

RINGKASAN

Komisi Pengawas Persaingan Usaha (KPPU) telah banyak memutus kasus persekongkolan tender, antara lain melalui Putusan KPPU Nomor 23/KPPU-L/2018 serta Putusan KPPU Nomor 07/KPPU-L/2012. Perbedaan kedua putusan terletak pada pendapat Majelis Hakim Pengadilan Negeri Medan yang membatalkan putusan KPPU Nomor 23/KPPU-L/2018, sedangkan Majelis Hakim Pengadilan Negeri Bekasi hingga Mahkamah Agung menguatkan putusan KPPU Nomor 07/KPPU-L/2012. Disamping itu, sanksi denda yang dijatuhkan berbeda jauh. Penelitian ini bertujuan menganalisis kedudukan Peraturan Komisi Pengawas Persaingan Usaha dalam Hukum Persaingan Usaha di Indonesia, menganalisis penerapan Pasal 22 Undang-Undang Nomor 5 Tahun 1999 dan Peraturan Komisi Pengawas Persaingan Usaha Nomor 2 Tahun 2010 tentang Pedoman Pasal 22 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Persekongkolan Dalam Tender dalam Putusan yang dikaji serta menganalisis pertimbangan KPPU dalam memutus sanksi administratif berupa denda terhadap Terlapor yang dinyatakan bersalah melakukan persekongkolan tender.

Penelitian ini merupakan penelitian yuridis normatif dengan pendekatan undang - undang, pendekatan konsep dan pendekatan kasus. Penelitian menggunakan data sekunder yang didapat dari studi kepustakaan. Data disajikan dengan deskriptif normatif dan dianalisis menggunakan metode normatif kualitatif.

Hasil penelitian menunjukkan bahwa kedudukan Peraturan Komisi dipersamakan dengan peraturan perundang undangan. Putusan KPPU Nomor 23/KPPU-L/2018, Putusan KPPU Nomor 07/KPPU-L/2012 dan Putusan Nomor 15PK/Pdt.Sus-KPPU/2017 menerapkan hukum sesuai dengan peraturan perundang undangan, sedangkan Putusan Nomor 692/Pdt.Sus-KPPU/2019/PN Mdn tidak, serta Pertimbangan KPPU dalam menjatuhkan sanksi administratif pada Putusan KPPU Nomor 23/KPPU-L/2018 telah sesuai dengan peraturan perundang – undangan, namun tidak detail, sedangkan dalam Putusan KPPU Nomor 07/KPPU-L/2012 KPPU sama sekali tidak memberikan pertimbangan dalam menjatuhkan sanksi sehingga penjatuhan sanksi cenderung bersifat subjektif.

SUMMARY

The Business Competition Supervisory Commission (KPPU) has decided many cases of bid rigging, including KPPU Decision Number 23/KPPU-L/2018 and KPPU Decision Number 07/KPPU-L/2012. The difference between the two decisions lies in the opinion of the Panel of Judges of the Medan District Court who canceled the KPPU Decision Number 23/KPPU-L/2018, while the Panel of Judges of the Bekasi District Court to the Supreme Court upheld the KPPU Decision Number 07/KPPU-L/2012. In addition, the fines imposed are significantly different. This study aims to analyze the position of the Regulation of the Business Competition Supervisory Commission in Indonesian Business Competition Law, analyze the application of Article 22 of Law Number 5 of 1999 and Regulation of the Business Competition Supervisory Commission Number 2 of 2010 concerning Guidelines for Article 22 of Law Number 5 of 1999 concerning Prohibition of Bid Rigging in Tenders in the reviewed Decision and analyze the KPPU's considerations in deciding administrative sanctions in the form of fines against the Reported Party found guilty of bid rigging.

This research is a normative juridical research with a law approach, concept approach and case approach. The research uses secondary data obtained from literature study. The data is presented with descriptive normative and analyzed using qualitative normative method.

The results showed that the position of Commission Regulations is equated with laws and regulations. KPPU Decision Number 23/KPPU-L/2018, KPPU Decision Number 07/KPPU-L/2012 and Decision Number 15PK/Pdt.Sus-KPPU/2017 apply the law in accordance with the laws and regulations, while Decision Number 692/Pdt. Sus-KPPU/2019/PN Mdn does not, and KPPU's consideration in imposing administrative sanctions in KPPU Decision Number 23/KPPU-L/2018 is in accordance with laws and regulations, but not in detail, while in KPPU Decision Number 07/KPPU-L/2012 KPPU did not provide any consideration in imposing sanctions so that the imposition of sanctions tends to be subjective.