

# kompetisia

Newsletter on Indonesian competition law and policy



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## Tender Decision on the Procurement of Health Equipments and the Provisioning of Regional Expenses Income Budget

Two business actors and government officials were proven guilty to breach article 22 of the Law No. 5/1999 on tender conspiracy which had occurred on the procurement of health equipments and the provisioning of Regional Expenses Income Budget in Health Agency, Central Bangka Regency of Year 2007. The alleged parties are Menumbing Medika Jaya, Ltd., Cahaya Abadi, Ltd., and Tender Committee. In its decision, KPPU's Commission Council obliged those business actors to pay fine with total amount of Rp. 857.649.820. Moreover, Menumbing, Ltd. was also prohibited to participate in any tender that was carried out in all of Governmental Agencies in Central Bangka Regency for 1 (one) year.

On this case, the examination process conducted by KPPU's investigation team had indicated that there was a horizontal collusion between those 2 business actors, where they were jointly compile and draws up the tender documents altogether. They also falsified other bid participant's documents (Pring Gading, Corp.), without any knowledge of the company's Director. KPPU also found the fact that the Tender Committee designedly has assisted Menumbing, Ltd. to be the tender winner by giving information about the goods specification

qualified in the tender. The Committee also proposed Menumbing, Ltd. as the tender winner, even though there were several administration mistakes on its tender proposal document.

Based on the facts and evidences which were found during the examination process, KPPU's Commission Council recommended the Commission to provide advice and recommendation as follows:

1. Recommendation to the Regent of Central Bangka to give sanctions on the Head of Tender Committee for misusing his position by arranging Menumbing, Ltd. to become the tender winner. The Regent is also expected to earn more attention in choosing the committee qualification.
2. Recommendation to the Commission to make a further investigation on the role of health equipment Distributor Company in this conspiracy.
3. Recommendation to the Commission to ask Bangka Belitung Police Regency to make a further investigation in the forgery of Pring Gading, Corp. document. In this case, the Commission Council had come to conclusion that Pring Gading, Corp. was not proven to breach article 22 of Law No.5/1999.

*...investigation team had indicated that there was a horizontal collusion between those 2 business actors...*

## The Levying Tender Decision of Contract Service in Road Public Work Sub-Service, Government of North Jakarta

*In this case, some of the tender participants were proven to have family relationship between its stockholders...*

KPPU investigated and examined 21 business actors and the Tender Committee as reported parties in case No. 07/KPPU-L/2008 for conspiracy allegation in the tender of Contract Service in Road Public Work Sub-Service, Government of North Jakarta.

In this case, some of the tender participants were proven to have family relationship between its stockholders. Some others have exactly the same company address and telephone number. All of the tender participants also have the equipment support letter from the same distributor company: Lancar Jaya Mandiri Abadi, Corp. Hereinafter, the further investigation had proven that the letter was counterfeited by all of the participants. Meanwhile, the Tender Committee did some mistakes in the tender execution process, for instance: they didn't take action against participants proven to have the same address, telephone number, the same format and contents in their

tender documents. The Committee also did not investigate the validation and accuracy of the tender participants documents on the phase of qualification evaluation. During the investigation process conducted by KPPU team, 16 reported parties were absent without any clarification or excuses.

Based on the facts and evidences which were found during the investigation process, KPPU's Commission Council had come to conclusion that all of the reported parties were proven to breach article 22 of the Law No. 5/1999 on conspiracy in tender. Five business actors among them were obliged to pay fine with total amount of Rp 340 million, while for the rest of them were prohibited to participate in any tender that was carried out by the DKI Jakarta Public Work Agency for 1 (one) year.

## Tender Conspiracy on the Procurement of Scent Removal Chemicals in DKI Jakarta Province

On September 9, 2008 KPPU issued a decision on the allegation of the violation of Article 22 the Law No. 5/ 1999 about tender conspiracy on the procurement bid of scent removal chemicals required by DKI Jakarta Hygiene Agency Budget Year 2007. This case entangled the tender committee (Reported Party I) and some business actors which are Putra Mandiri, Ltd. (Reported Party II); Putra Ulun Jandi, Corp. (Reported Party III); Nirwana Indah, Ltd. (Reported Party IV); dan Cemerlang Indah, Ltd. (Reported Party V).

The case chronology was started from the carrying out of Tender on the procurement bid of scent removal chemicals required by DKI Jakarta Hygiene Agency Budget Year 2007 which was won by Putra Mandiri, Ltd. with tender value equal to Rp. 779 million. In the report received by KPPU, the four business actors (Reported Party II–V) were suspected to be involved in a collusion conspiracy, with the tender committee as their facilitator. Based on the inspection result by investigation team, the collusion

among this business actors were seen from the similarity of the document format, the similarity of the typing mistake and the compilation process of the tender document together. While the tender committee proven to conduct a mistake in executing the tender evaluation of the tender participants.

Based on the facts and evidences which were found during the investigation process, KPPU's Commission Council had come to conclusion that the tender committee was not proved to breach article 22 of the Law No. 5/1999, since the conducted mistake was not aimed to make any conspiracy with any business actors. Meanwhile for the four business actors, they were stipulated had breach article 22 of the Law No. 5/1999 on conspiracy in tender and forbid them to participate in any tender that was carried out by the DKI Jakarta Hygiene Service for 1 (one) year.

*...that the tender committee was not proved to breach article 22 of the Law No. 5/1999, since the conducted mistake was not aimed to make any conspiracy with any business actors...*

## The Tender Conspiracy on the Development of Fish Dock Base in Jeneponto Regency, South Sulawesi

*KPPU's Commission Council recommended the Commission to provide advice and recommendation to the Government...*

On September 8 2008, KPPU finished the investigation and examination process on the allegation of the tender conspiracy on the development of Fish Dock Base (Pangkalan Pendaratan Ikan – PPI) Tanrusampe Stage III on Marine and Fisheries Agency in Jeneponto Regency, South Sulawesi. On this case, the committee of commodity/service auction and five alleged parties were being investigated. The alleged parties are Alya Ardin Mandiri, Corp., Cipta Barabata, Corp., Aswindo Putra Mandiri, Corp., Wardana Artha Guna, Corp. and FA Matano Trading Coy.

Considering the facts revealed during the investigation process, KPPU's Commission Council recommended the Commission to provide advice and recommendation to the Government as follows:

- Recommendation to the Regent of Jeneponto Regency to give sanctions on the Committee for its careless action in undertaking its task as the Tender Committee for the Development of Fish Dock Base.
- Advice to the Regent of Jeneponto Regency to instruct the Head of Marine and Fisheries

Service along with all of his staff, to conduct the tender process in accordance with the regulation and principles of fair business competition.

- Recommendation to BPKP (The Financial and Development Supervisory Board) to carry out an audit toward the tender project.
- Recommendation to South Sulawesi Regional Police to carry out the law process on the falsification of the bargaining document by Alya Ardin Mandiri, Corp.

Based on the inspections that had been done by the investigation team, KPPU through the Commission Council had come to conclusion that the four reported party along with the Committee were stipulated had breach article 22 of the Law No. 5/1999 on conspiracy in tender and being obligated to pay fine with total amount of Rp 600 million. Meanwhile, Wardana Artha Guna, Corp. was not proved to breach article 22 of the Law No. 5/1999.

## Tender Conspiracy on the Procurement of Scent Removal Chemicals in DKI Jakarta Province

On September 9, 2008 KPPU issued a decision on the allegation of the violation of the Article 22 of the Law No. 5/1999 about tender conspiracy on the procurement bid of scent removal chemicals required by DKI Jakarta Hygiene Agency Budget Year 2007. This case entangled the tender committee (Reported Party I) and some business actors which are Putra Mandiri, Ltd. (Reported Party II); Putra Ulun Jandi, Corp. (Reported Party III); Nirwana Indah, Corp. (Reported Party IV); and Cemerlang Indah, Ltd. (Reported Party V).

The case chronology was started from the carrying out of Tender on the procurement bid of scent removal chemicals required by DKI Jakarta Hygiene Agency Budget Year 2007 which was won by Putra Mandiri, Ltd. with tender value equal to Rp. 779 million. In a report which was accepted by KPPU, the four business actors (Reported Party II – V) were suspected to be involved in a collusion conspiracy, with the tender committee as their facilitator. Based on the inspection result by investigation team, the

collusion among this business actors were seen from the similarity of the document format, the similarity of the typing mistake and the compilation process of the tender document together. While the tender committee proven to conduct a mistake in executing the tender evaluation of the tender participants.

Based on the facts and evidences which were found during the investigation process, KPPU's Commission Council had come to conclusion that the tender committee was not proved to breach article 22 of the Law No. 5/1999, since the conducted mistake was not aimed to make any conspiracy with any business actors. Meanwhile for the four business actors, they were stipulated had breach article 22 of the Law No. 5/1999 on conspiracy in tender and forbid them to participate in any tender that was carried out by the DKI Jakarta Hygiene Service for 1 (one) year.

*...the four business actors (Reported Party II – V) were suspected to be involved in a collusion conspiracy, with the tender committee as their facilitator...*

## The 5th Seoul International Competition Forum

The 5th Seoul International Competition Forum is a yearly event that is hosted by Korea Fair Trade Commission (KFTC). Proceeding this year, the conference focused on three sessions, namely Optimal Harmonization of the Public and Private Enforcement, The Role and Direction of Economic Analysis in Competition Law Enforcement, and Effective Enforcement Strategy in the Healthcare Industry. In the activity opened by Chairman of KFTC, Mr. Yong Ho Baek and the Prime Minister of Korea, Mr. Han Seung-Soo, KPPU who is represented by Chairman Syamsul Maarif was honored to deliver a congratulatory remark, together with the Chairman of Swiss Competition Commission, Mr. Walter Stoffel.

*Commissioner Messi explored economic analysis in several activities, namely case investigation, competition advocacy, and formulating guideline on competition law...*

Despite of delivering congratulatory remark, KPPU also takes role as a Discussant for the session on the Role and Direction of Economic Analysis in Competition Law Enforcement. Commissioner M. Nawir Messi that represented KPPU as the discussant, in his presentation has provided brief explanation on Indonesian competition law and the use of economic analysis in competition law. Broadly speaking, Commissioner Messi explored economic analysis in several activities, namely case investigation, competition advocacy, and formulating guideline on competition law. He also explained several challenges faced by Indonesian in applying economic analysis in competition law enforcement. Other roles by KPPU at these series of international events were involving a Panelist for the session on the Significance and Specific Methods of Market Definition in Competition Law Enforcement and a Moderator for the session on the Role of Competition Authority in Regulatory Reform at the 13th International Workshop on Competition Policy, held in 5 September 2008.



From left to right:  
Chairman Syamsul Maarif, Commissioner Ahmad Ramadhan Siregar,  
Commissioner M. Nawir Messi, and Mr. Helly Nur Cahyo for the  
Seoul Forum 2008.

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