

Tinjauan Yuridis Persekongkolan Tender dalam Perkara No. 07/KPPU-I/2017 tentang Dugaan Pelanggaran Pasal 22 Undang-Undang No. 5 Tahun 1999 terkait 4 Paket Tender Pembangunan Jalan Dinas Bina Marga dan Tata Ruang (DBMTR) Bidang Pembangunan Jalan dan Jembatan Sumber Dana APBD Di Provinsi Banten = Juridical Review of Bid Rigging in Case Number 07/KPPU-I/2017 Concerning Alleged Violations of Article 22 of Law Number 5 of 1999 Regarding 4 Tender Packages for the Construction of Roads of Dinas Bina Marga Dan Tata Ruang (DBMTR) for the Road Construction and Bridge from APBD Fund in Banten Province

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Abstrak

ABSTRAK

Atas inisiatif tersebut, KPPU melakukan investigasi terhadap 4 (empat) Paket Pembangunan Jalan Dinas Bina Marga dan Tata Ruang (DBMTR) Provinsi Banten di atas terdapat dugaan pelanggaran Pasal 22 UU 5/1999 tentang Persekongkolan Tender dengan menyampaikan Laporan Dugaan Pelanggaran berupa indikasi kerjasama antara peserta dan atau dengan pihak lain. Ada beberapa indikasi persekongkolan tender yang belum terselesaikan dimasukkan dalam pertimbangan hukum Majelis Komisi dan alat bukti lain yang tidak dibahas dalam persidangan. Kemudian akan dilakukan penelitian dalam bentuk kesesuaian aplikasi Putusan UU No. 07 / KPPU-I / 2017 tentang Persaingan Usaha dan UU Pengadaan barang dan layanan pemerintah yang berlaku. Penelitian ini menggunakan metode penelitian normatif dan sumber data berdasarkan data primer atau literatur berupa dokumen pejabat, buku, hasil penelitian berupa laporan, dan lain-lain. Sehingga bisa digambar Secara garis besar, dalam kasus a quo terdapat indikasi persekongkolan horizontal dalam bentuk (i) pengaturan untuk penempatan personel dan peralatan inti, (ii) adanya kerja sama antara para pihak peserta tender. Selain itu, terdapat perbedaan perlakuan dalam menerapkan sistem evaluasi tender peserta tender oleh panitia pengadaan, sebagai indikasi persekongkolan vertikal. Bahwa indikasi tersebut menjadi bukti bukti di persidangan yang perlu dipertimbangkan oleh Majelis Komisi dan membutuhkan bukti langsung bersama sesuai. Alat bukti tidak bisa berdiri sendiri sehingga tidak ada bukti unsur-unsurnya "Kerjasama atau koordinasi" antara peserta tender dan / atau pihak lain dengan melakukan pengaturan pemenang tender dalam putusan a quo karena kurangnya bukti utama Baik.

ABSTRACT

On this initiative, the KPPU conducted an investigation into 4 (four) Banten Province Highways and Spatial Planning Agency (DBMTR) Road Development Packages for alleged violations of Article 22 of Law 5/1999 concerning Tender Conspiracy by submitting a Report on Alleged Violations in the form of indications of cooperation between participants. and or with other parties. There are several indications of unresolved tender conspiracies that were included in the Commission Council's legal considerations and other evidence that was not discussed in court. Then research will be carried out in the form of suitability of

the application of Law No. 07 / KPPU-I / 2017 concerning Business Competition and the Procurement Law applicable government goods and services. This study uses normative research methods and data sources based on primary data or literature in the form of official documents, books, research results in the form of reports, and others. So that it can be drawn in broad outline, in the a quo case there are indications of horizontal conspiracy in the form of (i) arrangements for the placement of core personnel and equipment, (ii) cooperation between the parties participating in the tender. In addition, there are differences in treatment in implementing the tender evaluation system for tender participants by the procurement committee, as an indication of conspiracy vertical. That these indications serve as evidence at trial which needs to be considered by the Commission Council and requires joint direct evidence accordingly. Evidence cannot stand alone so there is no evidence that the elements are "cooperation or coordination" between tender participants and / or other parties by arranging tender winners in a quo decisions due to lack of primary evidence.

Good.