Abstrak

PT. Pelabuhan Indonesia II (PELINDO II) yang merupakan Badan Usaha Milik Negara (BUMN) yang telah dicabut kewenangan hak monopoli melalui kebijakan demonopolisasi atas Undang-Undang Nomor 17 Tahun 2008 tentang Pelayaran. Walaupun telah dicabut, PT. Pelindo II tetap menyelenggarakan kegiatan usaha kepelabuhanan secara monopolis. Seperti dalam kasus pelanggaran perjanjian tertutup (*tying agreement*) nomor perkara 12/KPPU-I/2014 yang melibatkan PT. Pelindo II dengan PT. Multi Terminal Indonesia (MTI) yang merupakan anak perusahaannya. Indikasi pelanggaran berawal dari penerbitan surat edaran pemberitahuan kewajiban penggunaan alat bongkar muat *Gantry Luffing Crane* (GLC). Kewajiban yang diberlakukan ialah bagi Pengguna Jasa Dermaga harus pula menggunakan Jasa Pelayanan Bongkar Muat Barang yaitu GLC. Majelis Komisi KPPU dalam putusannya menyatakan PT. Pelindo II dan PT. MTI melanggar Pasal 15 ayat (2) Undang-Undang Nomor 5 Tahun 1999 tentang Larang Praktek Monopoli dan Persaingan Usaha Tidak Sehat. Namun ketika diajukan upaya hukum banding hingga kasasi Mahkamah Agung menyatakan putusan pembatalan atas putusan KPPU. Berdasarkan hal tersebut, terindikasi terdapat karakter khusus yang dimiliki oleh PT. Pelindo II dan PT. MTI tetap menjalankan kegiatan secara monopoli meskipun telah dicabut hak monopolinya, yakni karena fungsi sosial, ekonomi, asas keseimbangan, efisiesi dan efektifitas, serta hambatan masuk pasar. Serta terindikasi terdapat perbedaan pendapat pertimbangan hukum dalam Putusan KPPU dan Putusan MA, yakni pendekatan yuridis.

Kata Kunci : *Tying Agreement*, Karakter Khusus BUMN, Demonopolisasi, *Ratio Decidendi* Putusan

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Abstract

PT. Pelabuhan Indonesia II (PELINDO II) which is a State Owned Enterprises (SOEs) which has been revoked from its monopoly rights through the demonopolization policy of Law Number 17 of 2008 concerning Shipping. Even though it has been revoked, PT. Pelindo II continues to carry out port business activities on a monopolistic basis. As in the case of violation of a closed agreement (tying agreement) case number 12 / KPPU-I / 2014 which involved PT. Pelindo II with PT. Multi Terminal Indonesia (MTI), which is a subsidiary. Indication of violations began with the issuance of a circular notifying the mandatory use of the *Gantry Luffing Crane* (GLC) loading and unloading tool. The obligation that is imposed is that users of pier services must also use loading and unloading services, namely GLC. The KPPU Commission Council in its decision stated that PT. Pelindo II and PT. MTI violates Article 15 paragraph (2) of Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. However, when an appeal was filed, the Supreme Court declared the decision to cancel the KPPU's decision. Based on this, it is indicated that there are special characteristics possessed by PT. Pelindo II and PT. MTI continues to carry out activities in a monopoly manner even though its monopoly rights have been revoked, namely because of its social, economic functions, principles of balance, efficiency and effectiveness, as well as barriers to market entry. And there are indications of differences of opinion on legal considerations in the Indonesian Competition Commission Decision and the Supreme Court Decision, namely the juridical approach.

Keywords: Tying Agreement, Special Character of SOEs, Demonopolization, Decision Ratio Decidendi