

kompetisia

Newsletter on Indonesian competition law and policy



Published monthly by the Directorate of Communication
Commission for the Supervision of Business Competition (KPPU)
Republic of Indonesia

Vol. 05/1/2008

May 2008

Index :

- ☑ *Law Enforcement*
 - Bid rigging case in the Procurement of the Medical Instrument
 - Decision on Procurement of Polyvinyl Chloride (PVC) and High Density Polyethylene (HDPE) Pipes
 - Decision on bid rigging in rebuilding of the Melawai Market
 - Decision on Monopoly of Cargo Service in Hasanuddin International Airport
 - Decision on Discriminatory Practices and Collusive Bidding
 - Decision on Collusive Bidding in Several Highway Developments
- ☑ *Competition advocacy*
 - KPPU and Minister of Defense
- ☑ *Other*
 - KPPU handled 138 Cases
 - Upcoming international events
 - Statistics of KPPU (June 2000—May 2008)

KOMPETISIA
Newsletter on Indonesian
competition law and policy

Team of Editor:
Ahmad Junaidi
Deswin Nur
Solihatun Kiptiyah
Isti Prisniwi
Fathin Kemala Nashir

Contact address:
KPPU Building
Jl. Ir. H. Juanda No. 36
Jakarta 10120
INDONESIA

Also available online in our website:
<http://www.kppu.go.id>

Bid rigging case in the Procurement of the Medical Instrument

On May 5, 2008, Commission for the supervision of business competition (KPPU) utter decision on violation of the Law No. 5/1999, Article 22 concerning on allegation of Procurement in Medical Instrument of RSUD Brebes Budget Year 2006.

Based on intense examination, KPPU founded vertical conspiracy between Procurement Committee in determining Candi Prambanan, Corp. as the bid winner in medical instrument procurement. Furthermore, KPPU also found horizontal conspiracy between bid participants, Candi Prambanan, Corp, Usaha Lima Saudara, Ltd, Samudra Citra Persada, Corp, Pamiko Cipta Husada, Corp, and Graha Ismaya, Corp in form of cooperation in bargaining document to arrange Candi Prambanan, Corp to win this bid.

Based on confirmed evidences and as well as results of the examination, then the Commission Council carried out decision to punished Candi Prambanan, Corp to paid compensation with amount of Rp. 100,000,000 (one hundred million rupiah); Usaha Lima Saudara, Ltd, Samudra Citra Persada, Corp, and Pamiko Cipta Husada, Corp with amount of Rp. 50,000,000 (fifty million rupiah), and Graha Ismaya with amount of Rp. 250,000,000 (two hundred and fifty million rupiah).

...KPPU also found horizontal conspiracy between bid participants...

Decision on Procurement of Polyvinyl Chloride (PVC) and High Density Polyethylene (HDPE) Pipes

KPPU issued decision on prohibition of collusive tender in procurement of PVC and HDPE pipes in the Public Work Office. Under this decision, Alfatama Anugrah Sari Albaqi is obligated to pay fine with amount of Rp 505,000,000,00 (US\$ 50,500). This case was rose due to report on violation aimed to Alfatama Anugrah Sari Albaqi, Corp. and the bid committee. KPPU founded several intentions to synchronize procurement process to arrange certain business actor to win this procurement.

Based on facts from examinations, Commission Council viewed that actions by Bid Committee in permitting Alfatama Anugrah Sari Albaqi, Corp. even though they did not enclosed the factory schedule for implementation and accepting additional documents after dateline for submission are treated as form in facilitating Alfatama Anugrah Sari Albaqi as the bid winner. Further, mistakes did by the bid committee in organizing qualification and verification process that benefit Alfatama Anugrah Sari Albaqi, Corp. with higher offer than others participants. The bid committee was also deemed to made mistakes in determining certain requirements (which did not stated in the bid document) causing extermination of others bid participants.

Differentiation in date of invitation for clarification obtain by examination team from the witnesses and from the bid committee showed that committee has done a fatal failure in evaluating bid applications. Similarity founded within several documents by Alfatama Anugrah Sari Albaqi, Corp. with Harapan Widyatama Pertiwi, Corp (one of the bid participant) treated not as an intention to arrange and organizing Alfatama Anugrah Sari Albaqi as the bid winner. Therefore, the horizontal collusion was not proved in this case.

Bid committee who did not conduct a market price survey in determining fair price in designing owner estimates had causes high value of owner estimate in this procurement. Thus, this mistake has caused the State losses with amount of Rp 505,000,000 (US\$ 50,500). This number is resulted from differentiation in bid offer by Alfatama Anugrah Sari Albaqi and the lowest bid offer.

Through those mistakes, Commission Council recommended the Commission to give an order to the bid committee's superior to give an administrative sanction to the bid committee according to their respective jurisdiction. Moreover, Commission Council also ordered Alfatama Anugrah Sari Albaqi, Corp. to pay fines with amount of Rp 505,000,000 (US\$ 50,500).

...this mistake has caused the State losses with amount of Rp 505,000,000 (US\$ 50,500)...

Decision on bid rigging in rebuilding of the Melawai Market

The Melawai Market case began with report by business actor for violation of Article 22 the Law No. 5/1999 on collusive bidding. Several business actors (tender participants) and the bid committee are deemed as reported parties who are involved in this conspiracy. The reported parties are Pasar Jaya (region-owned company), Melawai Jaya Realty, Corp., Wijaya Wisesa, Corp., Cipta Gemilang Sejahtera, Corp., and Santika Tirtautama, Corp.

The examination process which began in 26 September 2007 and ended in 16 May 2008 came to conclusions that Pasar Jaya was failed in applying procedures by consistently chose Wijaya Wisesa, Corp. as the developer (bid winner) for rebuilding project of the Melawai Market (one of the famous market in Jakarta from decades), even though its did not provide a bank guarantee (one of the bid requirements). The horizontal collusion was not proved in this case.

Before come to their conclusions, the Commission Council considering several issues:

1. that mechanism for selection of investor used by Pasar Jaya was the Government Decree No. 39/2002 concerning Cooperation

between the Local Government and Third Parties. This decree did not give enough space for a fair competition in selecting their investor;

2. that the Government has enacted the Minister of Internal Affair Regulation No. 17/2007 on Guideline for Asset Management for Region. This guideline stated that this project shall based on a procurement process;
3. that the Government Decree shall be revised according to the Minister Regulation, so that this project can be done through open procurement.

Based on these facts, the Commission Council by its decision recommended the Commission to advice the Governor of Jakarta to disclose the Government Decree No. 39/2002 and issued a new regulation on this regard.

Furthermore based on evidences, the Commission Council decided that the reported parties did not approve in violation of the Law No. 5/1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

...Pasar Jaya was failed in applying procedures...

KPPU and Minister of Defense

Wednesday, 21 May 2008 will be the witness of an intense discussion between KPPU and Minister of Defense, Mr. Juwono Sudarsono in synchronizing of perception in developing strategic defense industry and national policy on civil airport taxi business with Indonesian competition policy.



From left to right: Mr. Juwono Sudarsono (Minister of Defense), Mr. Syamsul Maarif (Chairman), and Mr. Tresna P. Soemardi (Vice Chairman)

Decision on Monopoly of Cargo Service in Hasanuddin International Airport

On 22 May, KPPU decided a breach of Article No. 17(1), 19(a), and 25(1c) of the Law No. 5/1999 on Prohibition of Monopolistic Practices and Unfair Business Competition in Hasanuddin International Airport, South Sulawesi province. The reported party, Angkasa Pura I (a state-owned company) was being imposed a fine with amount of Rp 1,000,000,000 (US\$ 100,000) for its monopolistic practice in cargo service.

Facts founded during examination showed that Angkasa Pura I had authority to monopolize cargo service in every airport under their jurisdiction. Moreover, Angkasa Pura I formed a strategic unit business called Speed and Secure Warehousing (here after refer as "SSC") to run the cargo service in Hasanuddin Airport. This unit is aimed as an additional source of revenue for Angkasa Pura I.

Furthermore, the Commission Council founded that all users (consumers) of this cargo service were not delighted with services and securities provided by SSC. Moreover, other consumers (Air flight cargo and Indonesian Postal Service) were also obligated to pay this service even though there was no additional value involved. KPPU also founded that SSC accumulated huge profit which can not be compared with its low quality of services and securities.

Based on intense examination, the Commission Council declared that:

1. based on existing regulation, Angkasa Pura have the right to monopolize cargo service in Hasanuddin Airport;
2. Angkasa Pura through SSC did not give their

services and securities that equal to applied fee for this service;

3. Angkasa Pura through SSC enjoyed a high profit but did not correspond to a good quality of service and security provided. Thus, their service did not gave any additional value for their consumers;
4. SSC is one of Angkasa Pura's strategies to gain more profit for company, hence ignoring quality of service and security responsibility as obligated by the existing regulation.

Under these circumstances, the Commission Council recommended the Commission to give advice and recommendation to the Hasanuddin Airport Administrator to enhance supervision in Hasanuddin Airport, especially cargo terminal area, according to the existing regulation. KPPU also stressed the need for better coordination between Ministry of Transportation and Ministry of State-owned Company.

As for this behavior, the Commission Council decided Angkasa Pura I was convinced in breaching Article 17 (1) on Monopoly, Article 19(a) on Market Control, and Article 25 on Abuse of Dominant Position of the Law No. 5/1999. Therefore, in its decision, the Commission Council ordered Angkasa Pura I to:

1. increase service and security in cargo service in Hasanuddin Airport within 1 (one) month after this decision is applied;
2. recalculate tariff for cargo service in proportion to the fair price; and
3. pay fine with amount of Rp 1,000,000,000 (US\$ 100,000) resulting from their violations

...Angkasa Pura through SSC enjoyed a high profit but did not correspond to a good quality of service and security provided...

Decision on Discriminatory Practices and Collusive Bidding

KPPU on 28 May issued a decision on indication for violation of Article 19 (d) on Discriminatory Practices by China Oilfield Services (here after refer as "COSL") and Article No. 22 on Collusive Bidding by COSL, Corp., COSL Indo, Corp., and CNOOC Ses Ltd.

Based on examination, the Commission Council judged that:

1. COSL intention in determining COSL Indo Corp. as an agent of COSL and decided Mutiara Virgo, Corp.'s agency was an acceptable discriminatory practices by law, thus can not be classified as discriminatory practices according to the Law No. 5/1999;
2. In accordance to indication for violation of Article No. 22 the Law No. 5/1999, direct appointing of COSL Indo, Corp. by CNOOC SES Ltd. as the bid winner was not considered based on collusion because the bid process had been transparent which proved by involvement Transocean Indonesia, Corp. as the bid partici-

pant, even though being disqualified due to its exemption request.

Moreover, as the Commission's duty stated by Article 35(e) the Law No. 5/1999, the Commission Council addressed the Commission to give advice and recommendation to the Government that cite several ideas:

1. to enhance the implementation of regulation on domestic product empowerment in oil and gas industry as well as its supervision to consistent with the principle of fair competition;
2. to enhance licensing system in oil and gas by maintaining transparency and law certainty as the key factors;
3. to pay attention to policy harmonization in law enforcement on both recommendations.

As conclusion, the Commission Council decided that the reported parties did not violate article 19 (d) on discriminatory practices and article 22 on collusive bidding of the Law No. 5/1999.

...COSL intention in determining COSL Indo Corp. as an agent and decided Mutiara Virgo, Corp.'s agency was an acceptable discriminatory practices by law...

Decision on Collusive Bidding in Several Highway Developments

KPPU on 29 May 2008 issued a decision on collusive bidding in several highway developments (Lubuk Lancang-Teluk Betung-Tanah Kering; Pangkalan Balai-Pangumbuh; Pangkalan Balai-Lubuk Saung; Tanjung Beringin-Rimba Alai; and Rambutan Mendal-Mendil) in Banyuasin region. This conspiracy was organized by the Bid Committee (Public Work Office), Chandratex Indo Artha, Corp., Anugrah Artha Abadi Nusa, Corp., and the Head of Public Work Office in Banyuasin.

In their decision, the Commission Council found several behaviors that treat as the conspiracy to win a certain winner. These behaviors are as follows:

1. One of the bid participants (Amen Mulia, Corp.) was erased from the list of bid participant due to their absentia in pointing date and place for *aanwijzing* on the Letter of Offer Guarantee. This reason was unsubstantial because the validity of the letter was certified by Parolamas Insurance, Corp. as their guarantor.
2. Reasoning by the Bid Committee in erasing Amen Mulia, Corp. by stating that they will be deleted based on technical evaluation even though they pass the administrative evaluation, was a form of an irrelevant behavior because Amen Mulia, Corp. has been stated not passed the administrative evaluation. Thus, the Bid Committee was found guilty in making fake reason to revoke Amen Mulia, Corp.
3. The Bid Committee failed in observing the list of key human resource documents of Chandratex Indo Artha, Corp. and Anugrah Artha Abadi Nusa, Corp.
4. The Bid Committee's action to terminate Amen Mulia, Corp. and failed in observing mistakes on Chandratex Indo Artha, Corp. and Anugrah Artha Abadi Nusa, Corp's documents showed that the Bid Committee involved in vertical conspiracy to win Chandratex Indo Artha, Corp. and Anugrah Artha Abadi Nusa, Corp.

Furthermore, the Commission Council also concluded that:

1. There was not any substantial evidences that lead to the involvement of the Head of Public Work Office in Banyuasin within this collusive attempt;
2. Chandratex Indo Artha, Corp. concurred that

their office facility was used by Anugrah Artha Abadi Nusa, Corp. Further, Anugrah Artha Abadi Nusa, Corp. also concurred that they used Chandratex Indo Artha, Corp's employee in preparing the bid documents. This was strengthening by the similarity of bid documents by both parties.

3. Interlocking directorate result on relatives within both business actors was not considered in concluding the existence of conspiracy.
4. Chandratex Indo Artha, Corp.'s failure in winning highway development of Pangkalan Balai – Pangumbuh due to the time schedule and Anugrah Artha Abadi Nusa, Corp.'s failure in winning highway development of Rambutan – Mendal Mendil due to the similar reason, showed that there were an agreement between both parties in form of forge competition.
5. The accessibility in office uses between both parties, the similarity of the list for key human resources between both parties, and the existence of similar person in preparing bid documents as well as the existence of similar person in attending the bid process proved that there were a conspiracy between Chandratex Indo Artha, Corp. and Anugrah Artha Abadi Nusa, Corp. in participating this tender.

Based on the examination, the Commission Council concurred that the Bid Committee (Public Work Office), Chandratex Indo Artha, Corp., and Anugrah Artha Abadi Nusa, Corp. were violate the Article 22 of the Law No. 5/1999 in engaging a conspiracy to win a certain winner. Thus, the Commission Council issued a decision as follows:

1. to the Bid Committee, the Commission Council recommended KPPU to give advice and recommendation to their superior to give an administrative sanction to their Bid Committee as result of their involvement on this collusive bidding;
2. the Commission Council order Chandratex Indo Artha, Corp. to pay fines with amount of Rp 1,000,000,000 (one billion rupiah or equivalent to US\$ 100,000); and
3. the Commission Council order Anugrah Artha Abadi Nusa, Corp. to pay fines with amount of Rp 1,200,000,000 (one billion rupiah or equivalent to US\$ 120,000).

The accessibility in office uses between both parties, the similarity of the list for key human resources between both parties, and the existence of similar person in preparing bid documents as well as the existence of similar person in attending the bid process proved that there were a conspiracy...

KPPU handled 138 Cases

The Commission for the Supervision of Business Competition (KPPU), since June 2000 up to May 2008 had handled 138 competition cases in which eight of them were affirmed by the Supreme Court.

"From thousand of reports that came to KPPU, KPPU was just handled 138 cases. 75 of them had been decided, 27 were in the stipulation, and 35 of them are in process", said Dr. Syamsul Maarif, the Chairman of KPPU.

From 138 cases handled by KPPU, the dominant case is the bid rigging in public procurement which funded by the State/Local Budget. The rest is the non-bid rigging cases, such as the Carrefour case

which viewed bound the small enterprises, continued Syamsul.

Other reported cases did not handle by KPPU, mainly because did not support by a strong facts. Moreover, there was also certain group or institution that their job was only reporting cases to KPPU. Even when KPPU did not take notes the reported cases, they tend to bring KPPU to the court, continued Syamsul.

Source: Bisnis Indonesia, 5 June 2008 (unofficial translation)

From thousand of reports that came to KPPU, KPPU was just handled 138 cases...

Upcoming international events

The 4th APEC Training Course on Competition Policy, **November 5-7, 2008**, Sanur Paradise Plaza Hotel & Suites, Bali, Indonesia

Statistics of KPPU (June 2000—May 2008)

Total case handled	127 cases
Total decision issued	73 decisions (60.27% of which are bid-rigging cases)
Total stipulation	24 stipulations (50% of which are bid-rigging cases)
On going cases	30 on going cases (63.3% of which are bid-rigging cases)

Statistic on Reports
(June 2000 – May 2008)

Year	Number of report
2000	7
2001	31
2002	48
2003	58
2004	77
2005	183
2006	139
2007	244
As May 2008	71
TOTAL	855 reports

Statistic on Advices
(June 2000 – May 2008)

Year	Number of advices
2000	0
2001	4
2002	2
2003	10
2004	3
2005	12
2006	5
2007	11
As May 2008	3
TOTAL	50 advices

This newsletter is published in English by the Inter-institution Cooperation Division. Excerpts from this newsletter may be reproduced with full reference. If you would like to receive this newsletter by e-mail or have further inquiries, comments or items to be considered for publication, please contact *Deswin NUR (Mr.)* at international@kppu.go.id