

PERBANDINGAN PENGATURAN PENGECCUALIAN HUKUM PERSAINGAN USAHA INDONESIA, AUSTRALIA, DAN UNI EROPA: PEMBELAJARAN DALAM PERSPEKTIF ASAS SERTA TUJUAN UNDANG-UNDANG NOMOR 5 TAHUN 1999

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INTISARI

Penelitian ini bertujuan untuk menganalisis pengaturan pengecualian dalam hukum persaingan usaha dengan pendekatan *block exemption* dan penegakan hukum secara represif (*ex-post*). Pendekatan tersebut mengakibatkan timbulnya potensi ketidakpastian dan kerugian bagi pelaku usaha serta konsumen, terhambatnya persaingan usaha, dan inovasi apabila otoritas persaingan usaha melakukan kesalahan dalam penegakan hukum. Permasalahan tersebut akan ditinjau dengan membandingkan pendekatan *individual exemption* dan penegakan hukum secara preventif (*ex-ante*) yang digunakan oleh Australia. Perbandingan juga dilakukan dengan Uni Eropa yang telah mengubah pendekatannya menjadi *block exemption* dengan penegakan hukum secara represif. Penelitian ini mengandalkan *subject-matter of comparative law* berbasis *micro-comparison* dan *functional approach* dengan memperhatikan asas dan tujuan UU 5/1999.

Metode yang digunakan dalam penelitian ini adalah normatif-empiris dengan pendekatan kualitatif. Pengumpulan data primer dilakukan dengan mewawancarai Komisi Pengawas Persaingan Usaha. Adapun pengumpulan data sekunder dilakukan melalui studi pustaka berdasarkan regulasi yang berlaku, literatur ilmiah yang relevan, serta dilengkapi dengan mewawancarai akademisi sebagai data pelengkap. Penelitian ini bersifat deskriptif dengan memberikan hasil pembelajaran perbandingan pengaturan pengecualian persaingan usaha di Indonesia, Australia, dan Uni Eropa.

Hasil penelitian menunjukkan terdapat perbedaan pengaturan pengecualian persaingan usaha di Indonesia dan Australia serta terdapat beberapa persamaan dengan Uni Eropa. Pendekatan *individual exemption* dan penegakan preventif layaknya di Australia selaras dengan asas demokrasi ekonomi dan tujuan UU 5/1999. Berdasarkan pengalaman Uni Eropa, pendekatan tersebut memiliki hambatan yang menyebabkan persaingan usaha menjadi tidak efektif. Oleh karena itu, Indonesia disarankan tetap menggunakan pendekatan saat ini. Indonesia juga disarankan untuk memperluas batasan pengaturan pengecualiannya, membatasi tindakan negara, melengkapi pedoman pengecualian dalam UU 5/1999, serta mengadopsi pengecualian keberlanjutan seperti di Australia dan Uni Eropa.

Kata Kunci: *Block Exemption, Individual Exemption*, Hukum Persaingan Usaha, Demokrasi Ekonomi

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COMPARISON OF COMPETITION LAW EXEMPTIONS IN INDONESIA, AUSTRALIA AND UNI EROPA: LESSONS FROM PERSPECTIVE OF THE PRINCIPLE AND OBJECTIVES OF LAW NUMBER 5 YEAR 1999

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ABSTRACT

This research aims to analyze exemption regulations in competition law through the block exemption approach and repressive (ex-post) law enforcement. Such an approach results in potential uncertainty and losses for business actors and consumers, as well as the hindrance of competition and innovation should competition authorities commit errors in enforcement. These issues are examined by comparing the individual exemption approach and preventative (ex-ante) law enforcement used by Australia. Furthermore, a comparison is made with the European Union, which has shifted its approach to block exemptions with repressive enforcement. This research relies on the subject matter of comparative law based on micro-comparison and functional approach, while taking into account the principles and the objectives of Law No. 5/1999.

The method used in this research is normative-empirical with a qualitative approach. Primary data collection was conducted by interviewing Komisi Pengawas Persaingan Usaha. Secondary data collection was performed through literature studies based on prevailing regulations and relevant scientific literature, supplemented by interviews with academics. This research is descriptive, providing comparative learning outcomes on competition exemption regulations in Indonesia, Australia, and the European Union.

The results indicate differences in competition exemption regulations between Indonesia and Australia, as well as several similarities with the European Union. The individual exemption approach and preventative enforcement, as practiced in Australia, are aligned with the principles of economic democracy and the objectives of Law No. 5/1999. Based on the experience of the European Union, such an approach faces obstacles that can render competition ineffective. Therefore, it is recommended that Indonesia maintain its current approach. Indonesia is also advised to expand its exemption regulation limits, restrict state actions, complement its exemption guidelines in Law No. 5/1999, and adopt sustainability exemptions as implemented in Australia and the European Union.

Keywords: *Block Exemption, Individual Exemption, Competition Law, Democracy Economy*

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