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“PENGATURAN LARANGAN JUAL RUGI (*PREDATORY PRICING*) DI INDONESIA BERDASARKAN HUKUM PERSAINGAN USAHA INDONESIA DIBANDINGKAN DENGAN BERDASARKAN HUKUM PERSAINGAN USAHA UNI EROPA”

(xv + 172 halaman; 2 tabel; 1 lampiran)

ABSTRAK

Di dalam ekosistem bisnis, kegiatan jual rugi dianggap tidak sehat karena memonopoli harga sehingga berakibat pada pelaku bisnis lain yang tidak dapat memasuki pasar serta mematikan kompetitor dalam industri yang sama. Tujuan penelitian ini adalah menganalisis perbandingan jual rugi berdasarkan hukum persaingan usaha Indonesia (Undang Undang Nomor 5 Tahun 1999) dengan hukum persaingan usaha Uni Eropa (*The Treaty on the Functioning of the European Union*) serta penegakan hukum keduanya terhadap strategi monopoli jual rugi. Lebih lanjut, studi ini menawarkan rekomendasi kebijakan-kebijakan di masa depan terkait pencegahan praktik jual rugi yang kerap merugikan. Penulis menggunakan teori keadilan hukum, efisiensi hukum, konsep hukum persaingan usaha Indonesia dan Uni Eropa. Penelitian ini dilaksanakan menggunakan metode penelitian hukum normatif dengan menggunakan pendekatan asas-asas hukum dan perbandingan hukum serta analisis data yang bersifat kualitatif. Penelitian yang dilakukan menunjukkan hasil bahwa terdapat persamaan dalam indikator pengaturan jual rugi menurut Hukum Persaingan Usaha di Indonesia dengan Hukum Persaingan Usaha di Uni Eropa yang terlihat dari unsur pelaku usaha, pangsa pasar, indikasi penetapan jual rugi, serta analisis adanya indikasi penetapan jual rugi atau tidak. Sedangkan yang menjadi perbedaan dari pengaturan jual rugi di kedua hukum hanya terlihat dari segi substansi pengaturan jual rugi, definisi jual rugi, penggunaan test untuk mendeteksi jual rugi, penggunaan *recoupment test* serta otoritas persaingan usaha dari masing-masing negara. Dalam hal penegakan jual rugi menurut Hukum Persaingan Usaha Indonesia dengan Hukum Persaingan Usaha Uni Eropa terlihat tahapan penanganan perkara yang hampir sama. Perbedaan yang cukup signifikan terlihat dari kewenangan otoritas persaingan usaha dalam menindak praktik jual rugi serta penetapan sanksi dari hukum persaingan usaha kedua negara.

Kata Kunci : Perbandingan Hukum, Jual Rugi, Hukum Persaingan

Referensi : 116 (1823-2023)

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"THE PROHIBITION OF PREDATORY PRICING ARRANGEMENTS IN INDONESIA BASED ON INDONESIAN COMPETITION LAW COMPARED TO EUROPEAN UNION COMPETITION LAW"

(xv + 172 pages; 2 tables; 1 appendix)

ABSTRACT

In the business ecosystem, the strategy of predatory pricing is considered unhealthy because it monopolizes prices, resulting in other business actors being unable to enter the market and turning off competitors in the same industry. The purpose of this study is to analyze the comparison of predatory pricing based on Indonesian competition law (Law No. 5 of 1999) with European Union competition law (*The Treaty on the Functioning of the European Union*) and the enforcement of both laws against the monopoly strategy of predatory pricing. Furthermore, this study offers recommendations for future policies to preventing monopoly practice of predatory pricing that is often detrimental. The author uses the theory of legal justice, legal efficiency, the concept of Indonesian and European Union competition law. This research was carried out using normative legal research methods and using legal principles approaches and comparative law as well as qualitative data analysis. The research conducted showed that there are similarities in the indicators of predatory pricing arrangements according to Competition Law in Indonesia with Competition Law in the European Union which can be seen from the elements of business actors, market share, indications of determination of predatory pricing, and analysis of indications of determination of predatory pricing. Meanwhile, the difference between the predatory pricing arrangement in both laws is only seen in terms of the substance of the predatory pricing arrangement, the definition of predatory pricing, the use of tests to detect predatory pricing, the use of recoupment tests and the business competition authorities of each country. In terms of enforcement of predatory pricing according to Competition Law in Indonesia with Competition Law in the European Union, it can be seen that the stages of handling cases are almost the same. Significant differences can be seen in terms of the business competition authority in prosecuting predatory pricing practices and the imposition of sanctions under the competition law of the two countries.

Keywords : Comparative Law, Competition Law, Predatory Pricing

References : 116 (1823-2023)