

## Clean break sebagai syarat pemutusan perjanjian distribusi sepihak atas penunjukan distributor baru (studi kasus: PT Smak Snack melawan PT Effem Foods Inc. dan PT Effem Indonesia) = clean break as a requirement of unilateral termination of distribution agreement on the appointment of new distributor

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### Abstrak

Peran pedagang perantara khususnya distributor sangat penting dalam dunia usaha perdagangan. Untuk melaksanakan proses distribusi tersebut, distributor dapat melakukan hubungan dengan prinsipal berdasarkan pada sebuah perjanjian. Hingga kini meskipun telah banyak didirikan perusahaan distributor, undang-undang nasional belum mengaturnya secara khusus, sehingga dalam prakteknya timbul permasalahan khususnya mengenai perjanjian penunjukan distributor.

Menurut Permendag tentang Ketentuan dan Tata Cara Penerbitan Surat Tanda Pendaftaran Agen atau Distributor Barang dan/atau Jasa No. 11/MDag/ PER/3/2006, prinsipal yang memutuskan perjanjian distribusi secara sepihak sebelum masa berlaku Surat Tanda Pendaftaran berakhir lalu diikuti dengan penunjukan distributor baru harus mencapai clean break terlebih dahulu. Oleh karena itu, skripsi ini akan membahas mengenai tiga hal, yaitu pengaturan clean break sebagai syarat pemutusan perjanjian sepihak yang masih berlaku diikuti dengan penunjukan pihak baru dalam peraturan perundang-undangan di Indonesia, pengaturan khusus proses clean break sebagai syarat penunjukan distributor baru dalam perjanjian distribusi sesuai dengan Permendag No. 11/MDag/ PER/3/2006, serta penerapan proses clean break dalam perjanjian distribusi pada kasus PT Smak Snack melawan PT Effem Foods Inc. dan PT Effem Indonesia berdasarkan peraturan perundang-undangan di Indonesia. Penelitian ini menggunakan metode penelitian yuridis normatif.

Hasil dari penelitian atas kasus yang telah diputus pada pengadilan tingkat pertama sampai tingkat peninjauan kembali di Mahkamah Agung ini menyatakan bahwa ketentuan proses clean break perjanjian distribusi tidak dapat diterapkan karena tidak ada Surat Tanda Pendaftaran yang masih berlaku sesuai dengan persyaratan yang disebutkan dalam Permendag No. 11/M-Dag/PER/3/2006. Para Tergugat memang telah terbukti sah melakukan perbuatan melawan hukum, hanya saja dalam pertimbangannya Majelis Hakim Pengadilan Negeri tidak mempertimbangkan permasalahan dalil penerapan proses clean break dalam kasus ini.

<i>The role of middlemen is very important in the trading world, especially a distributor. A distributor must have a relationship with a principal under an agreement to implement a process of distribution. Although there are many distributor companies that have been established until now, there is still no specific national regulation that controls them, which consequentially made a lot of problems especially on the implementation of distribution agreement.

According to Minister of Trade Regulation No. 11/M-Dag/PER/3/2006 concerning the Requirements and Procedure on the issuance of the Letter of Registration for Agent or Distributor of Good and/or Services, the principal, who makes a unilateral termination of distribution agreement on the appointment of a new distributor, must in advance fulfill a clean break process. Therefore, this thesis mainly focuses on three problems. First, it explains the regulation in Indonesia of a clean break process as a requirement of unilateral termination of agreement which is still valid on the appointment of a new party. Second, it explains the specific regulation of a clean break process as a requirement for a new distributor under the distribution agreement. And third, it analyzes whether the process of clean break in the case of PT Smak Snack v. PT Effem Foods Inc. and PT Effem Indonesia had implemented the Minister of Trade Regulation No. 11/M-Dag/PER/3/2006 properly. This research is a normative juridical research.

The result of this research for the case that has already bound by the Supreme Court decision, concludes that the process of clean break cannot applied in this case because there is no valid letter of registration according to the term that stipulated in the Minister of Trade Regulation No. 11/M-Dag/PER/3/2006. Although the defendants was proven guilty on tort action in this case, the panel of judges in the district court didn't make any consideration on the clean break process.