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A Legal Analysis of the Supreme Court's Legal Reasoning in Annulling the KPPU Decision in a Tender-Collusion Case (Decision No. 523 K/Pdt.Sus-KPPU/2024)

Ayu Tampubolon[1], Janpatar Simamora[2]*, Januari Sihotang[3]
[1,2,3] Faculty of Law, HKBP Nommensen University Medan
**Correspondence: patarmora@uhn.ac.id*

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Abstrak

Penelitian ini mengkaji perbedaan penafsiran KPPU dan Mahkamah Agung mengenai pembuktian persekongkolan tender dalam Putusan Nomor 523K/Pdt.Sus-KPPU/2024, serta dasar pertimbangan hakim Mahkamah Agung membatalkan Putusan KPPU Nomor 17/KPPU-L/2022. KPPU sebelumnya menyatakan telah terjadi persekongkolan tender dan menjatuhkan sanksi denda, putusan mana dikuatkan oleh Pengadilan Negeri Jakarta Pusat. Namun di tingkat kasasi, Mahkamah Agung justru membatalkannya dengan alasan tidak ditemukan bukti langsung maupun tidak langsung adanya kerja sama atau permintaan dari peserta tender kepada pemilik proyek. Penelitian ini menggunakan metode hukum normatif dengan pendekatan kualitatif, mengandalkan data sekunder berupa bahan hukum primer, sekunder, dan tersier yang dihimpun melalui studi kepustakaan dan dianalisis secara deskriptif. Hasil penelitian menunjukkan bahwa perbedaan penafsiran kedua lembaga terletak pada standar pembuktian: KPPU menilai cukup dari adanya keuntungan yang diperoleh salah satu peserta tender, sedangkan Mahkamah Agung mensyaratkan dua unsur kumulatif, yaitu adanya keuntungan bagi peserta tender dan adanya kesepakatan atau permintaan dari peserta tender itu sendiri. Perbedaan ini memperlihatkan bahwa standar pembuktian yang lebih ketat dari Mahkamah Agung memberi kepastian hukum, namun berisiko mempersempit ruang gerak KPPU dalam menindak persekongkolan yang bersifat tersembunyi.

Kata Kunci: Persekongkolan Tender, Komisi Pengawas Persaingan Usaha, Mahkamah Agung, Pembuktian, Persaingan Usaha Tidak Sehat.

Abstract

This study examines the differing interpretations between the Business Competition Supervisory Commission (KPPU) and the Supreme Court regarding the evidentiary standard for tender collusion in Supreme Court Decision Number 523K/Pdt.Sus-KPPU/2024, as well as the legal grounds relied upon by the panel of judges of the Supreme Court in annulling KPPU Decision Number 17/KPPU-L/2022. KPPU had previously ruled that tender collusion occurred and imposed a monetary fine, a decision subsequently upheld by the Central Jakarta District Court. At the cassation level, however, the Supreme Court overturned the ruling on the grounds that no direct or indirect evidence was found indicating cooperation or a request from the tender participants to the project owner. This research employs a normative legal method *with a qualitative approach, relying on secondary data consisting of primary, secondary, and tertiary legal materials gathered through library research and analyzed descriptively. The findings show that the divergence between the two institutions lies in the standard of proof applied: KPPU considered it sufficient that one tender participant obtained a benefit, whereas the Supreme Court required two cumulative elements, namely a benefit to the tender participant and an agreement or request originating from that participant. This divergence indicates that the stricter evidentiary standard adopted by the Supreme Court provides greater legal certainty, but risks narrowing KPPU's authority to act against covert forms of tender collusion.*

Keywords: *Tender Collusion, Business Competition Supervisory Commission, Supreme Court, Evidence, Unfair Business Competition.*

INTRODUCTION

As a country adhering to a market economy system, Indonesia positions healthy business competition as a cornerstone of national economic development since it fosters efficiency, innovation, and consumer welfare thereby serving as a prerequisite for a conducive investment climate.[1] This is reflected in the enactment of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (hereinafter referred to as Law Number 5 of 1999) the primary legal framework for regulating business competition in Indonesia which was introduced in response to the country's economic conditions following the 1997–1998 monetary crisis, a period when monopolistic practices and unhealthy business conglomerates were shown to have exacerbated the national economic downturn.[2]

The enactment of Law Number 5 of 1999 served as a corrective measure regarding an economic trajectory that had proven unable to withstand the shocks of the 1997 crisis a crisis that exposed the fragility of Indonesia's economic foundations and revealed practices deemed inconsistent with the values of Pancasila and the 1945 Constitution. This Law established the Business Competition Supervisory Commission (KPPU) as an independent body authorized to oversee the Law's implementation, receive reports, conduct investigations and examinations, and impose administrative sanctions on business entities found to be in violation.[3]

One of the violations most frequently addressed by the KPPU is collusion in the tender process as stipulated in Article 22 of Law Number 5 of 1999 which prohibits business actors from conspiring with other parties to engage in unfair business practices; this prohibition aims to prevent financial losses to the state during the procurement of goods and services. The ban is grounded in the principle that such practices undermine the primary objective of a tender namely, to provide all business actors with an equal opportunity to compete fairly by offering the best prices and quality because price manipulation in the tender process can lead to

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[1] Kholidul Azhar, Ansori, Nivarica Aurel Nur Syahputri, "*Tinjauan Hukum terhadap Persekongkolan Tender dalam Pengadaan Barang dan Jasa Pemerintah*", jurnal hukum perdata dan pidana, 2024, hlm. 1

[2] Arie Siswanto*, Hukum Persaingan Usaha:* Naskah Akademik UU No. 5 Tahun 1999, hlm.25

[3] Andi Muhammad Asrun, "*Politik Hukum Pembentukan Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat",* Fiat Justisia: Jurnal Ilmu Hukum, (2014), hlm.1

irresponsible state spending (whether from the national or regional budgets), thereby harming the broader public interest.

Through KPPU Regulation No. 2 of 2010 concerning Guidelines on the Prohibition of Bid Rigging, the KPPU provides a broad interpretation of the term "tender" as used in Article 22 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition; the term is not limited to conventional project auctions but encompasses any form of price offering for goods or services, including direct selection and direct appointment in government procurement. Bid rigging can occur at any stage of the process ranging from planning and the drafting of requirements by the tender committee and the coordination of documents among bidders to the determination of the winner meaning the potential scope for collusion is extensive and requires rigorous oversight by the KPPU as the competent authority.[4]

Bid rigging is an act wherein a business actor colludes with another party to arrange and/or determine the winner of a tender, thereby potentially resulting in unfair business competition. This practice disadvantages not only other tender participants but also the tender organizers and, ultimately, the public interest—particularly regarding the procurement of government goods and services funded by state finances, as regulated under KPPU regulations.[5]

KPPU decisions are final and binding at the commission level; however, aggrieved parties may file an objection with the District Court or Commercial Court, followed by an appeal to the Supreme Court of the Republic of Indonesia (MA-RI). It is within this context that a complex normative interaction arises between the authority of the KPPU acting as a quasi-judicial body and that of the Supreme Court the apex of judicial power in the Indonesian legal system. This interaction frequently gives rise to legal tension, particularly when the Supreme Court, through its cassation ruling, overturns a KPPU decision that had previously been upheld by lower courts. This phenomenon reflects the complexities of competition law enforcement in Indonesia, characterized by differing perspectives: the KPPU employs economic analysis and a specialized competition law approach, whereas general court judges evaluate cases through the lens of civil procedural law and conventional evidentiary standards.[6]

An analysis of the Supreme Court's legal reasoning in overturning the KPPU's decision in this case is important for at least three reasons: first, from a theoretical perspective, it contributes to an understanding of the limits of the KPPU's authority and its relationship with the general judicial system within the Indonesian legal framework; second, from a practical perspective, it offers lessons for the KPPU on improving the quality of its evidentiary findings and legal reasoning to ensure greater resilience against judicial scrutiny; and third, from a legal policy perspective, it serves as a basis for evaluating and refining regulations governing KPPU procedural law and the system for legal challenges against KPPU decisions in the

[4]Shidarta“Persekongkolantender”https://businesslaw.binus.ac.id/2021/05/10/persekongkolan-tender. Diakses pada 06 Juli 2026 Pukul 17.30 WIB.

[5] Pasal 22 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat

[6] Peraturan KPPU Nomor 1 Tahun 2019 tentang Tata Cara Penanganan Perkara dan Perma Nomor 3 Tahun 2021 tentang cara pengajuan keberatan

future.[7] Article 22 of Law No. 5 of 1999 prohibits business actors from conspiring with other parties to arrange and determine the winner of a tender, as such actions can give rise to unfair business competition consistent with the definition of conspiracy in Article 1, point 8, namely cooperation between business actors aimed at controlling the relevant market for the benefit of the conspiring parties.

However, in its deliberations, the Supreme Court affirmed that tender collusion can only be deemed to have occurred if two conditions are met: the action must benefit a specific tender participant, and there must be evidence that the action was taken based on an agreement with or a request from the tender participant in question. The Supreme Court held that the actions of the First Reported Party (PT Jakarta Propertindo) which benefited the Second and Third Reported Parties constituted solely an internal policy of the project owner and were unsupported by either direct or indirect evidence of collaboration or a request from the tender participants; consequently, the element of collusion was found not to be proven. Indonesia is a state governed by the rule of law, upholding the supremacy of law across all aspects of national and state life. As such, Indonesia is obligated to ensure legal certainty and transparency in all economic activities.[8]

RESEARCH METHOD

This normative legal research focuses on a juridical analysis of the Supreme Court's legal reasoning in Decision Number 523K/Pdt.Sus-KPPU/2024 and its conformity with the norms of Law Number 5 of 1999.[9] The data used consists entirely of secondary data derived from primary legal sources (the Indonesian Civil Code, Law No. 5 of 1999, and Supreme Court Decision No. 523K/Pdt.Sus-KPPU/2024), secondary legal sources (books, scholarly journals, and the opinions of competition law experts), and tertiary legal sources (legal dictionaries and encyclopedias). Data collection was conducted through library research involving the examination of relevant literature and legal documents. Subsequently, the data were analyzed using a qualitative-descriptive approach, applying legal theories, principles, and norms to draw systematic conclusions regarding the issues under study.[10]

The case approach is limited to the procedural chain culminating in Supreme Court Decision No. 523 K/Pdt.Sus-KPPU/2024, read against Article 22 of Law No. 5 of 1999, KPPU tender-collusion guidance, and the relevant KPPU and Commercial Court determinations. The study separates the court’s ratio decidendi from the author’s evaluation. Other Supreme Court decisions are used only as limited comparators and not as proof of a settled or inconsistent national jurisprudence unless their factual and legal issues are materially comparable.

For evidentiary analysis, the article distinguishes the substantive elements of Article 22 from the methods by which those elements may be proved. Direct and

[7] Putusan Mahkamah Agung Nomor 523 K/Pdt.Sus-KPPU/2024

[8] Janpatar Simamora dan Bintang ME Naibaho, *“Strengthening the Legal Foundation of the Prosecutor’s Office in the Constitutional System of the Republic of Indonesia,”* Jurnal Konstitusi 22, no. 2 (Juni 2025) hlm 335.

[9] Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi),* (Jakarta: Kencana Prenadamedia Group, 2017), hlm. 35.

[10] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia,* Edisi Kedelapan, Liberty, Yogyakarta, 2006, hlm. 112.

indirect evidence are assessed according to their relevance, consistency, and inferential force in establishing communication, coordination, complementary conduct, or other indicia of collusion. The “rule of reason” is therefore treated as a framework for assessing competitive harm and context, not as a licence to relax statutory evidentiary requirements. On cassation, the Supreme Court’s role as judex juris requires special attention to whether the alleged error concerns the application of law rather than a mere reweighing of facts.

RESULTS AND DISCUSSION

Divergent interpretations between the KPPU and the Supreme Court regarding the proof of tender collusion in Judgment No. 523K/Pdt.Sus-KPPU/2024.

The KPPU and the Supreme Court hold differing views and interpretations regarding the evidence of bid rigging in case number 523K/Pdt.Sus-KPPU/2024. The case originated from the tender for the revitalization of Taman Ismail Marzuki (TIM), conducted by the DKI Jakarta Provincial Government through a Regional-Owned Enterprise (BUMD). During the tender process, several irregularities occurred that the KPPU deemed to be forms of intervention by the project owner. The KPPU considered the cancellation of the tender without a valid reason coupled with a request for access to participants' technical details to be strong indications of collusion intended to benefit a specific participant, which ultimately won the contract after the tender was re-run. However, the Supreme Court took a different stance. The Supreme Court overturned the previous ruling (9/Pdt.SusKPPU/ 2023/PN.Niaga Jkt Pst) and declared that there was no evidence of bid rigging as defined in Article 22 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.[11]

The Supreme Court has affirmed that not every action by a project owner that benefits a tender participant can automatically be classified as tender collusion; rather, two primary conditions must be met: first, it must benefit the tender participant, and second, it must be carried out based on an agreement with or at the request of the tender participant.[12] In this study, the Supreme Court overturned the KPPU’s decision on the grounds that it failed to meet the criteria established by the Court; while the KPPU maintained that sufficient indirect evidence existed to establish collusion by the reported parties, the Supreme Court held that such evidence was inadequate to prove that collusion had occurred. This divergence in interpretation demonstrates that the KPPU and the Supreme Court apply different standards of proof when evaluating the elements of tender collusion.

The KPPU tends to adopt a more lenient approach, wherein a profit secured by one of the tender participants is already regarded as a preliminary indication of collusion. Conversely, the Supreme Court applies a stricter standard by requiring two cumulative elements: the existence of a benefit for the tender participant and concrete evidence such as an agreement or a request from that participant to the

[11] https://ercolaw.com/syarat-persekongkolan-tender-menurut-mahkamah-agung/ Diakses pada 19 Agustus 2026 Pukul 10.00 WIB

[12] Sastyo Aji Darmawan, *Kekuatan Indirect Evidence Dalam Pembuktian Kasus Persekongkolan Tender dan Penerapannya di Dalam Proses Tender*, Jurnal Pengadaan Barang dan Jasa 1, no. 1 (2022)

project owner.[13] Consequently, a project owner's unilateral action that benefits one of the tender participants cannot automatically be classified as collusion unless supported by direct or indirect evidence of cooperation between the two parties.

This divergence in approaches ultimately impacts legal certainty on the one hand, yet also potentially constrains the KPPU's scope of action in addressing covert bid-rigging practices. The tension between these two approaches stems fundamentally from differing institutional perspectives. As an independent competition watchdog, the KPPU was established with specific authority to address anti-competitive practices that are inherently difficult to prove directly; consequently, in practice, it relies more heavily on economic analysis and indirect evidence to establish proof.[14]

Conversely, the Supreme Court as the apex of judicial authority within the general court system evaluates tender collusion cases through the framework of conventional civil procedural law, which prioritizes the principle of formal proof as a prerequisite for declaring an act unlawful. This divergence in paradigms ultimately leads to disparate rulings based on substantially identical facts as exemplified by the Taman Ismail Marzuki revitalization case, where the KPPU found collusion proven, whereas the Supreme Court ruled to the contrary. This situation underscores the lack of a uniform standard of proof between the administrative body handling business competition cases and the judicial institution reviewing those decisions at the cassation level. Yet, a uniform standard of proof is a crucial prerequisite for ensuring consistent enforcement of competition law, particularly in combating tender collusion a practice that, by its very nature, tends to be conducted covertly and without leaving a written trail.[15] Disparities in interpretation of this nature are not isolated phenomena within the realm of competition law; rather, they also arise regarding the hierarchy of other legal norms in Indonesia such as the issue of the legal standing of People's Consultative Assembly (MPR) Decrees within the legislative framework. In such cases, ambiguity regarding the status of a legal instrument creates a need for synchronization between norms and institutions to prevent disharmony in implementation. This underscores that the harmonization proposed in this study specifically concerning the evidentiary standards applied by the KPPU and the Supreme Court aligns with the broader need for harmonization across the Indonesian legal system as a whole.[16]

If this disparity persists without harmonization, KPPU rulings which are the product of rigorous investigation and in-depth economic evidentiary analysis risk being consistently overturned at the cassation stage; this, in turn, could undermine the KPPU's effectiveness as Indonesia's business competition watchdog. This tension can also be explained through the theory of the burden of proof, with Munir Fuady asserting that the law of evidence must clearly designate the party required to substantiate their claims, as an error in assigning the burden of proof can lead to

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[13] M. Kahfi, Kurniawan, dan L. W. P. Suhartana, *Persekongkolan Tender (Analisis Putusan Mahkamah Agung Nomor 405 K/Pdt.Sus-KPPU/2020)* Jurnal Risalah Kenotariatan 4, no. 2 (2023).

[14] Rachmadi Usman*, Hukum Persaingan Usaha di Indonesia* (Jakarta: Sinar Grafika, 2013).

[15] Kahfi, Kurniawan, & Suhartana, op. cit.

[16] Andy Omara dan Januari Sihotang, *"Kedudukan Ketetapan Majelis Permusyawaratan Rakyat dalam Undang-Undang Nomor 12 Tahun 2011 dan Implikasi Yuridisnya terhadap Sistem Perundang-Undangan di Indonesia,"* Jurnal Penelitian Hukum Gadjah Mada 1, no. 1 (2012).

injustice.[17] The KPPU applies a lenient standard regarding the burden of proof by relying on economic indications, whereas the Supreme Court requires formal proof, as is customary in conventional civil procedural law.

Competition law literature recognizes the "rule of reason" approach which entails an assessment of the overall context and impact of an action as an alternative to the *per se* illegal approach, which requires formal proof.[18] This is the approach essentially adopted by the KPPU, whereas the Supreme Court continues to temper the flexibility of that economic approach with the principle of legal certainty to ensure that the imposition of sanctions is not arbitrary.[19] A similar phenomenon is evident in Judgment Number 523K/Pdt.Sus-KPPU/2024 the subject of this study wherein the Supreme Court once again disregarded the indirect evidence submitted by the KPPU. This inconsistent pattern of rulings indicates that the issue of admitting indirect evidence is not merely a matter of differing interpretations within a single case; rather, it reflects the absence of standardized guidelines within the Supreme Court regarding the status of indirect evidence in competition law cases, causing the nature of the rulings to depend heavily on the views of the panel of judges hearing the case.[20]

Legal Rationale of the Supreme Court Justice in Overturning KPPU Decision No. 17/KPPU-L/2022 via Decision No. 523K/Pdt.Sus-KPPU/2024.

Decisions rendered by the KPPU are not inherently final, as business entities wishing to contest them may still pursue legal recourse by filing an objection with the court; the court then reviews the decision on both procedural and substantive grounds before the matter potentially proceeds to the cassation stage at the Supreme Court. It is through this mechanism that the Supreme Court, acting as *judex juris*, reviewed the KPPU's legal reasoning in Decision Number 17/KPPU-L/2022 and ultimately determined that the evidence relied upon by the KPPU to establish the occurrence of bid rigging was insufficient to be upheld.

The Supreme Court's authority to overturn a KPPU decision stems from its position as the highest judicial body empowered to review cases at the cassation level following the aggrieved party's pursuit of a legal challenge in court, as prescribed by the business competition dispute resolution mechanism. This authority enables the Supreme Court to re-examine whether the legal reasoning employed by the KPPU in establishing the occurrence of tender collusion was based on the correct application of law and proper assessment of evidence, as affirmed by Article 45 paragraph (2) of the Job Creation Law, which stipulates that a court ruling regarding a challenge to a KPPU decision may be appealed to the Supreme Court via

[17] Munir Fuady, *Teori Hukum Pembuktian (Pidana dan Perdata),* (Bandung: PT Citra Aditya Bakti, 2006) hlm. 48.

[18] Susanti Adi Nugroho*, Hukum Persaingan Usaha di Indonesia dalam Teori dan Praktik serta Penerapan Hukumnya,* (Jakarta: Kencana Prenadamedia Group, 2012), hlm. 190.

[19] Hermansyah, *Pokok-Pokok Hukum Persaingan Usaha di Indonesia,* (Jakarta: Kencana, 2009), hlm 33.

[20] Dina Mayasari Sinaga, Martono Anggusti, dan Janpatar Simamora, *"Penggunaan Indirect Evidence (Alat Bukti Tidak Langsung) oleh KPPU dalam Proses Pembuktian Dugaan Praktik Kartel (Studi di Kantor Komisi Pengawas Persaingan Usaha Wilayah I Medan)"*, Nommensen Journal of Legal Opinion 2, No. 1 (2021), hlm. 43-44.

cassation.[21] The position of the Supreme Court as a court of cassation is fundamentally intended to review the application of the law and the sufficiency of evidence in a judgment; as Janpatar Simamora emphasizes, the cassation function cannot be eliminated without compromising the principles of legal certainty and equal treatment before the law. This principle is equally relevant in the context of cassation proceedings regarding KPPU decisions, where the Supreme Court is required to provide certainty regarding consistent standards of proof to avoid the multiple interpretations that have historically characterized judicial practice.[22]

In its considerations, the Supreme Court affirmed that not every action by a project owner that benefits a tender participant can automatically be classified as tender collusion; rather, two cumulative conditions must be met: first, the action must benefit a specific tender participant, and second, there must be evidence that the action was taken based on an agreement with or a request from the tender participant concerned.[23] The Supreme Court's reasoning characterizing the actions of the First Respondent (PT Jakarta Propertindo) as merely an internal policy of the project owner is flawed. In administrative law, the exercise of authority in a manner inconsistent with the intent and purpose of its conferral clearly indicates an abuse of authority (*detournement de pouvoir*). Moreover, the Supreme Court's insistence on physical evidence fails to account for the reality that modern tender collusion schemes are increasingly sophisticated, meticulously executed, and covert, designed specifically to evade detection by law enforcement.[24]

Based on those two criteria, the Supreme Court held that the actions of Respondent I (PT Jakarta Propertindo) which benefited Respondent II and Respondent III constituted solely an internal policy of the project owner and were unsupported by either direct or indirect evidence of collusion or requests from tender participants; consequently, the element of collusion was deemed not proven in a legally valid and convincing manner.[25] The importance of legal certainty regarding the evidentiary aspects of this case aligns with the view of Janpatar Simamora, who asserts that a legal regulation cannot function effectively unless underpinned by operational technical standards. In the realm of competition law, the absence of established technical standards concerning indirect evidence before the KPPU prompted the Supreme Court to undertake a legal correction to ensure legal certainty for the parties involved.[26]

This difference in interpretation fundamentally stems from the differing approaches employed by the two institutions: the KPPU tends to utilize a more lenient economic analysis whereby a profit secured by a tender participant is

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[21] Fairuz Zahirah Zihni Hamdan, dkk., *"Upaya Keberatan atas Putusan KPPU ke Pengadilan Niaga: Pembaharuan Berkepastian Hukum",* 2023, hlm. 61-84

[22] Janpatar Simamora, *"Kepastian Hukum Pengajuan Kasasi Oleh Jaksa Penuntut Umum Terhadap Vonis Bebas,"* Jurnal Yudisial 7, No. 1 (2014): 1–17.

[23] Putusan Mahkamah Agung Nomor 523 K/Pdt.Sus-KPPU/2024.

[24] Janpatar Simamora, Risma Elfrida Esther Manik, *"Legal Politics in Combating Corruption during Indonesia's Era of Regional Autonomy Journal of Indonesia Legal Studies*, Vol. 10 No.1, 2025, hlm.138.

[25] Sekti Purwo Utomo dan Ditha Wiradiputra, "*Penggunaan Indirect Evidence pada Proses Pembuktian dalam Hukum Acara Persaingan Usaha",* Jurnal Hukum dan Kenotariatan,2021

[26] Janpatar Simamora, *"Regional Government Policy in Protecting Customary Land Rights: A Case Study of the Toba Batak Indigenous Community,"* Khazanah Hukum, Vol. 7, No. 3 (2025), hlm. 340

viewed as a preliminary indication of collusion whereas the Supreme Court evaluates cases through the lens of civil procedural law and stricter conventional evidentiary standards.

This discrepancy in evidentiary standards between the KPPU and the Supreme Court ultimately impacts legal certainty for business players on the one hand, while simultaneously threatening to constrain the KPPU's ability to take action against covert bid-rigging practices on the other.[27]

Based on the foregoing discussion, it is evident that the Supreme Court's annulment of KPPU Decision Number 17/KPPU-L/2022 stemmed not merely from procedural errors, but from fundamental differences in how the two institutions interpret and assess the sufficiency of evidence in tender collusion cases. The KPPU, employing a specialized approach grounded in economics and competition law, tends to view a unilateral benefit as a sufficient preliminary indication of collusion; conversely, the Supreme Court requires the fulfillment of two stricter, cumulative conditions: the existence of a benefit accruing to a tender participant and concrete evidence—such as an agreement or a request—involving that party. This divergence in approach proved to be the pivotal issue in the case at hand, highlighting the need to harmonize evidentiary standards between the competition authority and the general courts. Such harmonization is essential to ensure effective enforcement against covert tender collusion without compromising legal certainty for business entities. Fundamentally, this tension reflects the classic legal dilemma of balancing legal certainty against substantive justice, wherein overly stringent evidentiary standards risk undermining efforts to penalize anti-competitive practices that are, by their very nature, difficult to prove directly.[28]

Doctrinal Implications and Institutional Harmonization

The strongest doctrinal conclusion is not that indirect evidence is either categorically sufficient or categorically insufficient. Its probative value depends on a transparent chain of reasoning linking proven facts to each element of Article 22 while considering plausible lawful explanations. A sound decision should identify which facts are proven, which inferences are drawn from them, why those inferences are stronger than competing explanations, and how the evidence establishes the statutory elements.

Institutional harmonization should therefore focus on clearer KPPU evidentiary guidance and, where necessary, Supreme Court procedural guidance on the judicial review of competition cases. The purpose is not to transform cassation into a new fact-finding stage, but to make the distinction between legal sufficiency, evidentiary reasoning, and factual re-evaluation more predictable. Because this study concentrates on one principal decision and a limited comparator set, its conclusions are doctrinal and case-specific rather than statistical claims about all KPPU litigation.

[27]Dandapala,"Pertentangan Putusan Sebagai Alasan Peninjauan Kembali https://dandapala.com/kaidahHukum/detail/pertentangan-putusan-sebagai-alasan-peninjauan-kembali. Diakses pada 21 Agustus 2026

[28]Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence)*, (Jakarta: Kencana Prenada Media Group, 2009), hlm. 288.

CONCLUSION

Based on the foregoing explanation, it can be concluded that the difference in interpretation between the KPPU and the Supreme Court regarding Judgment Number 523K/Pdt.Sus-KPPU/2024 lies in the standard of proof applied. The KPPU considered the benefit obtained by a tender participant sufficient to indicate collusion, whereas the Supreme Court required the simultaneous fulfillment of two conditions: the existence of a benefit for the tender participant and evidence that such benefit was indeed requested or agreed upon by the participant in question. This divergence in perspective led the Supreme Court to overturn KPPU Decision Number 17/KPPU-L/2022, as the evidence presented by the KPPU whether direct or indirect was deemed insufficiently strong to prove the existence of collusion between Reported Party I and Reported Parties II and III.

The legal basis for the Supreme Court's decision to overturn the ruling stems from its role as *judex juris* at the cassation level, granting it the authority to re-examine whether the KPPU's legal reasoning was grounded in the correct application of the law and proper assessment of evidence. This divergence in approach is fundamentally rooted in the differing perspectives of the two institutions: the KPPU relies more heavily on economic analysis and circumstantial evidence given the inherent difficulty of openly proving bid-rigging whereas the Supreme Court adheres to the principles of formal evidentiary standards typical of civil procedural law. This situation reveals a lack of uniformity regarding evidentiary standards in Indonesian competition law enforcement between the supervisory body and the judiciary; consequently, future harmonization efforts are essential to ensure that enforcement actions against covert bid-rigging remain effective without compromising legal certainty for business entities.

First, the Business Competition Supervisory Commission (KPPU) needs to raise its standards and enhance rigor when gathering evidence for tender collusion cases. The KPPU should not rely solely on economic analysis or indications; instead, it should strengthen the evidentiary basis by incorporating other valid and relevant evidence. This ensures that KPPU rulings are robust and less likely to be overturned during legal challenges such as objections or appeals to the Supreme Court.

Secondly, it is necessary to harmonize regulations and jointly formulate evidentiary guidelines between the KPPU and the Supreme Court, particularly regarding the status and limits of using indirect evidence in business competition cases. Clarity regarding the standard of proof is crucial to ensuring legal certainty for business entities while maintaining the effectiveness of enforcement actions against bid-rigging practices, which are inherently covert in nature.

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