

## ABSTRAK

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### **ANALISIS HUKUM DUGAAN TINDAKAN KARTEL DALAM PENJUALAN KENDARAAN BERMOTOR RODA DUA**

(x + 89 halaman)

Pasal 5 ayat (1) UU No. 5/1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat, secara normatif mengatur mengenai perjanjian penetapan harga baik perjanjian secara tertulis maupun tidak tertulis atau dikenal dengan istilah kartel penetapan harga (*price fixing*). Ketentuan Pasal tersebut memiliki unsur-unsur tertentu dan bersifat *per se illegal* karena kartel penetapan harga tergolong dalam *hardcore* kartel atau kartel yang dilarang keras dalam ranah hukum persaingan usaha sehingga dalam proses pembuktiannya wajib disertakan bukti langsung atau *direct evidence* atas perjanjian penetapan harga yang dimaksud.

Putusan Perkara KPPU, No.04/KPPU-01/2016 memutuskan bahwa pihak Terlapor yakni PT. YMMI dan PT. AHM secara sah dan meyakinkan melanggar Pasal 5 ayat (1) yaitu melakukan praktik kartel penetapan harga dalam penjualan kendaraan bermotor roda dua dengan pertimbangan terpenuhinya seluruh unsur-unsur pelanggaran Pasal yang dijatuhkan dengan bukti – bukti tidak langsung yang disertakan oleh investigator. Penulis menganalisis putusan tersebut bahwa kasus tersebut tidak memenuhi unsur perjanjian dan unsur penetapan harga sebagaimana dijabarkan dalam unsur-unsur Pasal 5 ayat (1). Selain itu, Majelis menguatkan penggunaan *indirect evidence* yakni bukti ekonomi yang dikeluarkan oleh KPPU tanpa disertai *direct evidence* sebagaimana yang mestinya harus ditunjukkan dalam prinsip *per se illegal*. Oleh karena itu, penulis melakukan penelitian yuridis normatif melalui pendekatan undang – undang dan kasus terhadap putusan tersebut. Pada akhir penelitian, Penulis menarik kesimpulan bahwa unsur perjanjian dan unsur penetapan harga tidak terpenuhi dalam putusan tersebut.

Kata Kunci : Kartel, *Per Se Illegal*, *Direct Evidence*

Referensi : 22 (1776-2017)

## **ABSTRACT**

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### **LEGAL ANALYSIS OF CARTEL IN THE SALES OF TWO WHEELS MOTOR VEHICLES PRODUCT**

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Article 5 section (1) of Act No. 5/1999 of Law Concerning the Prohibition of Monopolistic Practices and Unfair Competition, normatively regulate about the pricing agreements or price fixing cartels with written or unwritten agreements. The provisions of that articles have certain elements and applied as per se illegal because price fixing cartel belongs to hardcore cartels that are strictly prohibited in competition law so that in the verification process, it must include the direct evidence of the price fixing agreement.

KPPU Decree No.04/KPPU-01/2016 decided that PT. YMMI and PT. AHM legally has breaking the Article 5 that did price fixing cartels of motorcycle in their market, the court decided based on the consideration of the fulfillment of all the article elements and the indirect evidence that shown by the investigator. The Author analyzes that the verdict of this case does not comply with the elements of the agreement and the element of price fixing as set out in the elements of Article 5 section (1). In addition, the court strengthened the use of indirect evidence (economic evidence) that issued by KPPU, without provided any direct evidence as it should be exist in the principle of per se illegal. Therefore, the author conducts the research of this verdict with normative juridical method research through statute approach and case study approach. At the end of the research, the authors summarize that the element of agreement and the price fixing element as set by Article 5, are not comply in this verdict.

Keywords : Cartel, Per Se Illegal, Direct Evidence

Reference : 22 (1776-2017)