



Analysis of Constitutional Court Decision Number 85/PUU-XIV/2016 Regarding Tender Rigging Practices

Adliakbar¹, Muhammad Ramadhan²

^{1,2} Fakultas Syariah dan Hukum, Universitas Islam Negeri Sumatera Utara, Indonesia

Abstract: In essence, tender rigging is one form of conspiracy prohibited by Law Number 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition and is also the case most often processed by the KPPU. However, both theoretically and practically, it raises problems, namely because of the biased interpretation of the phrase "other party" in Article 22 of Law Number 5/1999. This is the background to the judicial review of Article 22 to the Constitutional Court. In this paper, what is discussed is how tender rigging is regulated according to laws and regulations, what are the legal implications of the Constitutional Court Decision Number 85/PUU-XIV/2016 concerning the judicial review of Article 22 of Law Number 5/1999 and how the legal analysis of the legal considerations of the Constitutional Court Decision. This study uses normative legal research where the object of this research is laws and regulations and the Constitutional Court Decision. In this case, the Author concludes, namely, First, tender collusion which is a form of cooperation between two or more parties to control the relevant market and/or win tender participants resulting in unfair business competition is explicitly regulated in Article 1 number 8 and Article 22 of Law Number 5/1999 and KPPU Regulation Number 2/2010, Second, the legal implications of the Constitutional Court Decision Number 85/PUU-XIV/2016 are useful for ensuring legal certainty and justice for parties such as entrepreneurs, especially the community. For this reason, there needs to be harmonization between one regulation and another, testing of the Law against the Constitution related to the regulation of tender collusion in unfair business competition or revision of Law Number 5/1999.

Keywords: Judgment, Tender Rigging, Constitutional Review

1. Introduction

In the era of globalization, the development of technology and knowledge has led business actors to improve their standard of living, resulting in the emergence of unhealthy competitive practices. (Wijaya, 2020), (Soegoto, 2013). One of the actions in unfair business competition that occurs is the existence of entrepreneurs who are close to or have connections with the power elite who have excessive facilities which have an impact on social inequality. (FRENLY ANCIENT, 2024), (KAPINDO, nd). Unhealthy business competition practices lead to social unwellfare, especially in economic development. It is absolutely necessary for every country to carry out economic development aimed at improving and advancing the standard of living, welfare, and prosperity of every society. (Pearl, 2023), (Priono, 2024).

Collusion in tenders is a form of cooperation carried out by several parties or tender participants to win over competitors in the form of the lowest bid. (Widyastuti, 2023), (Rangkuti, 2022). An agreement made by one or more participants who agree that one of the participants will be the winner in a tender by making an offer at a price higher than the price of the company that has been manipulated. (Kahfi & Suhartana, 2023), (Hapsari, Prananingtyas, & Aminah, 2020). This form of agreement is contrary to the competitive tender process in business competition, because tenders are generally made to

Correspondence:

Name: Adliakbar

Email: adliakbarr09@gmail.com

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create fairness for other tender participants and ensure the creation of the lowest and most efficient price. (Yuningsih et al., 2022), (Panggraita, 2019).

Collusion in tenders will also result in the emergence of fair business competition and also unfair business competition, so that Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition was formed (hereinafter referred to as Law No. 5/1999) (Wulan, Masruroh, & Rusydi, 2019), (Amin, 2024). The Anti-Monopoly Law has regulated that business actors are prohibited from colluding with other parties to arrange and/or determine the winner of a tender so that it can result in unfair business competition. This law also regulates the establishment of an Independent Commission to oversee the implementation of Law No. 5/1999 called the Business Competition Supervisory Commission (KPPU). The Business Competition Supervisory Commission is an independent institution that is free from the influence and power of the government and other parties and is responsible to the President (Rombot, 2020), (Tamir, Kurniawan, & Saleh, 2022).

Basically, the Constitutional Court Decision No. 85/PUU-XIV/2016 is a conditionally unconstitutional decision/conditionally unconstitutional, namely that the provisions of Article 22 are in conflict with the 1945 Constitution, so in other words, other parties, including parties related to other business actors. (Anindyajati, 2018). With the Constitutional Court Decision No. 85/PUU-XIV/2016, it not only provides legal certainty but also justice for stakeholders including business actors and the government and especially for the welfare of the community as the final consumer who is the target/objective of the formation of Law No. 5/1999. The role of the Constitutional Court as the final interpreter of the constitution and also the protector of the constitutional rights of citizens (the protector of the citizen's constitutional rights) provides a change in the interpretation of the phrase "other parties" is one of the Court's efforts to protect the constitutional rights of its citizens in business competition as stated in the constitution (Hamzah & Yusuf, 2023), (Hamzah & Yusuf, 2023). Therefore, because it refers to the role of the Constitutional Court as a form of protector of the constitutional rights of citizens, implications can be made regarding the Constitutional Court's decision regarding tender collusion, which is a violation of the law stated in Article 22 of Law Number 5/1999, so we also want to see how the Constitutional Court's decision Number 85/PUU-XIV/2016 relates to violations in unfair trade. This is the background for the Author to research the analysis of the Analysis of the Constitutional Court's Decision Number 85/PUU-XIV/2016 concerning Tender Collusion The Constitutional Court's Decision Number 85/PUU-XIV/2016 which reinterprets the phrase "other parties" in Article 22 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition can be studied from the perspective of fiqh siyasah, especially in the realm of siyasah dusturiyah (Islamic state politics) (Anindyajati, 2018). In the fiqh of siyasah, the state and institutions of power have a great responsibility to realize justice, protect the rights of the people, and ensure the maintenance of public welfare (masalah 'ammah). This Constitutional Court decision shows the role of the Court as a protector of the constitutional rights of citizens as well as a guardian of the implementation of a fair economic system, similar to the function of Qadhi Hisbah in the Islamic government

system, namely a supervisory institution tasked with preventing fraud in muamalah activities. (Rineldi, nd), (Rusyda, 2021). In this context, the Court acts in accordance with the principles of trust and justice that are the basis of *fiqh siyasah*, by ensuring that applicable laws are not misused to harm the public, especially in the case of tender collusion that violates the principles of transparency and accountability. Thus, the Constitutional Court's decision not only has positive legal force in the Indonesian constitutional system, but is also in line with the principles of *fiqh siyasah* which emphasize the importance of justice, public protection, and trustworthy governance of power. (Bakry, Apriyanto, & Mangaluk, 2025), (Barkah, 2024).

The Constitutional Court's decision Number 85/PUU-XIV/2016 can also be viewed as a form of contemporary *ijtihad* in a modern legal system that is in line with Islamic sharia values, where legal interpretation is carried out to adjust to social realities and the needs of social justice. In *fiqh siyasah*, this is known as the concept of *tasharruf al-imam 'ala ra'iyat manuthun bi al-maslahah*, namely that all policies and decisions of the ruler (in this case the judiciary) must be based on considerations of the public interest. The Constitutional Court, through this decision, has shown its support for the principle of substantive justice by rejecting all forms of collusion in tenders that are detrimental to the public interest. This reflects that from the perspective of *fiqh siyasah*, the function of the state is not only to maintain security and order, but also to ensure the creation of economic justice and protection of society from unethical and detrimental practices. Therefore, analysis of this decision is important in understanding how the principles of *siyasah syar'iyah* can be implemented in the national legal system in order to guarantee the welfare of the people and uphold the true values of justice..

2. Materials and Methods

This type of research uses normative and empirical legal research methods, which are basically a combination of normative legal approaches with the addition of various empirical elements. Normative legal research methods are commonly referred to as doctrinal legal research or library research. It is called doctrinal legal research because this research is only aimed at written regulations so that this research is very closely related to the library because it will require secondary data in the library, as well as studying norms in legislation. While empirical legal research is a legal research method that functions to see the law in a real sense and examine how the law works in the community. Because this research examines people in living relationships in society, the empirical legal research method can be said to be sociological legal research.

Secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials, Primary legal materials are all legal rules made officially by a state institution or government institution which in its enforcement efforts are based on coercive power which is also carried out officially by state officials. This primary legal material is also one of the legal materials. Secondary legal materials are legal materials that explain primary legal materials in the form of books, official documents, legal dictionaries, legal journals or opinions of legal experts that are related to the problem of this research. These secondary legal materials are legal materials that are very useful for

improving the quality of positive law in force. Tertiary legal materials, namely materials that provide instructions or explanations for primary legal materials and secondary legal materials; consist of legal dictionaries, the great dictionary of the Indonesian language, and so on.

3. Results and Discussion

3.1 Tender Collusion Regulations According to Statutory Regulations

Unfair trading practices can be prosecuted criminally based on the provisions of Article 382 bis of the Criminal Code. Likewise, competitors who are harmed by unfair trading practices can sue civilly based on Article 1365 of the Civil Code.⁶ Legally, the validity of Law Number 5/1999 is as a special law, so that according to the principle of *lex specialis derogat legi generalis*, as long as it has been regulated separately in Law Number 5/1999, the general provisions in the Civil Code and other laws related to competition law and civil procedural law are not applicable.

The regulation of business competition law in Indonesia is contained in the following regulations: (a) Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition; (b) Presidential Decree Number 75/1999 concerning the Business Competition Supervisory Commission (b) KPPU Regulation Number 2 of 2010 concerning Guidelines for Article 22 of Law Number 5/1999 concerning the Prohibition of Collusion in Tenders; (d) Decree of the Chairman of KPPU Number 05/KPPU/IX/2000 concerning Procedures for Submitting Reports and Handling Alleged Violations of Law Number 5/1999; (e) Regulation of the Supreme Court of the Republic of Indonesia Number 01 of 2003 as amended and replaced by Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2005 concerning Procedures for Submitting Legal Appeals to Objections to KPPU Decisions.

Referring to Article 22 of Law Number 5/1999, the definition of tender collusion is cooperation between two or more parties in order to win a particular tender participant. Therefore, collusion in tenders can be done openly or secretly through adjustment actions, offers before being entered, or creating pseudo-competition, or agreeing and/or facilitating, or providing exclusive opportunities, or not refusing to take action even though knowing that the action is carried out to arrange in order to win a particular tender participant. Basically, the norm prohibiting collusion in tenders is a behavior that is rule of reason, namely unhealthy, dishonest, unlawful or inhibiting competition business activities. To be able to find out whether a tender is carried out in collusion can be found out through the tender procurement process itself.

Then the elements of tender collusion based on Article 22 of Law Number 5/1999, can be described as follows: (a) The existence of two or more business actors or business actors with other parties; Collusion is not only carried out between business actors (fellow tender participants) or also called horizontal collusion but can also be carried out between business actors and other parties such as the procurement committee (vertical collusion) and can occur between two or more business actors with other parties (horizontal and vertical collusion). (b) There is cooperation (collusion) in arranging and/or determining certain tender participants as tender winners. (c) Tender collusion is

intended to control the market; (d) The tender collusion results in unfair business competition

Meanwhile, according to KPPU Regulation Number 2/2010, the definition of collusion is cooperation carried out by business actors with other parties on anyone's initiative and by any means in an effort to win certain tender participants. Elements of collusion, namely: (a) Cooperation between two or more parties; (b) Openly or secretly carrying out actions to adjust documents with other participants; (c) Comparing tender documents before submission; (d) Creating pseudo-competition; (e) Approving and/or facilitating collusion (f) Not refusing to carry out certain actions even though they should know that the actions are carried out to arrange the victory of certain tender participants; (g) Providing exclusive opportunities by tender organizers or related parties either directly or indirectly to tender participants in an unlawful manner.

From the explanations above, it can be seen how the regulation of tender collusion in laws and regulations, especially Law Number 5/1999 and KPPU Regulation Number 2/2010 is quite complicated and broad. Considering that the definition given by Law Number 5/1999 concerning tender collusion is still normative and general, for that reason KPPU issued KPPU Regulation Number 2/2010 concerning guidelines for Article 22 of Law Number 5/1999 concerning the Prohibition of Collusion in tenders. In this case, the author agrees with the KPPU regulation which provides more stringent and detailed rules/guidelines regarding tender collusion, such as the concept and definition of collusion in tenders, types of collusion, losses due to the collusion, and things that need to be considered in analyzing whether or not there is collusion in tenders. Meanwhile, the correct definition of tender collusion refers to Article 22 of Law No. 5/1999 itself, namely, conspiracy between business actors and other parties (not only business actors) to arrange and/or determine the winner of a tender so as to inhibit unfair business competition.

3.2 Legal Implications of Constitutional Court Decision No. 85/PUU-XIV/2016 Concerning the Testing of Article 22 of Law No. 5/1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition

In essence, the Constitutional Court Decision No. 85/PUU-XIV/2016 is a conditionally unconstitutional decision, namely that the provisions of Article 22 are contrary to the 1945 Constitution as long as they are not interpreted other than "and/or parties related to other business actors" so that in other words other parties also include parties related to other business actors. Tender collusion is a cooperative behavior carried out between business actors and/or with related parties that results in unfair competition that is detrimental not only to the parties involved such as tender participants who have good intentions, but also to the community as end consumers who use the goods and/or services. Viewed from the perspective of consumers or employers, tender collusion can be detrimental in the following forms: (a) Consumers or employers pay a higher price than they actually do; (b) The goods or services obtained (both in terms of quality, quantity, time and value) are often lower than what would be obtained if the tender were conducted honestly; (c) There are market barriers for potential participants who do not

get the opportunity to participate in and win the tender; (e) The project value (for tenders for procurement of services) becomes higher due to mark-ups carried out by the colluding parties. If this is done in a government project that is financed through the APBN, then the collusion has the potential to create a high cost economy. There is a possibility of sharing opportunities or work areas if there is an arrangement between or for tender participants.

With the Constitutional Court Decision No.85/PUU-XIV/2016, it not only provides legal certainty but also justice for stakeholders including business actors and the government and especially for the welfare of the community as the final consumer who is the target/objective of the formation of Law No.5/1999. The role of the Constitutional Court as the final interpreter of the constitution and also the protector of the constitutional rights of citizens (the protector of the citizen's constitutional rights) provides a change in the interpretation of the phrase "other parties" is one of the Court's efforts to protect the constitutional rights of its citizens in business competition as stated in the constitution.

Towards the Community The community rights regulated by the constitution such as the right to live in physical and spiritual prosperity [Article 28H paragraph (1)], the right to receive facilities and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice [Article 28H paragraph (2)], and the right to recognition, guarantee, protection and certainty of fair law and equal treatment before the law [Article 28D paragraph (1)] are the constitutional rights of the community that need to be protected. The existence of tender collusion causes the constitutional rights of the community to be indirectly violated, especially since the community is also a taxpayer where most tender collusion is collusion involving government agencies and the source of funds comes from the APBN.

Against Business Actors Citing the opinion of Muhammad Sadi Is who divided into 3 (three) possibilities for implementing the KPPU decision by business actors, where one of them is that business actors do not file an objection or do not implement the KPPU.¹⁸ This is usually caused by business actors' dissatisfaction with the KPPU Decision, such as PT Bandung Raya Indah Lestari, which considers that the KPPU Decision has expanded the phrase "other party" so that the KPPU decision is considered not to provide justice and legal certainty. Therefore, with this Constitutional Court Decision, it is hoped that business actors can accept and implement the KPPU decision, especially regarding the phrase "other party" because in addition to providing justice and legal certainty, as stated in the Court's legal considerations, the KPPU must apply the principle of caution and use strong evidence in determining who is meant by a party related to another business actor.

Regarding KPPU, KPPU as one of the elements of competition law enforcement contributes significantly to ensuring the implementation of healthy competition, this is important considering that public welfare is the goal of enforcing healthy competition law itself. Constitutional Court Decision No. 85/PUU-XIV/2016 further emphasizes the position of KPPU in enforcing competition law, especially tender collusion. Although KPPU has made more detailed and technical rules in KPPU regulations, this

Constitutional Court Decision, which in terms of the hierarchy of the order of legislation has a higher position than KPPU Regulations, makes KPPU's position as one of the elements of law enforcement in tender collusion increasingly clear and firm. As stated by Sukarmi, one of KPPU's Commissioners.

Towards the Government, One of the roles of the state in economic activities is through state administrative actions in a legal manner such as regulating the procurement of goods and/or services related to the livelihoods of many people and aimed at the greatest prosperity of the people. Meanwhile, the state must create business competition regulations to achieve the goals of economic democracy as stipulated in Article 33 of the 1945 Constitution. This causes the state cq the Government to need to guarantee the existence of justice and public welfare in the national economy considering that tender collusion has a negative impact on the economy.

3.3 Analysis of Constitutional Court Decision No. 85/PUU-XIV/2016

The application filed by PT Bandung Raya Indah Lestari as the Applicant is based on the KPPU Decision Number 12/KPPU-L/2015 which states that the Applicant has been legally and convincingly proven to have violated Article 22 of Law Number 5/1999 and states that the procurement of a business entity through a public auction in the context of developing environmentally friendly technology-based waste processing infrastructure through a mechanism of cooperation between the government and business entities in the city of Bandung is null and void. KPPU Case Number 12/KPPU-L/2015 is a case regarding alleged violations of Article 22 of Law No. 5/1999 concerning the procurement of a business entity through a public auction in the context of developing environmentally friendly technology-based waste processing infrastructure through a mechanism of cooperation between the Regional Government and business entities.

The Applicant believes that the KPPU Decision has expanded the meaning of "other parties" in Article 22 of Law No. 5 of 1999 to include not only "other business actors" as defined by collusion or business conspiracy regulated in Article 1 number 8 of Law No. 5 of 1999 which states that "collusion or business conspiracy is a form of cooperation carried out by business actors with other business actors with the intention of controlling the relevant market for the benefit of the colluding business actors" but also includes parties other than business actors such as the Government in casu the Business Entity Procurement Committee (Reported Party I), Former Mayor of Bandung Dada Rosyada (Reported Party II) and the Regional Cleaning Company (Reported Party IV). In fact, if the KPPU had been consistent in interpreting the phrase "Other parties" in accordance with the definition regulated in Article 1 number 8 of Law No. 5 of 1999, then the KPPU Decision would certainly not have read like that.

Regarding the application, after going through a trial, the Court then in decision Number 85/PUU-XIV/2016 considered the following:

That regarding the first constitutionality issue, namely regarding the phrase "other parties" in Article 22, Article 23, and Article 24 of Law 5/1999 which is interpreted other than "other business actors" by the KPPU, according to the Court, that although the limitation of meaning or definition contained in the general provisions of Article 1

number 8 of Law 5/1999 must be interpreted imperatively and be followed and implemented in other articles that are technical operational in nature so that there is no multiple interpretations and there is legal certainty, it is important for the Court to consider that the limitation of parties involved in the conspiracy as described above, namely only limited to fellow business actors, turns out to be unable to overcome the mode of various collusive practices that are increasingly diverse, considering the increasingly rapid business competition and various technological advances, such as in tender collusion, where cooperation to regulate tenders can occur from the planning stage, preparation of DIPA, formation of committees, and requirement documents, HPS prequalification, at the time of tender opening, even at the final stage, namely evaluation of implementation, so that the imperative limitation as referred to in Article 1 number 8 of Law 5/1999 is no longer sufficient to balance and answer the need to eradicate the collusion in question in order to create healthy business competition, as is the case with the methods used in other collusions.

That the Court is of the opinion that in order for the meaning of conspiracy as intended in Article 1 number 8 of Law 5/1999 to be able to answer and balance the complexity of the existing conspiracy mode, it must be expanded not only between business actors in the conventional sense but also "parties related to business actors". According to the Court, such an interpretation does not only make the phrase "other party" as regulated in Article 22, Article 23, and Article 24 of Law 5/1999 which has existed in practice so far and can reach anyone and without limits, but it is expected to be limited, namely to parties who are related to business actors. Therefore, the KPPU must have sufficient evidence to prove the involvement of a third party in determining its relationship with business actors. Thus, the KPPU is required to be careful in determining the relationship of the third party with business actors. Thus, as long as the KPPU does not have sufficient evidence regarding the relationship of the third party with other business actors, it cannot be interpreted as a form of conspiracy. Therefore, the interpretation of Article 22, Article 23, and Article 24 of Law 5/1999 concerning the phrase "other parties" must be in line with the spirit contained in Article 1 number 8 of Law 5/1999 as the Court has emphasized above, namely "parties related to business actors".

That the next question that must be answered is whether the KPPU has the authority to interpret the phrase "other parties" in Article 22, Article 23, and Article 24 of Law 5/1999 as other than "other business actors" as has been considered in paragraph [3.14.3] above. Article 35 letter f of Law 5/1999 states that one of the duties of the KPPU is to prepare guidelines and/or publications related to Law 5/1999. Furthermore, Article 38 paragraph (4) of Law 5/1999 states that the procedures for submitting reports as referred to in paragraph (1) and paragraph (2) are further regulated by the Commission. That in relation to this matter, Law 5/1999 does not explicitly delegate regulatory authority to the KPPU. Article 35 letter f of Law 5/1999 only allows the KPPU to prepare work guidelines or "manuals" which, although their contents may be regulatory in nature, are only limited to being guidelines. However, in assessing the work guidelines or "manual" issued by the KPPU to make an interpretation of the meaning of other business actors

becoming other parties as regulated in Article 22, Article 23, and Article 24 of Law 5/1999, the Court must limit itself to not going too far in assessing this, considering that it is not the Court's authority to assess the legality of a regulation that is under the Law. Therefore, related to the KPPU's interpretation of the phrase "other business actors" becoming "other parties" which is based on the authority in Article 35 letter f and Article 38 paragraph (4) of Law 5/1999 is the domain of another institution in this case the Supreme Court to test it. However, it is important to emphasize that the KPPU in compiling the guidelines in question must consider and must not conflict with the Court's interpretation of the meaning of "other parties" in Article 22, Article 23, and Article 24 of Law 5/1999.

The Applicant's argument that the phrase "other parties" in Article 22, Article 23, and Article 24 of Law 5/1999 which is not in line with the provisions as referred to in Article 1 number 8 of Law 5/1999 which has been considered in the point above can give rise to legal uncertainty and is in conflict with Article 28D paragraph (1) of the 1945 Constitution is legally justified in part, considering that the Court did not grant as requested by the Applicant, however the Court is of the opinion that the phrase "other parties" in Article 22, Article 23, and Article 24 of Law 5/1999 must be interpreted as "related to other business actors".

If we look at the Court's considerations above, it can be seen that the Court has considered various aspects regarding the implementation of the law. This can be seen if the Court also uses the KPPU's statement to determine the constitutionality of the article or to clarify/emphasize the phrase "other parties" in Article 22, Article 23 and Article 24 in Law No. 5/1999. It can also be seen that although the objects of Article 22, Article 23 and Article 24 are different, to clarify/emphasize the phrase "other parties" the Court considers the three articles simultaneously to prevent differences in meaning in Law No. 5/1999.

In the verdict, it can be concluded that there has been a change or affirmation of the meaning of the phrase "other parties" so that what is meant by "other parties" are other business actors and/or parties related to other business actors to regulate and/or determine the tender winner so that it can result in unfair business competition. Thus, tender collusion does not only consist of one actor with another actor, but also includes other business actors and/or parties related to other business actors. It is possible that government agency officials are also included as related parties. Usually, the procurement of goods and/or services carried out by the government, both central and regional, through a tender process triggers quite high competition considering that the funds provided come from the APBN and/or APBD funds so that many business actors compete to get projects from the government with various corruption and collusion.

3.4 Analysis of Fiqh Siyarah in the Decision of the Constitutional Court No. 85/PUU-XIV/2016

Tender collusion is considered to be in conflict with Law No. 5/1999 when there is bad faith cooperation between certain business actors to agree to manipulate the bid price in the procurement of goods and/or services which results in unfair business

competition. In addition, the object of the case is Article 22, Article 23, Article 24, Article 36 letters c, d, h, i and Article 41, all of the norms of these articles are considered for their constitutionality together. Allah says in the Qur'an Surah Al-Jatsiyah verse 13.

يَبْفَكْرُونَ ٱلْأَرْضِ فِي وَمَا السَّمَوَاتِ فِي مَا لَكُمْ وَسَخَّرَ

Meaning: "And He has subjected to you everything in the heavens and everything on earth, (as a mercy) from Him. Indeed, in that there are indeed signs of Allah's verses for a people who think."

With the development of the era, all forms of transactions in muamalah have also developed, tender practices are one example of the development of transactions in muamalah. Tender is contracting out work or ordering another party to do or contract out all or part of the work in accordance with the agreement or contract made by both parties before the work is carried out. Imam As-Syatibi said that the purpose of Islamic law lies.

Fiqh siyasah itself is a branch of fiqh related to the rules and laws that govern the actions of rulers and governments in managing public affairs. The existence of the establishment of a court institution is in the field of Fiqh Siyasah Al Qadhaiyah, which has developed through the cases faced, namely the Al hisbah area, the Al Qadha area and the Al Mazhalim area, the al hisbah area focuses on problems in implementing amar ma'ruf nahi munkar. Furthermore, the Al Qadha area focuses on civil and criminal areas that occur between communities for the al mazhalim area to focus more on handling oppressive rulers against the rights of their people. The view put forward by Al Mawardi in the Book of Al-Ahkam As-Sulthaniyah, Abu Ya'la Al-Fara' explains the specific authority of the al-mazhalim regional court, namely: (a) Examination of the problem of acts of oppression by state rulers against their people; (b) Examination of the problem of fraud in the collection of state assets carried out by state employees on duty; (c) Examination of employee wages that are corrupted or will be paid late, (d) Examination of problems regarding the public interest that have not been resolved by hisbah officers. (e) Supervision of waqf; (f) Supervision of all state administration employees, to avoid negligence in carrying out their duties; (g) Supervision of real worship (zhahir); (h) Returning confiscated goods (ghasab); (i) Following up on legal decisions of judges that have not been resolved due to their weakness in the parties that have been given legal sanctions; (j) Resolving problems that are disputed between the disputing parties.

4. Conclusions

The concept of tender collusion according to statutory regulations is regulated in the provisions of Article 1 number 8 and Article 22 of Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition which is more detailed in its derivative regulations, through KPPU Regulation No. 2 of 2010 concerning Guidelines for Article 22 of Law No. 5/1999 concerning the Prohibition of Collusion in Tenders. Both Law No. 5/1999 and KPPU Regulation No. 2/2010 define tender collusion as a form of cooperation between two or more parties to control the relevant market or win tender participants which results in unfair business competition. Then, the legal implications of the Constitutional Court Decision No. 85/PUU-XIV/2016 are useful not only to guarantee legal certainty and justice for business actors, especially the community, but also for law

enforcers of business competition itself, especially the KPPU in carrying out its duties and authorities. This Constitutional Court decision further clarifies and reinforces the position of the KPPU in enforcing and supervising tender rigging.

As a suggestion, there needs to be harmonization and synchronization between one law and another, especially after the Constitutional Court Decision No. 85/PUU-XIV/2016 so that there is no overlap between one regulation and another. If there are articles in Law No. 5/1999 that are considered insufficient to accommodate the interests of stakeholders protected by the constitution in maintaining a healthy business competition climate when carrying out their business activities, then a judicial review of the law against the Constitution can be carried out at the Constitutional Court. Then, if in the end there are many articles that are tested causing the provisions of Law No. 5/1999 to undergo several changes, it is suggested to the Government and the DPR as the legislators to revise Law No. 5/1999 through the Prolegnas.

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