

Legal Analysis of the Supreme Court's Considerations Regarding Tender Rigging and its Implications for Legal Certainty in Business Competition (Study of Decision Number 43 PK/PDT.SUS-KPPU/2025)

Rusdinah*, Sugeng Santoso PN

Universitas Pelita Harapan, Indonesia

Email: rusdinah@gmail.com*, sugeng.santoso@lecturer.uph.edu

Abstract

Keywords

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This study examines the Supreme Court's legal considerations in annulling the decision of the Indonesian Business Competition Supervisory Commission (KPPU) in a tender rigging case through Decision Number 43 PK/Pdt.Sus-KPPU/2025. The research is motivated by the growing inconsistency in the application of evidentiary standards in Indonesian competition law, particularly regarding the use of indirect evidence in proving tender collusion. The study aims to analyze the consistency of judicial reasoning applied by the Supreme Court and its implications for legal certainty and the effectiveness of competition law enforcement in Indonesia. This research employed a normative juridical method using statutory, conceptual, and case approaches. Legal materials were collected through literature review and analyzed qualitatively using descriptive-analytical techniques. The findings reveal that the Supreme Court tends to apply a formalistic evidentiary approach emphasizing direct evidence, whereas the KPPU adopts a broader evidentiary framework based on behavioral and economic analysis through indirect evidence. This divergence has resulted in inconsistencies between administrative and judicial institutions, creating uncertainty in the enforcement of competition law. The study further demonstrates that inconsistent judicial reasoning weakens the deterrent effect of competition law enforcement and reduces predictability for business actors. The novelty of this study lies in its specific examination of judicial consistency in tender rigging cases and its contribution to the discourse on harmonizing evidentiary standards in Indonesian competition law. The study concludes that clearer evidentiary guidelines and institutional synchronization between the KPPU and the judiciary are essential to strengthen legal certainty and ensure more effective enforcement of anti-collusion regulations.

INTRODUCTION

Competition law is a fundamental instrument in the modern economic system, serving to maintain market balance and prevent practices that undermine competitive mechanisms. In the context of a developing country like Indonesia, competition law is not only concerned with protecting business actors but also has a broader dimension, namely as a tool to promote economic efficiency, increase national competitiveness, and protect consumer interests. Competition law is currently considered a parameter for resolving more comprehensive social issues, such as environmental protection, social change, and data confidentiality (Iacovides & Stylianou, 2025;

Lianos, 2020; Malinauskaite & Erdem, 2023). This indicates a shift from an initially economic perspective to a combination of public policy objectives. In a region like the European Union, the existence of competition law is crucial for achieving market integration, ensuring that businesses and consumers benefit from an integrated internal market. Healthy competition creates a competitive market environment, encouraging businesses to innovate and improve the quality of their products or services (Dereli, 2015; Liu et al., 2018).

Conceptually, competition law aims to maintain a balance between the interests of business actors and the broader public interest (Alam & Tejomurti, 2022; Dunne, 2020). This objective is reflected through several fundamental aspects of competition regulation. First, competition law seeks to prevent the concentration of market power in the hands of one or several business actors, such as monopolies and cartels, which may distort market structures and undermine fair competition. Second, it functions to protect consumers from unfair business practices that may lead to unreasonable pricing, limited choices, or a decline in the quality of goods and services (Propst, 2016; Trzaskowski, 2016). In addition, competition law encourages economic efficiency by fostering a healthy competitive environment in which business actors are motivated to innovate, improve productivity, and enhance service quality. Furthermore, it ensures equal business opportunities for all market participants by preventing discriminatory barriers that could restrict fair access to the market (Davies, 2017; Shelton & Minniti, 2018).

Regulations regarding business competition in Indonesia are specifically regulated in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (hereinafter referred to as Law No. 5/1999). This law serves as the primary legal basis for preventing and prosecuting various forms of anti-competitive practices, including bid rigging (Garud, 2021; Obanu & Ebeku, 2023). One important characteristic of competition law is its dynamic and complex nature, as it is closely related to the development of business practices that are constantly changing. Therefore, the enforcement of competition law requires not only clear normative regulations, but also precise interpretation by law enforcement officials (Alford, 2020; Bradford et al., 2019; Katsoulacos et al., 2016).

Bid rigging is one of the most common forms of competition violations in Indonesia. Article 22 of Law No. 5/1999 stipulates that business actors are prohibited from colluding with other parties to arrange and/or determine the winner of a tender, which could result in unfair business competition. This practice fundamentally undermines the fundamental principles of competition because tender outcomes are no longer determined by fair competition mechanisms, but rather by hidden agreements between business actors.

In practice, tender rigging often occurs in invisible forms and is difficult to prove directly. Business actors tend not to enter into written agreements, but instead use certain behavioral patterns that indicate coordination or collusion. This condition makes the proof in business competition cases more complex than in civil or criminal cases in general (Martín et al., 2022; Tran et al., 2018). In international practice, proving tender rigging does not always rely on direct evidence, but can also use indirect evidence such as bidding patterns, document similarities, or communication between business actors.

However, in the context of Indonesian law, the use of indirect evidence remains controversial, particularly regarding its evidentiary strength. Indonesian institutions, in this case the Indonesian Business Competition Supervisory Commission (KPPU), enforce competition law by preventing actions that could harm and disrupt the national economy. The commission's authority includes imposing fines and imposing penalties to prevent recurrence. This becomes increasingly important when competition cases proceed beyond the level of the Business Competition Supervisory Commission (KPPU) to the judicial process through objection and cassation mechanisms at the Supreme Court. In some cases, there have been differences in assessments between the KPPU and the Supreme Court regarding whether or not the elements of tender rigging have been met.

This phenomenon points to a more fundamental problem, namely the consistency of the application of evidentiary law in competition cases. The KPPU, as the institution with special authority in handling competition cases, often uses a more flexible approach to assessing evidence, including the use of indirect evidence. Conversely, the Supreme Court, in several of its decisions, tends to use a more formal and strict approach to assessing evidence, often overturning KPPU decisions on the grounds that the elements of evidence are not met.

This issue becomes even more complex when linked to its implications for legal certainty. Legal certainty is a fundamental principle in the legal system, demanding consistency and predictability in its application. Legal certainty is a defining guideline in the legal system, playing a crucial role in ensuring balance, justice, and trust in the law. Legal certainty is a fundamental parameter of a rule of law state and plays a crucial role in various legal aspects, including administrative law, tax law, international law, and, of course, competition law. If there is a significant difference in the assessment of evidence between the KPPU and the Supreme Court, this has the potential to create legal uncertainty for business actors. Business actors will have difficulty predicting how their actions will be assessed by law enforcement officials, thus disrupting the stability and trust in the legal system.

Furthermore, these differences also impact the effectiveness of competition law enforcement. When a KPPU decision, after a comprehensive investigation and examination process, is overturned at the cassation level, it could weaken the KPPU's position as a competition law enforcement agency. In the long term, this situation has the potential to reduce the deterrent effect on business actors who commit violations and open up opportunities for future bid-rigging practices.

Research conducted by Sastyo Aji Darmawan (2022) shows that the use of indirect evidence is essential in enforcing competition law, given the difficulty of finding direct evidence in bid-rigging cases. He emphasized that indirect evidence, such as bidding patterns and document similarities, plays a crucial role in uncovering hidden collusive practices.

Furthermore, research by Muhammad A. Yusro et al. (2024) in the *Indonesia Law Reform Journal* highlights that proving tender rigging requires a more comprehensive approach, recognizing indirect evidence as part of a valid evidentiary system in competition law. This

research also demonstrates differences in approach between the KPPU and the judiciary in assessing the strength of this evidence.

Meanwhile, research by Dadang Hardiana (2024) examined the dynamics of KPPU decisions and found that although the KPPU has used a behavioral analysis-based evidentiary approach, the effectiveness of law enforcement still faces challenges, particularly when these decisions are challenged in the courts. This research highlights potential inconsistencies in the assessment of evidence between the KPPU and the judiciary.

These three studies show that the main problem in tender conspiracy cases lies not only in fulfilling the elements of the violation, but also in how Evidence is assessed by law enforcement officials. However, these studies have not specifically examined the Supreme Court's legal considerations in overturning the KPPU's decision, particularly in relation to the consistency of the application of evidentiary law. In fact, the judge's consideration (*ratio decidendi*) is a very important aspect of a decision, as it reflects the legal logic used in making the decision. In practice, the differences in approach between the KPPU and the Supreme Court in assessing evidence can create legal uncertainty, due to the lack of consistent standards for determining whether or not the elements of tender rigging are met.

Furthermore, the implications of these differences also impact the effectiveness of competition law enforcement. When a KPPU decision, after thorough investigation and evidence-based verification, is overturned at the cassation level, it has the potential to weaken the KPPU's authority as a law enforcement agency. In the long term, this situation could reduce the deterrent effect and open up opportunities for future bid-rigging practices.

Based on these issues, this research focuses on analyzing the Supreme Court's legal considerations in overturning the KPPU's decision, specifically in the tender rigging case. This research aims to examine whether these considerations reflect consistency in the application of evidentiary law and their implications for legal certainty and the effectiveness of competition law enforcement in Indonesia.

Examining this issue is crucial because, in the practice of enforcing competition law, the differing approaches between the KPPU and the Supreme Court impact not only the outcome of cases but also the legal system as a whole. When a KPPU decision, after undergoing investigation and economic analysis, is overturned by the Supreme Court based on differing evidentiary considerations, it raises fundamental questions about the actual standard of proof applicable in competition cases. This unclear standard has the potential to create legal uncertainty for businesses, due to the lack of a consistent benchmark for assessing violations.

METHOD

This study used a normative legal research method, focusing on the study of legal norms and court decisions. This approach was chosen because the study aims to analyze the judges' legal considerations in the Supreme Court's decision regarding the annulment of the KPPU's decision, specifically in the tender rigging case. In this study, the author examines relevant legal materials to understand how the law is applied and interpreted in practice.

The approaches used include a statutory approach, a case approach, and a conceptual approach. The statutory approach is conducted by examining the provisions of Law No. 5/1999 and other related regulations. Meanwhile, the case approach is conducted by analyzing the Supreme Court's decision, which is the object of the research, particularly to observe how the judge considered the evidence in the case. The conceptual approach is used to understand legal concepts such as the theory of evidence, legal certainty, and the ratio decidendi, which form the basis for assessing the judge's considerations.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials obtained through literature review. All of these legal materials were then analyzed qualitatively using a descriptive-analytical method, namely by outlining the judges' considerations, assessing the consistency of the application of the law of evidence, and examining its implications for legal certainty and the effectiveness of competition law enforcement. This research is prescriptive in nature, so it not only explains the existing problems but also provides assessments and arguments regarding how the law should be applied in competition cases.

RESULTS AND DISCUSSION

Review of the Theory of Legal Certainty

Legal certainty is a fundamental principle in the legal system, ensuring that the law provides clear, consistent, and predictable guidance for every legal subject. Within the framework of a state based on the rule of law (*rechtstaat*), legal certainty is not only defined as the existence of written norms, but also encompasses consistency in the application of the law-by-law enforcement officials, including judges, in deciding cases.

Conceptually, Gustav Radbruch places legal certainty as one of the three basic legal values, alongside justice and utility. Radbruch states that law must be certain to serve as a reliable guideline in social life. This view emphasizes that without certainty, law will lose its authority because it is unable to guarantee the protection of rights and obligations. Furthermore, Hans Kelsen in his Pure Theory of Law explains that legal certainty is related to a system of norms that are hierarchically and logically structured, so that the application of law must be based on higher norms consistently. From this perspective, inconsistencies in court decisions, including differences in the assessment of evidence or legal construction, have the potential to give rise to legal uncertainty. Legal certainty is guided by clarity, stability, and legal possibilities, which enable individuals to plan their actions and make rational decisions. The principle of legal certainty will prevent arbitrary events in the application of the law, provide appropriate protection and prediction, and provide certainty in legal relations.

In contemporary developments, the concept of legal certainty is no longer understood rigidly as mere adherence to the text of the law, but also includes consistency in the interpretation and application of the law by judicial institutions. According to Lon L. Fuller, legal certainty can only be achieved if the law meets the principles of legality, such as clarity of norms, non-contradictory, and can be applied consistently. Judicial decisions that change or are inconsistent in assessing legal elements will have direct implications for disrupting legal certainty. In the Indonesian context,

legal certainty is also a constitutional mandate as reflected in Article 28D paragraph (1) of the 1945 Constitution which guarantees that everyone has the right to recognition, guarantees, protection, and fair legal certainty. Therefore, every court decision, including the Supreme Court's decision in business competition cases, must reflect consistency and legal rationality so as not to cause ambiguity in law enforcement practices.

Conceptual Review of Tender Rigging and Legal Actions Against KPPU Decisions

Tendering, as defined in the Big Indonesian Dictionary (KBBI), refers to a bidding process to obtain work or procure goods. In practice, this activity is generally only accessible to large-scale businesses, particularly if the project value exceeds one billion rupiah. In principle, the tender mechanism is a common instrument used in various sectors, such as construction, government procurement of goods and services, information technology services, and other large-scale projects. The tender process is generally carried out through several systematic stages.

The first stage begins with a tender announcement by the party requiring the goods or services (the project owner), which contains information regarding the needs and technical specifications of the work to be carried out. Next, tender participants submit bid documents containing price details, technical specifications, implementation methods, and the planned completion time. After the bid documents are received, the project owner conducts a comprehensive evaluation of all bids based on predetermined criteria. The results of this evaluation process then serve as the basis for determining the tender winner, namely the participant deemed to best meet the requirements from both administrative, technical, and financial aspects. The final stage of the tender process is the signing of a contract between the project owner and the tender winner. This contract serves as a legal basis that binds the parties to carry out the work in accordance with the agreed terms.

According to the provisions of KPPU Regulation No. 2 of 2010, tender implementation must be guided by the principles of fair business competition and free from practices detrimental to competition. In this regard, several important aspects must be met, namely:

1. The tender process must not contain any elements of discrimination, so that all participants have an equal opportunity to participate.
2. Tenders must not be designed or directed to benefit certain business actors through the determination of certain qualifications or technical specifications.
3. The requirements set out in the tender must not be so restrictive that only certain parties can fulfill these provisions.
4. The tender process must be carried out openly and transparently and announced to the public through the mass media within a sufficient period of time.

Tender rigging is a form of unfair business competition practice that is expressly prohibited by Indonesian competition law. Generally, tender rigging can be understood as collaboration between business actors and other parties, both fellow tender participants and tender organizers, with the aim of illegally arranging or determining the tender winner, thereby eliminating or reducing the level of competition that should occur naturally. Within the normative framework, the prohibition on tender rigging is regulated in Article 22 of Law No. 5/1999. This provision

emphasizes that business actors are prohibited from conspiring with other parties in order to arrange and/or determine the tender winner, which could result in unfair business competition. The essence of tender rigging lies in the existence of a hidden agreement aimed at manipulating the results of the tender process.

From an economic and legal perspective, tender rigging has serious impacts, namely:

1. budget inefficiency (prices higher than market prices)
2. financial loss
3. declining quality of goods/services
4. damage to the integrity of the procurement system

In legal literature, tender rigging is viewed as a form of market mechanism distortion, an action that eliminates real competition, and a practice that leads to unfair business competition. Legally, tender rigging can be classified into several forms, namely horizontal collusion (between tender participants), vertical collusion (between participants and the tender committee or organizer), and joint collusion involving both patterns simultaneously. This practice is generally carried out through the fixing of bid prices, project allocation, or the appointment of winners in a covert manner, creating the impression that the tender process is taking place competitively.

In practice, collusion in tenders can occur through various patterns or *modus operandi*, including:

1. Bid rotation or auction tender, which is an agreement between participants to take turns winning tenders in a previously agreed order.
2. Cover bidding or counter-bidding, where a particular participant deliberately submits a non-competitive bid, for example at a higher price, in order to ensure the victory of a predetermined participant.
3. The practice of borrowing a company name or borrowing a flag, namely using another company's name to fulfill administrative and qualification requirements, while the actual work is carried out by a party not bound by a contract, which ultimately has the potential to reduce the quality of the work results and cause state losses.
4. Technical specification engineering, namely the act of procurement officials who compile technical requirements in such a way that they are directed at a particular product, brand or provider, thereby limiting the competitive space that should be open.

Conceptually, tender rigging is complex because it is often carried out covertly, so its proof does not always rely on direct evidence. Tender rigging often occurs through secret agreements between bidders to manipulate outcomes, for example: bid fixing, complementary bids, or price fixing. In law enforcement practice, proving this case often uses a combination of direct and indirect evidence, such as similar tender documents, identical pricing patterns, and affiliated relationships between tender participants. However, the use of indirect evidence in judicial practice often gives rise to differences in assessments between the KPPU and the judiciary. In some cases, courts tend to require stricter proof, which does not always align with the economic approach used by the KPPU.

In addition to the evidentiary aspect, the dynamics of tender rigging cannot be separated from the legal mechanism for redressing KPPU decisions. Legally, KPPU decisions are not final and absolutely binding, as Law No. 5/1999 provides room for business actors to file objections to the courts. Legal redress against KPPU decisions is an integral part of the competition law enforcement system in Indonesia, which aims to guarantee the protection of business actors' rights and maintain the principle of procedural fairness. These provisions are normatively contained in Law No. 5/1999, specifically in Articles 44 to 46

Business actors who do not accept the KPPU's decision can file an objection with the Commercial Court. This objection constitutes an initial review of the KPPU's decision and must be filed within the statutory timeframe (14 days from receipt of the decision). At this stage, the Commercial Court will re-examine the legal and factual aspects of the KPPU's decision, ensuring that it is not only formal but also substantive. Against the Commercial Court's decision, the parties are still given the right to file an appeal to the Supreme Court of the Republic of Indonesia. An appeal is an extraordinary legal remedy within the context of competition procedural law, which aims to test the application of the law by the *judex facti* (Commercial Court). The Supreme Court, at this stage, has the authority to assess whether there is an error in the application of the law, not just the aspect of proving the facts. For decisions that have permanent legal force (*inkracht*), it is still possible to file a Judicial Review (PK) with the Supreme Court if the requirements as stipulated in the procedural law are met, for example, the discovery of *novum* (new evidence) or an error by the judge.

Facts of the Case of KPPU Decision Number 17/KPPU-L/2022

This case stems from the Decision of the Business Competition Supervisory Commission (KPPU) Number 17/KPPU-L/2022 dated July 18, 2023, which stated that there was a practice of tender collusion in a procurement project. In the decision, the KPPU determined the involvement of 3 (three) entities, namely PT Jakarta Propertindo (Perseroda), PT Pembangunan Perumahan (Persero) Tbk, and PT Jaya Konstruksi Manggala Pratama Tbk. For this violation, the KPPU imposed administrative sanctions in the form of fines on PT Pembangunan Perumahan (Persero) Tbk and PT Jaya Konstruksi Manggala Pratama Tbk, while PT Jakarta Propertindo (Perseroda) was deemed to be involved in the construction of the tender collusion that occurred. Not accepting the decision, the parties then filed a legal objection to the Commercial Court at the Central Jakarta District Court.

This objection was filed through two separate cases. The first case, Number 9/Pdt.Sus-KPPU/2023/PN Niaga.Jkt.Pst, was filed by PT Pembangunan Perumahan (Persero) Tbk together with PT Jaya Konstruksi Manggala Pratama Tbk. Meanwhile, the second case, Number 10/Pdt.Sus-KPPU/2023/PN Niaga.Jkt.Pst, was filed by PT Jakarta Propertindo (Perseroda). Although filed separately, the two cases essentially have the same object of dispute, namely the review of KPPU Decision Number 17/KPPU-L/2022. Therefore, referring to Article 6 paragraph (1) of Supreme Court Regulation Number 3 of 2021, the panel of judges then combined the two cases to be examined and decided simultaneously. This combination was carried out to maintain consistency of examination and avoid conflicting decisions. After going through the trial process,

the Central Jakarta Commercial Court on January 4, 2024 issued a decision with a uniform ruling on both cases, namely rejecting all objections filed by the applicants.

However, a different development emerged at the cassation level. Regarding case Number 10/Pdt.Sus-KPPU/2023/PN Niaga.Jkt.Pst filed by PT Jakarta Propertindo (Perseroda), the Supreme Court through Decision Number 745 K/Pdt.Sus-KPPU/2024 dated July 1, 2024 decided to reject the cassation application, so that the KPPU decision was maintained. Conversely, in case Number 9/Pdt.Sus-KPPU/2023/PN Niaga.Jkt.Pst filed by PT Pembangunan Perumahan (Persero) Tbk and PT Jaya Konstruksi Manggala Pratama Tbk, the Supreme Court through Decision Number 523 K/Pdt.Sus-KPPU/2024 dated July 31, 2024, actually granted the cassation application. In its deliberations, the Supreme Court assessed that there was insufficient evidence, either direct or indirect, to prove the existence of tender rigging as alleged by the KPPU. Therefore, the KPPU's decision in the case was declared null and void. The existence of two different cassation decisions on cases that essentially stemmed from the same disputed object gave rise to dualistic decisions. This condition not only created legal uncertainty but also hampered the implementation of the decision. Based on this, the KPPU then filed a judicial review on the grounds that there was a clear contradiction in the decision.

In Decision Number 43 PK/Pdt.Sus-KPPU/2025, the Supreme Court provided an important affirmation that the two objection cases at the Commercial Court level previously constituted an inseparable whole. This was based on the fact that the two cases had been combined, examined, and decided in the same series of legal considerations. Furthermore, the Supreme Court considered that the Commercial Court Decision Number 09/Pdt.Sus-KPPU/2023/PN Niaga.Jkt.Pst was binding on all parties involved in the case, including the KPPU and business actors. Therefore, when the decision was annulled through Cassation Decision Number 523 K/Pdt.Sus-KPPU/2024, the annulment also legally had implications for the entire construction of related decisions, including KPPU Decision Number 17/KPPU-L/2022. Through the judicial review mechanism, the Supreme Court finally ended the dualism of decisions that occurred at the cassation level. Decision Number 43 PK/Pdt.Sus-KPPU/2025 confirms that KPPU Decision Number 17/KPPU-L/2022 no longer has binding legal force, so it cannot be used as a basis for implementing administrative sanctions against business actors.

Analysis of the Supreme Court's Considerations in the Review Decision in the Tender Rigging Case

If examined more deeply, Decision Number 43 PK/Pdt.Sus-KPPU/2025 cannot be separated from the main problem that emerged at the cassation level, namely the existence of 2 (two) different decisions on the identical disputed object. In this context, the Supreme Court faced a situation that was not only juridical, but also concerned the credibility of the judicial system itself. The Supreme Court's considerations in the judicial review decision showed an effort to restore the unity of legal logic that was previously fragmented. This is evident from the assertion that cases Number 9/Pdt.Sus-KPPU/2023/PN Niaga.Jkt.Pst and Number 10/Pdt.Sus-KPPU/2023/PN Niaga.Jkt.Pst are an inseparable entity. Conceptually, this approach is in line with the principle of

unity of case, where cases that have the same object and factual basis should produce consistent decisions.

However, if examined further, the problems that arise are not only limited to inconsistencies in decisions, but also concern differences in the judges' perspectives in assessing evidence. In Cassation Decision Number 745 K/Pdt.Sus-KPPU/2024, the Supreme Court still accepted the evidentiary construction constructed by the KPPU. Conversely, in Decision Number 523 K/Pdt.Sus-KPPU/2024, the Supreme Court rejected the entire construction on the grounds that there was insufficient evidence, both direct and indirect. This difference indicates that at the cassation level itself, there is no uniform standard for assessing tender conspiracy cases. From an academic perspective, this condition reflects the fragmentation of legal interpretation within the Supreme Court itself. In its judicial review decision, the Supreme Court forsook the rigorous reexamination of the evidentiary approach in the cassation decision. Instead, it chose to use one of the cassation decisions as the basis for resolving the conflict. While this approach is effective in practice, academically it raises the question of whether resolving the duality of decisions is sufficient by choosing one decision without revising the substance of its considerations.

From a judicial decision theory perspective, legal considerations should not only resolve cases but also establish normative consistency. Court decisions, particularly those of the Supreme Court, serve as guidelines for similar cases in the future. Therefore, when the Supreme Court fails to provide sufficient clarification regarding the standard of proof, the decision has the potential to create further uncertainty. Furthermore, the Supreme Court's approach in this decision can be said to emphasize formal legal certainty over substantive legal certainty. Formal certainty was achieved because the dualism of the decision was successfully resolved. However, substantive certainty, particularly regarding the standard of proof, remains unanswered.

The judicial review decision in this case essentially no longer focuses on the substance of whether tender rigging occurred, but rather on a more fundamental issue: the inconsistency of the cassation decision on the same disputed object. At this point, the Supreme Court took a position to reorganize the logical unity of the previously fragmented decision. The Supreme Court's primary consideration lay in its assertion that the two separate objection cases filed at the Commercial Court level were, in fact, a single case. This was based not only on the similarity of the disputed object, but also on the fact that the two cases had been combined, examined, and decided within a single, identical set of legal considerations. Conceptually, it would be inappropriate for the final outcome of the cassation process to produce two conflicting decisions.

In this context, the Supreme Court uses what can be categorized as a systemic approach to court decisions. This means that decisions are not viewed as standalone entities, but rather as part of a unified judicial process that must be consistent from beginning to end. Therefore, when a cassation decision overturns a Commercial Court decision, logically, the overturning cannot be limited to a specific party but must apply to the entire case. This approach demonstrates that the Supreme Court, in its judicial review (PK) level, places greater emphasis on the unity and consistency of its decisions. (judicial consistency) compared to a reassessment of the evidence. In

other words, the focus of consideration shifts from evidentiary assessment to the structural coherence of judgments.

However, this approach is not without its problems. Upon closer examination, the cassation decision overturning the KPPU's decision in case No. 523 K/Pdt.Sus-KPPU/2024 was based on the assessment that there was insufficient evidence, either direct or indirect, to prove tender rigging. This consideration is essentially an assessment of the substance of the case. However, in the PK decision, the Supreme Court no longer reexamined whether this consideration was appropriate, but instead used it as a starting point for resolving conflicts between decisions.

Implications of Inconsistent Judicial Considerations on Legal Certainty and the Effectiveness of Enforcement of Competition Laws

Theoretically, legal certainty requires consistency in the application of norms so that the law can function as a predictable guideline. In Gustav Radbruch's thinking, legal certainty is a fundamental value that can only be achieved if the law is applied consistently and unchangingly. Meanwhile, Hans Kelsen emphasized that law as a system of norms must be implemented uniformly within a coherent structure. Similarly, Lon L. Fuller emphasized that law must be understandable and predictable to society, so that its application must not give rise to ambiguity. All three views place consistency at the heart of legal certainty.

In the context of competition cases, this principle becomes particularly relevant because differences in approaches to assessing evidence can directly impact legal certainty. When the same norm is applied differently by the KPPU and the Supreme Court, the law no longer provides certainty but instead opens up room for inconsistent interpretation. This demonstrates that legal certainty is determined not only by written norms but also by the consistency of their application at the judicial level. Practically, the inconsistency in the application of the law on evidence, as seen in the ruling on this tender rigging case, has significant implications for legal certainty. The Supreme Court, in its ruling, tended to believe that proof of tender rigging must be supported by direct evidence, while the KPPU had previously used an indirect evidentiary approach through behavioral and economic pattern analysis. This discrepancy demonstrates the lack of a uniform standard of proof in competition cases, leaving business actors with no clear reference point for how an action will be legally assessed.

The ambiguity of these standards has the potential to create systemic legal uncertainty. Businesses cannot predict whether an action will be considered a violation, as the assessment outcome depends heavily on the approach used by the institution examining the case. Under these conditions, the law loses its function as a guide to behavior, as it provides no certainty regarding permissible limits on business activities. Furthermore, this inconsistency also impacts the legitimacy of court decisions. Inconsistent decisions create the perception that the law is applied differently depending on the judge's perspective, rather than based on objective standards. This can erode trust in the judicial system, particularly in competition cases that have broad impacts on the public interest.

Another implication is seen in the effectiveness of competition law enforcement. The KPPU, as an institution with specialized expertise in the field of competition, uses an evidentiary approach

based on economic analysis and market behavior. This approach is actually necessary to uncover collusive practices that are not carried out openly. However, when this approach is not fully recognized by the Supreme Court, a lack of synchronization occurs in the law enforcement system. This lack of synchronization makes KPPU decisions, which have undergone in-depth investigation and analysis, vulnerable to being overturned. Consequently, the effectiveness of law enforcement is compromised, as the results of law enforcement lack certainty of sustainability in the courts. This can reduce the law's coercive power and reduce the deterrent effect on business actors who commit violations.

Furthermore, this situation also has the potential to encourage moral hazard among business actors. When there is uncertainty in the application of the law, business actors may take the risk of engaging in collusive practices, assuming that the KPPU's decision can still be overturned in court. This clearly contradicts the objective of competition law, which is to create healthy competition and prevent monopolistic practices. Furthermore, inconsistencies in the assessment of evidence also indicate a gap between the legal and economic approaches to competition cases. Competition law is fundamentally inseparable from economic analysis, as violations can often only be proven through behavioral patterns and market impacts. However, when the economic approach is not accommodated in the judge's deliberations, law enforcement becomes ineffective.

In the long term, this situation could hamper the development of competition law in Indonesia. Without clear and consistent evidentiary standards, it is difficult to build a strong and reliable law enforcement system. Therefore, harmonization of the approaches used by the KPPU and the Supreme Court is necessary to ensure uniformity in the application of evidentiary law.

CONCLUSION

Based on the analysis of the Supreme Court's considerations in the Judicial Review Decision on tender rigging cases, it can be concluded that these considerations do not fully reflect consistency in the application of evidentiary law, particularly in assessing the use of indirect evidence commonly used in competition law. The Supreme Court tends to apply a more formalistic standard of proof with an emphasis on direct evidence, thus inconsistent with the KPPU's approach based on behavioral and economic analysis. This inconsistency has implications for weakening legal certainty due to the absence of uniform and predictable evidentiary standards for business actors, and has an impact on decreasing the effectiveness of competition law enforcement due to the lack of synchronization between administrative and judicial institutions. Thus, these considerations indicate that the inconsistent considerations of judges not only reflect problems in the application of evidentiary law, but also have significant implications for legal certainty and the effectiveness of competition law enforcement, so that harmonization of evidentiary standards is needed to create a legal system that is consistent, provides certainty, and is able to effectively prevent the practice of tender rigging in Indonesia.

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