

**PERBANDINGAN HUKUM MENGENAI PENGATURAN PENGECAULIAN
CROSS LICENSING DAN POOLING LICENSING DALAM KERANGKA
ATURAN PERSAINGAN USAHA DI INDONESIA DAN DI AMERIKA
SERIKAT**

ABSTRAK

Di dalam Hukum Persaingan dapat ditemukan berbagai bentuk pengecualian (*exemption*) untuk menegaskan bahwa suatu aturan hukum dinyatakan tidak berlaku bagi jenis pelaku usaha tertentu. Pengecualian tersebut di antaranya adalah, pengecualian atas dasar perjanjian, seperti perjanjian lisensi Hak Kekayaan Intelektual. Dalam pengecualian perjanjian lisensi Hak Kekayaan Intelektual, dikenal dengan adanya Penghimpunan Lisensi (*Pooling Licensing*) dan Lisensi Silang (*Cross Licensing*). Pengaturan hukum terkait perjanjian *pooling licensing* dan *cross licensing* di negara Indonesia diatur dalam Peraturan Komisi Pengawasan Persaingan Usaha Nomor 2 Tahun 2009 tentang Pedoman Pengecualian Penerapan Undang-undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat terhadap Perjanjian Yang Berkaitan dengan Hak atas Kekayaan Intelektual, yang di mana pengaturannya sangat terbatas karena hingga saat ini di Indonesia belum pernah terjadi kasus atau permasalahan terkait *pooling licensing* dan *cross licensing*. Selain itu sebagai perbandingan dengan negara Indonesia, pengaturan mengenai perjanjian *pooling licensing* dan *cross licensing* di Negara Amerika Serikat diatur dalam *U.S. Department of Justice and Federal Trade Commission: Antitrust Guidelines for the Licensing of Intellectual Property* dan *U.S Department Of Justice and The Federal Trade Commision: Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition*. Di dalamnya mengatur mengenai lisensi di dalam hukum persaingan usaha, terutama yang terkait patent, hak cipta, rahasia dagang, dan *know-how*.

Penulisan skripsi ini menggunakan metode yuridis normatif yang difokuskan untuk melakukan suatu perbandingan hukum mengenai pengaturan pengecualian *cross licensing* dan *pooling licensing* dalam kerangka aturan persaingan usaha di Indonesia dan di Amerika Serikat. Berdasarkan pembahasan yang penulis lakukan terdapat perbedaan dan persamaan serta kelebihan dan kekurangan dalam pengaturan pengecualian *cross licensing* dan *pooling licensing* di negara Indonesia dan di Amerika Serikat.

Terdapat Persamaan dan Perbedaan, serta kelebihan dan kekurangan terkait pengaturan pengecualian *cross licensing* dan *pooling licensing* dilihat dari substansi hukum, struktur hukum dan budaya hukum. Salah satu dari persamaannya dari substansinya seperti, pengaturan pengecualian *cross licensing* dan *pooling licensing* di Indonesia diatur secara tertulis dalam Peraturan Komisi Pengawas Persaingan Usaha (KPPU) RI Nomor 2 tahun 2009, dan di Amerika Serikat diatur secara tertulis dalam *U.S Departement of Justice*

and The Federal Trade Commision: Antitrust Guidelines For the Licesning Of Intelectual Property dan U.S Department of Justice and The Federal Trade Commision, Antitrust Enforcement and Intelectual Property Rights: Promoting Innovation and Competition. Dalam hal perbedaannya salah satunya dilihat dari substansi di Indonesia *Cross Licensing dan Pooling Licensing* diatur dalam satu peraturan komisi yaitu, Peraturan Komisi Pengawas Persaingan Usaha (KPPU) RI Nomor 2 tahun 2009, sedangkan di Amerika Serikat *Cross Licensing dan Pooling Licensing* di atur di dalam dua peraturan yaitu, *U.S Departement of Justice and The Federal Trade Commision: Antitrust Guidelines For the Licesning Of Intelectual Property* dan *U.S Department of Justice and The Federal Trade Commision, Antitrust Enforcement and Intelectual Property Rights: Promoting Innovation and Competition.* Terkait kelebihan dalam pengecualian *cross licensing* dan *pooling licensing* baik di Indonesia maupun di Amerika serikat memiliki kesamaan, yaitu dapat mengurangi biaya transaksi sehingga produk yang dihasilkan menjadi lebih murah. Kekurangannya terkait pengecualian *cross licensing* dan *pooling licensing* di Indonesia, pemasaran terhadap suatu produk dikuasai secara dominan dan di Amerika Serikat, dalam klausul *Cross licensing* dapat menciptakan suatu hambatan, dan dalam klausul *Pooling Licensing* bersifat membatasi.

Kata kunci : Persaingan usaha, perbandingan hukum, pengecualian, *cross licensing*, *pooling licensing*.

**COMPARATIVE LAW REGARDING THE ARRANGEMENT OF CROSS
LICENSING AND POOLING LICENSING EXEMPTION IN THE
RULES FRAMEWORK OF BUSINESS COMPETITION IN
INDONESIA AND UNITED STATES**

ABSTRACT

In the Competition Law, there can be found various forms of exemptions to confirm that law is declared not applicable to certain types of business actors or businessmen. These exemptions include exemption based on agreement, such as Intellectual Property Rights licensing agreement. In the exemption of the Intellectual Property Rights licensing agreement, also known as Pooling Licensing and Cross Licensing. Legal arrangement related to pooling licensing and cross-licensing agreement in Indonesia are regulated in the Regulation of the Business Competition Supervision Commission Number 2 of 2009 concerning Exemption Guidelines for the Application of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition on Agreement Relating to Rights to Intellectual Property, in which the arrangement is very limited because until now in Indonesia there have never been cases or problems related to pooling licensing and cross-licensing. In addition, as a comparison with the Indonesian state, arrangement regarding pooling licensing and cross-licensing agreement in the United States are regulated in the U.S. Department of Justice and Federal Trade Commission: Antitrust Guidelines for the Licensing of Intellectual Property and U.S Department of Justice and the Federal Trade Commission: Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition. It regulates licensing in business competition law, especially those relating to patents, copyrights, trade secrets, and know-how.

This research employed a normative juridical method which was focused on conducting a comparative law regarding the arrangement of cross-licensing and pooling licensing exception in the rules framework of business competition in Indonesia and the United States. Based on the discussion of this study, the researcher found that there were differences and similarities, as well as advantages and disadvantages in the arrangement of cross-licensing and pooling licensing exemption in Indonesia and the United States.

There were Similarities and Differences, as well as the advantages and disadvantages related to the arrangement of cross-licensing and pooling licensing exemption was seen from the legal substance, legal structure, and legal culture. One of the similarities of the substance such as the arrangement of cross-licensing and pooling licensing exemption in Indonesia was regulated written in the Regulation of Business Competition Supervisory Commission Number 2 of 2009, and in the United States was regulated written in the U.S. Department of Justice and The Federal

Trade Commission: Antitrust Guidelines for the Lending of Intellectual Property and US Department of Justice and the Federal Trade Commission, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition. In terms of differences, one of them was seen from the substance in Indonesia, Cross Licensing and Pooling Licensing was regulated in one commission regulation, namely, Regulation of Business Competition Supervisory Commission (KPPU) RI Number 2 of 2009, while in the United States, Cross Licensing and Pooling Licensing was regulated in two regulations, namely, the U.S. Department of Justice and the Federal Trade Commission: the Antitrust Guidelines for the Intellectual Property Property and the US Department of Justice and the Federal Trade Commission, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition. Related to the advantages in the cross-licensing and pooling licensing exemption both in Indonesia and in the United States had similarities, which could reduce transaction costs so that the products produced were cheaper. The disadvantages were related to the cross-licensing and pooling licensing exemption in Indonesia, marketing of a product was dominated dominantly and in the United States, in the Cross licensing clause, it could create an obstacle, and in the Pooling Licensing clause was limiting.

Keywords: *Business competition, comparative law, exemption, cross-licensing, pooling licensing.*

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