

Penerapan prinsip private enforcement sebagai upaya memperoleh ganti rugi dalam hukum persaingan usaha Amerika Serikat dan Uni Eropa = The implementation of private enforcement in United States of America and European Union antitrust law

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Abstrak

Tindakan anti persaingan usaha seringkali menimbulkan kerugian bagi beberapa pihak, seperti konsumen atau pesaing usaha. Hal tersebut mengakibatkan timbulnya hak atas ganti kerugian. Namun, di Indonesia belum banyak pihak yang menyadari bahwa dalam hukum persaingan usaha terdapat mekanisme private enforcement untuk memperoleh ganti rugi, serta belum ada ketentuan yang mendorong penggunaan private enforcement. Hal tersebut sangat disayangkan karena di Amerika Serikat mekanisme private enforcement menjadi alat untuk perolehan ganti rugi yang paling populer dengan berbagai keuntungan serta kemudahan yang ditawarkan. Di sisi lain, Uni Eropa yang juga memberlakukan ketentuan perihal private enforcement ditemukan banyak kendala dan hambatan dalam penerapannya, sehingga penggunaan public enforcement tetap menjadi pemain utama dalam penerapan hukum persaingan usaha. Penelitian ini merupakan penelitian hukum normatif yang menggunakan analisa kualitatif terhadap penerapan mekanisme private enforcement dalam hukum penegakan usaha di Amerika Serikat dan Uni Eropa. Ketentuan serta penerapan di Amerika Serikat akan dijadikan sebagai bahan rujukan dalam penerapan private enforcement di Indonesia.

.....Several antitrust infringements will harm several parties, for example consumers or competitors. It will consequently give the rights to get compensation. However, only a few people who aware of this rights and also there is no supportive regulations for individual to do these private actions. This is unfortunate because United States of America USA has private enforcement mechanism, which is really popular in order to obtain competitions. USA also gives many advantages and convenience through this mechanism. On the other hand, European Union EU has also imposed the provision on private enforcement. In comparison of implementation in USA and EU, EU has several obstacles. Therefore, public enforcement still takes major parts in enforce EU antitrust law. This research is a normative and legal research with the using of qualitative analysis of regulations and applications of private enforcement in both jurisdictions. In the end, it will be references in the application of private enforcement in Indonesia.