

Tinjauan Tying Agreement Dalam Praktik Hukum Persaingan Usaha Indonesia (Studi Kasus Putusan Komisi Pengawas Persaingan Usaha No. 31/KPPU-I/2019 Dalam Praktek Dominasi Penjualan Pelumas Scooter Matic Oleh PT. Astra Honda Motor) = Review of Tying Agreements in Indonesian Business Competition Law Practices (Case Study of Decision of the Commission for the Supervision of Business Competition No. 31/KPPU-I/2019 in Practice Dominating Sales of Scooter Matic Lubricants by PT. Astra Honda Motor)

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Abstrak

Tesis ini hendak mengkaji terkait dengan Putusan KPPU No. 31/KPPU-1/2019. Terdapat dua pertimbangan hakim yang menarik untuk dikaji lebih lanjut, yakni hakim membenarkan perjanjian tertutup (tying agreement). Kemudian hakim memilih rule of reason daripada per se illegal. Akan tetapi, penelitian ini akan berfokus hanya pada kajian mengenai tying agreement. Perjanjian antara PT. AHM dengan Main dealer dan Dealer yang memiliki persyaratan bahwa pihak yang ingin mempunyai bengkel AHASS harus bersedia menerima dan membeli barang dan jasa lain dari PT. AHM selain itu terdapat klausula perjanjian potongan harga suku cadang yang diperoleh pemilik bengkel AHASS. Rumusan masalah yang peneliti bahas yaitu apakah tindakan PT AHM melakukan perjanjian tertutup dengan Main Dealer dan Dealer di Indonesia masuk kategori pelanggaran pasal 15 ayat 2 dan 3 berdasarkan UU Persaingan usaha dan apakah pendekatan Rule of Reason yang digunakan dalam putusan KPPU No: 31/KPPU-I/2019 sudah tepat dalam memutus pelanggaran pasal 15 ayat 2 dan 3 UU Persaingan Usaha. Metode penelitian yang digunakan yaitu normatif, sifat penelitian yang digunakan yaitu deskriptif-analitis, jenis data yang digunakan yaitu data primer dan sekunder, analisis data dilakukan secara deskriptif-kualitatif, serta pengambilan kesimpulan dilakukan dengan logika deduktif.

.....This thesis intends to examine the KPPU's Decision No. 31/KPPU-1/2019. There are two interesting judges' considerations for further study, namely the judge justifying a closed agreement, tying agreement. Then the judge chose the rule of reason rather than per se illegal. However, this research will focus only on the study of tying agreement. Agreement between PT. AHM with Main dealers and Dealers who have a requirement that parties who want to have an AHASS workshop must be willing to accept and buy other goods and services from PT. In addition to that, AHM has a clause on the spare parts discount agreement which is obtained by the AHASS workshop owner. The formulation of the problem that the researcher discusses is whether the action of PT AHM in entering into closed agreements with Main Dealers and Dealers in Indonesia is categorized as a violation of Article 15 paragraphs 2 and 3 based on the Business Competition Law and whether the Rule of Reason approach used in KPPU's decision No: 31/KPPU- I/2019 has been right in deciding violations of Article 15 paragraphs 2 and 3 of the Business Competition Law. The research method used is normative, the nature of the research used is descriptive-analytical, the types of data used are primary and secondary data, data analysis is carried out descriptively-qualitatively, and conclusions are drawn using deductive logic.