

*DISPARITY IN DETERMINATION OF COMPENSATION IN TWO CASES
FROM REPORTS ON VIOLATIONS OF ARTICLE 23 LAW NO. 5 OF 1999
(CASE STUDY OF KPPU DECISION NO. 19/KPPU-L/2007 AND KPPU
DECISION NO. 08/KPPU-L/2024)*

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ABSTRACT

The objective of this research is to identify and analyse the reasons why commission panel imposed different compensation case No. 19/KPPU-L/2007 and case No. 08/KPPU-L/2024 that originating from reports while the defendant of the both case were proven to have violated Article 23 of Law No. 5 of 1999. The study also analysed and assessed the embodiment of justice and legal certainty on the determination of compensation.

This research is constitutes a normative legal study, supplemented by interviews. Data is collected from literature research as primary, secondary, and tertiary legal materials, also from field research by interviews with informant. The data obtained is subjected to a qualitative analysis, followed by a descriptive presentation.

*The results of the investigation indicate that the disparity of determination of compensation is because when case No. 19/KPPU-L/2007 heard there is no regulation regarding guidelines for determining compensation in antitrust cases, whereas when case No. 08/KPPU-L/2024 heard there is regulation regarding guideline for determining compensation in antitrust cases. The absence of regulation in case No. 19/KPPU-L/2007, the commission panel relied on its subjectivity and convictions in determining compensation, exercising its quasi-judicial and based on the principle of *ex aequo et bono*, whilst in case No. 08/KPPU-L/2024 the judge followed the provisions of the regulation. In accordance with that disparity, case No. 19/KPPU-L/2007 had embodied justice according to John Rawls theory, while the case No. 08/KPPU-L/2024 didn't, as its decision didn't not benefits the complainants as the weakest and most disadvantaged party. In terms of legal certainty, the legal certainty has been achieved to a certain extent, as Gustav Radbruch theory that positive law is better than no law at all and according to Soerjono Soekanto, legal certainty is reflected in the consistency of decisions made by law enforcers. However, the legal certainty has not been realised due to differences in the disparity in determination of compensation, despite the complainants clearly suffered losses as a result of anti-competitive actions committed by the defendants.*

Keywords: *compensation, antitrust, justice and legal certainty.*

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DISPARITAS PENETAPAN GANTI KERUGIAN PADA DUA PERKARA
DARI LAPORAN ATAS PELANGGARAN PASAL 23 UNDANG-UNDANG
NO. 5 TAHUN 1999 (STUDI KASUS PUTUSAN KPPU NO. 19/KPPU-L/2007
DAN PUTUSAN KPPU NO. 08/KPPU-L/2024)

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INTISARI

Penelitian ini bertujuan untuk mengetahui dan menganalisa alasan majelis komisi menetapkan ganti kerugian yang berbeda pada 2 (dua) perkara yang berasal dari laporan yaitu perkara No. 19/KPPU-L/2007 dan perkara No. 08/KPPU-L/2024 yang para terlapornya sama-sama telah terbukti melanggar Pasal 23 Undang-Undang No. 5 Tahun 1999 serta menganalisa dan menilai perwujudan keadilan dan kepastian hukum pada penetapan ganti kerugian.

Penelitian ini merupakan penelitian hukum normatif yang dilengkapi dengan wawancara. Data diperoleh dari penelitian kepustakaan berupa bahan hukum primer, sekunder, dan tersier serta diperoleh dari penelitian lapangan berupa wawancara kepada narasumber. Data yang diperoleh kemudian diolah secara kualitatif dan disajikan secara deskriptif.

Hasil penelitian menunjukkan bahwa perbedaan penetapan ganti kerugian disebabkan karena pada saat perkara No. 19/KPPU-L/2007 disidangkan belum ada aturan mengenai pedoman penetapan ganti kerugian pada perkara persaingan usaha, sedangkan pada saat perkara No. 08/KPPU-L/2024 disidangkan telah terdapat peraturan mengenai pedoman penetapan ganti kerugian pada perkara persaingan usaha. Dikarenakan belum adanya aturan maka pada perkara No. 19/KPPU-L/2007 dalam menetapkan ganti kerugian majelis komisi mengandalkan subyektivitas, keyakinannya, melaksanakan wewenangnya selaku *quasi-judicial*, serta berdasar pada prinsip *ex aequo et bono*, sementara pada perkara No. 08/KPPU-L/2024 majelis komisi mengikuti apa yang diatur dalam peraturan tersebut. Atas perbedaan penetapan ganti kerugian tersebut, perkara No. 19/KPPU-L/2007 telah mewujudkan keadilan menurut John Rawls, sedangkan pada perkara No. 08/KPPU-L/2024 belum mewujudkan keadilan karena putusan tersebut tidak memberikan manfaat bagi pelapor sebagai pihak yang paling lemah dan tidak beruntung. Terkait kepastian hukum sudah terwujud namun belum sepenuhnya, karena menurut Gustav Radbruch adanya hukum positif masih lebih baik daripada tidak ada hukum sama sekali dan menurut Soerjono Soekanto kepastian hukum tercermin dari konsistensi putusan yang dihasilkan oleh penegak hukum, yang mana dalam kedua perkara tersebut belum terwujud karena perbedaan penetapan ganti kerugian kendati para pelapor telah sama-sama secara nyata mengalami kerugian akibat tindakan anti persaingan yang dilakukan oleh para terlapor.

Kata kunci: ganti kerugian, persaingan usaha, keadilan dan kepastian hukum.

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