

Masalah persekongkolan tender dalam persaingan usaha-studi kasus putusan KPPU No. 35/KPPU-1/2010 dalam proyek Donggi Sinoro = Tender collusion issue in business competition : case study of KPPU verdict No. 35/KPPU-I/2010 in Donggi Sinoro project

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Abstrak

Tesis ini mencoba melakukan analisis dan eksaminasi terhadap putusan KPPU No. 35/KPPU-1/2010 mengenai Proyek Donggi Senoro, suatu kasus high-profile dalam industri minyak dan gas di Indonesia. Walaupun KPPU sebagai badan pengawas persaingan telah menangani banyak kasus serupa dalam persaingan usaha di masa lalu, yaitu kasus pelanggaran pasal 22 Persekongkolan Tender, tetapi kasus ini menarik secara khusus karena KPPU menghadapi suatu konsep baru yang menimbulkan kontroversi dalam ranah hukum, yaitu beauty contest.

Dalam membuat putusannya, ternyata KPPU menerapkan pendekatan pragmatik dan mencari dasar hukum dari sumber-sumber luar yang berarti mengenyampingkan asas hukum positif di Indonesia. Selain dari itu, KPPU ternyata melakukan analogi dengan menyatakan bahwa beauty contest adalah sama dengan tender/lelang. Tesis ini akhirnya menarik suatu kesimpulan bahwa KPPU telah membuat putusan yang salah.

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This thesis is trying to make an analysis and examination on KPPU Verdict No. 35/KPPU-1/2010 concerning the Donggi Senoro Project, the case of high-profile business in oil and gas industry in Indonesia. Although KPPU as a competition supervision agency has examined many similar cases in business competition in the past, namely cases violating article 22 of Tender Collusion, however, this very case is specifically interesting because KPPU encounters a new concept that creates controversy within legal scholars, i.e., beauty contest.

In making its verdict, it turns out that KPPU applies pragmatic approach and searching for legal bases from outside sources which means putting aside the legal principle of positive law in the country. In addition to that, KPPU in fact has performed an analogy through declaring that beauty contest is identical with tender. This thesis finally arrives at a conclusion that KPPU has made a wrong decision.