *indirect evidence* sebagai upaya pembuktian adanya *tying agreement* pada sektor ekonomi digital perspektif ketentuan Hukum Persaingan Usaha Indonesia dan Hukum Persaingan Usaha Jerman.

Jenis penelitian ini adalah penelitian hukum normatif. Jenis penelitian tersebut dilakukan dengan studi pustaka terhadap bahan hukum primer, sekunder, dan tersier. Pendekatan yang digunakan adalah pendekatan perundang-undangan (*statute approach*), pendekatan konseptual (*conceptual approach*), dan pendekatan komparatif (*comparative approach*). Peneliti menggunakan metode studi kepustakaan dan menggunakan analisis kualitatif.

Hasil dari penelitian tesis ini menunjukkan bahwa perbedaan pengaturan *tying agreement* dalam Hukum Persaingan Usaha Indonesia dan Jerman adalah pengaturan mengenai sifat, perilaku, dan karakteristik praktik *tying agreement* pada sektor ekonomi digital. Pada dasarnya, Indonesia dan Jerman telah mengenal *indirect evidence*. Penerapan *indirect evidence* khususnya bukti ekonomi memerlukan indikator tertentu yang memuat karakteristik praktik *tying* pada sektor ekonomi digital untuk mempermudah penilaian atas perilaku tersebut. Oleh karena itu, perlu adanya pengaturan berupa Peraturan Pemerintah yang memiliki keistimewaan yang mengatur tentang persaingan usaha pada sektor ekonomi digital dengan memperhatikan bahwa dalam ketentuan *tying agreement* harus dikaitkan dengan posisi dominan, sehingga hal tersebut dapat menutup potensi adanya dalih perjanjian yang dikecualikan apabila perusahaan digital yang melakukan *tying agreement* telah memenuhi unsur-unsur pelanggaran tersebut.

Kata Kunci: *Indirect Evidence*, *Tying Agreement*, Hukum Persaingan Usaha, Ekonomi Digital.

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The Position of Indirect Evidence in Competition Law as an Effort to Prove Tying Agreement in the Digital Economy Sector (Comparative Study of Indonesia and Germany)

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ABSTRACT

The research in this thesis aims to analyze and determine the comparison of the provisions of Indonesian Competition Law with the provisions of German Competition Law regarding tying agreement in the digital economy sector and the position of indirect evidence as an effort to prove the existence of tying agreement in the digital economy sector from the perspective of the provisions of Indonesian Competition Law and German Competition Law.

This type of research is normative legal research. This type of research is carried out by studying the literature of primary, secondary, and tertiary legal materials. The approaches used are the statute approach, the conceptual approach, and the comparative approach. The researcher uses a literature study method and uses qualitative analysis.

The results of this thesis research show that the differences in the regulation of tying agreement in Indonesian and German Competition Law are the regulations regarding the nature, behavior, and characteristics of tying agreement practices in the digital economy sector. Basically, Indonesia and Germany have recognized indirect evidence. The application of indirect evidence, especially economic evidence, requires certain indicators that contain the characteristics of tying practices in the digital economy sector to facilitate the assessment of such behavior. Therefore, it is necessary to have regulations in the form of Government Regulations that have special features that regulate business competition in the digital economy sector by considering that the provisions of tying agreement must be linked to a dominant position, so this can close the potential for the existence of an excuse for an agreement that is excluded if the digital company that carries out the tying agreement has fulfilled the elements of the violation.

Keywords: *Indirect Evidence, Tying Agreement, Business Competition Law, Digital Economy.*

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