

Analisis Terhadap Pelanggaran Persaingan Usaha yang tidak Disertai dengan Penjatuhan Hukuman dikarenakan Ketidakmampuan Membayar Denda (Studi Kasus Putusan KPPU Nomor: 04/KPPU-I/2021) = Analysis of Competition Law Violations not Accompanied by Imposition of Punishments Due to Inability to Pay Fines (Case Study KPPU decision Nomor: 04/KPPU-I/2021)

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Abstrak

Praktek monopoli merupakan kegiatan anti persaingan yang dilarang berdasarkan Pasal 17 UU Anti Praktek Monopoli dikarenakan sangat merugikan kepentingan umum, sehingga terhadap pelaku usaha yang terbukti melakukan praktek monopoli harus dijatuhkan sanksi administratif guna menegakkan hukum persaingan usaha, namun pada Putusan KPPU Perkara Nomor: 04/KPPU-I/2021 terdapat adanya kondisi dimana pelaku usaha yang terbukti melakukan praktek monopoli tidak memiliki kemampuan untuk membayar denda sehingga Majelis Komisi memutuskan dengan tidak menjatuhkan denda administratif pada amar putusan sehingga perlu dianalisis apakah pertimbangan demikian sudah tepat menurut hukum, dan pertanggungjawaban atas membayar denda tersebut apakah dapat dibebankan terhadap Organ-Organ Perseroan sampai harta pribadinya. Metode penelitian dalam penelitian ini adalah yuridis normatif. Hasil penelitian menunjukkan bahwa pertimbangan Majelis Komisi dengan analisis pendekatan teori keadilan tidak tepat dikarenakan tidak mencerminkan keadilan yang menyangkut kepentingan umum secara luas karena dampak tindakan antipersaingan sangat merugikan, namun dengan analisis pendekatan teori kemanfaatan, pertimbangan Majelis Komisi telah tepat dikarenakan apabila denda dijatuhkan tidak memiliki sisi kemanfaatan dikarenakan kasus ini berkaitan dengan kasus tindak pidana korupsi, kemudian terkait pertanggungjawaban, baik terhadap Direksi, Dewan Komisaris, Pemegang Saham, dan Beneficial Owner secara teori dapat dimintakan pertanggungjawaban sampai dengan harta pribadi sesuai dengan porsinya masing-masing karena telah terbukti bahwa pada PT ACK, Direksi dalam pengurusannya dan Komisaris dalam pengawasannya tidak menjalankan fiduciary duty, serta Pemegang Saham dan Beneficial Owner menjadikan Perseroan sebagai Alter Ego guna kepentingan pribadi yang mengakibatkan Perseroan menjadi berada pada kondisi ketidakmampuan membayar denda administratif, sehingga berdasarkan prinsip piercing the corporate veil, dari yang semula pertanggungjawabannya masing-masing Organ Perseroan secara terbatas berubah menjadi tidak terbatas sampai harta pribadi masing-masing.

.....Monopolistic practice is an anti-competitive activity that is prohibited under Article 17 of the Law Against Monopolistic Practice because it is very detrimental to the public interest, so business actors who are proven to have committed monopolistic practice must be subject to administrative sanctions in order to enforce business competition law, but in KPPU's Decision Number: 04/KPPU- I/2021 there are conditions where Business Actors who are proven to have committed monopolistic practice do not have the ability to pay fines so that the Commission Council decides not to impose administrative fines on the verdict so that it is necessary to analyze whether such considerations are appropriate according to law, and whether the responsibility for paying these fines is can be charged to the Company's Organs up to personal assets. The research method in this study is normative juridical. The results of the study show that the consideration of

the Commission Council with the analysis of the theory of justice approach is inappropriate because it does not reflect justice that concerns the public interest at large because the impact of anti-competitive actions is very detrimental, but with the analysis of the theory of benefit approach, the considerations of the Commission Council are appropriate because if a fine is imposed there is no side benefit because this case is related to a criminal act of corruption, then related to accountability, both to the Board of Directors, Board of Commissioners, Shareholders, and Beneficial Owners in theory can be held accountable up to personal assets in accordance with their respective portions because it has been proven that PT ACK, Directors in their management and Commissioners under their supervision do not carry out fiduciary duties, and Shareholders and Beneficial Owners make the Company an Alter Ego for personal gain which causes the Company to be in a condition of inability to pay administrative fines, so that it is based on the principle of piercing the corporate veil, from the beginning the responsibilities of each Company Organ are limited to unlimited up to their respective personal assets.