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SHIFTING LEGAL APPROACH IMPLEMENTATION WITHIN A TYING CLAUSE UNDER THE DEALERSHIP AGREEMENT

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Abstract
This research examines the application of the legal approach implemented by the Commission for Business Competition ("KPPU") toward the alleged violation of the tying agreement under Article 15 paragraph (2) of Law Number 5 Of 1999 in the dealership agreement. This research also examines the exemption criteria in the dealership agreement because of the relation with the license agreement of intellectual property rights in Article 50 letter b of Law Number 5 Of 1999 using a normative-juridical and case study approach. This study concludes several results. *Firstly*, in Article 15 paragraph (2) of Law Number 5 Of 1999, tying agreement implements the approach of *per se illegal*. Despite that, KPPU analyzed the tying strategy under the dealership agreement using the *rule of reason* approach on KPPU's Decision Number 31/KPPU-1/2019 with the consideration of the positive impacts in the dealership agreement. *Secondly*, the exemption of competition law regulated in Article 50 letter b of Law Number 5 Of 1999 could not be applied to the dealership agreement because it does not fulfill the criteria for license agreement related to intellectual property rights

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I. INTRODUCTION

In competition law, all business actors establish their best endeavor to gain maximum profit by fulfilling consumer preferences and utilizing existing resources. The existence of competitors for business actors in a perfectly competitive market is other potential market actors competing to dominate the market (Sumadi 2017:33). In practice, many agreements and business activities in the business sector were injustice towards parties whose economic or social status is weaker under the pretense of maintaining fair business competition. Unfair business competition has a destructive character that could disrupt a country's finances due to many people losing their welfare and justice for the economy and society. (Nugroho 2012:106).

For that reason, Article 4 to Article 16 of Law Number 5 Of 1999 concerning Monopolistic Practices and Unfair Business Competition **("Law Number 5 Of 1999")** regulate prohibited agreements because they are considered detrimental to business competition and cause monopolistic practices (Nugroho 2012:118). Nonetheless, business competition law in Indonesia does not implement in an absolute system, because it recognizes exceptions to emphasize that a legal rule in competition law is declared invalid in certain agreements or activities (Lubis 2017:295). One of the exceptions is a license agreement related to Intellectual Property Rights **("IPR")**, regulated in Article 50 letter b of Law Number 5 Of 1999.

According to Article 50 letter b of Law Number 5 of 1999, IPR license agreement must fulfill specific criteria to be excluded from competition rules. One of them is the examination on whether or not there is an element of anti-competitive clauses in the IPR license agreement. The alleged anti-competition clause in an Agreement on the Appointment and Assignation of the Main Dealer is reflected in the preliminary examination of Case Number 31/KPPU-I/2019, namely the alleged practice of tying agreement in Article 15 paragraph (2) of Law Number 5 Of 1999, between PT Astra Honda Motor **("PT AHM")** and the Main Dealer and/or Astra Honda Authorized Service Station **("AHASS")** (Fransisca Christy Rosana n.d.). The tying agreement is classified as a prohibited agreement due to the harmful impacts of the competition, described as follows; (1) emerge the entry barrier, because it causes other business actors not to have the equal opportunity to enter the market and compete fairly on tied products sector; (2) eliminate the consumers' right to decide freely on the purchased goods (Usman 2013:337).

Enshrine in Article 15 paragraph (2) of Law Number 5 Of 1999 related to tying agreement, used the approach of *per se illegal*, which means for business actors who conduct tying agreement, without proving the consequences of the agreement have emerged, this article could be applied perfectly to the perpetrator. Nonetheless, since the issuance of KPPU's Regulation Number 5 of 2011 concerning Guidelines for Article 15, in an exclusive agreement, including a tying agreement to determine the existence of a violation, it must be proven beforehand regarding the negative impact of the implementation of the rights and obligations of the parties emerge of the agreement.

In connection with the problems raised earlier, the author aims to examine several legal problems: *Firstly*, how is the implementation of the legal approach to the alleged violation of the tying clause between PT AHM and the Main Dealer in the Appointment and Assignation Agreement of Main Dealer based on Law Number 5 Of 1999. *Secondly*, whether the Agreement on Appointment and Assignation of Main Dealer **(hereinafter referred to as "dealership agreement")** between PT AHM and Main Dealer, which includes a tying clause, is an agreement that is excluded under Article 50 letter b of Law Number 5 Of 1999.

II. RESEARCH METHODS

This research utilizes a normative juridical method by analyzing library materials or secondary data, primarily written legal materials (Soekanto 2009:12). This study uses the statute approach and case approach (Marzuki 2011:114). The legal approach that is being used for this research is in the form of primary legal material as positive law in Indonesia. Furthermore, this study uses a case approach in the form of the KPPU's Decision Number 31/KPPU-I/2019.

The research specification uses descriptive-analytical by describing the legal approach used by KPPU in analyzing the tying clause under the dealership agreement between PT AHM and Main Dealer, based on Law Number 5 Of 1999. Moreover, this study examines the exemption of license agreement under the dealership agreement based on the criteria regulated in Law Number 5 Of 1999 and Law Number 20 Of 2016. The data collection technique in this study was conducted by library research.

III. RESULT AND DISCUSSION

3.1. The Implementation of Legal Approach to the Alleged Violation of Tying Clause in Dealership Agreement

Competition law provides an alternative between 2 (two) different approaches, namely, *per se illegal* and *rule of reason*. These approaches utilized by KPPU as references to assess and analyze violation of business actor activities based on Law Number 5 Of 1999 (Simbolon 2013:189).

Per se illegal means "unlawful from the beginning". The act is against the law, which means inherently prohibited or illegal (Sudaryat 2019:19). The *per se illegal* approach is the application of competition law, which prohibits an act or agreement without requiring proof of its consequences. In a *per se illegal* approach, every prohibited act and agreement is contrary to applicable law (Jemarut 2020:380). Under this approach, several businesses agreements types, for instance, exclusive agreement, price-fixing, and boycott, are considered as a violation of the competition law and therefore a detrimental to other business actors and public interest. Thus, without the urgency to prove the impact of violation related to fair competition law principles, this approach could be automatically applied to the perpetrator (Widhiyanti 2016:389).

The *rule of reason* approach is the opposite and in a wider scope than *per se illegal* and tends to be efficiency-oriented. KPPU implements this approach to evaluate the consequences of a particular agreement or activity, whether it has a prohibited impact within the scope of monopolistic practices and/or unfair business competition (Sirait 2017:172). This approach uses economic analysis to determine whether a business actor's actions have implications for competition (Lubis 2017:66).

One type of prohibited agreement in competition law is a tying agreement. Tying agreement is the scope of exclusive agreement in Article 15 Of Law Number 5 Of 1999. The definition of tying agreement is an agreement between enterprises with the requirement that obliges the receiving party to purchase the main products and requires the receiving party to purchase additional products.

The competition rules implement the rigid approach to tying agreement under Article 15 paragraph (2) of Law Number 5 Of 1999, with *per se illegal* approach. This means for business actors who conduct tying agreements, without having to prove the consequences of the unfair business practice has emerged, this article can already impose on business actors who violate it (Nugroho 2012:215).

Tying agreement becomes prohibited for the following reasons: (1) the tying strategy tends to disrupt competition because it causes a barrier to entry into the tied product market, which prevents other business actors from being able to compete fairly on tied products; (2) causes the tied and tying products' monopolization; (3) business actors who practice tying agreements terminate consumers' right to decide the goods they desire to buy freely. On the other hand, a tying agreement tends to positively impact the consumer that needs a unified package of goods or services. Thus, they could benefit from a lower price (Sudiarto 2021:41).

The tying agreement has occurred, when the buyer is forced to buy additional products to obtain the main product they wanted. The main product the buyer wants to buy is often referred to as the tying product, while the secondary product is referred to as the tied product. (Mukherjee 2014:22)

Implementing Article 15 paragraph (2) of Law Number 5 Of 1999 is recognized in the various cases handled by KPPU. One of the tying cases to analyze the approach in competition law is KPPU's Decision Number 31/KPPU-I/2019 concerning the dealership agreement between PT AHM and Main Dealer.

Based on a preliminary examination by the KPPU's Investigator Team, in case number 31/KPPU-I/2019, it was found that there was an alleged violation of the exclusive agreement in the form of tying agreement under Article 15 paragraph (2) of Law Number 5 Of 1999, which was conducted by PT AHM as the Reported Party. PT AHM as the holder of Honda Motor's exclusive license is alleged to have entered into a tying agreement in a dealership agreement involving the Main Dealer and/or an authorized AHASS.

There is an alleged tying clause because of the relationship between PT AHM and the Main Dealer, as stated in the dealership agreement, contains a requirement that every person who requires to possess an AHASS must receive at the minimum initial strategic tools in the form of a bike lift and a mechanic truster (screwdrivers, pliers, and others) from PT AHM, and are required to purchase other spare parts (including lubricants) from PT AHM.

In a quo case, KPPU has the authority to assess, analyze, and investigate anti-competition impacts in the dealership agreement. Therefore, in this tying case, all the elements in Article 15 paragraph (2) of Law Number 5 Of 1999 were proven by KPPU as follows: (1) The business actor, is PT Astra Honda Motor as a legal entity, in the form of a foreign investment limited liability company based on Law Number 25 Of 2007, while the establishment is regulated by Law Number 40 Of 2007 regarding Limited Liability Companies; (2) The agreement, is the dealership agreement made between PT AHM and the Main Dealer. PT AHM as the holder of the exclusive license rights from Honda Motor Co. Ltd., products for new motorcycles and motorcycle spare parts under the Honda brand, in marketing their products, are stated in the dealership agreement. Moreover, the derivative agreement contained in the Dealer Appointment and Assignation Agreement, arranged as follows but not limited to, stipulated that the Main Dealer must report and consult with PT AHM to appoint and assign dealers as the second layer chain; (3) The receiver party consists of Main Dealer (first chain) and Dealer (second chain) who receive and/or promote PT AHM's products; (4) Goods or Services (Tying Product) is strategic tools existed under the dealership agreement. Article 3 of the Dealership Agreement regulates: "*Both Main Dealer and Dealer commit as an official AHM's service station; thus, they are obliged to complete and utilize the repair shop facilities and infrastructure, consists of strategic tools from the main dealer as a standards tool and repair shop facilities to implement after-sales-service of motorcycles assigned by PT AHM*"; (4) Other Goods and/or Services (Tied Products), is lubricant products with specifications SAE 10 W 30, JASO MB, API SG or higher specification by PT AHM. As regulated in Article 2.A.3 Of the Dealership Agreement, regulates: *"Main Dealer and Dealer are obliged to purchase as a commitment to fulfill the responsibility as an Astra Honda Authorized Service Station".*

As aforementioned, each element of the tying agreement in Article 15 paragraph (2) of Law Number 5 Of 1999 have been fulfilled. Despite that, based on the *rule of reason* approach that evaluates the economic reasons and the benefit principle or positive impact, PT AHM has successfully provided positive impacts on the community consisting of PT AHM's consumer products and services. In addition to the positive impact, the purpose of the dealership agreement is to maintain quality, reputation, and after-sales service to PT AHM's customers. Thus, KPPU stated the action of PT AHM under the dealership agreement could be justified.

Derived from KPPU's Decision Number 31/KPPU-I/2019, it could be concluded that the tying agreement in Article 15 paragraph (2) of Law Number 5 Of 1999 implements a *per se illegal* approach which automatically imposed on business actors who violate it. Nevertheless, the *rule of reason* approach could be applied in this case, considering KPPU analyzed the positive impact of a tying agreement between PT AHM and Main Dealer under the dealership agreement.

According to a competition law expert, Ningrum Natasya Sirait, based on the developments that have occurred, the tying agreement also has a pro-competition aspect. Hence, if KPPU would analyze and unify the negative and positive impacts, initially KPPU must prove which impact is more significant (Sirait 2017:172). Because not all tying arrangements disrupt the fair competition in the market (Leslie 2017:410). The shift in the legal approach application of competition law also enshrined in KPPU's Regulation Number 5 Of 2011 that in competition law, a tying agreement must be proven by analyzing the background of an exclusive agreement and impact of the rights and obligations between parties in an agreement.

Acquired from KPPU's Regulation Number 5 of 2011, the tying strategy could have positive impacts, comprising of; 1) selling various products simultaneously will reduce transaction costs, especially in the process of collecting information, negotiating, and managing logistics; and 2) In certain cases (for instance: complex machines), the manufacturer can bind the buyer; thereby, quality control of the raw materials used by the machine can be maintained. Thus, there will be no mistakes in using raw materials that worsen engine performance.

Additionally, the existence of criteria in classifying a tying agreement as a violation in Article 15 of Law Number 5 Of 1999 consists of; 1) substantially closing the trade volume; 2) tying is conducted by business actors that have market power and are increasing due to tying agreement; 3) the secondary product in a sale must be different from the main product; 4) tying has significant market power, which forces buyers to buy the tied product. Each criterion is intended to distinguish between a pro-competitive and potentially anti-competitive agreement (Leslie 2017:410).

In analyzing the tying agreement case under the dealership agreement, it is necessary to examine the negative impacts on the rights and obligations of the parties to the tying agreement practice. Moreover, to determine that the tying agreement violated competition law. KPPU is also obligated to analyze the magnitude of the negative impact, which must be greater than the positive impact.

The Commission Council proved the negative impact that occurred in the dealership agreement by the existence of after-sales services created a monopoly market as a result of the buyer's dependence on the after-sales conditions provided by PT AHM, which is described as follows; 1) Witness Martin Adelia's statement as the Sales Manager of PT Topindo Atlas Asia, which stated that other lubricant products outside the Honda brand could not sell their oil to Honda motorcycles because they are committed to the warranty rules for a period of 1 (one) to 3 (three) months; and 2) Witness Andria Nusa, Director of Sales and Marketing of PT Pertamina Lubricants, stated that Pertamina has difficulties promoting its lubricant products to the Astra Honda Motor Service Station.

Regarding the positive impact of the tying agreement, the business actor must provide to KPPU evidence that proves their agreement is legal, which impacts the pro-competitive theory. The positive impacts have arisen from the tying clause under the dealership agreement. Based on KPPU's considerations, the positive impacts from the tying clause under the dealership agreement have become apparent, which comprise of: (1) The dealership agreement does not eliminate the consumers' right to freely decide the products they want to buy. Consumers are not obliged to service their motorbikes at AHASS because there are still service options outside of AHASS; service at AHASS is solely a recommendation and not an obligation; (2) AHASS continues to provide services although consumers buy and bring lubricants from other brands outside AHM’s oil; (3) The dealership agreement and its derivative agreement aims to maintain quality, reputation, and after-sales service to consumers. Consequently, based on the reasons and benefit principle, the tying under the dealership agreement positively impacts the community, in this case, the consumers of PT AHM's products and services. Thus, PT AHM's tying clause contained in the dealership agreement could be justified.

Based on the description above, although the application of the law in Article 15 paragraph (2) Law Number 5 Of 1999 is *per se illegal*, in this case, the Commission Council applies evidence toward the dealership agreement based on a *rule of reason* approach by assessing and analyzing the magnitude of the positive impact on the community, namely PT AHM's consumers, which is greater than the negative impact. Hence, the agreement stated in the dealership agreement by PT AHM has a pro-competition aspect.

Determination of the implementation of the legal approach application does not solely depend on the use of words in Law Number 5 of 1999, which states that the word "prohibited" means using a *per se illegal* approach, while the terms "reasonable" or "which may potentially cause" means using a *rule of reason* approach (Lubis 2017:89). Under Article 35 of Law Number 5 of 1999, KPPU has a task to assess the agreements and activities of business actors, which may result in monopolistic practices and unfair business competition. Therefore, the task of the KPPU concerning this case is to have the authority to implement the two approaches alternatively.

KPPU determined the implementation of the *rule of reason* on tying agreement in the dealership agreement, based on the best practice of competition law. Moreover, while investigating the agreement's impacts, KPPU depended on the guidelines of purpose in Article 3 letter a of Law Number 5 Of 1999, that the dealership agreement has an impact on specifically increasing the efficiency of the national economy and improving consumer welfare.

Tying agreements existed due to the motivation of business actors to enhance and maintain their reputation for product quality and reliability. This should not be considered abusive because it increases efficiency and market demand. For example, poor service to the dominant company's products could negatively impact the dominant company's reputation and result in lower sales. Hence, the dominant company may sell its products and services together through a tying agreement (Nazzini 2018:19).

The excessive application of *per se illegal* could reach actions that are not detrimental and has a pro-competitive aspect. The business actors who should not be convicted though because they did the initially classified action that violated competition law, the business actors asserted violated the law without the urge to prove specific actions or agreements harmed the competition (Simbolon 2013:191). Competition law expert, Ningrum Natasya Sirait stated the tying agreement has valid business reason due to the dynamic of competition law development. Many economists have suggested and supported the method of *rule of reason* instead of *per se illegal*, because a business strategy utilizing a tying agreement does not always generate a negative impact. Consequently, in resolving the tying agreement case in the dealership agreement above, KPPU has considered the impact of unfair business competition to determine whether or not there is a violation of Article 15 paragraph (2) of Law Number 5 Of 1999.

3.2. Exceptions to the IPR Agreement in The Dealership Agreement between PT AHM and the Main Dealer

Competition law in Indonesia recognizes exceptions to determine the competition rules do not apply to the actions of business actors or certain agreements. Law Number 5 Of 1999 provided the exception for specific reasons. One, in particular, is for enterprises that conducted intellectual property rights **("IPR")** agreements. IPR could potentially establish anti-competitive impacts, but due to the exclusive rights, IPR has the right to exclude from competition rules (Lubis 2017:295). Exclusive rights reward the creator or inventor through economic and moral rights (Sudantra and Bagian 2017:2). IPR aims to provide intellectual rights protection as a reward and incentive to increase innovation and creativity in developing an invention in trade and technology, which is expected to improve the quality of a civilized community (Mafulah 2020:91). IPR are "creations of mind" in the form of works or inventions produced by sacrificing money, time, and energy. Therefore, every intellectual work has an exclusive right that deserves to be protected and recognized morally and ethically(Douglas Poltak T. Napitupulu 2018:86).

Derived from the competition law's purpose, it must provide certainty to enterprises by increasing the market efficiency and fair competition to supply the consumers with the best choice in the market. The exclusive rights in IPR are often interpreted as a form of privileged that potentially cause monopolistic practices and unfair business competition. Despite that, the exclusive right should be separated from the exploitation act because exclusive rights solely provide a legal basis for monopolizing but are restricted by the limitations of Law Number 5 Of 1999 to consider the harmony between the purposes of business actors and the public welfare (Hakim 2015:416).

One of the agreements in the IPR field that requires absolute protection is a license agreement. A license is a form of permission granted by a competent authority to access the right to perpetrate one or a series of actions (Hanoraga and Prasetyawati 2015:160). The scope of the exception under the business competition law in Article 50 letter b of Law Number 5 of 1999, as described further in KPPU's Regulation Number 2 Of 2009 comprise of: (1) license agreements within the scope of patents, trademark rights, copyrights, industrial design rights, integrated circuit layout design rights, and trade secret rights; (2) trademarks and service marks; (3) integrated circuit layout design.

In the trademark regime, the inventor has the right to utilize the trademark and relish the economic benefits by licensing it to others, under Article 43 paragraph (1) of Law Number 20 of 2016 concerning Trademark and Geographical Indication. **(“Law Number 20 Of 2016”)** (Ni Ketut Supasti, Darmawan 2016:79). The definition of a license in the trademark regime is regulated in Article 1 point 18 of Law Number 20 of 2016, defined as follows:

"License means any permit granted by the owner of a registered trademark to another party based on the written agreement in accordance with laws and regulations to use the registered trademark."

Intellectual Property Law with exclusive rights regulates what IPR holders could accomplish in business activity. Meanwhile, the business competition law regulates the limitations to prevent IP holders' from implementing unfair business action (Hakim 2015:219). Hence, intellectual property and competition laws are considered complementary norms due to the equal objective of stimulating economic growth by providing the incentive to engage in commercial, research, and creative sectors (Sadi 2016:27).

In a quo case, the owner of the registered trademark, namely PT AHM as the holder of the exclusive license rights from Honda Motor Co. Ltd, stated that PT AHM granted a license to another party, namely the Main Dealer, to utilize the PT AHM's trademark in the trade of products comprise of new Honda motorcycle vehicle and spare parts of Honda brand motorcycle under Article 42 of Law Number 20 Of 2016.

The position of PT AHM as the party with the right of a trademark could provide a license to another party utilizing the written agreement to obtain an economic advantage of PT AHM's intellectual property products. Derived from a quo case, PT AHM stated that the dealership agreement was classified as a license agreement regarding the protection of PT AHM's product in the form of strategic tools and AHM's oil lubricants protected by regulation of IPR (KPPU's Decision Number 31/KPPU-I/2019: 268). Based on the reported party's response under KPPU's Decision Number 31/KPPU-I/2019, PT AHM further claimed the license agreement arranged in the dealership agreement exempts the alleged violation of a tying agreement, because the dealership agreement fulfills the license agreement's exclusion criteria in Article 50 letter b of Law Number 5 Of 1999.

Concerning the exemption of license agreement in Article 50 paragraph b of Law Number 5 Of 1999, appropriately should not be seen as an absolute exemption from any existing prohibition. Nevertheless, the exemption should be analyzed based on the elements that have been regulated descriptively under KPPU's Regulation Number 2 Of 2009 as a consideration criterion for whether or not a license agreement is excluded from the competition law (Hakim 2015:416). The elements of analysis consist of the following components: (1) whether the requested IPR is categorized as an essential facility. If it is not categorized as an essential facility, the exception could be provided; (2) whether or not the agreement is categorized as an IP license agreement, because the exception does not apply if it is not an IP license agreement; (3) IPR license agreement has fulfilled the recording at the Directorate General of Intellectual Property **("Directorate General Of IP")** because the exception does not apply if the IPR license agreement has not been recorded. Based on the regulations of the trademark license in Article 42 of Law Number 20 of 2016, a license agreement must be registered with the Minister and published in the Official Gazette of Trademarks because an unregistered license agreement would not have legal consequences for third parties; (4) whether the IPR license agreement contained the element of the anti-competitive clause, if there is no indication found, the exemption to the IPR license agreement applies.

Based on the criteria of exceptions regulated in KPPU's Regulation Number 2 Of 2009, to investigate whether a dealership agreement is an exclude license agreement. The dealership agreement is analyzed with criteria as follows: (1) PT AHM's license agreement is not an essential facility. The objects regulated in the dealership agreement consist of strategic tools and AHM's lubricant oil are not a product that is considered an essential facility or related to the livelihood of many people. Thus, the dealership agreement could be excluded because it does not fulfill the essential facility criteria; (2) In analyzing whether the dealership agreement is a license agreement or not, acquired from Article 7 paragraph (2) letter c Government Regulation Number 36 of 2018 on the Recordal of Intellectual Property License Agreements **("GR Number 36 of 2018")** and Article 1320 of the Civil Code stipulate that *"the license agreement shall leastwise contain the object of the license agreement"*. The dealership agreement does not state clearly the license object of IPR, whether in the scope of trade secret, trademark, or Standard Procedure Operation to license partially or entirely and characterized as an exclusive or non-exclusive license to the Main Dealer; (3) Concerning the requirements for recording the dealership agreement as a license agreement has not been fulfilled by PT AHM, because PT AHM has solely requested the registration of the agreement to the Directorate Of IP. Subsequently, in the Commission Court's agenda of examining evidence, PT AHM could not disclose evidence, that the license agreement application had been recorded in the General Register of License Agreements as regulated in Article 15 paragraph (2) of GR Number 36 of 2018. Moreover, PT AHM is unable to publish the issuance of the dealership agreement that has been announced in the official news and the official website of the Directorate General Of IP, as stipulated in Article 15 paragraph (1) GR Number. 36 of 2018. Therefore, the dealership agreement does not fulfill the requirements for registration at the Directorate General of IP and does not have any legal consequences for the third party; (4) Regarding the alleged anti-competition clause in the dealership agreement in the form of a tying agreement, as stated by the Commission Council that it was not proven as a violation of Article 15 paragraph (2) of Law Number 5 Of 1999, determined from the *rule of reason* approach with positive impacts on consumers of PT AHM's products and services, thus PT AHM's tying clause could be justified. Therefore, there is no anti-competitive clause in the agreement between PT AHM and the Main Dealer in the dealership agreement.

The explanation aforementioned concluded that the dealership agreement does not fulfill the criteria for exemption from the IPR license agreement in Article 50 letter b of Law Number 5 Of 1999, as further elaborated in KPPU's Regulation Number 2 of 2009, for reasons of not fulfilling the exemption criteria for the license agreement, explained as follows: (1) does not fulfill the minimum criteria for the IPR license agreement, because the object of the IPR is not clearly stated in the dealership agreement; (2) dealership agreement has not fulfill the registration criteria at the Director IP. Conclusively, the IPR license agreement exemption could not be applied to the dealership agreement.

The exclusion could solely be implemented to utilize the AHASS trademark under Law Number 20 Of 2016. The AHASS (Astra Honda Authorized Service Station) brand is an official Honda motorcycle repair shop registered as a trademark at the Directorate General of IP. Consequently, PT AHM has the right to monopoly in utilizing the AHASS trademark.

IV. CONCLUSION

The legal approach to Article 15 paragraph (2) of Law Number 5 Of 1999 implements a *per se illegal* approach; hence without having to prove the consequences of the practice, this article emerges to be perfectly applicable to business actors who violate them. Nonetheless, due to the dynamic development of competition law, the tying strategy does not always have a negative impact and has pro-competition aspects. The shift in tying agreement is also reflected in KPPU's Regulation Number 5 Of 2011, which essentially states that Article 15 paragraph (2) Of Law Number 5 Of 1999 could implement the *rule of reason*. Based on KPPU’s Decision Number 31/KPPU-I/2019, the Commission Council considered the magnitude of the positive impacts are greater than the negative impact on the agreement between PT AHM and the main dealer in the dealership agreement. Thus, in a quo case Commission Council could implement the *rule of reason* approach.

The dealership agreement between PT AHM and the Main Dealer is not an excluded IPR license agreement under Article 50 letter b of Law Number 5 Of 1999 because it does not fulfill the exclusion criteria described in KPPU's Regulation Number 2 Of 2009, which comprise: *First*, the dealership agreement does not state the object of the IPR in the dealership agreement. *Second*, it does not fulfill the requirements for recording the license agreement regulated in Law Number 20 Of 2016 in conjunction with GR Number 36 Of 2018.

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