

Analysis On Bancassurance Tying Agreement Practice With Rule Of Reason And Per Se Illegal Approach (Case Study KPPU Decision Number 5/KPPU-I/2014)

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ABSTRACT

This research is aimed To analyze and to understand why between KPPU and Central Jakarta district court/supreme court settle this case with a different result. Writers also want to analyze whether between KPPU and Central Jakarta district court/supreme court using different approaches to settle this case and to determine the factor why they are using a different approach.

This research is conducted using a normative study and using a case study approach to complete this research. This research relies mainly on laws and regulations since this is a case study research as well as journal, books, news related to this topic.

Upon analyzing the data, this legal research has reached two conclusions. First, the reason why KPPU and District Court settle this differently its because KPPU is way to strict and limitative in applying rule of reason approach while in District Court Judge also found to bound to Principle of justice which is why the outcome of their assessment is different as well. Second is rule of reason should be used in tying agreement due to the facts that tying agreement also gives positives effect.

Keywords: competition law, Bancassurance, tying agreement, rule of reason, per se illegal

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Analisis Terhadap Praktek *Tying Agreement* di Bancassurance Dengan Pendekatan Rule Of Reason dan Per Se Illegal (Studi Kasus Putusan KPPU Nomor 5/KPPU-I/2014)

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INTISARI

Penelitian ini ditulis untuk menganalisis dan mengerti mengapa di antara KPPU, Pengadilan Negeri Jakarta Pusat dan Mahkamah Agung mengeluarkan putusan yang berbeda. Penulis juga akan menganalisa perbedaan pendekatan yang digunakan oleh KPPU, Pengadilan Negeri Jakarta Pusat dan Mahkamah Agung.

Penelitian ini merupakan penelitian normatif dengan menggunakan studi kasus dalam pendekatannya. Penelitian ini sebagian besar bergantung pada undang-undang yang berlaku karena menggunakan studi kasus. Selain itu penelitian ini juga bergantung pada buku, jurnal, dan berita yang berkaitan dengan topic penelitian ini.

Setelah menganalisis data yang ada, penelitian ini menghasilkan dua kesimpulan. Yang pertama KPPU dalam menerapkan *rule of reason* terlalu sempit dan kaku sementara hakim Pengadilan Negeri juga berpegang pada *Principle of Justice* yang mengapa putusan dari pengadilan negeri juga berbeda dengan KPPU. Yang kedua dalam melakukan penilaian terhadap *tying agreement*, pendekatan yang paling cocok adalah *rule of reason* karena *tying agreement* juga dapat memberi dampak positif.

Kata Kunci:Hukum Persaingan Usaha, Bancassurance, Perjanjian Mengikat, rule of reason, per se illegal

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