

Analisa pasal 22 tentang larangan persekongkolan tender dan penggunaan pasal 19 huruf (d) UU No.5 tahun 1999 untuk menjerat panitia tender yang tidak melakukan persekongkolan (studi putusan KPPU No.05/KPPU-L/2009) = Analysis on article 22 about collusive tendering and the usage of article 19 letter (d) of act 5 of 1999 to punish the tender committee who is not doing conspiracy (study of KPPU Decision No.05/KPPU-L/2009)

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Abstrak

Praktek persekongkolan tender dalam pengadaan barang/jasa pemerintah yang dilakukan oleh panitia tender dalam kasus Event Organizer Lomba Keterampilan Siswa dimana Komisi Pengawas Persaingan Usaha (KPPU) telah diputus bersalah melakukan persekongkolan tender tanpa memutus terlapor lain ikut melakukan persekongkolan sehingga panitia tender hanya melakukan persekongkolan secara sendiri. Penulis mencoba menggali unsur-unsur persekongkolan dalam kasus tersebut. Kemudian mencoba menganalisa apakah panitia tender dapat dijerat dengan pasal hukum persaingan usaha yang lain walau tidak melakukan persekongkolan dalam tender, namun tetap menimbulkan praktek persaingan usaha yang tidak sehat. Karena hakekat dari hukum persaingan usaha adalah demi menjaga kondusifitas pasar demi tercapainya cita-cita keadilan sosial agar dapat meningkatkan kesejahteraan rakyat.

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The practice of collusive tendering in procurement of government goods/services which performed by the tender committee in the case of Event Organizer Lomba Keterampilan Siswa where the Business Competition Supervisory Commission (KPPU) has been found guilty of doing conspiracy in collusive tendering without deciding another reported participate in conspiracy, which makes the tender committee doing the collusive tendering all by himself. The author tries to explore the elements of conspiracy on that case. Then try to analyze whether the tender committee can be charged under another competition law, even though there is no conspiracy in these tender, but still pose practice of unfair competition. Because the nature of competition law is to ensure the conduciveness of market in order to attain the ideals of social justice in order to improve the welfare of the people.