

**UPAYA IDEAL MENGHINDARI DISPARITAS PERTIMBANGAN
HUKUM SENGKETA PERJANJIAN TERTUTUP DAN
PENGUASAAN PASAR DALAM HUKUM
PERSAINGAN USAHA (STUDI KASUS
PUTUSAN MAHKAMAH AGUNG
NOMOR 806 K/PDT.
SUS-KPPU/2019)**

INTISARI

Oleh:

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Tujuan dari penelitian ini untuk menganalisis terjadinya disparitas pertimbangan hukum dan anotasi dikaitkan dengan analisis dampak dari perjanjian tertutup dan penguasaan pasar dalam Putusan Nomor 22/KPPU-I/2016, Putusan Nomor 124/Pdt.G/KPPU/2018/PN.Jkt.Sel, dan Putusan Nomor 806 K/Pdt.Sus-KPPU/2019, yang dilakukan PT. TIV dan PT. BAP. Ketiga disparitas pertimbangan hukum tersebut dianalisis menggunakan pendekatan *rule of reason*, dihubungkan dengan peraturan-peraturan terkait perjanjian tertutup dan penguasaan pasar.

Jenis penelitian hukum normatif dengan pendekatan undang-undang dan pendekatan kasus. Sifat penelitian deskriptif, data yang digunakan bahan hukum primer dan bahan hukum sekunder dengan teknik pengumpulan studi pustaka. Data yang diperoleh kemudian dianalisis secara kualitatif yang disampaikan secara deskriptif. Kesimpulan dari penelitian ini, disparitas pertimbangan hukum disebabkan karena pengaturan perjanjian tertutup dan penguasaan pasar dalam Pasal 15 dan Pasal 19 UU No. 5/1999 bersifat abstrak.

Peraturan komisi sebagai peraturan pelaksana tidak dijadikan acuan dalam menangani perkara perjanjian tertutup dan penguasaan pasar. Hal tersebut menimbulkan kesenjangan dalam penegakan hukum persaingan usaha. Dalam penerapan aturan tersebut tidak dapat menggunakan pendekatan *per se illegal* sebab Pasal 15 dan Pasal 19 memiliki keterkaitan terhadap pasal lain dalam UU No. 5/1999. Perlu ada penyelarasan aturan untuk memberikan kemanfaatan hukum dan rasa keadilan.

Kata kunci: perjanjian tertutup, penguasaan pasar, pertimbangan hukum

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**THE IDEAL APPROACH TO AVOID DISPARITIES IN LEGAL
CONSIDERATIONS FOR EXCLUSIVE AGREEMENT AND
MARKET CONTROL DISPUTES IN COMPETITION
LAW (CASE STUDY OF SUPREME COURT
DECISION NUMBER 806 K/PDT.
SUS-KPPU/2019)**

ABSTRACT

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The purpose of this research is to analyze the occurrence of disparities in legal considerations and annotations related to the analysis of the impact of exclusive agreements and market control in court decisions Number 22/KPPU-I/2016, Court Decision Number 124/Pdt.G/KPPU/2018/PN.Jkt .Sel, and Court Decision Number 806 K/Pdt.Sus-KPPU/2019, by PT. TIV and PT. BAP. The three disparities in legal considerations were analyzed using a rule of reason approach, linked to regulations related to exclusive agreements and market control.

The research is normative legal research with a statutory approach and a case approach. The nature of this research is descriptive, the data used are primary legal materials and secondary legal materials using literature review. The data obtained was then analyzed qualitatively which was presented descriptively. The conclusion of this research is that the disparities in legal considerations is caused by the regulation of exclusive agreements and market control in Article 15 and Article 19 of Law No. 5/1999 is unclear.

Commission regulations as implementing regulations are not used as benchmarks in adjudicating cases involving closed agreements and market control, thereby resulting in law enforcement gaps within business competition law. The application of these regulations cannot adopt per se illegal approach, since the Article 15 and Article 19 are related with other articles in Law No. 5/1999. Consequently, there is a necessity harmonization of regulations to provide legal benefits and a sense of justice.

Keywords: *exclusive agreement, market control, legal considerations*

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