ABSTRACT

RULE OF REASON PRINCIPLE
IN COMPETITION LAW OF INDONESIA
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The legality of an agreement or regulation can not be determined by so simple a test, as whether it restrains competition. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppressor even destroy competition. The analysis approach of Antitrust Law is per se illegal or rule of reason. One question the courts must address is whether, as a matter of policy, a certain business practice will be held to be per se illegal or wether a rule of reason approach can be applied. The per se illegal approach means that a certain type of business agreement, arrangement, or activity will automatically be held to be illegal by the courts. The agreement, arrangement, or activity is per se illegal because the courts believe that its use by a business will always result in a substantial restrain of trade. The rule of reason approach means that the courts will look at the facts surrounding an agreement, arrangement, or other restraint before deciding whether it helps or hurts competition. In reaching its decision, the courts will consider such factors as the history of restraint, the business reasons behind the restraint, the restraining business's position in its industry, and the structure of industry. The Act of The Republic of Indonesia Number 5 of 1999 adopted Antitrust Law and this rule of reason approach. The potential for conflicts inherent in rule of reason approach were to formulate criterias of rule of reason. There is no doubt that there is currently a great deal of confusion surrounding the issue of criterias of rule of reason. In this confusion there are a number of fundamental issues that have to be resolved, "which criterias of rule of reason apply?", "what is the meaning of rule of reason in the Act of The Republic of Indonesia Number 5 of 1999?''.

Keyword : **Antitrust Law, Rule of Reason Approach, Criteria of Rule of Reason.**