

Kewenangan Lembaga Pengawas Persaingan Usaha di Uni Eropa dalam Menilai Dugaan Penyalahgunaan Posisi Dominan Oleh Pelaku Usaha Yang Telah Melaksanakan Non-Reportable Transactions dan Perbandingannya Dengan Hukum Persaingan Usaha di Indonesia = The Authority of Business Competition Authorities in the European Union in Assessing Alleged Abuse of Dominant Position by Business Actors Who Have Carried Out Non-Reportable Transactions and Its' Comparison with Competition Law in Indonesia

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Abstrak

Tulisan ini menganalisis bagaimana kewenangan lembaga pengawas persaingan usaha di Uni Eropa meninjau dugaan penyalahgunaan posisi dominan oleh pelaku usaha yang melaksanakan non reportable transactions berdasarkan hukum persaingan usaha di Uni Eropa dan perbandingannya dengan hukum persaingan usaha Indonesia. Tulisan ini disusun dengan menggunakan metode penulisan yuridis normatif. Transaksi merger antara badan usaha yang memenuhi threshold harus dinotifikasikan kepada lembaga pengawas persaingan usaha. Sementara itu, transaksi yang tidak memenuhi threshold (non-reportable transactions) bebas dari kewajiban notifikasi. Terdapat 2 (dua) jenis sistem notifikasi, yaitu ex-ante dimana notifikasi dilaksanakan sebelum transaksi berlaku efektif, dan ex-post dimana notifikasi dilaksanakan setelah transaksi berlaku efektif secara yuridis. Pada 2023, European Union Court of Justice (ECJ) mengeluarkan preliminary ruling dalam Putusan ECJ Case C-449/21. Pada putusan tersebut terdapat indikasi penyalahgunaan posisi dominan di pasar penyiaran televisi Prancis ketika suatu badan usaha bernama TDF melakukan non-reportable transaction berupa merger dengan kompetitornya yaitu Itas. Kompetitor TDF, yaitu Towercast, mengajukan gugatan menyatakan transaksi tersebut adalah penyalahgunaan posisi dominan dan seharusnya ditinjau kembali. Putusan ECJ menyatakan bahwa non-reportable transactions dapat ditinjau kembali oleh lembaga pengawas persaingan usaha secara ex-post. Putusan tersebut memberi kesadaran bahwa ada kekosongan hukum di hukum persaingan usaha mengenai potensi penyalahgunaan posisi dominan pada non-reportable transactions.

.....This paper analyzes the authority of business competition authorities in the European Union (EU) reviews allegations of abuse of dominant position by business actors through non-reportable transactions and its comparison with competition law in Indonesia. This paper was written using the normative juridical method. Mergers that meet thresholds must be notified to the business competition authorities. Transactions that do not meet the thresholds and are thus free from notification obligations are referred to as non-reportable transactions. There are two types of notification systems, namely ex-ante, where notification is carried out prior to a transaction becoming legally effective, and ex-post where the notification is carried out after the transaction becomes effective. In 2023, the EU Court of Justice (ECJ) issued a preliminary ruling in the decision of ECJ Case C-449/21. A company named TDF conducted a non-reportable transaction as it merged with its competitor in the television broadcasting market, named Itas. Its other competitor, Towercast, reported the transaction as an abuse of dominant position and therefore must be re-assessed. The results of the preliminary ruling states that non-reportable transactions can be reviewed ex-post by business

competition authorities. The ruling raises awareness that an abuse of a dominant position can potentially be conducted through non-reportable transactions.