

Tinjauan yuridis persaingan usaha tidak sehat mengenai penetapan harga dalam industri jasa freight container (studi kasus putusan nomor 08/KPPU-L/2018) = Judicial review of unfair business competition regarding price-fixing agreement in freight container industry (case study on the kppu decision number 08/Kppu-L/2019)

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Abstrak

UU No. 5/1999 bertujuan untuk menciptakan persaingan usaha sehat dan berasaskan demokrasi ekonomi dengan memperhatikan keseimbangan antar kepentingan pelaku usaha dan kepentingan umum. Hal ini menjadi tidak jelas manakala KPPU dalam Putusan No. 08/KPPU-L/2018 memutuskan pelaku usaha freight container, yang memiliki peran penting khususnya di Indonesia sebagai negara kepulauan, dinyatakan bersalah melakukan price fixing sementara di sisi lain, persaingan usaha menjadi hal yang mutlak terjadi di antara para pelaku usaha yang berorientasi pada market economy. Oleh karena itu penelitian ini bertujuan untuk menjelaskan persaingan pada industri jasa freight container dalam rute Surabaya menuju Ambon dan menjelaskan kesesuaian Putusan KPPU No. 08/KPPU-L/2018 berdasarkan peraturan perundang-undangan persaingan usaha di Indonesia terhadap industri jasa freight container rute Surabaya-Ambon. Dengan menggunakan metode penelitian hukum normatif-deskriptif. Hasil penelitian menemukan bahwa: Usaha jasa freight container rute Surabaya-Ambon memiliki struktur dan karakteristik pasar oligopoli yang saling berperang harga akibat ketatnya persaingan; Putusan No. 08/KPPU-L/2018 tidak sesuai dengan teori-teori dalam hukum persaingan usaha dikarenakan unsur “perjanjian”, “pelaku usaha pesaing”, “menetapkan harga” dan “pasar bersangkutan” dalam Pasal 5 ayat (1) UU No. 5/1999 yang dipersalahkan terhadap para terlapor tidak terbukti terpenuhi sebab surat penyesuaian kenaikan tarif yang dikeluarkan para terlapor tidak dapat membuktikan bahwa telah terjadi suatu kesepakatan atau komunikasi secara bersama-sama dalam menaikkan tarif freight container dengan bukti harga yang tercantum pada bukti surat tidak pernah direalisasikan. Saran dalam penelitian ini meliputi standarisasi tarif oleh regulator dan tata kelola persaingan usaha dalam industri pelayaran yang sesuai dengan asas keseimbangan.....Laws of the Republic Indonesia No. 5/1999 was made to create a competition in the free market based on economical democracy by observing the equilibrium between the interest of the business entity and the interest of the people. The matter becomes uncertain when KPPU within the verdict No. 08/KPPU-L/2018 decided the business entity freight container, the one who has an important role, especially in Indonesia as an Island Nation, is stated guilty on making a price-fixing. Meanwhile, on the other side, the competition in the business field becomes absolute only between the business entity that is market economy-oriented. Therefore, this research carry the importance of explaining the competition in the services business of freight container industry within the limitation of Surabaya-Ambon route, and explaining the suitability of KPPU’s decision No, 08/KPPU-L/2018 basing it on the laws of the Republic Indonesia regarding business entities competition in Indonesia on the matter of freight container Surabaya-Ambon route. Using the law’s research method descriptive-normative. The result of the research found that: the service business of freight container Surabaya-Ambon route has the structure and characteristics of oligopoly market, where there are war on pricing between business entities caused by the strict competition between them; the KPPU’s verdict No. 08/KPPU-L/2018 is

not compatible with the theories of business entities competition law because the element of “agreement”, “business competitors”, “fixed pricing” and “related markets” in article 5 verse (1) Laws of The Republic Indonesia No. 5/1999 that is being put upon defendant not proven legitimate, caused by the letter issued by the claimant does not involve any sign of agreement or joint communication regarding price increment on freight container services with the proof of the written price was never objectified. The Suggestion for this research covers the standardized rate of the regulator and the management of the competition between business entities that provide services for shipment based on balance.