

Studi komparatif leniency program untuk pembuktian kartel dalam antitrust law di Amerika Serikat dan antimonopoly law di Jepang = Comparative study of leniency program to prove the existence of cartel in United States antitrust law and Japan antimonopoly law

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Abstrak

Kartel dipersepsikan sebagai bentuk paling berbahaya dari tindakan anti persaingan dan di beberapa yurisdiksi menerima penanganan dari perspektif hukum pidana. Sifat kerahasiaan kartel menjadi hambatan terbesar bagi otoritas persaingan usaha untuk membuktikan keberadaan kartel, hal mana juga dialami oleh Komisi Pengawas Persaingan Usaha di Indonesia. Untuk alasan ini, sejumlah besar yurisdiksi telah mengadopsi leniency program untuk mengungkapkan keberadaan kartel. Tesis ini membahas pengaturan dan implementasi leniency program dalam Antitrust Law di Amerika Serikat dan Antimonopoly Law di Jepang serta kemungkinan penerapannya dalam hukum persaingan di Indonesia. Penelitian ini adalah penelitian yuridis normatif yang menggunakan metode pendekatan perundang-undangan dan pendekatan perbandingan. Hasil penelitian menyarankan untuk menerapkan leniency program melalui amandemen Undang- Undang Nomor 5 Tahun 1999 dan sejalan dengan itu meningkatkan sanksi denda administratif yang diterapkan KPPU terhadap pelaku kartel.

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Cartels are perceived as the most dangerous form of anti-competitive conduct and in some jurisdiction subjected to the criminal penalty regime. The confidential nature of cartel has been the biggest obstacle in proving their existence, which is also experienced by the Business Competition Supervisory Commission in Indonesia. Leniency programs uncover conspiracies that would otherwise go undetected and for this reasons numerous jurisdictions have adopted leniency program within their competition law regime. The study discussed the regulation of leniency program and its implementation both in the United States Antitrust Law and in Japan Antimonopoly Law. The study also addressed the possibility of leniency program? application in Indonesia. The study used juridical-normative research method which emphasis on the use of statute and comparative approach. The result suggest to implement leniency program in Indonesia through the amendment of Law No. 5 of 1999 and to increase the administrative fines imposed by the Commission against perpetrators of cartels.