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Juridical Analysis of Tender Contract Law Enforcement According To Law Number 5 of 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition

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Abstract: This paper analyzes several instances of bid rigging based on two KPPU case decisions: No. 04/KPPU-L/2020 involving procurement collusion in hospital projects in Langsa, Aceh, and No. 14/KPPU-L/2019 related to irregularities in the procurement of drinking water systems at Bandar Lampung. The research employs a normative legal methodology with a prescriptive and practical orientation. It adopts legal and case-based approaches. Legal materials referenced include primary, secondary, and tertiary sources, collected through a literature-based method. The study concludes that the decision in Case No. 04/KPPU-L/2020 adheres to the provisions of Article No. 22 of Law No. 5 of 1999 and KPPU Regulation No. 2 of 2010, which serves as the guideline for implementing said article. Meanwhile, in Case No. 14/KPPU-L/2019, the existence of post-tender cooperation between the government and private parties, which ignored previously agreed tender terms, constitutes a violation of Article 79 of Government Regulation No. 54 of 2010 concerning the evaluation of bids in public procurement.

Keyword: Tender Negotiation, Business Competition

INTRODUCTION

In essence, humans are very attached to a characteristic, namely competition. In the economic world, competition can be called business competition. Where there are two parties whose aim is to achieve profits, sales, or market share (Zihaningrum & Kholil, 2016). Basically, competition is a condition that has many positive aspects. When viewed from an economic perspective, competition is a means of protecting business actors against abuse, so that the economic power of economic actors is not concentrated only in certain hands. However, if competition is carried out inappropriately and unfairly, even to the extent that monopolistic practices occur, causing other parties to feel disadvantaged, then such competition is not permitted because it will hinder economic development itself.

Monopolistic practices and unfair competition have long been recognized as legal violations occurring globally. These practices reflect not only dishonesty and greed but also

signal a broader moral decline within societies (Saputra & Hadi, 2018). Such unethical business behavior is considered a moral offense that has proven challenging to eliminate and continues to negatively affect national life, particularly in the context of Indonesia's development agenda aimed at advancing the economy in accordance with Pancasila and the 1945 Constitution. In Indonesia, unfair competition is expressly forbidden. This is evidenced by the presence of Law No. 5 of 1999, which addresses the prohibition of monopolistic behavior and anti-competitive conduct. The implementation of this law serves as a preventive and corrective legal framework for issues stemming from monopolies and unfair market practices. By enforcing this regulation, the government aims to ensure that businesses operate ethically and fairly, while also offering legal certainty and protection to all market participants against monopolistic and anti-competitive behavior.

Among the various forms of monopolistic practices and unfair competition prohibited under Law No. 5 of 1999, one notable example is bid rigging. This practice is specifically addressed in Article 22 of the law, which prohibits business actors from colluding with others to manage or predetermine the outcome of a tender, as such actions can distort fair market competition. The frequent occurrence of bid rigging cases brought before the KPPU indicates that its rulings have yet to serve as an effective deterrent for business actors, particularly those repeatedly involved in such schemes. Bid rigging poses a significant threat to the development of a competitive and healthy marketplace. These conspiracies in tenders can take several forms. Horizontal collusion involves coordination among competing providers of goods or services. Vertical collusion refers to arrangements between one or more business actors and entities such as tender or auction committees, users of goods/services, project owners, or employers. Lastly, combined horizontal and vertical collusion involves collaboration between both business entities and organizing authorities, as noted by Rombot et al. (2020).

This paper examines multiple cases of tender collusion, including an incident in Aceh Province where there were accusations of bid manipulation in the Langsa Regional Referral Hospital construction project, overseen by the Aceh Health Department. The Business Competition Supervisory Commission (KPPU) addressed this matter in Decision No. 04/KPPU-L/2020. Another example occurred in Bandar Lampung, involving suspected breaches of Article 22 of Law No. 5 of 1999 during the Government Cooperation with Business Entities (KPBU) tender for the Drinking Water Supply System (SPAM) project. KPPU resolved this case through Decision No. 14/KPPU-L/2019. Based on these cases, this study investigates how legal measures are enforced against tender collusion under Law No. 5 of 1999, which aims to prevent monopolistic practices and unfair business competition.

Based on this background description, the author formulates the problems to be discussed as follows:

1. How does Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition regulate tender rigging?
2. What is the legal interpretation of the KPPU ruling in Case No. 04/KPPU-L/2020 concerning the tender for the construction work package of the Langsa Regional Referral Hospital under the Aceh Health Service Working Unit?
3. What is the legal evaluation of the KPPU ruling in Case No. 14/KPPU-L/2019 concerning the tender process for the Government Partnership project with Business Entities involving the Drinking Water Supply System in Lampung City?

METHOD

This research was a type of prescriptive normative legal research using a statutory approach. Using primary, secondary, and tertiary legal material sources collected from document studies or library research with deductive analysis of legal materials using the syllogism method which stems from the major premise (general statement). Then a minor

premise (of a special nature) is proposed and from the two premises, a conclusion or conclusion is drawn.

RESULTS AND DISCUSSION

Regulation of Law No. 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition Against Tender Conspiracy

Business collusion is a type of cooperation among companies designed to dominate a specific market, providing advantages to those involved in the collusive agreement. On the other hand, a tender is a formal process where parties submit price offers to undertake a project, supply products, or provide services (Rombot et al., 2020). To address the persistent problem of bid rigging, an independent body called the Business Competition Supervisory Commission (KPPU) was established to monitor business activities and prevent monopolistic practices and unfair competition. The issue of tender manipulation is regulated under Law No. 5 of 1999, which prohibits monopolistic and anti-competitive behaviors. This legislation, particularly in Chapter II, aims to control and prevent such practices. Article 3 of the law outlines its main objectives as follows :

1. To ensure the protection of public interest.
2. Enhancing the overall efficiency of the national economic system.
3. To support the Improvement of societal welfare.
4. To foster a healthy and competitive business environment through proper regulation.
5. To uphold fair and equal business opportunities for enterprises of all sizes-large, medium, and small-while preventing monopolistic behavior and unfair competition driven by business actors.
6. Creating effectiveness and efficiency in business activities. (Rombot et al., 2020)

Article 22 of Law No. 5 of 1999 prohibits any form of conspiracy or collusion between business entities and other parties aimed at influencing the outcome of a tender process. This includes submitting price bids either for the execution of a project or for the procurement of specific goods and services (Muthiah, 2016). The regulation on tender collusion, as outlined in Article 22 of the same law, states: "*Business actors are forbidden from collaborating with other parties to arrange and/or predetermine the winner of a tender in a way that may lead to unfair competition.*" The article contains several key components or elements, which are further elaborated below:

1. Elements of Business Actors as referred to in Article 1 point 5

"A business actor refers to any person or entity regardless of whether it holds legal status that is founded, based, or operates within the territory of the Republic of Indonesia. These actors, either independently or in collaboration through agreements, engage in a range of activities within the economic sector."

2. Collusive elements, collusive elements can be in the form of

- a. The involvement of two or more parties in collaborative arrangements.
- b. Deliberately or covertly coordinating or aligning documents with other tender participants.
- c. Reviewing and comparing bid documents with competitors before submission.
- d. Orchestrating the appearance of competition where none truly exists.
- e. Giving consent to or actively supporting such practices.
- f. Failing to object or take preventive measures despite being aware—or reasonably expected to be aware—that the act is intended to manipulate the selection of a specific tender participant.

3. Elements of Other Parties, the other parties are

"Those engaged in tender collusion may include not only business entities participating in the tender but also other legal subjects who are not directly involved as tender participants."

4. Key Components in Organizing and/or Selecting Tender Winners: The act of organizing and/or deciding the outcome of a tender involves the following elements

"A collaboration among the parties engaged in the tender process to coordinate efforts aimed at removing other business entities as rivals and/or securing victory for specific tender participants through particular methods."

5. Tender elements include, among others

- a. Organizer.
- b. Participant.
- c. Condition.
- d. Best price offer or request.
- e. Purchase of goods and/or services.
- f. Sales of goods and/or services
- g. Execution of a job.
- h. Quality of work, goods, and/or services.
- i. Certain time.
- j. Fairly open competition.
- k. Procedures and methods.

6. Components of Unfair Business Competition refers to

"Rivalry among business entities in the production and/or marketing of goods and/or services that occurs in a dishonest manner, violates legal standards, or obstructs fair business competition."

Legal Analysis of the KPPU Decision in Case Number 04/KPPU-L/2020 regarding the Work Package for the Construction of the Langsa Regional Referral Hospital, Aceh Health Service Working Unit

1. Position Case

The case outlined in KPPU Decision No. 04/KPPU-L/2020 originated from a public report concerning the tender for the construction of the Langsa Regional Referral Hospital, managed by the Aceh Health Service Working Unit for the fiscal year 2018. This decision identifies several parties suspected of breaching Article 22 of Law No. 5 of 1999, which addresses the prohibition of monopolistic practices and unfair business competition related to bid rigging. The parties involved include PT Mina Fajr Abadi (Reported I), PT Sumber Alam Sjahtera (Reported II), PT Arafah Alam Sjahtera (Reported III), PT Betesada Mandiri (Reported IV), PT Eka Jaya Lestri (Reported V), PT Adhi Ptra Jaya (Reported VI), and the Task Force of the Working Group (referred to as Reported Party VII) from the Construction–LXXXIX Aceh Government Goods and Services Procurement Bureau for the fiscal year 2018. (Panjaitan, 2023)

The chronology of the case is as follows:

On July 27, 2018, the Head of the Goods and Services Procurement Bureau assigned the Working Group to conduct an electronic auction for the work packages related to the construction of the Langsa Regional Referral Hospital. Subsequently, on August 3, 2018, the

Working Group announced the tender for the Construction Work Package for the Langsa Regional Referral Hospital, under the Aceh Health Service for the fiscal year 2018, via the website: <https://lpse.acehprov.go.id>. The tender attracted participation from 16 companies, all of which submitted their bid documents.

The names of these companies are PT Sas Bunaiyya Innovation, PT Arafah Alam Sejahtera, PT Sumber Alam Sejahtera, PT Adhi Putra Jaya, PT Mirtada Sjahtera, PT Pulau Bintan Bstari, PT Betesada Mandiri, PT Sumber Cipta Yonanda, PT Mina Fajr Abadi, PT Sinatria Inti Surya, PT Pentas Menara Komindo, PT Eka Jaya Lstari, PT Ekha Nadi Pratama, PT Putra Ananda, PT Sepakat Jaya Nusantara, and PT Tanjung Harapan. The Working Group carries out an evaluation of administrative documents where the evaluation is carried out on the administrative data submitted by tender participants and the evaluation is only carried out on matters that were not assessed during the qualification assessment. And in this evaluation, there were seven companies passed, namely PT Sas Bunaiyya Innovation, PT Mirtada Sjahtera, PT Bethesada Mandiri, PT Sumber Cipta Yonanda, PT Mina Fajr Abadi, PT Sinatria Inti Surya, and PT Pentas Menara Komindo. Next, the Working Group carried out a technical evaluation, only PT Mina Fajar Abadi was the only company that passed. At the next evaluation stage, namely price and qualification evaluation, PT Mina Fajar Abadi was declared passed. On September 14 2018, the Working Group announced that the tender package for the construction of the Langsa regional hospital was won by Reported Party I, namely PT Mina Fajar Abadi. After the tender winner was announced, the Working Group received objections from several tender participants, namely PT Adhi Putra Jaya (Rebuttal answered on 13 September 2018), PT Sas Bunaiyya Innovation (Rebuttal answered on 20 September 2018), PT Sinatria Inti Surya (Rebuttal answered on 20 September 2018), PT Pentas Menara Komindo (Rebuttal answered on 20 September 2018). In this case, the working group was also proven to have taken post-bidding action in the PT Mina Fajar Abadi procurement document (Hawiwie et al., 2021). The Working Group is prohibited from carrying out post-bidding actions because it can give rise to unhealthy business competition. This can be seen from Pokja's actions in receiving the K3-Construction-Intermediate Expert SKA Certificate for key personnel at the time of proving qualifications. The upload of bid documents was carried out on 13 August 2018 (09.00 WIB) while proof of qualifications was carried out on 04 September 2018 (16.00 WIB). During the trial process, the Commission Council proved that there was a vertical conspiracy in the tender case for the construction package for the Langsa Regional Hospital. This conspiracy was carried out by Reported Party I and Reported Party VII in the procurement, especially in the form of various omissions and facilitation carried out by Reported Party VII to Reported Party I to win the tender.

2. Legal Analysis of KPPU Decision No. 04/KPPU-L/2020

In KPPU case no. 04/KPPU-L/2020, the evidence was carried out by a team of commission investigators and the respondents. The agenda for the examination of evidence will be held on 08 December 2020. Evidence in KPPU Decision No. 04/KPPU-L/2020 was implemented to prove:

a. Horizontal Conspiracy

In the LDP, the investigative team explained the discovery of indications of conspiracy carried out by Reported Party I, Reported Party II, Reported Party III, Reported Party IV, Reported Party V, and Reported Party VI. A The evidence for the discovery of indications of bid rigging in the trial consists of:

- 1) Similarity of Metadata (summary of basic details about data) between Tender Participants Reported I, Reported Party II, Reported Party III, Reported Party IV, Reported Party V, and Reported Party VI. Reported Party VII re-examined the document files and it turned out that there were files received from the CD submitted by KPA via ULP which had

similar metadata with the name of the author Saiful. In this case, the similarity of metadata is not proven to be an indication of tender conspiracy (if there are similarities in typing or it is done by one person with the same computer user ID or IP address then it is tender conspiracy)

- 2) Similarities in Bidding Documents In the power of attorney documents of Reported Party I and Reported Party II there are similar writing errors in the form of the word "subsequently" which should be written "subsequently". The power of attorney for Reported Party I and Reported Party II was made on 06 August 2018. In the documents of the Statement of Submission to Technical Specifications and the Statement of Capability to Complete the Work on Time submitted by Reported Party I and Reported Party II there are similar writing errors in the form of the word "with" which should be written "with". According to the Legal Expert (Mahmul Siregar), if there are many indications of similarities, then there has been a conspiracy involved because it is difficult to believe that the similarities occurred by chance and the parties created the documents independently. In this case it is proven that the offer document was prepared by the same person.
- 3) The Bid Guarantee Documents for Reported Party I and Reported Party VI were issued by the same company, namely PT Asuransi Rama Satria Wibawa Banda Aceh Branch where the documents were issued on the same date (08 August 2018) with consecutive letter numbers.

b. Vertical Conspiracy

There was negligence on the part of the Working Group in not checking the bid documents carefully and not paying attention to the checklist regarding indications of conspiracy in the tender. This can be seen from the similarity of writing errors in the documents, consecutive letter numbers and bid guarantee documents issued by the same company, which is an indication of bid rigging. If indications of tender collusion are found, the working group should disqualify the tender participants who carry out such actions. The Working Group was found to have conducted post-bidding actions in the bidding documents of Reported I. Such post-bidding actions are prohibited in the procurement of goods and services, as they can lead to unhealthy competition, in accordance with Article 79 Paragraph (2) of Government Regulation No. 54 of 2010. Post-bidding actions are actions of changing, adding, replacing and/or reducing procurement documents and/or bidding documents after the deadline for submitting bids. This action was discovered by the receipt of a certificate for the list of key personnel for the position of site manager at the time of proving qualifications.

In this case, the fulfillment of the elements outlined in Article 22 of Law No. 5 of 1999 regarding the Prohibition of Monopolistic Practices and Unfair Business Competition is addressed in KPPU Decision No. 04/KPPU-L/2020, which includes the following points :

1) Businessmen

In this case, the business entity involved is Reported Party I, specifically PT Mina Fajar Abadi, which emerged as the winner of the tender for the construction work package of the Langsa Regional Referral Hospital. Thus, the element of the business actor has been satisfied.

2) Other Business Actors

In KPPU case No. 04/KPPU-L/2020, the term "other business actors" refers to Reported Party II, Reported Party III, Reported Party IV, Reported Party V, and Reported Party VI, all of whom participated in the tender for the construction work package of the Langsa Regional Referral Hospital. Therefore, the elements concerning other business actors have been met in this case.

3) Parties related to Business Actors

In this case, the term "parties related to business actors" refers to the Construction Working Group-LXXXIX of the Aceh Government Goods and Services Procurement Bureau for the 2018 Fiscal Year. Thus, the elements concerning other parties have been satisfied in this context..

4) Conspiracy Elements

In this case there was a horizontal conspiracy carried out by Reported Parties I, II, III, IV, V and VI. This can be seen from the similarity of typing errors in the documents of the reported persons. Reported Party I admitted that he had borrowed from the companies of Reported Parties II, IV and V so that the companies were controlled by Reported Party I. And Reported Party VI also borrowed from the companies. During the trial, Reported Party V admitted that they received a fee of 1% for participating in the tender and Reported Party VI also admitted at the trial that the reward for participating in the tender was the opening of a branch office in Aceh if they won. In this case, there was a vertical conspiracy between Reported Party I and Reported Party VII. This can be seen from actions *post bidding* What was done by Reported Party VII, namely accepting the offer document after the deadline for accepting the documents had finished. Therefore, it can be concluded that the element of conspiracy is fulfilled.

5) Arranging and Determining Tender Winners

In this case, Reported Party II, Reported Party III, Reported Party V, and Reported Party VI failed at the administrative evaluation stage because they did not submit the original bid guarantee so that the conspiracy they carried out had no effect in arranging and/or determining Reported Party I as the winner of the tender. Reported Party VII also facilitated Reported Party I as the winner of the tender. In this case, the elements of regulating and determining the tender winner are fulfilled.

6) Elements of Unfair Business Competition

In Reported Party I's offer document, there were requirements that were not met, namely a list of key personnel for the position of site manager. However, in this evaluation the Working Group still passed Reported Party I and instead allowed Reported Party I to add documents when proving qualifications. The actions taken by Reported Party VII were unlawful and resulted in unfair business competition.

Therefore, the decision made by the Commission Council in KPPU case No. 04/KPPU-L/2020 is considered accurate, as Reported Party I and Reported Party VII were found to have legally and convincingly violated Article 22 of Law No. 5/1999. As a result, Reported Party I was fined IDR 1,723,500,000. This imposition of fines is in accordance with the provisions stated in Article 47 Paragraph (2) letter g of Law No. 5/1999, which mandates a minimum fine of IDR 1,000,000,000.

Legal analysis of the KPPU Decision on Case Number 14/KPPU-L/2019 regarding the auction of the Government Collaboration project with Business Entities Related to the Drinking Water Supply System in Lampung City

1. Position Case

Case position of KPPU decision no. 14/KPPU-L/2019, the object of the a quo case is conspiracy in the tender auction for the Regional Drinking Water Company (PDAM) regarding the Government Cooperation Project with Business Entities Related to the Drinking Water Supply System in the city of Lampung. In KPPU Decision Number 14/Kppu-L/2019 the business actors reported consist of (Soemartono & Sriwijaya, 2024): Regional Drinking Water Company (PDAM) Way Rilau of Bandar Lampung City as (Reported I), PT Bangun Tjipta Contractor as (Reported II), and PT Bangun Cipta Sarana as (Reported III) took part in the procurement of an auction type tender via the PDAM Way Rilau website

www.pdamwayrilau.com, in a collaborative project between the government and business entities concerning the drinking water supply system in Bandar Lampung city. This tender procurement is a category of government collaboration with business entities using the post-qualification method and knockout system. This tender for Government Cooperation with Business Entities was attended by 12 prospective participants who submitted pre-qualification documents, including the Reported Parties. The composition of the list is:

- a. PT Medco Gas Indonesia
- b. KSO PT Bangun Tjipta Contractor and PT Bangun Cipta Sarana.
- c. KSO SHL Global Investment Ltd and PT Pasadena Engineering
- d. CSO Adaro-Adhi Karya – Suez
- e. Salcom MMCB Consortium
- f. Acuatico Pt. Ltd
- g. KSO Camce – NRC
- h. PT Metito Indonesia
- i. KSO PT Wastec International and PT MAM Energindo
- j. Cobra Instalacione Services S.A.
- k. CSO PP – WABAG, and
- l. KSO Maynilad – LANGUAGE Hydrochem

The collaboration mechanism between the government and business entities is employed for the procurement of the Bandar Lampung City SPAM Business Entity in Lampung Province, recognized as a national strategic project. However, this partnership encountered regulatory violations as outlined by the relevant laws. During the tender process, the participating parties submitted their documentation to the procurement committee for assessment. Unfortunately, the committee failed to inform them of any modifications to the selection criteria for the bid documents. Consequently, numerous companies were eliminated from the auction due to actions taken after the bidding process. This situation led to a vertical conspiracy involving the Regional Water Company (PDAM) Way Rilau, Bandar Lampung City, identified as Reported Party I, along with PT Bangun Tjipta Contractor and PT Bangun Cipta Sarana, identified as Reported Parties II and III, respectively, resulting in these parties being awarded the tender.

2. Legal Analysis of Decision No. 14/KPPU-L/2019

In this case, there were 3 perpetrators who were reported, namely; Regional Drinking Water Company (PDAM) Way Rilau, Bandar Lampung City as (reported party I), PT Bangun Tjipta Contractor (reported party II), and PT Bangun Cipta Sarana (reported party III) in this case. The Reported Party carried out "post bidding" actions in the procurement process, this can be seen on November 6 2017. The Procurement Committee carried out the process of opening cover I (Administrative and Technical) bidding documents. At the time of opening the cover I (Administrative and Technical) bid document, it was discovered that the KSOs of PT Bangun Cipta Contractor and PT Bangun Tjipta Sarana did not attach one of the administrative document requirements, namely the original bid security document. Based on the request for proposal document regarding the bid guarantee, it is stated that any bid document that is not accompanied by an original bid guarantee will be disqualified and declared invalid on the grounds that it does not comply with the specified requirements. Even though there was an agreement regarding bid documents that were not accompanied by a guarantee that the original bid would be disqualified, the procurement committee did not reject the bids for KSO PT Bangun Tjipta Contractor and PT Bangun Cipta Sarana and continued to declare it passed and included KSO PT Bangun Tjipta Contractor and PT Bangun Cipta Sarana until the final stage, even then the Way Rilau Regional Drinking Water Company (PDAM) of Bandar Lampung City determined it to be the winner.

The actions taken by the Regional Drinking Water Company (PDAM) Way Rilau in Bandar Lampung City, concerning post-bidding developments and modifications to the assessment criteria outlined in points 12 and 13 of the LDP (Facts/Findings), can be classified as facilitating collusion. This behavior represents a means of granting preferential treatment by the tender organizer or associated parties, either directly or indirectly, to the businesses involved in the tender. Such actions violate legal standards and demonstrate a lack of consistency in the identification of the Regional Drinking Water Company (PDAM) Way Rilau and the Procurement Committee. Furthermore, the Regional Drinking Water Company (PDAM) Way Rilau knowingly engaged in misconduct by accepting a replacement of the photocopy of the Bid Guarantee Letter for the joint venture of PT Bangun Cipta Contractor and PT Bangun Tjipta Sarana with the original bid guarantee letter, despite the fact that the deadline for submitting bid documents had already expired.

Based on the documentary evidence submitted by the Regional Water Company (PDAM) Way Rilau, Bandar Lampung City, it can be seen that the opening of the cover I offer document was carried out in the PDAM Way Rilau meeting room, Bandar Lampung City, where the condition of the room made it possible for the parties present in the room to communicate with each other without using loudspeakers, so it is very unlikely that the Regional Drinking Water Company (PDAM) Way Rilau, Bandar Lampung City, KSO PT Bangun Cipta Contractor, PT Bangun Tjipta Sarana and the consultants who were present at that time were the same. Never heard or saw what happened. Based on the situation when the Envelope I bid document was opened, the KPPU assessed that there was an element of deliberate intent by the Regional Drinking Water Company (PDAM) Way Rilau, Bandar Lampung City, in this case, the procurement committee assisted by consultants, to jointly agree to obscure the actual incident that the bid guarantee letter contained in Envelope I belonging to KSO PT Bangun Cipta Contractor and PT Bangun Tjipta Sarana was not an original document as required in the RfP Document.

The post-bidding action carried out by the reported parties occurred when the KSO of PT Bangun Cipta Kontaktor and PT Bangun Tjipta Sarana submitted the original bid guarantee document, which was then accepted by the Way Rilau Regional Drinking Water Company (PDAM) Bandar Lampung City, at the opening of the cover I bid document where the time for submission and receipt of the original bid guarantee document occurred after 14.15 WIT where the final deadline for submitting bid documents was 14.00 WIT. KPPU assessed that KSO PT Bangun Cipta Kontaktor and PT Bangun Tjipta Sarana had carried out post bidding action in terms of submitting the original bid guarantee letter after the deadline for submitting bid documents had passed. The Way Rilau Regional Drinking Water Company (PDAM) Bandar Lampung City strictly complies with the post-bidding prohibition against Maynilad-WIKA when completing the bidding documents after the deadline for submitting bid documents has passed.

As a result, the Commission Council, in its ruling on KPPU Decision No. 14/KPPU-L/2019, determined that the reported parties were legally culpable and imposed administrative penalties in the form of fines. Specifically, Reported Party I (PDAM Way Rilau, Bandar Lampung City) was ordered to pay a fine of IDR 1,747,000,000.00. Reported Party II (PT Bangun Cipta Contractor) was fined IDR 3,843,000,000.00, while Reported Party III (PT Bangun Tjipta Sarana) was required to pay a fine of IDR 2,358,000,000.00.

CONCLUSION

The Commission Council correctly identified the elements specified in Article 22 of Law No. 5 of 1999, in line with Commission Regulation No. 2 of 2010, which outlines guidelines for Article 22 concerning the prohibition of collusion in tenders. In KPPU Case No. 04/KPPU-L/2020, evidence showed that Reported Party VII participated in post-bidding activities related

to the Offer Documents of Reported Party I. The decision made by the Commission Council in this case was warranted, as both Reported Party I and Reported Party VII were found to have legally and convincingly breached Article 22 of Law No. 5 of 1999.

Considering the Commission Council's findings in case number 14/KPPU-L/2019, which involves the auction of government collaboration projects with business entities for the drinking water supply system in Lampung City, it was determined that the respondents had indeed violated Article 22 of Law No. 5 of 1999. This violation pertains to the prohibition of monopolistic practices and unfair business competition, particularly through bid rigging that took place during the post-bidding phase of the government collaboration auction projects. The actions of the reported party led to losses for other tender participants due to the fraudulent activities committed, prompting the KPPU to impose administrative sanctions on the reported parties, declaring them legally culpable and imposing fines as a consequence of their proven guilt.

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