

**BID RIGGING RELATED TO POST BIDDING ACTIVITY RESULTS IN
UNFAIR BUSINESS COMPETITION
(A CASE STUDY OF KPPU DECISION NO. 03/KPPU-L/2016)**

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ABSTRACT

Bid rigging is categorized as prohibited practice under Article 22 of Law No. 5 of 1999 concerning The Prohibition of Monopolistic Practice and Unfair Business Competition (the “Indonesian Competition Law”). Hereinafter, bid rigging has experienced many varieties, and one of the varieties is post bidding activity. Although the government has formed the Law and the Indonesian Business Competition Supervisory Commission (the “KPPU”) as the Indonesian Competition Law enforcement, but that seems not enough to provide a deterrent effect against the perpetrators. Using the recent case of the KPPU Decision No. 03/KPPU-L/2016, knowing the facts that there is an allegation towards violation of Article 22 on the tender jack-up drilling rig services for BD, which has been conducted by Husky-CNOOC Madura Limited (the “HCML”) and PT COSL INDO (the “COSL”). The author would like to analyze the implementation of Article 22 of the Indonesian Competition Law towards bid rigging cases related to post bidding activity, and whether HCML and COSL has been proven to violate the provisions of Article 22.

This research is a normative-empirical legal research where the analysis relies heavily on secondary data and supported by primary data. The normative sources are used to analyze theories and find means that can possibly be regulated in the Indonesian Competition Law meanwhile the empirical source is used to support the analysis.

The author has found that in order to protect the tender process from any anti-competitive behaviors, such as bid rigging, which related to post bidding activity and results in unfair business competition, the government should; provide improvement towards the prohibition of bid rigging, the authorities of the KPPU, and imposing heavy sanction to business actors or procurement / tender committee that commits into bid rigging, and for the KPPU is expected to increasing the quality of the decision concerning on bid rigging,

Keywords: The Indonesian Business Competition Supervisory Commission (KPPU), Bid Rigging, Post Bidding Activity, Husky-CNOOC Madura Limited (HCML), PT COSL INDO (COSL).

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PERSEKONGKOLAN TENDER BERKAITAN DENGAN TINDAKAN *POST BIDDING* MENAKIBATKAN PERSAINGAN USAHA TIDAK SEHAT

(STUDI KASUS TERHADAP PUTUSAN KPPU NO. 03/KPPU-L/2016)

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INTISARI

Persekongkolan tender dikategorikan sebagai praktik terlarang berdasarkan Pasal 22 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat ("Hukum Persaingan Indonesia"). Selanjutnya, persekongkolan tender telah mengalami banyak varietas, dan salah satu varietasnya adalah tindakan *post bidding*. Meskipun pemerintah telah membentuk Undang-Undang dan Komisi Pengawas Persaingan Usaha Indonesia ("KPPU") sebagai penegak hukum pesaingan, namun hal itu nampaknya tidak cukup memberikan efek jera terhadap pelakunya. Melalui kasus pada Keputusan KPPU No. 03/KPPU-L/2016, mengetahui fakta bahwa ada dugaan pelanggaran Pasal 22 atas jasa rig pengeboran jack tender untuk BD, Yang telah dilakukan oleh Husky-CNOOC Madura Limited ("HCML") dan PT COSL INDO ("COSL"). Penulis ingin menganalisis pelaksanaan Pasal 22 Undang-Undang Persaingan Usaha Indonesia terhadap kasus penawaran kecurangan yang berkaitan dengan kegiatan penawaran pasca, dan apakah HCML dan COSL telah terbukti melanggar ketentuan Pasal 22.

Penelitian ini merupakan penelitian hukum normatif-empiris dimana analisisnya sangat bergantung pada data sekunder dan didukung oleh data primer. Sumber normatif digunakan untuk menganalisis teori dan menemukan sarana yang dapat diatur dalam Hukum Persaingan Indonesia sedangkan sumber empiris digunakan untuk mendukung analisis.

Penulis telah menemukan bahwa untuk melindungi proses tender dari perilaku anti persaingan, seperti persekongkolan tender, yang terkait dengan tindakan *post bidding* dan menghasilkan persaingan usaha tidak sehat, pemerintah harus; memberikan penyempurnaan terhadap larangan persekongkolan tender, otoritas dari KPPU, dan menjatuhkan sanksi berat kepada para pelaku yang melakukan persekongkolan tender, dan untuk KPPU diharapkan dapat meningkatkan kualitas keputusan tentang persekongkolan tender.

Kata kunci: Komisi Pengawas Persaingan Usaha (KPPU), Persekongkolan Tender, Tindakan *Post Bidding*, Husky-CNOOC Madura Limited (HCML), PT COSL INDO (COSL)

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