

RINGKASAN

Pada proyek pengadaan Paket Pembangunan *Revetment* (dinding pantai) dan Pengurugan Lahan di Pelabuhan Perikanan Popoh Kabupaten Tulungagung pada tahun 2017, Majelis Komisis KPPU menemukan adanya persekongkolan tender yang melibatkan empat terlapor dan pihak Pokja 84 UPT P2BJ. KPPU menjatuhkan sanksi denda dan sanksi daftar hitam pada para terlapor. Para Terlapor mengajukan keberatan di Pengadilan Niaga Surabaya. Pengadilan Niaga memutuskan para terlapor hanya menerima sanksi denda dan tidak menerima sanksi daftar hitam. KPPU mengajukan kasasi di Mahkamah Agung atas putusan Pengadilan Niaga. Mahkamah Agung menguatkan putusan KPPU, sehingga para terlapor mendapatkan sanksi denda dan daftar hitam. Tujuan penelitian pertama, menganalisis pihak yang berwenang menetapkan daftar hitam pada putusan Mahkamah Agung No. 127 K/Pdt.Sus-KPPU/2023 menurut hukum normatif di Indonesia dan menganalisis pertimbangan hakim pada sengketa persekongkolan tender pada putusan Mahkamah Agung No. 127 /K/Pdt.Sus-KPPU/2023.

Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, kasus, dan konseptual. Spesifikasi penelitian yaitu penelitian preskriptif dengan data sekunder serta pengumpulan bahan hukum melalui studi kepustakaan dengan pengolahan melalui langkah klasifikasi dan sistematisasi dan analisis menggunakan metode normatif kualitatif.

Hasil penelitian pertama, dalam menjalankan tugas dan fungsinya, KPPU mendapat kewenangan atribusi melalui Undang-Undang Nomor 5 Tahun 1999 *tentang* Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat dan bertanggung jawab kepada Presiden. Kewenangan yang dalam menerapkan Sanksi daftar hitam dijelaskan dalam Peraturan LKPP Nomor 4 Tahun 2021 dan Perpres Nomor 16 Tahun 2018 yang diubah menjadi Perpres Nomor 12 Tahun 2021 yaitu oleh PA/KPA atas usulan PPK. Adapun kewenangan KPPU dalam memberi sanksi administratif berupa sanksi denda dan perintah menghentikan kegiatan yang terbukti menimbulkan persaingan usaha tidak sehat.

Hasil penelitian kedua, Pertimbangan hukum hakim Mahkamah Agung No 127/K/Pdt.Sus-KPPU/2023 dalam memutuskan perkara menggunakan yurisprudensi Mahkamah Nomor 893K/Pdt.Su-KPPU/2020. Pihak yang berwenang menerapkan daftar hitam adalah PA/KPA atas usulan dari PPK. Pengadilan tidak secara langsung memutus sanksi daftar hitam, namun putusan pengadilan yang berkekuatan hukum tetap dapat menjadi dasar bagi LKPP untuk menjatuhkan sanksi tersebut. Agar sanksi daftar hitam lebih efektif diharapkan KPPU dapat berkoordinasi dengan PPK untuk mengajukan nama pelaku usaha yang terbukti melanggar untuk disampaikan pada PA/KPA. Selain itu KPPU diharapkan konsisten dalam memberi sanksi dan tidak melampaui kewenangan yang telah diatur dalam Undang-undang Persaingan Usaha.

SUMMARY

In the project of procurement of *Revetment* Development Package (beach wall) and land reclamation at the Popoh Fisheries Port, Tulungagung Regency in 2017, the ICC Commission Panel found that there was a tender conspiracy involving four reported parties and the Working Group 84 UPT P2BJ. ICC imposed fines and blacklist sanctions on the reported defendants. The Reported Parties filed an objection at the Surabaya Commercial Court. The Commercial Court ruled that the reported defendants only received a fine and did not receive a blacklist sanction. ICC filed an appeal at the Supreme Court against the decision of the Commercial Court. The Supreme Court upheld ICC's decision, so that the reported defendants received fines and blacklists. The purpose of the first research is to analyze the authorities who set the blacklist in the Supreme Court decision No. 127 K/Pdt.Sus-KPPU/2023 according to normative law in Indonesia and analyze the judge's consideration on the tender conspiracy dispute in the Supreme Court decision No. 127 /K/Pdt.Sus-KPPU/2023.

This research uses normative juridical methods with legislative, case, and conceptual approaches. The research specifications are prescriptive research with secondary data and the collection of legal materials through literature studies with processing through classification and systematization steps and analysis using qualitative normative methods.

The results of the first research, in carrying out its duties and functions, ICC received attribution authority through Law Number 5 of 1999 *concerning the Prohibition of Monopoly Practices and Unfair Business Competition* and was responsible to the President. The authority in implementing blacklist sanctions is explained in LKPP Regulation Number 4 of 2021 and Presidential Regulation Number 16 of 2018 which was amended to Presidential Regulation Number 12 of 2021, namely by PA/KPA on the proposal of PPK. The authority of ICC in providing administrative sanctions in the form of sanctions, fines and orders to stop activities that are proven to cause unfair business competition.

The results of the second research, the legal considerations of Supreme Court judges No. 127/K/Pdt.Sus-KPPU/2023 in deciding cases using the Court's jurisprudence Number 893K/Pdt.Su-KPPU/2020. The authority to implement the blacklist is PA/KPA on the proposal of the PPK. The court does not directly decide on the blacklist sanction, but the court decision with legal force can still be the basis for the LKPP to impose the sanction. In order to make the blacklist sanctions more effective, it is hoped that ICC can coordinate with the PPK to submit the names of business actors who are proven to be in violation to be submitted to the PA/KPA. In addition, ICC is expected to be consistent in sanctioning and not exceeding the authority that has been regulated in the Business Competition Law.