

Analisis Peraturan dalam Bidang Penyiaran Televisi Konvensional dan penyediaan Layanan Aplikasi dan/atau Konten Melalui Internet Over The Top dalam Perspektif Persaingan Usaha yang Adil”= REGULATIONS ANALYSIS OF CONVENTIONAL TELEVISION BROADCASTING AND APPS/CONTENT SERVICE PROVIDERS THROUGH THE INTERNET OVER THE TOP IN A FAIR BUSINESS COMPETITION PERSPECTIVE

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Abstrak

Penelitian ini membahas mengenai analisis peraturan dalam konteks persaingan usaha tentang diskriminasi khususnya pada bidang penyiaran. Penelitian ini dilatarbelakangi oleh pergeseran kebiasaan untuk mengakses siaran yang berubah dari saluran TV konvensional ke layanan aplikasi dan/atau konten melalui internet over the top (“OTT”). Perubahan tersebut membawa perubahan pada pasar bersangkutan yakni penyedia layanan TV Konvensional dan penyiaran OTT. Jumlah penikmat layanan OTT meningkat dengan tajam. Meskipun memiliki fungsi yang sama, layanan OTT secara prinsip memiliki karakter yang berbeda dengan TV konvensional. Perbedaan peraturan merupakan konsekuensi logis dari perbedaan prinsip dan karakter meskipun memiliki fungsi yang sama. Perbedaan peraturan tersebut diakui melalui putusan Mahkamah Konstitusi No 39/PUU-XVIII/2020 tanggal 10 Desember 2020 yang berpendapat bahwa televisi konvensional dan OTT merupakan hal yang berbeda dan tidak diskriminatif. Tulisan ini bertujuan menganalisis keadilan dan kesesuaian dengan pengaturan yang pro kompetisi serta non diskriminatif dalam konteks persaingan usaha. Dalam penelitian ini, digunakan teori keadilan menurut Thomas Hobbes yang meninjau keadilan dari kerangka kekuasaan negara. Kekuasaan negara dalam hal ini berbentuk produk undang-undang. Dari hasil analisis mengenai keadilan pengaturan, dilakukan penelitian lebih lanjut dalam konteks persaingan usaha dengan teori diskriminasi. Diskriminasi dalam konteks persaingan usaha dapat berupa pembedaan pada suatu pelaku usaha untuk bersaing diluar permasalahan harga. Pembedaan berdampak pada pelaku usaha untuk bersaing pada pasar. Lebih lanjut, dibahas pula mengenai prinsip pembentukan peraturan menurut Bertelsmann di era digital yang bersifat pro kompetisi untuk meningkatkan mutu regulasi layanan penyiaran. Dengan diketahuinya prinsip pembentukan peraturan di era digital yang bersifat pro kompetisi layanan TV Konvensional dan penyiaran OTT bisa bersaing secara sehat.

.....This study discusses the analysis of regulations in the context of business competition regarding discrimination, especially in the broadcasting sector. This research is based by a shift in habits to access broadcasts that change from conventional TV channels to application services and/or content via the internet over the top (“OTT”). These changes bring changes to the relevant market, namely Conventional TV service providers and OTT broadcasters. The number of users of OTT services has increased significantly. Despite having the same function, OTT service in principle has a different character from conventional TV. Differences in regulations are a logical consequence of differences in principles and characters even though they have the same function. The difference in regulations is recognized through the decision of the

Constitutional Court No. 39/PUU-XVIII/2020 dated December 10, 2020,² which argues that conventional television and OTT are different and non-discriminatory. This paper aims to analyze fairness and conformity with pro-competitive and non-discriminatory arrangements in the context of business competition. In this study, the theory of justice according to Thomas Hobbes is used which reviews justice from the framework of state power. The power of the state in this case is in the form of a product of law. From the results of the analysis of regulatory justice, further research was conducted in the context of business competition using the theory of discrimination. Discrimination in the context of business competition can be in the form of differentiating a business actor to compete outside of price issues. The difference has an impact on business actors to compete in the market. Furthermore, Bertelsmann's principle of the formation of regulations in the digital era that is pro-competitive in nature is also discussed to improve the quality of regulation of broadcasting services. By knowing the principles of forming regulations in the digital era that are pro-competition, Conventional TV services and OTT broadcasting can compete in competitively.

Keywords: competition law; broadcasting operators; broadcasting law; conventional television; digital applications; over the top