

# Analisis peraturan dalam bidang penyiaran tekevisi konvensional dan penyediaan layanan aplikasi dan/atau konten melalui internet over the top dalam perpektif persaingan usaha yang adil = Analysis of regulations in the field of conventional television broadcasting and the provision of application and/or content services via the internet over the top in the perspective of fair business competition

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## Abstrak

Penggunaan internet mengeser kebiasaan masyarakat. Siaran yang biasa dinikmati lewat TV konvensional perlahan bergeser ke layanan aplikasi dan/atau konten melalui internet over the top (“OTT”). Perubahan kebiasaan ini juga mengubah pasar yang bersangkutan 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 dan persaingan usaha yang sehat ditengah perbedaan pengaturan TV Konvensional dan penyiaran OTT. Tulisan ini menganalisis 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 pembentukkan peraturan menurut Bertelsmann di era digital yang bersifat pro kompetisi untuk meningkatkan mutu regulasi layanan penyiaran. Dengan diketahuinya prinsip pembentukkan peraturan di era digital yang bersifat pro kompetisi layanan TV Konvensional dan penyiaran OTT bisa bersaing secara sehat

.....The use of the internet has shifted society habits. Broadcasts that are usually enjoyed through conventional TV are slowly shifting to apps/content from Over the top (“OTT”) service provider. This change in habits also changes the market share of 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 which argues that conventional television and OTT are different and not discriminatory. This paper aims to analyze fairness and conformity with pro-competition and fair business competition

arrangements amidst the differences between Conventional TV and OTT broadcasting arrangements. This paper analyzes justice according to Thomas Hobbes who 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 the issue of price. Differentiation has an impact on business actors to compete in the market. Furthermore, Bertelsmann also discussed the principles of establishing regulations in the digital era that are pro-competitive in nature to improve the quality of broadcasting service regulations. By knowing the principles of forming regulations in the digital era that are pro-competition, Conventional TV services and OTT broadcasting can compete in a healthy manner.