

# Pengaturan perjanjian penetapan harga dan kartel sebagai aspek dalam persaingan usaha: studi perbandingan Indonesia dan Australia (analisis putusan [2017] HCA 21 High Court of Australia) = Regulation on price fixing and cartel as aspects of business competition: a comparative study on Indonesia and Australia (an analysis on verdict [2017] HCA 21 High Court of Australia)

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## Abstrak

Indonesia mengatur hukum persaingan usaha dalam UU No. 5 Tahun 1999 dan Australia mengaturnya dalam Trade Practice Act 1974 yang sudah diperbarui menjadi Competition and Consumer Act 2010. Dalam perkara Garuda Indonesia melawan Australian Competition and Consumer Commission, hakim di dalam amar putusannya menyatakan bahwa Garuda Indonesia bersalah atas penetapan harga yang dilakukan dengan maskapai-maskapai penerbangan lainnya tentang bea cukai, biaya keamanan dan biaya tambahan bahan bakar untuk kargo udara yang dilakukan di Australia. Oleh karena itu, Garuda Indonesia diwajibkan untuk membayar denda sejumlah AU\$19,000,000 (sembilan belas juta dolar Australia). Skripsi ini kemudian mengambil 3 (tiga) pokok permasalahan yaitu bagaimana perbandingan pengaturan tentang perjanjian penetapan harga dan kartel ditinjau dari hukum persaingan usaha di Indonesia dan Australia, apakah akibat hukum dari putusan [2017] HCA 21 High Court of Australia terhadap posisi Garuda Indonesia dalam penerbangan di Australia, dan apakah akibat hukum putusan [2017] HCA 21 High Court of Australia terhadap hukum persaingan usaha di Indonesia. Metode penelitian yang digunakan adalah yuridis-normatif, yang menekankan pada penggunaan norma hukum secara tertulis dan didukung dengan hasil wawancara narasumber dan/atau informan. Kesimpulan yang didapatkan adalah: 1) perjanjian penetapan harga dan kartel sama-sama diatur di dalam perundang-undangan Indonesia dan Australia, terdapat persamaan dan perbedaan pengaturan di kedua negara tersebut; 2) putusan [2017] HCA 21 High Court of Australia tidak memiliki akibat hukum apapun terhadap posisi Garuda Indonesia dalam penerbangan di Australia; 3) putusan [2017] HCA 21 High Court of Australia tidak memiliki dampak terhadap hukum persaingan usaha di Indonesia.

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Indonesia regulates business competition law in Law no. 5 of 1999 and Australia regulated it in the Trade Practice Act 1974 which was updated to the Competition and Consumer Act 2010. In the case of Garuda Indonesia against the Australian Competition and Consumer Commission, the judge in his ruling stated that Garuda Indonesia was guilty of price fixing carried out with airlines- other airlines about customs, security fees and fuel surcharges for air cargo carried in Australia. Therefore, Garuda Indonesia is required to pay a fine of AU\$19,000,000 (nineteen million Australian dollars). This thesis then takes 3 (three) main issues, namely how to compare the arrangements regarding price fixing agreements and cartels in terms of business competition law in Indonesia and Australia, what are the legal consequences of the decision of [2017] HCA 21 High Court of Australia on Garuda Indonesia's position on flights in Australia, and what are the legal consequences of the decision of [2017] HCA 21 High Court of

Australia on business competition law in Indonesia. The research method used is juridical-normative, which emphasizes the use of written legal norms and is supported by the results of interviews with informants and/or informants. The conclusions obtained are: 1) price fixing agreements and cartels are both regulated in legislation

Indonesia and Australia, there are similarities and differences in the arrangements in the two countries; 2) the decision of [2017] HCA 21 High Court of Australia does not have any legal effect on Garuda Indonesia's position on flights in Australia; 3) the decision of [2017] HCA 21 High Court of Australia has no impact on business competition law in Indonesia.