

**THE VALIDITY OF THE COLLUSIVE TENDER IN THE
PROCUREMENT OF GOODS AND SERVICES OF BUS
TRANSJAKARTA (Pte Ltd) (Case Study the Verdict Number:
15/KPPU-I/2014)**

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ABSTRACT

Conspiracy in the tender including auction collusive tenders occurring through a deal between businessmen, between the owner of the work as well as between the two parties. The tender conspiracy case that happened in Indonesia is a case involving the *Pte Ltd. Industri Kereta Api (Pte Ltd. INKA)* in the procurement of Transjakarta fiscal of 2013. From the results of this research noted that enforcement of the law against the procurement of Transjakarta yet running optimally, where knowing the verdict matter passengers number: 15/KPPU-I/2014 in unfair business competition elements Law number 5 of 1999 can't show anyone others who benefited by *Pte Ltd. INKA* and profitable, as well as in the By Law 16 of Number 2018 on The President of Government procurement of goods/service stating *Pte Ltd. INKA* is not proven procurement tenders because collusion *Pte Ltd. INKA* do not know reasons of *Pte Ltd. Mayapada Auto Sempurna* resign therefore the *Pte Ltd. INKA* as winner in the tender Package I repeated Single Bus.

Keywords: Conspiracy of Tenders, Collusive Tender, Procurement Bus Trans Jakarta

A. INTRODUCTION

In the era of economic system reform in Indonesia occurred as a fundamental change in particular the broad economic field require antitrust logician. The formation of the antitrust logician is the basic changes to the businessmen who stop and reduce pressures unfair business competition in a position of economic power to the detriment of other businessmen or small businessmen. Indonesia itself in obviating the monopolistic practices of unfair in economics and business by rising of Law Number 5 of 1999 on the Prohibition on Monopolistic Practices and Unfair Business Competition. Law Number 5 of 1999 were meant to provide a guarantee of legal certainty and the protection of the same to every performer in trying, in a way to prevent the onset of monopolistic practices and/or business competition is not fair (Devi Meyliana, 2013:16).

Business is an increasingly widespread phenomenon grew various areas of governance capable of accommodating the wishes of business owners in the conduct

of its business (Devi Meyliana, 2013:14). In the fields of business, trade expected in carrying out activities prohibited conduct business venture competition in unfair activities of collaboration that govern the supply of goods and services that benefit the parties, where businessmen by deliberately limiting the conspiracy in restraint of other business that can lead to an unfair business competition (Ramada Usman, 2013:79).

A conspiracy governing the supply of goods and services is called the tender conspiracy, where businessmen in competing deliberately to raise prices or lower quality goods and services to trade off to the buyer against any product or services through the procurement of goods and services. The mechanism in the process of procurement of goods and services in the tender are listed in Law Number 5 of 1999 on the Prohibition on Monopolistic Practices and Unfair Business Competition as well as presidential Regulation number 16 Of 2018 on the procurement of goods or services the government which is the normative provisions in the procurement of goods and services which prohibits the existence of unfair business competition between businessmen who conspired with other parties to have the goal to set or determine the winner of the tender.

Komisi Pengawas Persaingan Usaha (KPPU) as a business and competition watchdog independent agencies that handle, disconnect, or doing procurement a matter regarding alleged monopoly and competition of unfair businesses about the tender conspiracy. Based on The law Number 5 of 1999 on the Prohibition on Monopolistic Practices and Unfair Business Competition set up the tender conspiracy prohibitions as set forth in article 22 which reads:

“Businessmen are prohibited from conspiring with others to manage and or determine the winner of the tender so it can result in the occurrence of unfair competition”.

On This matter, the others are not limited to just the Government, but private parties or other businessmen who participated in the tender in question (Rachmadi Usman, 2004: 80). The legal approach in this article is formulated with a rule of reason which requires *KPPU* to conduct an evaluation to prove a result of the conspiracy's activities (Daniel Jusuf Said Sembiring, 2016 : 2). The rule of reason is an approach that aims to evaluate the consequences of the agreement or certain business activities in order to determine an agreement or activity not impede or support other competitors (Tri Anggraini, 2005: 5).

The tender conspiracy or bidding collusion occurs when businessmen in following tenders that are supposed to compete in a closed but do a conspiracy to raise prices or lower the quality of the goods or services for the buyer want to obtain a product or service through the process of procurement of goods or services (Paramitha

Prananingtyas, 2017 : 209). Conspiracy in the tender for the procurement of goods or services in particular often undermine the buyer of the other party is generally the Central Government or regional and private parties to obtain goods and services at a price that is very cheap. The process of procurement of goods and services has determined the winners of tenders before the tender offer begins, it has been cited by Alum Simbolom i.e. (Alum Simbolom, 2014: 67):

“It is often the case, the tender offer was announced in various media only false, pretending to actually winning bidder already in the bag or is predetermined.”

The procurement of the goods or services associated with the Government is an activity to obtain goods or services that process starting from the planning requirements until the completion of the entire activity to obtain goods or services at the time of procurement in progress (Purwosusilo, 251 : 251). The procurement of goods or services the Government arranged in Presidential Regulation Number 16 Of 2018 of Government procurement of goods/services. It is no important elements involved in the activities of the procurement of goods or services the Government of both individuals and institutions, namely the Government and providers of goods or services. The activities of the procurement of goods or services of the Government in the regulation of 16th Of Number 2018 President of Government procurement of goods/services berpinsip that the procurement of goods or services is carried out in an efficient, effective, transparent, terbuka, competitive, fair and unaccountable intercultural businessmen against or between the two sides of the participants of government procurement of goods or services.

The procurement of goods or services the Government arranged in presidential Regulation number 16 of 2018 of Government procurement of goods/services. It is no important elements involved in the activities of the procurement of goods or services the Government of both individuals and institutions, namely the Government and providers of goods or services. The activities of the procurement of goods or services of the Government in the presidential Regulation number 16 of 2018 arranging that the procurement of goods or services is carried out in an efficient, effective, transparent, competitive, fair and unaccountable intercultural businessmen against or between the two sides of the participants of government procurement of goods or services.

One case concerning the tender conspiracy in the procurement of goods or services is happening in Indonesia is an alleged violation of the conspiracy tender *Pte Ltd. Industri Kereta Api (Pte Ltd. INKA)* in manipulating the auction or collusion in procurement of goods and services bus *Pte Ltd. Transjakarta* fiscal of 2013 interregional trade between the two sides. The case of the existence of the community as well as the other reports in this regard to other businessmen who follow procurement Transjakarta who reported the occurrence of conspiratorial tenders

conducted by the *Pte Ltd. Industri Kereta Api (Pte Ltd. INKA)* on Transjakarta Bus procurement (Medium Bus, Single Articulated buses, and Bus) fiscal of 2013.

On the matter of number 15/KPPU-I/2014, the *Pte Ltd. Industri Kereta Api (Pte Ltd.)* and *Pte Ltd. Mekar Armada Jaya* and *Pte Ltd. Ifani Dewi* which also partnered with *Pte Ltd Mekar Armada Jaya* alleged the existence of a tender conspiracy in procurement of Transjakarta so *Pte Ltd. Industri Kereta Api (Persero)* became the winner of the tender package and I jointly enter a Qualification Document on the package V Articulated Bus. *Pte Ltd. INKA* allegedly does conspiracy horizontally with equality with the IP Address there is cooperation between the bidders in the access to the website <http://lpse.jakarta.go.id> where the known tender procurement Transjakarta is done with procurement systems through *LPSE DKI Jakarta*. As well as doing the vertical Conspiracy where no Tender Committee dismissed the participation of *Pte Ltd. Ifani Dewi* in the procurement of a package of bus way articulated bus 5 though there are similarities with the *KSO* members *Pte Ltd. INKA*, namely *Pte Ltd. Mekar Armada Jaya* and the Tender Committee inconsistent in his assessment of where directly carrying out the evaluation of the tender bidding on procurement anniversary single package of bus way bus 1, but did not carry out the evaluation of bidding on tender procurement of buses being repeated a package of 3 even though participants who enter registration is the same that is 2 (two) participants. Which case this behavior is suspected to facilitate *Pte Ltd. Industry Kereta Api (Persero)* has won the single bus way bus procurement package 1.

Based on explanation above, the authors interest to deepen further and specifically raised the case of the tender conspiracy on the verdict *Komisi Pengawas Persaingan Usaha (KPPU)* number: 15/KPPU-I/2014 regarding the procurement of goods and services the Trans Jakarta in the fiscal of 2013, therefore the writing titled as “The Validity Of The Collusive Tender In The Procurement Of Goods And Services Bus *Pte Ltd. Transjakarta* (Case Study The Verdict Number: 15/KPPU-I/2014)”.

B. PROBLEM STATEMENT

1. Has the *Pte Ltd. Industri Kereta Api* as bidders *Pte Ltd. Bus Transjakarta* in alleged violation of the procurement of the goods or services of the *Pte Ltd. Industri Kereta Api* been unfair business competition elements?
2. Has the *Pte Ltd. Industri Kereta Api* as a participant in the procurement of goods and services of *Pte Ltd. Bus Transjakarta* been performed as of Collusive Tender Behaviour?

C. RESEARCH METHODS

This research method uses the normative approach, where this approach is an approach that refers to logician in force (Roni Hanitjosuemiro, 1982:20). The approach of logician, i.e. the ratio logic and basic ontological birth logician related research issues. By studying the ratio logic and The ontological basis of logician can be found the content of the philosophy that is behind the logician that (Peter Mahmud Marzuki, 2014: 93). The data used in the study of normative law this is secondary data in the form of law that refers to the primary logician and secondary legal materials in the form of primary law. Data analysis method in this article uses qualitative methods of the task force which is the data obtained from the study of librarianship, and analyze based on problems that were seen with the provisions already in force could then be summed up and can be obtained the answers to the problems that already exist.

D. DISCUSSION AND RESEARCH RESULTS

1. **The element of competition efforts in Law Number 5 of 1999 On The Prohibition on Monopolistic Practices and Unfair Business Competition**

Businessmen in the procurement of goods and or services in Indonesia based on economic democracy by observing the presence of a balance between the interests of the public and trade participants in procurement of goods and or services. Law Number 5 of 1999 on the prohibition of the practice Monopoly and unfair Business Competition mention that the purpose of the following trade:

- a. Maintain public interest and increase the efficiency of the national economy as one of the efforts to improve the welfare of the people of Indonesia.
- b. Manifest a conducive business climate via the regulation of unfair business competition in order to ensure the existence of a certainty against the perpetrators of other endeavors.
- c. Avoid and prevent the existence of a monopoly and or/unfair business competition posed by interregional trade.
- d. Creating effectiveness and efficiency in business activities.

The purpose of trade as described in Law Number 5 of 1999 on the prohibition of the practice of Monopoly and unfair Business Competition gave the impact efficiently to realize procurement of goods/services and or do no harm between businessmen as well as fairness in the tender process. In the procurement of goods and or services there are activities that are prohibited including the occurrence of monopoly, monophony, mastery of the market, and a conspiracy.

Conspiracy is the existence of an agreement or have the intention to cooperate and led to no justice in the process of procurement of goods and or services.

Article 22 to Article 24 of the Law number 5 of 1999 on the prohibition of the practice of monopoly and unfair Business Competition prohibit businessmen conspiring in terms as follows:

- a. conspired with other parties to set and or determine the winner of the tender.
- b. conspired with others to obtain information piha business activities of competitors who are classified as company confidential.
- c. conspired with other parties to hinder production and or marketing of goods and services or other businessmen.

The tender conspiracy including within the reach of the vast behavior among production, distribution, pricing, trade activities, as well as the manipulation of the auction or tender through collusive agreement between businessmen between the owner of the work, as well as between the two parties (Paramita Prananingtyas, 2017:212).

One of the cases regarding the tender conspiracy in the procurement of goods or services is the alleged violation of Law Number 5 of 1999 on the prohibition of the practice Monopoly and unfair Business Competition Attempt at Conspiracy case of Tender Trans Jakarta in fiscal of 2013. Chronological events tender busway followed the *Pte Ltd*. INKA as follows:

Date	Activity	Description
11 June 2013	Upload document deals	Tender Single Bus Package I File name: <i>Pte Ltd</i> Industri Kereta Api (Persero)14508127.rhs
12 June 2013	Upload document deals	Tender Single Bus Package V File name: <i>Pte Ltd</i> . Industri Kereta Api (Persero) 14540127.rhs
18 June 201	Upload document deals	Tender Articulated Bus Package V
1 July 2013	Upload document deals	Tender Single Bus Package I File Name: <i>Pte Ltd</i> . Industri Kereta Api (Persero)15352127.rhs
1 July 2013	Upload document deals	Tender Single Bus Paket V File Name: <i>Pte Ltd</i> . I n d u s t r i K e r e t a A p i (Persero)14508127.rhs
11 July 2013	Upload document deals	Tender Articulated Bus Package I File name: <i>Pte Ltd</i> . Industri Kereta Api (Persero) 14506127.rhs

Date	Activity	Description
11 July 2013	The announcement of the winner of the tender for single bus package I	The Winner : <i>Pte Ltd.</i> Industri Kereta Api (Persero)
11 July 2013	The announcement of the winner of the tender for single bus package V	The Winner : <i>Pte Ltd.</i> Industri Kereta Api (Persero)
18 July 2013	BAHP from committee	The Winner : <i>Pte Ltd.</i> . Adi Teknik Equipindo
26 July 2013	The announcement of the winner of the tender Articulated Bus package I	<i>Pte Ltd.</i> Industri Kereta Api (Persero) is not passed, document Qualifications are not eligible
15 August 2013	The announcement of the winner of the tender Articulated Bus package II	The Winner: <i>Pte Ltd.</i> Korindo Motors
4 September 2013	Upload documents deals	Tender Articulated Bus Package II

Chronological based on the above, *Pte Ltd.* INKA following a tender in accordance with the procedure established by the Committee for the Tender. The *Pte Ltd.* INKA is the manufacturer which can be evidenced by a documents the right brands and intellectual property rights are owned by *Pte Ltd.* INKA fully and fears as a manufacturer of motor vehicles is also recognized by the Ministry of industry so based on the above it is not possible the existence of the partnership between *Pte Ltd.* INKA with other businessmen as well as cooperation with the Committee in a bid to follow the Tender Package 5 Busway Articulated Bus.

The tender conspiracy provided for in Law Number 5 of 1999 on the prohibition of the practice Monopoly and unfair Business Competition in section 22 which reads: "*businessmen are prohibited from conspiring with others to set up and determine the the winner of the tender resulting in occurrence of unfair business competition*". A tender which is bidding on the filing of the price to buy up a job to make goods or provide services at the time of the procurement tenders that take place. The tender sense in asking a price against goods or services covers for (Paramita Prananingtyas, 2017:212) :

- a. as a Jobber or the parties execute a job which has been agreed upon;
- b. procurement of goods or services;

- c. Buy a goods or services at the time the tender offer is taking place; and
- d. selling an item and/or services at the time the tender offer lasts.

Thus, it can be concluded the tender consists of open tenders, restricted tenders, as well as the public auction and the auction is limited. One of the actions that led to unfair competition is the tender conspiracy is one form of activity that is prohibited by Law Number 5 of 1999 on the prohibition of the practice competition and antitrust effort. The corresponding elements in the conspiracy of procurement of goods or services is the presence of elements of the perpetrators, the other party, or to set up and determine the winner of the tender and the element of unfair competition efforts.

Pte Ltd. Industri Kereta Api (Pte Ltd. INKA) of alleged infringement conspiracy tender in manipulating the auction or collusion in procurement of goods and services *Pte Ltd. bus Transjakarta* fiscal in 2013 interregional trade between the two sides which resulted in unfair business competition. The allegations in the lawsuit verdict staple *KPPU Number 15/KPPU-I/2014* was not met in the elements of Law Number 5 of 1999 as follows:

- a. Elements of Trade (based on Chapter 1 step 5)

“Trade is any person individual or business entity either in the form of a legal entity or not legal entities established and domiciled or conduct activities within the jurisdiction of the Republic of Indonesia, either alone or together through the agreement, organizes a wide range of business activities in the field of Economics ”.

In the case of trade elements of the existence of the persekongkooan tender is done at the time of the procurement of buses *Pte Ltd. Trans Jakarta* businessmen among others consist of 18 (eighteen) party businessmen one is *Pte Ltd. Industri Kereta Api (Pte Ltd. INKA)*. The trade item that Reported III in casu the railway Industry *Pte Ltd. (Persero)* as the State-owned enterprises (*BUMN*) was founded for the benefit of the country and with signs comply with the law, it is included in the notion of trade as stipulated in article 1 step 5 Law Number 5 of 1995 on the prohibition of the practice Monopoly and unfair Business Competition.

In the element of the other party, can not show anyone others who benefited by the *Pte Ltd. Industri Kereta Api* and profitable *Pte Ltd. Industri Kereta Api*. The facts or the evidence until the end of the proceedings of the Assembly Commission, there has never been an effort that leads to winning bidders. Propositions submitted by the Investigator is just a mere assumption, without anyone supported by the evidence is true and can be accountable before the law.

b. Element of Conspiracy

Conspiracy is a collaboration between trade with the other party's trade on the initiative of a person or a private agency or Government in any way to winning bidders in the procurement of goods or services. Conspiracy element contains the following:

- 1) cooperation conducted between two parties or more;
- 2) openly or closed has been doing action adjustment documents with other participants in the procurement of goods or services;
- 3) Comparing the tender documents between other participants prior to the submission of a tender is carried out;
- 4) created a competition that is not obvious and unnatural;
- 5) approve or facilitate another party or other participants in the conspiracy of the tender;
- 6) does not perform an action although it is aware of any arrangements with a view to winning bidders; and
- 7) Give special opportunity by organizers of the tender or of the parties involved in the procurement of goods or services either directly or indirectly to other businessmen who followed a tender in a way against the law.

The elements conspired in the procurement tender conspiracy case trans Jakarta, That the *Pte Ltd. Industri Kereta Api (Persero)* and *Pte Ltd. Mekar Armada Jaya* and *Pte Ltd. Ifani Dewi* partnered with *Pte Ltd. Mekar Armada Jaya* jointly enter document qualification on Package V Articulated buses, there is cooperation between Industry namely reported *Pte Ltd. Industri Kereta Api* reported with reported *Pte Ltd. Mobilindo Armada Cemerlang IP* usage related to access to *LPSE DKI Jakarta*. The use of IP for access to *LPSE Jakarta* recorded both use IP 114.79.12.203 and also with regard to the use of the IP of the reported *Pte Ltd. Srikandi Metropolitan* that is reported is that *Pte Ltd. Industri Kereta Api (Persero)* and reported *Pte Ltd. Srikandi Metropolitan* using the IP 114.79.12.28 Reported and *Pte Ltd. Mobilindo Armada Cemerlang*) and reported *Pte Ltd. Srikandi Metropolitan*) using IP 125.160.240.25. On the package I single bus reported being followed by *Pte Ltd. Industri Kereta Api (Persero)*) and reported *Pte Ltd. Mayapada Auto Sempurna* won by reported *Pte Ltd. Industri Kereta Api (Persero)*, reported *Pte Ltd. Mayapada Auto Sempurna* is a companion to the fact both are using the same IP for access *LPSE Jakarta* is IP 114.79.50.94.

c. Elements of Other

The other party is a party that consists of vertical, horizontal and combination of vertical and horizontal collaboration, where the parties involved in the tender process that had been doing the bidding of a conspiracy in the procurement of goods or services among businessmen as bidders or other legal subjects related to the tender. The following description of the type of conspiracy among other tenders (Munawar Kholil. 2016: 110):

- 1) horizontal Conspiracy is persengkolan where the presence of top trade services providers with fellow businessmen or provider of goods and services over its competitors.
- 2) vertical Conspiracy is a conspiracy in which one of them businessmen or provider of goods and services with the auction or tender Committee Committee or users of goods and services or the giver of work in collaboration with one of the bidders in the the procurement of goods or services.
- 3) Horizontal and vertical Conspiracy is a conspiracy composed of tender Committee or panita auction or auction users or users of goods and services or owners or the giver of work by engaging the two parties or not businessmen or providers of goods and services in the process of procurement of goods or services.

The elements of the other party that has applied horizontal conspiracy in the case of procurement of buses *Pte Ltd.* Trans Jakarta in fiscal of 2013, one of which was the *Pte Ltd.* Industri Kereta Api (*Pte Ltd.*. INKA), whereas the elements of another party in a conspiracy is vertical organizers and the procurement of goods or services in the field of construction work of Department of transportation province of DKI Jakarta fiscal year 2013 which is one of the subjects of the law related to tenders that have been run.

On the other side in a horizontal conspiracy *Pte Ltd.* INKA allegedly had committed acts of collaboration in the form of horizontal communication and cooperation in the preparation of the bidding documents that it can result in the occurrence of unfair business competition over the existence of evidence and facts about the similarities IP address, on setting up the winner of the Tender the Tender among the participants, about the implementation of the Methods in common.

In a conspiracy between Vertical Reported II by the Committee, based on reported II failed not bus way articulated 5 Pack where there is common ground with Industrial members of the KSO *Pte Ltd.* Industri Kereta Api (Persero) namely *Pte Ltd.* Mekar Armada Jaya. In that trial, Witness *Pte Ltd.* Mekar

Armada Jaya, under oath stating unequivocally that never gave support to the *Pte Ltd. Industri Kereta Api (Persero)* on a package of busway articulated 5. Against witnesses *Pte Ltd. Mekar Armada Jaya* is not contradicted expressly by the *Pte Ltd. Industri Kereta Api (Persero)* and also does not prove that a letter of support from *Pte Ltd. Mekar Armada Jaya* on a package of busway 5 articulated are original documents, not faked or not engineered.

When discovered the existence of commonalities and similarities IP address address log in and log out, if using the freshbidz bidding room, computer or Internet kiosk the same IP Addressnya certainly will be the same, but that needs to be checked is whether the conduct is the same person. For a big company is not possible do document auction revenue e-proc in internet cafes (CAFE), when there is only one provider of goods that can give a certain aspects so that needs to be studied is how do direct appointment of technical negotiations, if the vendors do not sell directly then conducted a competition among distributors. That is often the case in determining the price typically use reference prices from vendors, should have checked the references of previous users.

d. Regulatory elements and is the winner of the tender

Doing arrangements and conducting the tender winner is an act of the parties involved in the tender process in abetting that aims to get rid of other businessmen as its competitors and/or to win certain bidders in various ways. In the process of setting and or/tender determination made in the determination of criteria as the winner of the tender, persyaratan techniques in procurement tenders, finance, specifications upon procurement of goods or services, as well as the process of tenders and so on.

In the element as a regulator and as a winner of the tender Committee, procurement of goods and services in the field of or/construction work of Department of transportation province of DKI Jakarta declared inconsistent in applying the evaluation system where should be repeated at an auction all participants are evaluated to get the result and only Reported to facilitate III *Pte Ltd. INKA* won a package I single bus.

e. Elements of an unfair business competition.

Elements in these unfair business Competition is competition, where sesame businessmen in the exercise of the activities of manufacturing and or marketing of goods and/or services do dishonest attitude or conduct against the law or intentionally inhibit competition between other trade efforts. Unfair business competition in the procurement tender things a quo in the following form:

- 1) doing a dishonest attitude between sesame other businessmen, where participants and/or their agent coordinating each other or *bekerjsama* in order to facilitate one participant to win the tender by acting as an escort. That such action is very clear and reflects one of the actions that hamper business competition because it has led to the perpetrators of other businesses can't compete competitively owned its competitors;
- 2) Behavior against the law and/or behavior that inhibits competition between businesses that have done the appraisal that do not fit with the way disregarded the rules of procurement of goods and services. That such actions reflect an act of dishonest and behaved against the law which can eliminate the other party as well as the business rivalry could potentially result in losses in the State.

Elements breaking unfair business competition on the Tender Conspiracy case Trans Jakarta, where one of them is the price that approximates the *HPS*, it can not only with single indication only, but rather to look back indication another. The problem is sometimes the Committee involved so be biased, where if the *HPS* from the beginning conceived right then approach the *HPS* can be said to be normal-normal just yet so *HPS* has be scenario then the view of outsiders such as the Auditor then will see it as an indication of when then so asked not to show supporting data in drawing up the *HPS*. *LKPP* concerns, the organizers fear the Cancel. Together is if there are 2 (two) is any indication, the Committee can only cancel but should not do blacklist.

However, an affiliation that has been done by the bidders each *laiinya* this allows its reported doing between businessmen offer *rapprochement*, or categorized as facilitating practices. So, legally bidders in the procurement of goods or services is no longer possible to be independent. Things in such a way that may constitute an action that hinders business competition, because it has created artificial rivalries or a business competition that may lead to unfair business competition as well as by directly inhibiting the perpetrators of other businesses to be able to compete competitively.

Thus the ruling number: *15/KPPU-I/2014* yet effective because there are not evidences in Law Number 5 of 1999, in which *Pte Ltd. INKA* not proven unfair business competition in the procurement of goods/services. According to the theory of legal effectiveness Soerjono Soekanto where effective or whether a law is determined by 5 (five) factors i.e. as follows (Soerjono Soekanto, 2008:8):

- a. the ruling factor in itself;
- b. law enforcement Factors i.e. Parties that form or applying the law;

- c. Factors means or facilities that support law enforcement;
- d. Environmental Factors i.e. the communities, where the applicable law or applied in everyday life; and
- e. Cultural Factors as copyrighted works and taste that is based on human intention in the Association life.

From this theory, proved that KPPU has not been effectively decided the lawsuit verdict number: *15/KPPU-I/2014* in alleged violation of the tender conspiracy *Pte Ltd. INKA* because there are factors in shaping the law enforcement as well as implementing the law, in which law enforcement in *KPPU* does not meet the elements of Law Number 5 of year 1999, so not yet embody the sense of fairness as well as creating peace.

The effectiveness of the law in Indonesia should be able to implement consistently and without discriminating between other community. Anthony Allot argued about the effectiveness of the law that the law be effective if the purpose of existence and its application could be prevented over deeds is not desirable and effective laws in the laws If well designed can be realized, but if there is a failure then occurs a correction so it requires to implement or apply the law in a different new conditions on the law that will get it done (Salim HS dan Erlies SePte Ltdiana, 2013:302).

No effective law over the presence of law enforcement which forms or apply the law in a ruling number: *15/KPPU-I/2014* failure in applying and implementing the law on the alleged violation of the conspiracy tender *Pte Ltd. Industri Kereta Api (Pte Ltd. INKA)*, so need to make corrections to implement or apply the law in a different new conditions on the law that will menyelasaikt the procurement of goods and services related *Pte Ltd. Bus Transjakarta* fiscal of 2013.

2. Collusive Tender participants of the procurement of goods and services *Pte Ltd. Transjakarta*

Requirements of goods and or services is the most important part which cannot be separated by the conduct of the Government in the provision of goods or services. The availability of an item and or/service is part of the duties and responsibilities of the Government in conducting efforts to meet people's needs (public, private, legal entities, non legal entities, company, State-owned enterprises, etc.) that is the needs of the Government in administering the Government in the provision of goods or services. In the context of the making of the contract on a procurement of goods/services become routine behavior (Yohanes Sogar Simamora, 2013 : 1), either the Central Government or local governments.

Quality between goods or services providers is one important element which could not be separated in a system of procurement of goods or services. When a procurement of goods or services and not diikuinya between the quality of a good provider, it will pop up a lot of problems occur regarding Miss understandings between panita and providers of goods and or services that will be very cause some loss between both parties (Purwosusilo,2014: 357).

One of the special characters of the contract the Government procurement of goods/services are dependencies with aspects of financial management of the State. The effort of realizing a balance between rights and obligations on the parties directly involved contract ways, it must first be laid out and arranged through the underlying the rule of law. The position of the Government in the implementation of the goods or services Government procurement is in fact a manifestation of the exercise of the tasks of the Union in the folk life of prosper through the provision of various facilities needed by the people in run of his life, especially in meeting the basic necessities and a sense of security.

Balance between accomplishing the fulfillment of rights and obligations between the parties involved in a contract or procurement of goods and services, both in presidential Regulation number 16 of 2018 of government procurement of goods/services as well as in its application, with expected to awaken a system of procurement of goods/services quality. Conversely the absence of balance of the fulfillment of these rights and obligations are feared would open the chance of onset of misappropriation or cheating which in turn is hard to realize hairdressing good governance (Purwosusilo,2014: 11).

Goods or services procurement activities of the Government in Indonesia set up in presidential Regulation number 16 Of 2018, in the regulation mentioned that the procurement of goods or services apply the principle as follows:

- a. Efficiently;
- b. Effective;
- c. transparent;
- d. open;
- e. Compete;
- f. Fair; and
- g. Accountable.

With the principles of the procurement of goods/services that are described in the regulation of the President Number 16 ofs 2018, Procurement Committee as well as officials of the makers of Commitment in issuing a decision, the tender procedure for the procurement of goods/services, General provisions in the procurement of goods/services, as well as other actions must be based on the

principle. In addition, in the presence of the problems of the implementation of the goods/services of the Government in accordance with the laws and regulations of the President who set it up also required the presence of prudence and objectivity in the assessment against the bidders in the alleged the offence of conspiracy tender *Pte Ltd. Industri Kereta Api (Pte Ltd.INKA)*.

The tender conspiracy trans Jakarta over alleged facilitate *Pte Ltd. Industri Kereta Api (Persero)* in the Tender Package I Single Busway buses, based on the provisions of letter H anniversary of Procurement documents concerning Auctions Failed were in accordance with the provisions of article 51 paragraph (2) Presidential Regulation number 16 Of 2018 on the procurement of goods and services that Government tenders/selection fails in terms of:

- a. There is an error in the evaluation process;
- b. There are no participants who delivered the document deals after granting an extension of time;
- c. There are no participants who pass the evaluation of deals;
- d. found an error in the selection or Document does not comply with the provisions of this regulation of the President;
- e. all participants involved corruption, collusion, and Nepotism (*KKN*);
- f. all participants involved unfair business competition;
- g. the entire quotation Tender goods/construction works/services Other *HPS* over;
- h. fee negotiation on the selection not reached;

Involvement in corruption, collusion, and neptosisme in the procurement of goods/services that result in failure in the auction tender aims for restricting competition in the procurement of goods/services potentially trying in the market concerned with how to determine the winner of the tender. Article 7 presidential Regulation number 16 of 2018 on the procurement of goods and services mentions the existence of ethics in procurement of goods/services where all parties involved in the procurement of goods/services adhere to ethics to avoid and prevent abuse of authority and/or colluding in tenders.

That what was done by the Committee against the evaluation Pack 1 single bus after the second anniversary of the auction is conducted in accordance with the provisions of article 51 paragraph (2) Presidential Regulation number 16 Of 2018 of Government procurement of goods and services. The *Pte Ltd. INKA* holds if this provision is not enforced by the Tender Committee tender for another, then it is the authority of the Tender Committee and has absolutely nothing to do with *Pte Ltd. INKA*. Then, *Pte Ltd. INKA* has no cooperation between businessmen which involve *Pte Ltd. Industri Kereta Api (Persero)* and

the Tender Committee had not properly facilitate *Pte Ltd. Industri Kereta Api (Persero)* to win the tender I Single Busway buses.

Presidential Regulation number 16 Of 2018 there is no ban on one service provider, in cooperation with several companies in different packages. The ban is the occurrence of collusion based on other rules, KSO (the operating Partnership) are allowed as long as not breaking a healthy business competition. In making procurement documents should refer to the regulations of the President Number 16 of 2018, so the party should follow the auction documents, IKP (instructions to participants) is mandatory by the bidder. Auctions can be said to fail if the prequalification stage in graduating less than three, after an auction process enters the bidding documents of less than three (3) unless the limited auction. The process of clarification is valid for prequalification phase carried out prior to the determination of the qualified, pascakualifikasi after three (3) stages of evaluation was completed (administrative, technical, price), before it was designated as the winner.

At the time of the auction reset should not be necessary in 3 (three) winners, one or two still continued, if one of the winners of the reserve of 1 (one) as well as the winner of the replacement of a number of 2 (two) was absent without notice but have received the invitation letter as well as the sufficient time and concerned is not present then it can indicated intentionally absent. Presidential Regulation number 16 Of 2018 does not control and do not provide limitations regarding time but if necessary provide evidence deed then given time of one week. With e-procurement in the proc baran/service provide information more open but a very short time will give rise to collusion between providers and users of services. To date the system e-proc is still passive. If there is not an affiliate of affiliates that are eliminated but a conspiracy happening that should be eliminated.

Based on presidential Regulation number 16 Of 2018, the PA is set the task of PPK and Procurement Officials, so that the authority of the head of Department in setting the parties will be designated and its designees the undertakings with not working There is mutual interventions. In determining and selecting the tender Committee basically the people judged to meet the criteria i.e. having a certification of procurement from LKPP and been deemed worthy of the already certified so that need not be another consideration.

Tender Single Bus package I restarted, the Enter Document Deals is *Pte Ltd. Industri Kereta Api (Persero)* and *Pte Ltd. Mayapada Auto Perfect* in casu. The *Pte Ltd. Industri Kereta Api (Persero)* is not on the reasons of *Pte Ltd. Mayapada Auto Sempurna* so expressed is not passed in the phase of evaluation administration, technical requirements and prices, so that in the end it appears

the *Pte Ltd. Industri Kereta Api (Persero)* as the winner of the tender Package I repeated Single Bus. Furthermore, the Committee's tender process conducted by Mayapada Auto Sempurna were in accordance with presidential Regulation number 16 of 2018. With regards to the *Pte Ltd. Industri Kereta Api (Persero)* is not proven Industrial Horizontal Conspiracy between *Pte Ltd. Industri Kereta Api (Persero)* and *Pte Ltd. Mayapada Auto Sempurna* to win the railway Industry *Pte Ltd. (Persero)* in a Single Bus tender Package I reset, nor the alleged Horizontal and vertical Perserkongkolan between the *Pte Ltd. Industri Kereta Api (Persero)* and *Pte Ltd. Mayapada Auto Sempurna* to win the *Pte Ltd. Industri Kereta Api (Persero)* in the tender Package I repeated Single Bus.

In the elements and settings do or did the winner of the tender, the Investigator cannot make a determination of how the *Pte Ltd. Industri Kereta Api (Persero)* to set and determine the winner of the tender. *Pte Ltd. Industri Kereta Api (Persero)* to ever win the tender for Articulated buses, Articulated Buses and proven *Pte Ltd. INKA* on tender of the of 2012 is currently not experiencing damage means. It thus shows that *Pte Ltd. Industri Kereta Api (Persero)* though the bus manufacturers in the country, but always give priority to quality. Department of transportation DKI Jakarta as the *PPK*, in this case it should be able to do direct designation based on repeat orders and presidential Regulation number 16 of 2018 are set about *TKDN* in an effort to support domestic products, but the effort they are not done by the Department of transportation DKI Jakarta..

Thus, *Pte Ltd. INKA* in the subject matter of case verdict number: 15/ *KPPU-I/2014* not proven auction manipulation or collusion in the tender, because the *Pte Ltd. INKA* don't do conspiracies in the tender process, in which *Pte Ltd. INKA* is not tahu-menahu on the reasons of *Pte Ltd. Mayapada Auto Sempurna* over his actions in the package I repeated Single Bus so expressed is not passed in the stage of evaluation of the administrative, technical and price requirements and ultimately emerged *Pte Ltd. Industri Kereta Api (Persero)* as the winner of the tender Package Single Bus reset and There are no evidences regarding of the existence of the arrangement in determining the winner of the tender because the investigator cannot make a determination of how the *Pte Ltd. Industri Kereta Api (Persero)* to set the and determine the winner of the tender.

E. CLOSING

- 1) On elements in 5 Law Number 5 of 1995 stating that the sanction on the Law of monopoly and competition of unfair businesses can not show anyone others who benefited by *Pte Ltd. INKA* and profitable *Pte Ltd. INKA*. The facts or the evidence until the end of the proceedings of the Assembly Commission, there has never been an effort that leads to winning bidders. Propositions submitted by

the Investigator is just a mere assumption, without anyone supported by the evidence is true and can be accountable before the law. In the element Set and or determine the winner of the Tender, the Investigator cannot determine how to *Pte Ltd*. INKA to set and determine the winner of the tender. When discovered the existence of commonalities and similarities IP address address log in and log out, if using the freshbidz bidding room, computer or Internet kiosk the same IP Addressnya certainly will be the same, but that needs to be checked is whether the conduct is the same person. For a big company is not possible do document auction revenue e-proc in internet cafes, when there is only one provider of goods that can give a certain aspects so that needs to be studied is how do direct appointment of technical negotiations.

- 2) Collusive tenders aimed to limit the other competitors in the procurement of goods/services potentially trying in a market concerned with how to determine the winner of the tender. The conspiracy took place in stages in the tender process there are participants of the procurement of goods/service planning and creation of the terms of the tender, tender, odokumen adjustments until the announcement of the tender. Thus, *Pte Ltd*. INKA in the subject matter of case verdict number:

15/KPPU-I/2014 is not proven auction manipulation or collusion in the tender, because the *Pte Ltd*. INKA don't do conspiracies in the tender process, in which *Pte Ltd*. INKA is not tahu-menahu on the reasons of *Pte Ltd*. Mayapada Auto Sempurna over his actions in the package I repeated Single Bus so expressed is not passed in the stage of evaluation of the administrative, technical and price requirements and ultimately emerged *Pte Ltd*. Industri Kereta Api (Persero) as the winner of the tender Package Single Bus reset and There are no evidences regarding of the existence of the arrangement in determining the winner of the tender because the investigator cannot make a determination of how the *Pte Ltd*. Industri Kereta Api (Persero) to set the and determine the winner of the tender.

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