

The Status of Evidence in Tender Conspiracy from the Perspective of Ibn Qayyim Al-Jauziyah (A Study of KPPU Decision Number 17/KPPU-L/2022 and Supreme Court Decision Number 523 K/Pdt.Sus-KPPU/2024)

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Abstrak

Bukti tidak langsung dalam perkara persekongkolan tender menimbulkan persoalan mengenai batas antara petunjuk yang sah dan dugaan yang belum memadai. Penelitian ini menganalisis kedudukan indirect evidence dalam Putusan KPPU Nomor 17/KPPU-L/2022, pertimbangan Mahkamah Agung dalam Putusan Nomor 523 K/Pdt.Sus-KPPU/2024, dan konsep al-bayyinah serta qarinah menurut Ibnu Qayyim al-Jauziyah. Penelitian hukum normatif ini menggunakan pendekatan perundang-undangan, konseptual, dan kasus, dengan analisis kualitatif-preskriptif. Hasil penelitian menunjukkan bahwa bukti tidak langsung bukan jenis alat bukti tersendiri di luar Pasal 42 Undang-Undang Nomor 5 Tahun 1999, melainkan penalaran berdasarkan alat bukti yang sah. KPPU menggunakan pembatalan tender, pergantian tim, perubahan dokumen, dan penetapan pemenang untuk menyimpulkan adanya persekongkolan. Mahkamah Agung menilai hubungan antara peristiwa itu dan kerja sama terlarang belum terbukti secara memadai. Dalam analisis qarinah, rangkaian petunjuk tersebut lebih tepat digolongkan sebagai qarinah zanniyyah daripada qarinah qati'ah. Diperlukan pengujian hubungan logis, penjelasan alternatif, dan alasan hukum yang transparan untuk menilai kecukupan bukti.

Kata Kunci: indirect evidence; persekongkolan tender; pembuktian; qarinah; persaingan usaha

Abstract

Indirect evidence in bid-rigging cases raises the question of when circumstantial indications become legally sufficient proof. This article examines KPPU Decision No. 17/KPPU-L/2022, Supreme Court Decision No. 523 K/Pdt.Sus-KPPU/2024, and Ibn Qayyim Al-Jauziyah's concepts of al-bayyinah and qarinah. The study employs normative legal research using statutory, conceptual, and case approaches and qualitative doctrinal analysis. It finds that indirect evidence is not a separate evidentiary category beyond Article 42 of Law No. 5 of 1999, but an inferential method based on recognized sources. KPPU regarded the initial tender cancellation, changes in the procurement team and documents, and the outcome of the repeated tender as evidence of coordination. The Supreme Court found the evidentiary connection between these events and prohibited cooperation insufficient. Within a comparative qarinah framework, these indications are more appropriately characterized as qarinah zanniyyah than qarinah qati'ah. The article proposes a reasoned standard requiring established facts, clear inferential links, examination of lawful alternative explanations, and transparent judicial justification.

Keywords: indirect evidence; bid rigging; legal proof; qarinah; competition law

INTRODUCTION

Effective competition is not merely a mechanism for allocating economic opportunities; it is also a legal condition for ensuring that procurement decisions are accountable, public resources are used efficiently, and market participants compete on the merits.¹ Indonesian competition law responds to these concerns through Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The statute places restrictions on agreements and conduct that distort competition and establishes the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha, KPPU) as a specialist enforcement institution.² Competition enforcement must nevertheless accommodate two competing requirements: the need to uncover concealed anticompetitive coordination and the need to protect undertakings against findings resting on unsupported assumptions.³

Tender collusion presents an acute form of this tension. Article 22 of Law Number 5 of 1999 prohibits an undertaking from conspiring with another party to arrange or determine the winning bidder where that conduct may result in unfair competition. Bid-rigging can involve horizontal coordination among bidders or vertical arrangements between bidders and procurement officials. Its economic effects may include inflated project costs, exclusion of efficient competitors, reduced quality of contracted work, and diminished confidence in procurement institutions.⁴ Yet the conduct may be deliberately concealed behind formally regular documents or ordinary managerial decisions, making a written agreement or an explicit admission exceptional rather than typical.⁵

A further account of Indonesian competition law stresses that the statutory prohibition must be interpreted in its institutional enforcement context, rather than by equating an unfavourable bidding outcome with a completed infringement. This study accordingly treats the existence of concerted conduct as an element to be demonstrated, even where procurement design changes create a strong incentive to investigate.⁶

For precisely that reason, the evidentiary assessment of a suspected agreement cannot be restricted mechanically to an express written contract. Communication records, similarities among bidding documents, affiliations, the sequence of procurement decisions, and economic incentives can provide a basis for drawing an inference about coordination. Such material is ordinarily described as indirect or circumstantial evidence. Its value does not come from a separate evidentiary category created by terminology alone, but from the relationship between

¹ Munir Fuady, *Hukum Anti Monopoli Menyongsong Era Persaingan Sehat* (Bandung: Citra Aditya Bakti, 2003).

² Rachmadi Usman, *Hukum Persaingan Usaha di Indonesia* (Jakarta: Sinar Grafika, 2013).

³ Republic of Indonesia, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, arts. 22 and 42.

⁴ Andi Fahmi Lubis et al., *Hukum Persaingan Usaha: Buku Teks*, 2nd ed. (Jakarta: Komisi Pengawas Persaingan Usaha, 2017).

⁵ Binoto Nadapdap, *Hukum Persaingan Usaha: Bukti Tidak Langsung (Indirect Evidence) Versus Tembok Kartel* (Jakarta: Jala Permata Aksara, 2019).

⁶ Susanti Adi Nugroho, *Hukum Persaingan Usaha di Indonesia: Dalam Teori dan Praktik serta Penerapan Hukumnya* (Jakarta: Kencana, 2018).

established facts and the specific element alleged to have been violated. Properly used, circumstantial reasoning can reveal a concealed agreement; improperly used, it can transform coincidence or an unfavorable commercial result into presumed illegality.⁷

The degree of evidentiary sufficiency is not a uniform formula across Indonesian procedural regimes. For example, the principle of simple proof examined in proceedings for postponement of debt-payment obligations responds to different statutory objectives and judicial procedures. It cannot be transposed into tender-collusion proceedings as a substitute for proving the elements of Article 22.⁸

Article 42 of Law Number 5 of 1999 recognizes witness testimony, expert testimony, letters and documents, indications, and statements by undertakings. It does not list indirect evidence as a sixth, independent form of proof. The legal question is therefore how an inference assembled from those recognized sources may meet the evidentiary requirements of Article 22. KPPU Regulation Number 2 of 2023 clarifies the role of indications, including economic and communication evidence, in case handling. This development helps explain the admissibility of circumstantial material but cannot by itself determine the weight that a particular set of circumstances should receive. Admissibility, relevance, reliability, and inferential sufficiency are distinct propositions that require separate analysis.⁹

That distinction came to the fore in the proceedings concerning the Phase III revitalization of Taman Ismail Marzuki, the Jakarta Arts Centre. In Decision Number 17/KPPU-L/2022, KPPU inferred vertical tender collusion from a sequence that included the cancellation of the first tender, changes in the procurement team, alterations to the terms of reference and request for proposals, and the eventual outcome of the repeated tender. The Central Jakarta Commercial Court upheld the decision. However, in Decision Number 523 K/Pdt.Sus-KPPU/2024, the Supreme Court set aside KPPU's finding with respect to the petitioners, concluding that the established circumstances had not adequately shown a cooperative arrangement or request connecting the project owner and the successful bidders. The judicial disagreement turned on the quality of the inference, not on the mere existence of circumstantial proof.¹⁰

An Indonesian translation of Ibn Qayyim's discussion of adjudication is useful for clarifying his practical concern with judicial methods of uncovering contested facts. The translation is read alongside the edited Arabic volume, not as proof that the modern competition-law category of indirect evidence already existed in the classical text.¹¹

⁷ Fajar Bima Alfian and Rilda Murniati, "Implementasi Bukti Tidak Langsung dalam Penyelesaian Perkara Hukum Persaingan Usaha," *Jurnal Persaingan Usaha* 3, no. 2 (2023): 106–119, <https://jurnal.kppu.go.id/index.php/official/article/download/94/54>.

⁸ Viqi Anugraha and Adlin Budhiawan, "Prinsip Pembuktian Sederhana sebagai Syarat Penundaan Kewajiban Pembayaran Hutang," *Journal of Education Research* 4, no. 2 (2023): 742–751, <https://doi.org/10.37985/jer.v4i2.201>.

⁹ Komisi Pengawas Persaingan Usaha, Peraturan KPPU Nomor 2 Tahun 2023 tentang Tata Cara Penanganan Perkara Praktik Monopoli dan Persaingan Usaha Tidak Sehat, art. 12.

¹⁰ Mahkamah Agung Republik Indonesia, Putusan Nomor 523 K/Pdt.Sus-KPPU/2024, July 31, 2024.

¹¹ Ibn Qayyim Al-Jauziyah, *Buku Pintar Memutuskan Perkara dari Rumah Tangga, Peradilan Sampai Negara*, trans. Muhammad Muchson Anasy (Jakarta: Pustaka Al-Kautsar, 2014).

The case is particularly instructive because it exposes the difference between proof that an administrative decision benefited a bidder and proof that the decision was made pursuant to prohibited coordination. A revised tender criterion may alter competitive conditions, but revision alone does not identify an agreement. A bidder's eventual victory may be relevant, but victory is equally compatible with lawful competition unless additional facts show a connection with coordinated conduct. The adjudicator must therefore explain which underlying circumstances are proven, why their combination points to an agreement, and whether plausible lawful explanations have been adequately considered. Without this chain of reasoning, a collective assessment risks becoming the mere aggregation of suspicions.¹²

Theoretical resources for assessing this problem can be found beyond contemporary competition-law doctrine. Ibn Qayyim Al-Jauziyah's account of al-bayyinah treats proof as that which discloses the truth rather than reducing proof to a rigid inventory of formal means. Within this account, qarinah denotes signs or circumstances from which an unobserved fact may be inferred. This approach neither abandons legal rigor nor assumes that every suspicion is sufficient. The probative force of an indication depends on the reliability of the fact from which it is drawn, the logical relationship between that fact and the matter disputed, and the availability of competing explanations.¹³

Prasetya and Muhammad examined evidentiary reasoning in tender-collusion proceedings.¹⁴ Wardana and Hirsanuddin addressed the treatment of an Article 22 procurement case.¹⁵ Other scholarship has considered the relationship between economic and communication indicators. A recently published analysis of the same Supreme Court ruling has also discussed the divergence between the two institutions' legal reasoning. The present article has a narrower and distinctive inquiry: it uses the paired decisions to examine whether the quality of KPPU's inferential chain can be evaluated through the concepts of al-bayyinah, qarinah and ghalabat al-zann without confusing a theory of evidentiary evaluation with a source of binding Indonesian procedural law. The comparison seeks to clarify what a fair and sufficiently reasoned evidentiary standard ought to demand.¹⁶

The contribution differs from earlier studies in its unit of analysis. Prasetya and Muhammad describe the legal handling of tender-collusion proof, while Darmawan addresses the evidentiary strength and procedural use of indirect evidence. The 2026 study by Tampubolon, Simamora, and Sihotang examines the Supreme Court's reasoning in annulling the KPPU decision. The present inquiry does not reproduce their holding analysis. It reconstructs a fact-to-element evidentiary matrix from the

¹² Sastyo Aji Darmawan, "Kekuatan Indirect Evidence dalam Pembuktian Kasus Persekongkolan Tender dan Penerapannya di Dalam Proses Tender," *Jurnal Pengadaan Barang/Jasa* 1, no. 1 (2022): 10–18, <https://doi.org/10.55961/jpbj.v1i1.7>.

¹³ Ibn Qayyim Al-Jauziyah, *Al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah*, vol. 1, ed. Naif bin Ahmad al-Hamd (Dar 'Alam al-Fawa'id, 1428 AH).

¹⁴ Hendi Indra Prasetya and Danan Wahyu Muhammad, "Pembuktian dalam Penyelesaian Perkara Persekongkolan Tender," *Media of Law and Sharia* 3, no. 1 (2022).

¹⁵ Yuditheo Wardana and Hirsanuddin, "Penanganan Persekongkolan Tender Pembangunan Jalan Ruas Ngajam–Apulea Segmen III dalam Perkara Nomor 30/KPPU-I/2019," *Jurnal Commerce Law* 3, no. 1 (2023): 243–251.

¹⁶ Ayu Tampubolon, Janpatar Simamora, and Januari Sihotang, "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)," *Adagium: Jurnal Ilmiah Hukum* (2026), <https://doi.org/10.70308/nx3c5738>.

paired decisions and evaluates each inferential step with the same criteria derived from *qarinah*: authenticity of the underlying fact, specificity to prohibited cooperation, independence of corroboration, and capacity to survive record-supported alternative explanations. The intended novelty is an operational comparative test, rather than the assertion that Islamic legal thought itself governs KPPU proceedings.¹⁷

Normative legal research, as distinguished from independent empirical fact-finding, evaluates legal materials through an explicit doctrinal framework. The present inquiry therefore does not claim to establish new events in the tender process; it assesses the probative reasoning found in the decisions and in the legal literature.¹⁸

Accordingly, this article addresses three interconnected questions. First, what is the legal position of indirect evidence under Indonesian competition law and how was it constructed in KPPU Decision Number 17/KPPU-L/2022? Second, why did the Supreme Court consider the available evidence insufficient in Decision Number 523 K/Pdt.Sus-KPPU/2024? Third, what analytical guidance can be derived from Ibn Qayyim's treatment of *qarinah* for distinguishing persuasive circumstantial evidence from an allegation that remains conjectural? The article argues that the decisive task is to test the inferential bridge between established procurement events and the legally required cooperation, rather than to count the number of suspicious events or insist categorically upon direct communication.

RESEARCH METHOD

Scientific crime investigation offers a useful methodological contrast: forensic inquiry in criminal proceedings may develop traceable facts through specialized technical methods, but that literature does not determine the procedural authority or standard of proof applicable to KPPU. The contrast highlights why source verification and legal inference must be assessed separately.¹⁹

This study adopts normative legal research with statutory, conceptual, and case approaches. The statutory approach examines Articles 22 and 42 of Law Number 5 of 1999 and the relevant KPPU procedural rules. The case approach compares KPPU Decision Number 17/KPPU-L/2022, the related commercial-court proceedings, and Supreme Court Decision Number 523 K/Pdt.Sus-KPPU/2024. The conceptual approach examines the relationship among circumstantial evidence, judicial inference, *al-bayyinah*, *qarinah*, and *ghalabat al-zann* in the thought of Ibn Qayyim Al-Jauziyah. The inquiry is directed at the interpretation and justification of legal conclusions, not at conducting a new investigation into the procurement itself.²⁰

Primary legal materials consist of the relevant legislation, KPPU procedural regulation, and the decisions under examination. Secondary legal materials include writings on competition law, economic and communication evidence, Islamic

¹⁷ Ayu Tampubolon, Janpatar Simamora, and Januari Sihotang, "A Legal Analysis of the Supreme Court's Legal Reasoning in Annuling the KPPU Decision in a Tender-Collusion Case," *Adagium: Jurnal Ilmiah Hukum* (2026), <https://doi.org/10.70308/nx3c5738>.

¹⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Depok: Rajawali Pers, 2019).

¹⁹ Niki Marjuki and Budi Sastra Panjaitan, "Penerapan Scientific Crime Investigation (SCI) dalam Pengungkapan Kasus Tindak Pidana di Indonesia," *Jurnal Ilmu Hukum, Humaniora dan Politik* 5, no. 1 (2024): 537–544, <https://doi.org/10.38035/jihhp.v5i1.3140>.

²⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2021).

evidentiary reasoning, and legal research methodology. The analysis proceeds by identifying the propositions that each tribunal regarded as proven, distinguishing those propositions from the conclusions inferred from them, and examining the logical and legal grounds for accepting or rejecting the inference of a collusive arrangement. The source descriptions of events and numerical scores are treated as case-record assertions; they are not presented as measurements independently generated by this research.²¹

The judgments were selected because the KPPU and the Supreme Court assigned different probative weights to substantially the same procurement sequence. The documentary review was updated through 13 October 2026. Decision Number 17/KPPU-L/2022 was checked against the publicly available reproduced judgment, particularly its evidentiary discussion and documentary exhibits; Decisions Numbers 523 and 745 K/Pdt.Sus-KPPU/2024 and 43 PK/Pdt.Sus-KPPU/2025 were checked using accessible copies and the official Supreme Court decision catalogue. The KPPU and Supreme Court records were treated as primary judicial materials. The Commercial Court's result was traced from its quoted operative order in the appellate judgments; its complete standalone case file and the underlying bids were not independently authenticated for this study. That limitation prevents claims about facts beyond those reproduced in the cited decisions.²²

To make interpretation reproducible, each extracted proposition was coded by: (i) relevant actor and date; (ii) evidentiary document or decision page; (iii) whether it was a party's allegation, a finding recorded by KPPU, or the Supreme Court's legal conclusion; (iv) the element of Article 22 it could establish; (v) independent corroboration, if any; and (vi) a counter-explanation actually recognized in the judgment, as distinct from a hypothetical explanation supplied by the authors. The categories of admissibility and inferential sufficiency were assessed separately. Apparent inconsistencies in outcomes were resolved by identifying the litigants and operative orders in each judicial proceeding rather than treating the decisions as interchangeable.

The interpretive method is qualitative and doctrinal. Grammatical interpretation is applied to the statutory categories of evidence and the requirements of Article 22; systematic interpretation relates those categories to the procedural rules; and conceptual comparison is used to evaluate the strength of circumstantial reasoning. Ibn Qayyim's ideas are used as a normative and analytical perspective, not as legislation binding KPPU or Indonesian courts. The classification of indications as relatively conclusive or merely presumptive is consequently presented as the author's analytical assessment of the evidentiary argument rather than as an automatic substitute for the legal standard established by Indonesian positive law.²³

²¹ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

²² Supreme Court of the Republic of Indonesia, Decision Number 523 K/Pdt.Sus-KPPU/2024 (July 31, 2024), 6–9.

²³ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2019).

RESULTS AND DISCUSSION

1. The Legal Status and Construction of Indirect Evidence in KPPU Decision Number 17/KPPU-L/2022

Bid-rigging is difficult to prove because the prohibited arrangement ordinarily lies behind outwardly regular transactions. Participants may communicate through intermediaries or may structure procurement decisions so that an intended result appears to arise from competitive assessment. In this setting, circumstantial evidence helps investigators reconstruct what probably occurred from facts that are observable and independently verifiable. However, a legal system cannot treat the difficulty of obtaining direct evidence as permission to disregard the requirements of proof. The proper starting point is to identify the precise statutory conduct: an arrangement or conspiracy with another party concerning the winner of a tender, with consequences for fair competition. Each evidentiary inference must ultimately speak to those elements rather than to general unease with the outcome.²⁴

The distinction between the means of proof and the method of reasoning is essential. Under Article 42, a procurement document belongs to the recognized documentary category; testimony regarding a meeting belongs to the witness category; an established pattern derived from those materials may amount to an indication. Indirect evidence describes the reasoning that connects such materials to a legally material proposition. It does not allow a decision maker to bypass the statutory list by labeling an unsupported allegation 'circumstantial evidence.' The definition of indications under Article 12 of KPPU Regulation Number 2 of 2023 makes room for correspondences among acts, occurrences, testimony, and data. It also distinguishes economic indicators from evidence of communication. Each should be assessed for authenticity, context, and connection to the alleged conspiracy.²⁵

The procurement dispute arose in the Phase III revitalization of Taman Ismail Marzuki. KPPU examined the actions of PT Jakarta Propertindo (Perseroda), identified as the procurement organizer, and of PT Pembangunan Perumahan (Persero) Tbk and PT Jaya Konstruksi Manggala Pratama Tbk, which participated through a joint operation referred to as KSO PP-JAKON. According to the factual account set out in the KPPU ruling and reproduced in the source manuscript, the first tender was cancelled after the evaluation stages. PT Wijaya Karya Bangunan Gedung (Persero) Tbk had been placed first, whereas KSO PP-JAKON was ranked third. The case therefore required an explanation not merely for the cancellation but for its relationship to the subsequently changed procurement conditions and winning result.²⁶

KPPU's inferential chain contained several distinct propositions. The commission referred to the intervention of a director in a review of technical evaluation results, the request by the joint operation for detailed evaluation information, the cancellation of the initial tender, the replacement of procurement personnel, and revisions to procurement requirements. During the repeated tender, the joint operation was said to have expanded its stated experience from 31 to 106

²⁴ Mustapa Khamal Rokan, *Persekongkolan Tender di Indonesia Perspektif Hukum Persaingan Usaha: Analisis Putusan KPPU tentang Persekongkolan Tender di Indonesia* (Jakarta: Kencana, 2017).

²⁵ Komisi Pengawas Persaingan Usaha, *Peraturan KPPU Nomor 2 Tahun 2023 tentang Tata Cara Penanganan Perkara Praktik Monopoli dan Persaingan Usaha Tidak Sehat*, art. 12.

²⁶ Komisi Pengawas Persaingan Usaha, *Putusan Nomor 17/KPPU-L/2022*, July 18, 2023, concerning the Phase III revitalization procurement at Taman Ismail Marzuki.

items, obtaining a technical score of 96.09 compared with 63.13 for its competitor. KPPU considered the cumulative sequence indicative of coordination between the project organizer and the bidders favored by the revised process. These details matter as parts of the alleged chronology, but the numerical comparison does not itself demonstrate communication, instruction, or reciprocal commitment.²⁷

The numerical evidence now has an identifiable documentary provenance. In its discussion of technical evaluation, the KPPU decision identifies evidence C161 and C162 for the increase in the joint operation's ten-year portfolio of comparable experience from 31 items at the cancelled tender to 106 at the repeated tender (pp. 453–454). Its comparison of the experience subcriterion reports PP-JAKON's score increasing from 83.33 to 96.09, while PT Wijaya Karya Bangunan Gedung's score fell from 84.79 to 63.13 (pp. 451–452). These are experience-subcriterion evaluation scores, not percentages of proven conspiracy or independently reconstructed calculations. Because the full original scoring worksheets and methodology were not separately audited here, the article treats the figures as findings reported by the Commission, not as this study's independent econometric results.²⁸

Cancellation of a tender is an equivocal fact when considered alone. Procurement rules and commercial practice may allow cancellation for legitimate administrative, technical, budgetary, or policy reasons. A cancellation becomes probative of collusion only where additional material makes a prohibited purpose significantly more plausible than these explanations. The appropriate questions include whether the stated grounds for cancellation were contemporaneously recorded, whether procurement actors deviated from a mandatory procedure, whether the decision was foreseeable to a preferred bidder, and whether communications or other conduct independently connect the decision with that bidder's interests. An unexplained cancellation can justify investigation; it should not automatically become a finding of an agreement.²⁹

The replacement of the procurement team presents the same inferential problem. A change of personnel may be managerial housekeeping, a response to procedural irregularities, or an instrument for securing a predetermined result. Its evidentiary value depends on context: the timing, authority for the replacement, reasons given, role of those appointed, and relationship between the changed team and the later alterations in evaluation criteria. It is analytically unsound to infer a conspiracy solely because a staffing change preceded a different outcome. Equally, it would be unsound to disregard a staffing change where independent evidence showed it was requested by a bidder or used to implement a prearranged procurement strategy.³⁰

Changes to the Terms of Reference (Kerangka Acuan Kerja, KAK) and Request for Proposal (RfP) were more closely related to competitive conditions than the mere replacement of personnel. A modification of evaluation criteria can change who

²⁷ Komisi Pengawas Persaingan Usaha, Putusan Nomor 17/KPPU-L/2022, July 18, 2023, concerning the Phase III revitalization procurement at Taman Ismail Marzuki.

²⁸ Komisi Pengawas Persaingan Usaha, Decision Number 17/KPPU-L/2022 (July 18, 2023), 451–454, 464–465 (Tables 20–22 and discussion of Exhibits C161–C162).

²⁹ Sterry Fendy Andih, "Pengaturan Bukti Petunjuk pada Hukum Acara Persaingan Usaha dalam Kerangka Hukum Pembuktian di Indonesia," *Jurnal Magister Hukum Udayana* 8, no. 4 (2019).

³⁰ Mahmul Siregar, "Bukti Tidak Langsung (Indirect Evidence) dalam Penegakan Hukum Persaingan di Indonesia," *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018).

qualifies and how bids are scored. The legal issue remains whether the modification was generally applicable and reasonably connected to project needs or deliberately designed in coordination with a particular participant. A rigorous assessment must compare the documents before and after revision, identify the competitive advantage produced, investigate who proposed the changes, and consider technical reasons offered by the procuring body. In the absence of this connective analysis, the fact that one bidder benefited is evidence of an effect, not yet evidence of a prohibited agreement.³¹

The winning result of the repeated tender is likewise important as an outcome that needs explanation, not as independent proof of how that outcome was procured. KSO PP-JAKON's success can corroborate a theory of collusion if there is already reliable evidence of coordinated conduct leading to that result. Without such evidence, the same outcome might be explained by technical improvements, different qualification criteria, or legitimate adjustments in procurement priorities. This is a central distinction between correlation and legal causation. A finding of collusion should connect a specific action of the organizer to a response, request, or arrangement involving the relevant bidder, rather than substituting the beneficiary's identity for proof of the relationship.³²

Table 1. Evidence Matrix: Same Criteria Applied to the Disputed Tender Indicators

Indicator / pinpoint	Established source and competing account	Article 22 inference and corroboration	Qarinah appraisal
First ranking and cancellation (KPPU, pp. 368–370, 451–454)	The first tender was cancelled; KPPU described the initial ranking and differing reasons for cancellation. The Supreme Court treated the tender organizer's choice as an internal decision (MA 523, p. 7).	An inference of facilitation needs a link between cancellation and bidder-directed cooperation. Tender irregularity alone cannot supply that link.	Documented event; inferential link disputed: zanniyyah.

³¹ Dina Mayasari Sinaga, Martono Anggusti, and Janpatar Simamora, "Penggunaan Indirect Evidence (Alat Bukti Tindak Langsung) oleh KPPU dalam Proses Pembuktian Dugaan Praktik Kartel," *Nommensen Journal of Legal Opinion* 2, no. 1 (2021): 37–46, <https://doi.org/10.51622/njlo.v2i01.207>.

³² Udin Silalahi, "Indirect Evidence dalam *Hukum Persaingan Usaha*," *Jurnal Hukum Bisnis* 32, no. 5 (2013).

Indicator / pinpoint	Established source and competing account	Article 22 inference and corroboration	Qarinah appraisal
Procurement team and intervention (KPPU, pp. 451–465)	KPPU described management intervention and changes in evaluators; the appellate court did not treat them as establishing agreement by themselves.	The relevant statutory element is cooperation, not merely a manager's power to replace personnel. No independently verified direct request linking both parties is identified in MA 523, p. 7.	Serious investigatory clue, not self-sufficient proof.
KAK/RfP amendments (KPPU, pp. 368–370, 453–465)	Changes to assessment rules and documentary requirements were reported. Commercial reasons or legitimate re-evaluation are possible only to the extent supported by the record; otherwise they remain hypotheses.	A changed criterion must be causally traced to bidder influence or coordinated design. Benefit to a bidder is not equivalent to proof of collusive cooperation.	Contextually probative but rebuttable: zanniyyah.
Experience documents and technical marks (KPPU, pp. 451–454, 464–465)	C161–C162 concern 31 to 106 experience items; reported experience scores are PP–JAKON 83.33–96.09 and WIKA Gedung 84.79–63.13. Source calculations not independently recomputed.	Score movements substantiate changed evaluations and possible competitive advantage, not a request or agreement. Additional independent corroboration remains critical.	Reliable as KPPU-recorded data; nonconclusive as to collusion.

Indicator / pinpoint	Established source and competing account	Article 22 inference and corroboration	Qarinah appraisal
Repeated tender winner (KPPU, p. 465; MA 523, pp. 7–8)	PP-JAKON became winner of the repeated tender; the Supreme Court accepted the favorable outcome but distinguished it from proof of prohibited cooperation.	A favorable result corroborates a collusion hypothesis only when linked to independent facts of coordination; otherwise the conclusion is circular.	Result established; conspiracy inference insufficient on this record.

An assessment of cumulative circumstances has value precisely because each individual act may be ambiguous. Several moderately probative facts can reinforce one another where they are independent, mutually consistent, and better explained by coordination than by lawful alternatives. Nevertheless, cumulative analysis must avoid circular reasoning. One cannot establish the improper nature of a cancellation solely from the later award, and then establish the improper nature of the award solely from the cancellation. The analysis should include a transparent factual matrix setting out the source of each fact, the element of Article 22 to which it relates, its alternative explanations, and any independent material linking it to the other facts. This disciplined reconstruction makes circumstantial proof intelligible and reviewable.³³

The matrix shows why cumulative analysis requires more than counting events. Cancellation, amended criteria, and a new winner are institutionally connected and may therefore derive from a common procurement decision rather than three independent proofs. In contrast, contemporaneous bid communications, a bidder's attributable request, or inconsistent technical assessments established through distinct evidence would provide additional corroboration. The Supreme Court's decision at page 7 specifically found no direct or indirect evidence that the organizer acted on cooperation with, or a request from, the cassation petitioners. That conclusion concerns the sufficiency of the actual file, not an absolute prohibition on inferential evidence.³⁴

KPPU's approach in Decision Number 17/KPPU-L/2022 treated the collection of tender events as a coherent pattern sufficient to infer vertical collusion. In principle this approach is not inconsistent with Article 42; an indication may be built through several forms of recognized evidence, including economic evidence and communication-related circumstances. The difficulty is whether the particular pattern demonstrates the agreement or concerted cooperation required by Article 22. If a decision describes many irregular or unusual events but does not establish the bridge to coordination, its reasoning remains incomplete even though the factual

³³ Fajar Bima Alfian and Rilda Murniati, "Implementasi Bukti Tidak Langsung dalam Penyelesaian Perkara *Hukum Persaingan Usaha*," *Jurnal Persaingan Usaha* 3, no. 2 (2023): 106–119, <https://jurnal.kppu.go.id/index.php/official/article/download/94/54>.

³⁴ Supreme Court of the Republic of Indonesia, Decision Number 523 K/Pdt.Sus-KPPU/2024 (July 31, 2024), 6–8 (reasons and operative order).

description is extensive. The number of circumstances cannot compensate for the absence of a reasoned connection to the disputed element.³⁵

The doctrinal position can therefore be formulated in three stages. The tribunal must first establish the basic facts through admissible evidence. It must then demonstrate how those facts, individually and collectively, support a proposition of coordinated conduct; this requires assessing relevance, independence, causality, and lawful alternative explanations. Finally, it must determine whether the resulting inference meets the standard necessary for the substantive infringement. These stages do not introduce a new statutory category of evidence. They provide a defensible method for using existing evidentiary categories without allowing suspicion to be mistaken for proof. The process protects both the public interest in combating hidden collusion and the procedural interests of the undertakings accused.³⁶

2. The Supreme Court's Assessment of Evidentiary Sufficiency in Decision Number 523 K/Pdt.Sus-KPPU/2024

The distinction between the existence of a suspicious procurement sequence and proof of prohibited collaboration provides the core of the Supreme Court's review. Decision Number 523 K/Pdt.Sus-KPPU/2024, decided on 31 July 2024, set aside KPPU Decision Number 17/KPPU-L/2022 in relation to the parties to that cassation. The judgment followed proceedings in which the Central Jakarta Commercial Court had accepted KPPU's conclusion. The Supreme Court did not need to characterize circumstantial evidence as categorically unlawful. Instead, the decisive inquiry was whether the factual sequence invoked by KPPU established the collaboration that Article 22 required, as opposed to showing that the organizer's decisions ultimately benefited one set of bidders.³⁷

The procedural history must be distinguished from the proof issue addressed by the present article. On 1 July 2024 the Supreme Court rejected the separate cassation brought by PT Jakarta Propertindo in Decision Number 745 K/Pdt.Sus-KPPU/2024.³⁸ On 31 July 2024 Decision Number 523 granted the cassation of PT Pembangunan Perumahan and PT Jaya Konstruksi concerning the same KPPU investigation. KPPU then sought reconsideration; the Supreme Court rejected that application in Decision Number 43 PK/Pdt.Sus-KPPU/2025 on 3 November 2025.³⁹ The differing outcomes for the parties must not be collapsed into a statement that the entire proceeding was uniformly annulled or uniformly upheld. Judicial commentary subsequently discussed the procedural tension, but the operative result must be attributed to the judgments themselves.⁴⁰

³⁵ Sastyo Aji Darmawan, "Kekuatan Indirect Evidence dalam Pembuktian Kasus Persekongkolan Tender dan Penerapannya di Dalam Proses Tender," *Jurnal Pengadaan Barang/Jasa* 1, no. 1 (2022): 10–18, <https://doi.org/10.55961/jpbj.v1i1.7>.

³⁶ Andi Fahmi Lubis et al., *Hukum Persaingan Usaha*: Buku Teks, 2nd ed. (Jakarta: Komisi Pengawas Persaingan Usaha, 2017).

³⁷ Mahkamah Agung Republik Indonesia, Putusan Nomor 523 K/Pdt.Sus-KPPU/2024, July 31, 2024.

³⁸ Supreme Court of the Republic of Indonesia, Decision Number 745 K/Pdt.Sus-KPPU/2024 (July 1, 2024), dispositive ruling (cassation of PT Jakarta Propertindo).

³⁹ Supreme Court of the Republic of Indonesia, Decision Number 43 PK/Pdt.Sus-KPPU/2025 (November 3, 2025), 9 (rejection of KPPU's reconsideration application).

⁴⁰ Arief Sapto Nugroho, "Pertentangan Putusan Sebagai Alasan Peninjauan Kembali," *Dandapala*, February 18, 2026, <https://www.dandapala.com/kaidahHukum/detail/pertentangan-putusan->

The Supreme Court's stated reasoning at pages 6–8 identifies three evidentiary concerns in the Supreme Court's assessment: an absence of demonstrated communication linking the organizer with the bidders in the alleged agreement; an absence of a sufficiently established pattern of cooperative tender behavior; and a lack of corroborating proof linking the administrative sequence to a hidden understanding. These observations should not be read as a universal rule that Article 22 can only be proven through emails, admissions, or minutes of a meeting. Their significance lies in the perceived failure, on the evidentiary record before the Court, to connect the conduct of the organizer with a request, agreement, or coordination involving the successful participants.⁴¹

The Court's reasoning on page 7, required two connected matters to be established: a decision or sequence of decisions that gave a particular bidder an advantage, and a prohibited cooperative relationship or request explaining why the advantage was created. The first matter concerns the objective effect of the procurement choices; the second concerns the collusive character of the conduct. The distinction prevents administrative decisions that happen to favor a party from being treated automatically as conspiracies. At the same time, this requirement need not privilege direct over indirect evidence. A cooperative relationship may also be established circumstantially where the facts support a reliable inference and render lawful alternatives substantially less persuasive.⁴²

Consider the cancellation of the first tender. The cancellation might be irregular because of missing reasons or because it followed a completed technical evaluation. Such defects are capable of raising procedural questions, and in the context of later revisions they can contribute to an inquiry into a concealed agreement. But an irregular procurement act is not necessarily a competition-law conspiracy. To sustain the inference, a decision should articulate why the irregularity more strongly supports prior coordination than a negligent or unilateral management choice. The factual chain must show more than dissatisfaction with the justification supplied by the project owner. It must provide positive grounds for linking the alleged beneficiaries to the acts being challenged.

The same analysis applies to the procurement team's replacement and changes in KAK or RfP. If the changes have identifiable technical reasons applicable across competitors, the inference of coordination loses strength. Conversely, if their timing, selective design, or documented communications show that they were initiated in response to a request from a particular bidder, their probative value increases. This is not simply a contest between the legal preferences of KPPU and the Supreme Court. It is a question of what inferential explanation is supported by the admitted facts. A legally adequate judgment must state the precise connection that turns a suspicious administrative act into evidence of concerted action.⁴³

The distinction between counter-explanations found in a judgment and those posited by an academic author is material. Decision Number 523, pages 7–8,

sebagai-alasan-peninjauan-kembali.

⁴¹ Mahkamah Agung Republik Indonesia, Putusan Nomor 523 K/Pdt.Sus-KPPU/2024, July 31, 2024.

⁴² Ayu Tampubolon, Janpatar Simamora, and Januari Sihotang, "A Legal Analysis of the Supreme Court's Legal Reasoning," *Adagium: Jurnal Ilmiah Hukum* (2026), <https://doi.org/10.70308/nx3c5738>.

⁴³ Mahmul Siregar, "Bukti Tidak Langsung (Indirect Evidence) dalam Penegakan Hukum Persaingan di Indonesia," *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018).

expressly characterizes the challenged actions as internal policy decisions and points to tender terms accepted by bidders. Those are judicially stated reasons in the source. Budgetary revision, administrative error, or general technical housekeeping are examples of other possible explanations but were not independently established in this article as facts of the Taman Ismail Marzuki tender. They cannot be used as affirmative exculpatory findings absent supporting records.

The Supreme Court considered the chain of evidence insufficient because the relevant procurement outcomes remained compatible with lawful internal policy decisions. A plausible lawful explanation does not invariably defeat an anticompetitive inference: adjudicators may reject an alternative as inconsistent with the complete record. But the alternative cannot be ignored or dismissed merely because another interpretation is possible. A fully reasoned decision should explain why competing explanations are improbable or contradicted by independent evidence. This requirement is especially important when the primary conduct consists of managerial acts that have both lawful and potentially unlawful uses.⁴⁴

From the standpoint of legal certainty, the judgment illustrates a demand for analytical transparency. It insists that adjudicators explain the passage from established facts to the legal element of collusion rather than announce that numerous indications jointly establish guilt. Such transparency does not necessarily make antitrust enforcement ineffective; it can improve the quality of future investigations by encouraging KPPU to assemble a more targeted evidentiary record. Investigative attention should extend to the origins of revised bidding criteria, records of the decision-making process, contemporaneous interactions, and economic explanations for the observed outcome. Evidence need not be dramatic; it must be relevant to the element in dispute.⁴⁵

The broader Indonesian discourse on Islamic economic-law theory distinguishes juristic concepts from their translation into a modern regulatory context. Accordingly, this article draws an analytical analogy between the theory of adjudicative indications and the evaluation of economic conduct; it does not claim that a classical religious text directly governs KPPU proceedings.⁴⁶

The case also exposes the danger of an excessively demanding account of direct proof. Secret tender collusion is unlikely to be documented in a plainly worded agreement. A judicial rule that requires a written contract or direct confession in all cases would be inconsistent with the use of indications recognized in competition proceedings. The better reading of the dispute is narrower: the Supreme Court required an adequate basis for inferring a relationship of cooperation, whether that basis was direct or indirect. This interpretation is consistent with the distinction between admitting circumstantial evidence as a permissible method and assessing whether the circumstantial evidence in a particular case is sufficiently persuasive.⁴⁷

⁴⁴ Mahkamah Agung Republik Indonesia, Putusan Nomor 523 K/Pdt.Sus-KPPU/2024, July 31, 2024.

⁴⁵ Fajar Bima Alfian and Rilda Murniati, "Implementasi Bukti Tidak Langsung dalam Penyelesaian Perkara Hukum Persaingan Usaha," *Jurnal Persaingan Usaha* 3, no. 2 (2023): 106–119, <https://jurnal.kppu.go.id/index.php/official/article/download/94/54>.

⁴⁶ Zulham and Mustapa Khamal Rokan, *Teori Hukum Ekonomi Syariah di Indonesia: Teks ke Konteks* (Medan: FEBI Press, 2022).

⁴⁷ Maria Margaretha Christi Ningrum Blegur Laumuri, "Pengaruh Penggunaan Indirect Evidence dalam Putusan Komisi Pengawas Persaingan Usaha (Studi Putusan Nomor 04/KPPU-I/2016)," *Kertha Patrika* 40, no. 3 (2018): 186–199, <https://doi.org/10.24843/KP.2018.v40.i03.p05>.

The procedural history also makes clear why 'the Supreme Court rejected indirect evidence' is an inaccurate generalization. The Court's criticism concerned the specific relationship among tender cancellation, revised procurement arrangements, the favored outcome, and the missing proof of a coordinated plan. The KPPU judgment and the Supreme Court judgment can therefore be understood as occupying different points along one evidentiary continuum: both address the same material events, while assigning different weight to the inference of cooperation. The challenge for institutional consistency is to specify the factors that explain such weight openly so that future cases are not decided by intuition alone.⁴⁸

The role of *qarinah* also needs to be distinguished from preventive methods of Islamic legal reasoning. Scholarship on *sadd al-dzari'ah* discusses preventing pathways to legally undesirable outcomes; it does not by itself prove that a particular bidder participated in a specific prohibited agreement. The present inquiry is concerned with retrospective proof of conduct, not an independent preventive prohibition.⁴⁹

A practical implication follows. KPPU decisions could present the alleged inference in a structured sequence that distinguishes established fact, evidentiary source, proposition inferred, statutory element satisfied, and competing explanation. Courts reviewing the decision would then be able to identify the precise link they regard as too weak instead of rejecting an undifferentiated mass of circumstantial allegations. This would reduce the gap between administrative fact-finding and judicial control without eroding either institution's lawful role. It also creates a point of contact with the notion of *qarinah*: the evidentiary value of a sign derives from the strength and clarity of the inference it supports.⁵⁰

3. Indirect Evidence through Ibn Qayyim Al-Jauziyah's Concepts of Al-Bayyinah and Qarinah

Ibn Qayyim Al-Jauziyah's theory of evidence offers a perspective that differs from a narrowly formal conception of proof. In *al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah*, the idea of *al-bayyinah* is associated with whatever makes truth apparent. Testimony and acknowledgment may be important, but the identification of truth is not necessarily limited to their formal presence. Conduct, conditions, documents, and signs can also illuminate a disputed occurrence where they are reliably established and interpreted with judicial care. The relevance of this theory to modern competition law lies in its attention to the quality of reasoning from observed circumstances to an underlying event.⁵¹

Qarinah refers to an accompanying sign or circumstance from which a fact not directly observed may be inferred. It operates through a relation between an evidentiary fact and the fact to be established. That relation can be strong, weak, or ambiguous. The concept is therefore particularly suitable for examining covert

⁴⁸ Ayu Tampubolon, Janpatar Simamora, and Januari Sihotang, "A Legal Analysis of the Supreme Court's Legal Reasoning," *Adagium: Jurnal Ilmiah Hukum* (2026), <https://doi.org/10.70308/nx3c5738>.

⁴⁹ Cahaya Permata, "Kedudukan *Sadd Adz-Dzariah* sebagai Metode *Istinbath Hukum Islam*," *ALWAQFU: Jurnal Hukum Ekonomi dan Wakaf* 5, no. 3 (2026), published online January 28, 2025, <https://jurnal.alwaqfu.or.id/index.php/alwaqfu/article/view/283>.

⁵⁰ Ibn Qayyim Al-Jauziyah, *Al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah*, vol. 1, ed. Naif bin Ahmad al-Hamd (Dar 'Alam al-Fawa'id, 1428 AH).

⁵¹ Ibn Qayyim Al-Jauziyah, *Al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah*, vol. 1, ed. Naif bin Ahmad al-Hamd (Dar 'Alam al-Fawa'id, 1428 AH).

tender arrangements: a tribunal rarely observes collusion as a complete event, but may encounter the traces it leaves in decisions, documents, communications, or economic patterns. The mere existence of traces is not enough. A sign is probative only insofar as its connection with the suspected conduct can be justified and critically tested.⁵²

Islamic juristic discussions distinguish indications with stronger probative significance from those that remain vulnerable to alternative interpretations. Modern discussions frequently employ the labels *qarinah qati'ah* for an indication regarded as conclusive and *qarinah zanniyyah* for one that remains presumptive. These labels must be used carefully: they should not be treated as a numerical probability formula, nor should their application in a competition case be presented as a binding rule of Indonesian law. In this article they describe the relative degree of confidence that a rational adjudicator may place in an inferential chain, guided by the quality of its factual foundations and the possibility of competing explanations.⁵³

For transparent application, this article uses four common criteria: source reliability (S), specificity of the connection to collusive cooperation (C), independence of supporting indications (I), and the status of alternative explanations (A). A *qarinah* approaching *qati'ah* would require well-established S, a direct or exceptionally strong C, genuinely independent I, and no plausible record-supported A capable of undermining the conclusion. *Qarinah zanniyyah* describes a materially relevant yet rebuttable chain in which one or more of C, I, or A remains contested. *Ghalabat al-zann* refers here to the judgment that the collusive explanation clearly predominates after those checks; no numerical probability or special Indonesian procedural burden is asserted. This is the authors' operational synthesis inspired by Ibn Qayyim's conception of truth-disclosing signs and informed by later juristic discussions, rather than a claim that the medieval text sets out these four modern codes verbatim.⁵⁴

The related expression *ghalabat al-zann* identifies a strong or prevailing probability, not proof produced merely by multiplying weak suspicions. A series of indications can contribute to such an assessment only if they have sufficiently reliable factual bases and mutually reinforcing connections. Where several facts are explained by the same unproven assumption, their accumulation does not automatically make that assumption more reliable. Conversely, independently documented facts that converge upon one account may make the inference substantially stronger. This is an analytically important distinction for procurement cases in which a tribunal may be tempted to view every unusual event through an already suspected narrative of conspiracy.⁵⁵

Applied to the initial cancellation of the Taman Ismail Marzuki tender, the *qarinah* approach would first ask whether the cancellation and its sequence are

⁵² Mushtaq Ahmad, Muhammad Zakariya, and Z. U. al-Azhari, "Procedure of Circumstantial Evidences in Islamic Criminal Law," *Journal of Islamic and Religious Studies* 4, no. 2 (2019): 67–83, <https://doi.org/10.36476/JIRS.4:2.12.2019.04>.

⁵³ Rifqi Qowiyul Iman, "Persangkaan Hakim dalam Qarīnah Qaḍā'iyyah sebagai Instrumen Probatoris Keadilan," *MARINews*, Mahkamah Agung Republik Indonesia, September 24, 2025, <https://marinews.mahkamahagung.go.id/artikel/persangkaan-hakim-dalam-qarinah-qaaiyyah-01R>.

⁵⁴ Ibn Qayyim Al-Jauziyah, *Al-Ṭuruq al-Ḥukmiyyah fī al-Siyāsah al-Shar'iyyah*, vol. 1, ed. Naif bin Ahmad al-Hamd (Dar 'Alam al-Fawa'id, 1428 AH).

⁵⁵ Wahbah al-Zuhaili, *Fiqh Islam wa Adillatuh*, Indonesian trans. Abdul Hayyie al-Kattani et al. (Jakarta: Gema Insani, 2011).

securely documented. If so, that act can be considered a valid starting circumstance. The next question is whether the cancellation points with sufficient specificity toward coordination with a bidder. The answer cannot be assumed. A tender may be cancelled after the evaluation stage for various reasons, including administrative review or technical concerns. The indication becomes stronger where the reasons are inconsistent with the records, where prior instructions reveal a favored party, or where subsequent acts provide independent corroboration. In their absence, the cancellation remains an investigatory sign rather than conclusive proof.⁵⁶

Replacement of the procurement team and amendments to tender documents may carry greater inferential significance because they concern the mechanism through which the winner was determined. Nevertheless, their significance is conditional. Where the changes are objectively justified and fairly applied, the inference of clandestine cooperation may be weak. Where the evidence demonstrates selective alterations initiated by or coordinated with a bidder, the same acts may provide powerful indications. Ibn Qayyim's emphasis on the evidentiary relationship is useful precisely because it resists both automatic acceptance and automatic rejection of such circumstances. The relevant question is not whether an event appears unusual but whether the event points compellingly to the prohibited arrangement.⁵⁷

KSO PP-JAKON's victory in the repeated tender must be analyzed in the same way. The fact that a bidder emerged as the beneficiary is not irrelevant; it may complete an inferential sequence in which earlier arrangements were intended to favor that bidder. Yet the beneficiary's identity cannot supply the missing agreement by itself. The conclusion would be circular if the contested administrative changes were called collusive because they led to a favorable award, while the award was called collusive because it followed those changes. A credible evidentiary construction needs an independent link, such as an attributable request, coordinated timing supported by additional materials, or a pattern that cannot reasonably be explained by lawful procurement decisions.⁵⁸

The qarinah perspective also requires the adjudicator to account for evidentiary contradiction. When one indication points toward collusion and another supports an innocent explanation, a balanced evaluation examines the comparative strength of both. The adjudicator should explain whether the contrary material is unreliable, incomplete, or outweighed by stronger independent sources. This obligation is especially important for a public authority investigating a contested procurement process because its institutional mission to deter collusion cannot displace the respondent's right to an intelligible statement of reasons. A strong suspicion can justify further investigation, but a sanction demands an evidentiary inference that satisfies the governing legal standard.⁵⁹

⁵⁶ Komisi Pengawas Persaingan Usaha, Putusan Nomor 17/KPPU-L/2022, July 18, 2023, concerning the Phase III revitalization procurement at Taman Ismail Marzuki.

⁵⁷ Ibn Qayyim Al-Jauziyah, *Al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah*, vol. 1, ed. Naif bin Ahmad al-Hamd (Dar 'Alam al-Fawa'id, 1428 AH).

⁵⁸ Sastyo Aji Darmawan, "Kekuatan Indirect Evidence dalam Pembuktian Kasus Persekongkolan Tender dan Penerapannya di Dalam Proses Tender," *Jurnal Pengadaan Barang/Jasa* 1, no. 1 (2022): 10–18, <https://doi.org/10.55961/jpbj.v1i1.7>.

⁵⁹ Mushtaq Ahmad, Muhammad Zakariya, and Z. U. al-Azhari, "Procedure of Circumstantial Evidences in Islamic Criminal Law," *Journal of Islamic and Religious Studies* 4, no. 2 (2019): 67–83, <https://doi.org/10.36476/JIRS.4.2.12.2019.04>.

From this perspective, KPPU's general use of cumulative indirect evidence is compatible with an understanding of *al-bayyinah* that values substantive truth. The difficulty in this particular dispute lies in the completeness of the inferential bridge. The cancellation of the first tender, the procurement team's replacement, changes in KAK and RfP, and a new winner create a pattern that merits close scrutiny. As the Supreme Court emphasized, however, the pattern still allows for an account based on internal procurement policy unless evidence also establishes cooperation or a request involving the beneficiaries. That residual explanatory possibility weakens the inference without invalidating the method of indirect proof itself.⁶⁰

The same S-C-I-A appraisal applies to every indicator in the matrix. Cancellation and team replacement are documented (S) but equivocal on cooperation (C), frequently not independent of later rule changes (I), and subject to a judicially recognized account of internal decision-making (A). Scores and experience documents have stronger numerical support (S) but cannot identify collusive assent (C). The winning result is certain (S), yet it has no independent explanatory force without a demonstrated coordination link (I and C). None is dismissed merely because it is circumstantial; none is upgraded to conclusive proof simply because it follows another suspicious event.

For this reason, the construction advanced by KPPU in Decision Number 17/KPPU-L/2022 is more appropriately evaluated, within the comparative framework adopted here, as *qarinah zanniyyah* rather than *qarinah qati'ah*. This is a doctrinal characterization of the reasoning, not a claim that a religious classification determines the legal validity of the Indonesian decision. The record described in the article gives reasons to investigate possible manipulation of the tender, but the contested gap between procurement measures and a coordinated understanding prevents those reasons from being treated as conclusive in themselves. The Supreme Court's intervention can accordingly be read as a demand for stronger inference, not a prohibition on inferential evidence.⁶¹

A useful normative model can be drawn from the comparison. At the first level, each alleged indication must be grounded in an authentic and procedurally admissible source. At the second, the tribunal must show that the indication is relevant to an identifiable element of Article 22. At the third, it must establish the explanatory link among indications and avoid double-counting facts derived from a single underlying assumption. At the fourth, it must examine genuine alternative explanations using the record rather than rhetorical dismissal. At the fifth, it must state why the surviving inference is sufficiently persuasive to justify the outcome. These requirements translate the conceptual insight of *qarinah* into a transparent method of legal reasoning without pretending to amend Article 42.⁶²

The model also supports a fairer separation between investigative suspicion and adjudicative proof. A pattern of unusual tenders may reasonably prompt document requests, interviews, forensic review of communications, or closer scrutiny of evaluation criteria. After the investigation, however, an administrative

⁶⁰ Mahkamah Agung Republik Indonesia, Putusan Nomor 523 K/Pdt.Sus-KPPU/2024, July 31, 2024.

⁶¹ Ibn Qayyim Al-Jauziyah, *Al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah*, vol. 1, ed. Naif bin Ahmad al-Hamd (Dar 'Alam al-Fawa'id, 1428 AH).

⁶² Komisi Pengawas Persaingan Usaha, Peraturan KPPU Nomor 2 Tahun 2023 tentang Tata Cara Penanganan Perkara Praktik Monopoli dan Persaingan Usaha Tidak Sehat, art. 12.

sanction should depend on whether the evidence proves a forbidden arrangement according to the legally applicable standard. By insisting on the quality rather than the quantity of indications, the model avoids two undesirable outcomes: impunity for carefully concealed coordination and the punishment of lawful business conduct merely because the procurement result was politically or commercially controversial.⁶³

The value of Ibn Qayyim's approach is therefore methodological rather than ornamental. It reminds modern adjudicators that evidence is valuable because it discloses truth, and that disclosure depends on a credible connection between what is observed and what is alleged. It provides a language for describing why one circumstantial inference is persuasive and another is speculative. Applied with due respect for positive law, *al-bayyinah* and *qarinah* complement the statutory evidentiary framework of competition proceedings and reinforce the obligation to give reasons, test opposing accounts, and explain the transition from administrative irregularity to a legally established conspiracy.⁶⁴

CONCLUSION

Indirect evidence has a legally significant role in Indonesian tender-collusion proceedings, but it is not an independent sixth category of proof under Article 42 of Law Number 5 of 1999. Its proper function is to link facts derived from recognized evidentiary sources to the prohibited conduct defined in Article 22. In KPPU Decision Number 17/KPPU-L/2022, the commission relied on the cancellation of a tender, changes in the procurement team and procurement documents, and the result of a repeated tender. These circumstances provided a basis for investigating collusion, but their probative force depended on demonstrating a sufficiently reliable relationship with the alleged cooperation between the organizer and the beneficiaries.

The Supreme Court's ruling in Decision Number 523 K/Pdt.Sus-KPPU/2024 should not be generalized into a rejection of circumstantial proof. Its central concern was the insufficiency of the demonstrated connection between the observed procurement sequence and the coordinated arrangement alleged under Article 22. The disagreement between KPPU and the Court therefore concerned inferential sufficiency: the commission considered the accumulation of events persuasive, whereas the Court found that lawful explanations and the missing proof of coordination prevented a conclusive finding. The case illustrates the importance of an evidentiary matrix that clearly separates established facts, legal elements, inferential links, and plausible competing explanations.

Ibn Qayyim Al-Jauziyah's concepts of *al-bayyinah* and *qarinah* offer an additional framework for explaining this distinction. They support the evaluation of independently established circumstances while insisting that an indication must bear a credible and strong relationship to the disputed fact. Within the comparative analytical vocabulary of this article, the KPPU's disputed evidentiary construction is closer to *qarinah zanniyyah* than to *qarinah qati'ah*. Future practice should strengthen the documentation of procurement changes, test alternative accounts,

⁶³ Udin Silalahi, "Indirect Evidence dalam *Hukum Persaingan Usaha*," *Jurnal Hukum Bisnis* 32, no. 5 (2013).

⁶⁴ Rifqi Qowiyul Iman, "Persangkaan Hakim dalam *Qarīnah Qaḍā'iyyah* sebagai Instrumen Probatoris Keadilan," *MARINews*, Mahkamah Agung Republik Indonesia, September 24, 2025, <https://marinews.mahkamahagung.go.id/artikel/persangkaan-hakim-dalam-qarinah-qaaiyyah-01R>.

and explain explicitly how each indication proves prohibited cooperation. Such a framework promotes effective detection of concealed bid-rigging while preserving legal certainty and procedural fairness.

The procedural position as at the research cut-off must also be stated precisely. The separate cassation in Decision Number 745 K/Pdt.Sus-KPPU/2024 was rejected, the cassation in Decision Number 523 K/Pdt.Sus-KPPU/2024 was granted for the participating applicants, and KPPU's reconsideration application in Decision Number 43 PK/Pdt.Sus-KPPU/2025 was rejected. The doctrinal conclusion drawn from Decision Number 523 concerns the proof of cooperative conduct for those litigants; it must not be expressed as if all respondents had obtained identical relief.⁶⁵

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⁶⁵ Supreme Court of the Republic of Indonesia, Decision Number 43 PK/Pdt.Sus-KPPU/2025 (November 3, 2025), 9.

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