

RINGKASAN

ADITYA MAULANA RIZQI, Program Studi Magister Ilmu Hukum Pasca Sarjana Universitas Jenderal Soedirman, penerapan pendekatan yuridis dalam penyelesaian perkara perjanjian tertutup berdasarkan hukum persaingan usaha di Indonesia. (studi terhadap putusan KPPU perkara nomor 02/KPPU-I/2013 dan putusan kppu perkara nomor 31/KPPU-I/2019), Pembimbing : Prof. Tri Lisiani Prihatinah, S.H., M.A., Ph.D., dan Dr. Sulistyandari, S.H., M.Hum.

Tujuan penelitian ini yaitu pertama untuk menganalisis penerapan pendekatan yuridis terhadap permasalahan Perjanjian Tertutup dalam Putusan KPPU Nomor: 02/KPPU-I/2013 dan Putusan KPPU Nomor 31/KPPU-I/2019. Kedua, untuk menganalisis perlindungan hukum terhadap pelaku usaha lain yang dirugikan akibat adanya perjanjian tertutup dalam Putusan KPPU Nomor : 02/KPPU-I/2013 dan Putusan KPPU Nomor 31/KPPU-I/2019.

Tipe penelitian yang digunakan dalam penelitian ini adalah yuridis normatif, dengan metode pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Sumber data yang digunakan ialah data sekunder dengan bahan hukum primer, sekunder dan tersier. Data dianalisis dengan metode normatif kualitatif. Diperoleh hasil bahwa penerapan pendekatan yuridis oleh Komisi Pengawas Persaingan Usaha terhadap permasalahan perjanjian tertutup dalam Putusan KPPU Nomor Perkara : 02/KPPU-I/2013 dan Putusan KPPU Nomor Perkara : 31/KPPU-I/2019 tidak tepat karena tidak mendasarkan pada Peraturan Komisi Pengawas Persaingan Usaha Nomor 5 Tahun 2011 tentang Pedoman Pasal 15 (Perjanjian Tertutup). Penerapan pendekatan *per se illegal* pada Putusan KPPU Nomor Perkara : 02/KPPU-I/2013 tidak tepat, karena terbukti memenuhi unsur-unsur pelanggaran Pasal 15 ayat (2), namun tidak terbukti memenuhi kriteria pelanggaran Pasal 15 yaitu kriteria kekuatan pasar yang semakin bertambah karena strategi perjanjian tertutup yang dilakukan pelaku usaha dan kriteria pelaku usaha yang melakukan perjanjian *tying* harus memiliki kekuatan pasar yang signifikan sehingga dapat memaksa pembeli untuk membeli juga produk yang diikat. Penerapan pendekatan *rule of reason* pada Putusan KPPU Nomor Perkara : 31/KPPU-I/2019 tidak tepat, karena terbukti memenuhi unsur-unsur pelanggaran Pasal 15 ayat (2) dan terbukti memenuhi semua kriteria pelanggaran Pasal 15. Terdapat perlindungan hukum yang berbeda bagi pelaku usaha lain yang dirugikan akibat dari adanya perjanjian tertutup pada Putusan KPPU Nomor 02/KPPU-I/2013 dan Putusan KPPU Nomor 31/KPPU-I/2019. Putusan KPPU Perkara Nomor : 02/KPPU-I/2013 terdapat perlindungan hukum secara preventif dan represif. Putusan KPPU Perkara Nomor : 31/KPPU-I/2019 terdapat perlindungan hukum secara preventif, namun tidak terdapat perlindungan hukum secara represif. Pelaku usaha lain yang dirugikan akibat dari adanya perjanjian tertutup dalam Putusan KPPU Perkara Nomor : 31/KPPU-I/2019 tidak dapat mengajukan upaya hukum keberatan.

Kata kunci : Pendekatan Yuridis, Perlindungan Hukum, Perjanjian Tertutup, Persaingan Usaha.

SUMMARY

ADITYA MAULANA RIZQI, Master of Law Study Program, Postgraduate University of Jenderal Soedirman, application of a juridical approach in settling closed contract cases based on business competition law in Indonesia. (study of KPPU's decision case number 02/KPPU-I/2013 and KPPU's decision case number 31/KPPU-I/2019), Advisor : Prof. Tri Lisiani Prihatinah, S.H., M.A., Ph.D., and Dr. Sulistyandari, S.H., M.Hum.

The purpose of this study is first to analyze the application of a juridical approach to the issue of closed agreements in KPPU's Decision Number: 02/KPPU-I/2013 and KPPU's Decision Number 31/KPPU-I/2019. Second, to analyze the legal protection of other business actors who have suffered losses as a result of closed agreements in the KPPU's Decision Number: 02/KPPU-I/2013 and KPPU's Decision Number 31/KPPU-I/2019.

The type of research used in this research is normative juridical, with statutory approach, case approach, and conceptual approach. The data source used is secondary data with primary/secondary/tertiary legal materials. While the data were analyzed using qualitative normative methods. The result is that the application of a juridical approach by the Commission for the Supervision of Business Competition to the issue of closed agreements in the KPPU's Decision Case Number: 02/KPPU-I/2013 and KPPU's Decision Case Number: 31/KPPU-I/2019 is inappropriate because it is not based on the Supervisory Commission Regulation Business Competition Number 5 of 2011 concerning Guidelines for Article 15 (Closed Agreement). The application of the *per se* illegal approach to the KPPU Decision Case Number: 02/KPPU-I/2013 is not appropriate, because it is proven to fulfill the elements of a violation of Article 15 paragraph (2), but it is not proven to meet the criteria for violating Article 15, namely the criteria for increasing market power because the closed agreement strategy carried out by business actors and the criteria for business actors entering into tying agreements must have significant market power so that they can force buyers to also buy tied-up products. The application of the rule of reason approach to the KPPU Decision Case Number: 31/KPPU-I/2019 is not appropriate, because it is proven to fulfill the elements of a violation of Article 15 paragraph (2) and is proven to fulfill all the criteria for a violation of Article 15. There are different legal protections for perpetrators other businesses that were harmed as a result of the existence of closed agreements in the KPPU Decision Number 02/KPPU-I/2013 and KPPU Decision Number 31/KPPU-I/2019. KPPU Decision Case Number: 02/KPPU-I/2013 contains preventive and repressive legal protection. KPPU Decision Case Number: 31/KPPU-I/2019 has preventive legal protection, but there is no repressive legal protection. Other business actors who have suffered losses as a result of the existence of closed agreements in the KPPU Decision Case Number: 31/KPPU-I/2019 cannot submit objection legal remedies.

Keywords: Business Competition Law, Closed Agreement, Juridical Approach, Legal Protection.