

Tinjauan yuridis cross border cartel berdasarkan hukum persaingan usaha: studi kasus: putusan high court of Australia [2017] HCA 21) = Juridical review on cross border cartel based on competition law: case study: decision of high court of Australia [2017] HCA 21

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Abstrak

Skripsi ini membahas mengenai perbedaan pengaturan dan penerapan cross border cartel di Indonesia dan Australia serta meninjau putusan High Court of Australia [2017] HCA 21 berdasarkan Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat (Undang-Undang Nomor 5 Tahun 1999). Berdasarkan putusan High Court of Australia [2017] HCA 21, PT Garuda Indonesia (Persero) Tbk dan Air New Zealand Ltd terbukti sebagai pihak dari perjanjian penetapan harga dari bandar udara di Indonesia, Hong Kong, dan Singapura ke bandar udara di Australia. Metode penelitian yang digunakan dalam penelitian ini adalah yuridis normatif dan perbandingan hukum.

Hasil penelitian menunjukkan bahwa hukum persaingan usaha Indonesia dapat ditegakkan oleh Komisi Pengawas Persaingan Usaha (KPPU) terhadap PT Garuda Indonesia (Persero) Tbk di Indonesia dan terhadap Air New Zealand Ltd dengan menerapkan prinsip ekstrateritorialitas berdasarkan effects doctrine. Berdasarkan hasil penelitian, perlu dilakukan amandemen terhadap Undang-Undang Nomor 5 Tahun 1999 untuk menegaskan kewenangan KPPU atas perusahaan asing supaya KPPU memiliki dasar tekstual yang jelas dan pasti untuk menegakkan yurisdiksi ekstrateritorialnya.

.....This thesis discusses the differences between the regulation and application of cross border cartel in Indonesia and Australia and also reviews the decisions of the High Court of Australia [2017] HCA 21 based on Law Number 5 of 1999 Concerning The Prohibition of Monopolistic Practices and Unfair Business Competition (Law Number 5 of 1999). Based on the decision of the High Court of Australia [2017] HCA 21, PT Garuda Indonesia (Persero) Tbk and Air New Zealand Ltd were proven as parties to the price fixing agreement from airports in Indonesia, Hong Kong, and Singapore to airports in Australia. The research methods used in this research are normative legal and comparative law.

Results of research show that Indonesian competition law can be enforced by the Business Competition Supervisory Commission (KPPU) against PT Garuda Indonesia (Persero) Tbk in Indonesia and against Air New Zealand Ltd by applying the extraterritoriality principle based on the effects doctrine. Based on the results of research, it is necessary to amend Law No. 5 of 1999 to affirm the KPPUs authority over foreign companies so that the KPPU has an explicit and definite textual basis to enforce its extraterritorial jurisdiction.