

Studi komparatif : penerapan Per Se Illegal pada pembuktian kasus kartel di jepang dan korea = Comparative study the implementation of Per Se Illegal to prove existence of cartel case in japan and south korea

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Abstrak

[ABSTRAK

Dari semua praktik bisnis yang tidak sehat, Kartel dipersepsikan sebagai bentuk paling berbahaya dari tidakan persaingan usaha karena para pelakunya sepakat melakukan konspirasi mengenai hal-hal yang bersifat sangat pokok dalam suatu transaksi bisnis. Kartel akan menyebabkan kerugian bagi konsumen. Sifat kerahasiaan kartel menjadi hambatan terbesar bagi otoritas persaingan usaha untuk membuktikan eksistensi kartel, Indonesia juga mengalami hal tersebut. Untuk sejumlah alasan tersebut, beberapa negara di Barat menggunakan pendekatan per se illegal. Per se illegal memiliki beberapa keunggulan dibanding rule of reason dalam mengungkap keberadaan kartel. Tesis ini membahas mengenai pengaturan penerapan pendekatan per se illegal dalam Anti Monopoly Act (AMA) di Jepang dan The Regulation of Monopolies and Fair Trade Act (FTA) di Korea Selatan serta kemungkinan penerapan pendekatan per se illegal 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 ketentuan mengenai pendekatan per se illegal melalui amandemen Undang-undang Nomor 5 tahun 1999 sejalan dengan itu menambahkan kewenangan KPPU terkait pengeledahan.

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ABSTRACT

From of all the unfair business practices, Cartel are perceived as the the most dangerous from of competitive business, because the principals agreed the conspiracy on matters that are staples in a business transaction. Cartel would cause harm to consumers. The confindential nature of cartel has been the biggest obstacle for the Competition authority?s effort to prove the existence of the cartel, Indonesia also experienced it. From some reasons, numerous jurisdictions have adopted approach of per se illegal. Per se illegal has several advantages compared to a rule of reason in expose the existence of cartel. This study discussed the rule on Anti Monopoly Act (AMA) in Japan and The Regulation of Monopolies and Fair Trade Act (FTA) in South Korea also addressed the possibility application Per Se illegal approach in Indonesia. The study used juridical-normative research method which emphasis on the use of statute and comparative approach. The result suggest to implement provisions concerning Per Se Illegal approach trough

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