

Segi pembuktian alat bukti surat dalam hukum acara persaingan usaha, analisis putusan Komisi Pengawas Persaingan Usaha perkara Nomor 02/KPPU-L/2005

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Abstrak

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Analisis ini bermula dari laporan pemasok(distributor) kepada Komisi Pengawas Persaingan Usaha terhadap dugaan pelanggaran persaingan usaha yang dilakukan oleh PT. Carrefour Indonesia. Laporan tersebut disebabkan bahwa PT. Carrefour menerapkan National contract sebagai syarat pemasokan barang ke gerai Carrefour, yang mana perjanjian(contract) tersebut memuat klausul (trading term) yang diantaranya mengatur tentang listing fee, minus margin, regular discount. Klausul listing fee, minus margin, dan regular discount tersebut diduga oleh Komisi Pengawas Persaingan Usaha telah melanggar Undang-undang nomor 5 tahun 1999 tentang larangan praktek monopoli dan Persaingan Usaha tidak sehat pasal 19 huruf a dan huruf b, pasal 25 ayat (1) huruf a. Sebagai pokok permasalahan yang dihadapi dalam penulisan ini yaitu bagaimana proses pembuktian dalam pemeriksaan perkara persaingan usaha oleh KPPU dan bagaimanakah kekuatan pembuktian alat bukti surat berupa duplikasi surat oleh Komisi Pengawas Persaingan Usaha. Pokok permasalahan tersebut di jawab dengan menggunakan metode analisis yuridis normatif dengan menyimpulkan bahwa proses pemeriksaan perkara pada Komisi Pengawas Persaingan Usaha merupakan pendekatan administratif dan perdata sebagaimana diatur dalam Undang undang nomor 5 tahun 1999 dan Peraturan Komisi Pengawas Persaingan Usaha nomor 1 tahun 2006. Namun dalam proses pembuktian perkara persaingan usaha mendekati persamaan dalam proses pembuktian dalam hukum acara pidana. Dan komisi dalam melakukan pemeriksaan alat bukti surat adalah menggunakan dokumen bukan otentik dikarenakan telapor tidak menyerahkan alat bukti surat otentik kepada komisi yang kemudian alat bukti surat tidak otentik tersebut menjadi pertimbangan majelis dalam memberikan putusannya, dimana cara tersebut sesungguhnya tidak sesuai dengan tata cara pemeriksaan perkara persaingan usaha dalam hal jika telapor tidak kooperatif untuk memberikan alat bukti surat yang dibutuhkan oleh komisi sebagaimana diatur dalam pasal 41 Undang-undang nomor 5 tahun 1999.

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This analysis began with the report on the supplier to the Commision for the supervision of business competition towards the assumption of the violation of the competition for efforts that was done by PT. Carrefour Indonesia. This report was caused that PT. Carrefour applied National contract as the condition for the supplying of the thing to the Carrefour counter, whichever the agreement (contract) contained the clause (trading term) that among them arranged about listing fee, minus margin, regular discount. The clause listing fee, minus margin, and regular discount it was suspected by the Commision for the supervision of business competition to violate regulation number 5 /1999 about the ban on the practice of the monopoly and the Competition for efforts were unhealthy the article 19 point a and point b, the article 25 (1) point a. As the subject of the problems that was dealt with in this writing that is how the process of authentication in the case inspection of the competition for efforts by Commision for the supervision of business competition

and how the strength of authentication of the document evidence took the form of duplication of the document by the Commission for the supervision of business competition. The problems above answered by using the normative juridical analysis method with concluded that the process of the case inspection of the Commission for the supervision of business competition to be the administrative approach and civil law as being arranged in regulation number 5/1999 and regulation of the Commission for the supervision of business competition number 1/2006. However in the process of authentication of the case of the competition for efforts approached the equality in the process of authentication in the law of criminal procedure. And the commission in carrying out the inspection of the document evidence was to use the document not authentic was caused PT. Carrefour did not hand over the authentic letter/document evidence to the commission that afterwards the letter/document evidence was not authentic that became consideration of the council in giving his decision, Where this method actually was not in accordance with the conduct of the case inspection of the competition for efforts in the matter if PT. Carrefour uncooperative to give the letter/document evidence that was needed by the commission as being arranged in the article 41 regulation number 5/1999.