



**JURIDICAL ANALYSIS OF LAW ENFORCEMENT  
OF LAW NO. 5 OF 1999 IN TENDER WINNER  
RIGGING AS AN UNFAIR COMPETITION  
PRACTICE (15/KPPU-L/2023)**

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Article	Abstract
<p><b>Keywords:</b> <i>Tender Rigging; Unfair Competition; KPPU; Legal Consequences; Public Procurement; Competition Law</i></p> <p><b>Article History</b> Received: June 19, 2025; Reviewed: June 20, 2025; Accepted: June 25, 2025; Published: June 30, 2025</p>	<p>Tender rigging, as prohibited under Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, remains a significant issue in Indonesia. Decision No. 15/KPPU-L/2023 highlights forms of tender conspiracy, including price fixing, bid rotation, and market allocation, which undermine fair competition in public procurement. These practices violate competition law and disrupt the transparency and efficiency of procurement processes. Despite sanctions imposed by the Business Competition Supervisory Commission (KPPU), challenges in enforcing the decision and preventing future violations persist. The legal consequences outlined in the decision are analyzed to determine their alignment with the objectives of competition law in fostering a competitive and fair market environment. Strengthening enforcement mechanisms, increasing transparency, and deterring anti-competitive practices are essential to maintaining integrity in public procurement and make clearness from tender rigging as one practice that prohibited by the regulation. Addressing these challenges is critical to supporting the principles of fairness and promoting compliance with competition law in Indonesia.</p>

## 1. INTRODUCTION

A fair and competitive market is a cornerstone of economic growth, fostering innovation, reducing inefficiencies, and benefiting consumers through better quality goods and services at competitive prices. In Indonesia, Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition serves as the legal foundation for promoting healthy competition and preventing monopolistic practices<sup>1</sup>. This law plays a critical role in ensuring that businesses operate transparently and fairly, safeguarding the interests of both consumers and the broader economy.

One of the most detrimental forms of unfair competition, particularly in the public procurement sector, is tender rigging<sup>2</sup>. Tender rigging refers to collusive practices among companies to manipulate the outcomes of tender processes, undermining their fairness and transparency<sup>3</sup>. Such practices include price fixing, where companies agree in advance on the prices they will submit in bids; bid rotation, where firms take turns winning tenders to maintain market control; and market allocation, where companies divide markets, territories, or sectors to avoid competing with one another<sup>4</sup>.

These collusive practices not only waste public funds but also compromise the quality of goods and services procured by the government, resulting in inefficiencies that hinder public welfare. Furthermore, they erode public trust in the procurement system and create an uneven playing field for businesses. Recognizing these harms, the Komisi Pengawas Persaingan Usaha (KPPU) “Indonesia’s Competition Commission”, is tasked with monitoring and enforcing competition laws to address and prevent such violations<sup>5</sup>.

A notable case that highlights the impact of tender rigging is Decision No. 15/KPPU-L/2023, where the KPPU uncovered evidence of collusion among several companies in a government project tender<sup>6</sup>. This decision illustrates the serious consequences of tender manipulation, including inflated project costs, substandard work, and diminished trust in

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<sup>1</sup> Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Government of Indonesia. <https://peraturan.bpk.go.id/Details/45280/uu-no-5-tahun-1999>

<sup>2</sup> OECD. (2019). Guidelines for Fighting Bid Rigging in Public Procurement.

[https://www.oecd.org/en/publications/guidelines-for-fighting-bid-rigging-in-public-procurement\\_8cfeafbb-en.html](https://www.oecd.org/en/publications/guidelines-for-fighting-bid-rigging-in-public-procurement_8cfeafbb-en.html)

<sup>3</sup> Saputra, G. B., & Hadi, H. (2018). Penegakan Hukum Persekongkolan Tender Menurut Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat. *Jurnal Privat Law*, 6(2), 213-219.

<sup>4</sup> Asmah, A. (2019). PENERAPAN SANKSI DENDA TERHADAP KASUS PERSEKONGKOLAN TENDER JALAN NASIONAL. *Jurnal Yudisial*, 12(2), 197-214.

<sup>5</sup> KPPU. (2023). About Us: The Role of KPPU in Competition Law Enforcement. Retrieved from: <https://www.kppu.go.id>.

<sup>6</sup> KPPU. (2023). Decision No. 15/KPPU-L/2023: Government Procurement Tender Case. Retrieved from: <https://putusan.kppu.go.id>.

public procurement processes<sup>7</sup>. The case underscores the importance of robust enforcement of competition laws to deter collusive practices and ensure that public procurement systems remain transparent, competitive, and free from corruption.

Understanding the dynamics of the conspiracy and evaluating the legal consequences in this case provides valuable insights into the effectiveness of Law No. 5 of 1999 in combating anti-competitive behavior and preserving market integrity<sup>8</sup>. This research aims to analyze the enforcement of competition laws in Indonesia, particularly through Decision No. 15/KPPU-L/2023, to evaluate how effectively Law No. 5 of 1999 addresses tender rigging<sup>9</sup>. By examining the types of tender conspiracies identified, the legal consequences imposed, and the deterrent effect of these penalties, this study seeks to contribute to the development of a more transparent and efficient public procurement system. Strengthening enforcement mechanisms will not only promote fairness and deter violations but also support sustainable economic growth in Indonesia.

Based on the statement above, the problems statement that are need to be addressed are:

- 1) How does Decision No. 15/KPPU-L/2023 reflect the enforcement of Law No. 5 of 1999 in addressing tender rigging in Indonesia?
- 2) What type of tender conspiracy in Decision No. 15/KPPU-L/2023 and the legal consequences in Decision No. 15/KPPU-L/2023 are correct?
- 3) How effective are the penalties imposed in Decision No. 15/KPPU-L/2023 in deterring tender rigging practices in the future?

## 2. RESEARCH METHODOLOGY

The research employs a normative method to analyze Decision No. 15/KPPU-L/2023 on tender rigging in Indonesia<sup>10</sup>. It focuses on a legal review of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and related regulations. The analysis emphasizes the application of legal principles and enforcement mechanisms in addressing collusion and ensuring fair competition in public procurement.

The study also evaluates the decision's effectiveness in combating tender rigging and compares Indonesia's enforcement practices with those of other jurisdictions to identify potential improvements to its legal framework. This approach aims to provide a

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<sup>7</sup> OECD. (2020). Consequences of Collusion in Public Procurement.

[https://www.oecd.org/en/publications/collusion-and-corruption-in-public-procurement\\_ef957f70-en.html](https://www.oecd.org/en/publications/collusion-and-corruption-in-public-procurement_ef957f70-en.html)

<sup>8</sup> Cakra Budi Prasetyo, Larangan Praktek Persekongkolan Tender Dalam Mewujudkan Persaingan Usaha Yang Sehat, 2021.

<sup>9</sup> Dave David Tedjokusumo, Praktik Persekongkolan Tender dalam Paket Pembangunan Revetment dan Pengurangan Lahan di Pelabuhan, 2023.

<sup>10</sup> I Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," Kertha Widya: Jurnal Hukum, Vol. 10, No. 1, 2022, <https://ejournal.unipas.ac.id/index.php/KW/article/view/419>.

comprehensive assessment of the decision's implications for strengthening competition law enforcement.

### **3. ANALYSIS AND DISCUSSION**

#### **3.1 Legal Framework in Tender Rigging**

Tender rigging in Indonesia is regulated under Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. The key provisions relevant to the practices in Decision No. 15/KPPU-L/2023 are as follows:

1) Article 5: Prohibition of Price Fixing

This article prohibits agreements among businesses to fix prices, eliminating competition in the market. In tender rigging, this occurs when companies coordinate bids to set artificially high tender prices<sup>11</sup>.

2) Article 9: Prohibition of Market Allocation

Businesses are prohibited from dividing markets or customers to avoid competition. In tender rigging, companies may collude to "share" tender projects by taking turns to win bids, ensuring the absence of genuine competition<sup>12</sup>.

3) Article 22: Prohibition of Tender Rigging

This article specifically targets tender collusion. It prohibits any conspiracy to manipulate tender outcomes, ensuring fair competition in public procurement<sup>13</sup>.

4) Article 47: Administrative Penalties

The KPPU is authorized to impose administrative penalties, including fines, on businesses found guilty of anti-competitive practices like tender rigging. This serves as a deterrent to ensure compliance<sup>14</sup>.

5) Article 49: Personal Liability

Executives or individuals in leadership roles can be held personally accountable for anti-competitive practices, including tender rigging. This provision ensures that key decision-makers face direct penalties for orchestrating such schemes<sup>15</sup>.

#### **3.2 Tender Mechanism and Its Manipulation in This Case**

Public procurement is one of the most crucial activities in ensuring government efficiency and transparency. The tender mechanism, as the primary tool in public procurement, plays a vital role in promoting fair competition among bidders and optimizing the use of public funds to deliver quality goods and services. A well-functioning tender process is designed to encourage broad participation, transparency, and

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<sup>11</sup> Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition [5]

<sup>12</sup> Ibid [9]

<sup>13</sup> Ibid [22]

<sup>14</sup> Ibid [47]

<sup>15</sup> Ibid [49]

accountability, ensuring that government projects meet their intended objectives effectively.

However, this mechanism is susceptible to manipulation, particularly through anti-competitive practices like tender rigging. Such practices compromise the fundamental principles of fairness, competition, and value-for-money in public procurement. In Decision No. 15/KPPU-L/2023, these vulnerabilities were exploited, revealing deliberate collusion among bidders to manipulate the tender process and its outcomes.

### **3.2.1 Tender Process in Indonesia**

The tender process in Indonesia is governed by Presidential Regulation No. 12 of 2021, which amends Presidential Regulation No. 16 of 2018 on Public Procurement. This amendment introduced improvements and adjustments to enhance the transparency, efficiency, and accountability of public procurement processes which establishes a clear and systematic framework to ensure transparency and fairness. The standard steps of the process include:

- 1) **Announcement:** The tender begins with a public announcement by the procuring entity, outlining the scope of work, technical specifications, and submission requirements<sup>16</sup>. This step is essential for ensuring transparency and encouraging participation from a diverse range of potential bidders.
- 2) **Submission of Bids:** Interested companies prepare and submit their proposals, which typically include both technical and financial components. These submissions must adhere to the criteria specified in the tender documents, ensuring consistency and fairness in the evaluation process<sup>17</sup>.
- 3) **Evaluation:** The proposals are carefully reviewed by a procurement committee based on predefined criteria, such as compliance with technical requirements, cost-effectiveness, and the bidder's qualifications<sup>18</sup>. This step aims to identify the proposal that best meets the needs of the project while adhering to the principles of value-for-money.
- 4) **Awarding of the Contract:** The tender concludes with the awarding of the contract to the bidder offering the optimal combination of quality and price<sup>19</sup>. This ensures that the procurement objectives are achieved in a cost-efficient manner while maintaining the required standards of service or product quality.

By establishing these procedures, Indonesian regulations aim to foster healthy competition, prevent corruption, and optimize the use of public resources. However, these

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<sup>16</sup> Presidential Regulation No. 12 of 2021, Article 17 (Amending Perpres No. 16/2018).

<sup>17</sup> Ibid [50(2)]

<sup>18</sup> World Bank. (2018). *Fraud and Collusion in Public Procurement*

<sup>19</sup> OECD. (2010). *Collusion and Corruption in Public Procurement*

mechanisms are not immune to exploitation, as demonstrated in Decision No. 15/KPPU-L/2023.

### **3.2.2 Manipulation of the Tender Process in This Case**

In the case analysed, the standard tender process was subverted through collusion among the participating companies, undermining the principles of competition and fairness. These manipulations occurred at multiple stages of the process:

- 1) **Coordination of Bid Prices:** By agreeing on predetermined prices before submission, the companies ensured that all bids lacked competitive pricing. This led to inflated costs for government projects, undermining the objective of securing the best value for public funds<sup>20</sup>.
- 2) **Alternating Contract Winners:** The companies employed a rotation system, preselecting which bidder would win each contract<sup>21</sup>. This arrangement removed the competitive element from the tender process, ensuring that contracts were awarded not based on merit, but on prior agreements among the conspirators.
- 3) **Market Segmentation:** The companies divided the procurement market by allocating specific regions or projects to each participant<sup>22</sup>. This strategy minimized competition by ensuring that companies did not bid against each other in the same tenders, effectively monopolizing certain areas or sectors.

These manipulations not only violated competition law but also rendered the tender process ineffective in securing value-for-money and transparency in public procurement.

### **3.3 Types of Tender Conspiracies in Decision No. 15/KPPU-L/2023**

In Decision No. 15/KPPU-L/2023, the KPPU identified significant collusive behaviours, primarily focusing on price fixing, bid rotation, and market allocation, which are all forms of tender rigging:

- a) **Price Fixing:** The companies involved in the conspiracy were found to have coordinated their bids by agreeing on predetermined prices, violating Article 5 of Law No. 5 of 1999, which prohibits agreements that manipulate prices to harm competition. This practice resulted in inflated tender prices, which forced the government to pay more than it would have in a genuinely competitive bidding process. This misallocation of public funds is particularly damaging, as it limits the funds available for other crucial sectors, thereby impacting public welfare.
- b) **Bid Rotation:** The conspirators engaged in bid rotation, where they prearranged to take turns winning government contracts. This practice restricted genuine competition,

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<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

undermining the integrity of the tender process. The KPPU demonstrated that the companies' collusion resulted in a situation where the merit of each bid was irrelevant, as the outcome was predetermined. This violated Article 22 of Law No. 5 of 1999, which prohibits agreements that manipulate the tender process by fixing winners.

- c) Market Allocation: Another key form of collusion was market allocation, where the conspirators divided the procurement market by geographic regions or sectors. This limited competition and ensured that each company monopolized specific regions or market segments. This violated Article 9 of Law No. 5 of 1999, which prohibits the division of markets to eliminate competition. Such practices stifled market entry for new competitors and reduced the diversity of bids for government projects.

These practices directly contravened the objectives of Indonesian competition law by distorting competition, inflating public spending, and diminishing the overall quality of government procurement.

### **3.4 Legal Consequences Imposed in Decision No. 15/KPPU-L/2023**

In response to the violations identified, KPPU imposed significant penalties to deter future occurrences of tender rigging:

- a) Fines and Sanctions : The companies involved were fined in accordance with Article 47 of Law No. 5 of 1999, which provides for administrative penalties for anti-competitive behaviour<sup>23</sup>. The fines were calculated based on several factors, including the duration of the violation, the economic harm caused, and the profits gained from the collusion<sup>24</sup>. By considering these elements, the penalties aimed to address both the scale of the offense and its impact on public procurement. However, while the fines were substantial, their deterrent effect depends on whether they outweigh the potential profits derived from illegal practices. If fines remain relatively small compared to the financial benefits of collusion, companies may continue to treat anti-competitive behaviour as a calculated risk or simply as a “cost of doing business,” particularly in lucrative government projects. Therefore, imposing proportional and severe penalties is crucial to ensure that engaging in tender rigging is not financially advantageous.
- b) Personal Accountability : KPPU also held key executives personally liable under Article 49 of Law No. 5 of 1999, which allows for sanctions against individuals directly involved in or responsible for anti-competitive practices<sup>25</sup>. This step marked a significant emphasis on accountability at the leadership level, as it targeted decision-makers who orchestrated the collusion rather than just punishing the companies as

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<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

legal entities. By holding individuals personally liable, KPPU sought to discourage executives from participating in or ignoring anti-competitive schemes, knowing that they themselves—not just their companies—could face serious legal consequences. This approach strengthens the enforcement of competition laws by ensuring that corporate leaders prioritize compliance and actively prevent violations within their organizations.

The proportionality and consistency of these penalties remain critical to their success. Fines must be severe enough to act as a true deterrent, and personal accountability must be enforced effectively to create a culture of responsibility and compliance<sup>26</sup>. Without these measures, tender rigging may persist, eroding public trust in procurement processes and causing continued financial losses for the government.

### **3.5 Application of Law No. 5 of 1999 to Tender Rigging**

To demonstrate a violation of Law No. 5 of 1999 in this case, KPPU examined the following key elements :

1) Existence of an Agreement

Evidence such as contracts, meeting minutes, and digital communications showed that the companies had explicitly agreed to manipulate the tender. This fulfilled the requirement under Article 22, which prohibits agreements that influence tender outcomes<sup>27</sup>.

2) Intent and Purpose of the Agreement

The purpose of the collusion was to restrict competition and control tender results by determining bid winners, fixing prices, and dividing market territories. This directly violated the objectives of Article 3, which aims to foster fair competition and protect public interests.

3) Article 47 of Law No. 5 of 1999 requires that anti-competitive agreements must harm competition. KPPU successfully demonstrated that the collusion resulted in:

- Inflated costs for government projects, which diverted public funds away from other important needs
- Reduced opportunities for other companies to compete, leading to a less competitive market.
- Erosion of trust in the fairness and transparency of government procurement processes, diminishing public confidence in the integrity of the system.

### **3.6 Effectiveness of Law No. 5 of 1999 in Addressing Tender Rigging**

To demonstrate a violation of Law No. 5 of 1999 in this case, KPPU examined the

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<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid*

following key elements: Law No. 5 of 1999 serves as a solid legal framework to address tender rigging and other anti-competitive practices<sup>28</sup>. However, its effectiveness hinges on both robust enforcement mechanisms and sufficient resources allocated to the KPPU. While the Commission has made significant strides in detecting collusion using modern investigative tools, such as digital forensics and data analysis, the sophistication of some collusive schemes still poses challenges<sup>29</sup>. The law's impact could be strengthened by ensuring that penalties reflect the full extent of harm caused by anti-competitive actions and by leveraging digital technologies to improve the transparency of tender processes.

Moreover, promoting corporate accountability by encouraging businesses to adopt internal compliance measures would further deter future violations<sup>30</sup>. By enhancing these elements, Law No. 5 of 1999 could more effectively safeguard fair competition and prevent tender rigging in the long term.

## **4. CONCLUSION AND RECOMMENDATIONS**

### **4.1 Conclusion**

Improving competition law enforcement in Indonesia's public tenders requires a multi-pronged approach. Strengthening legal provisions against anti-competitive practices, enhancing transparency through digital platforms, and increasing the regulatory authority of bodies like KPPU are crucial steps<sup>31</sup>. Stricter penalties, mandatory compliance programs for businesses, and a more efficient judicial review system will ensure greater accountability and fairness in the procurement process. By investing in better training for regulators and enhancing enforcement mechanisms, Indonesia can foster a transparent, competitive, and fair public procurement system that minimizes collusion and maximizes the effective use of public funds.

### **4.2 Recommendations**

To strengthen the enforcement of competition law in Indonesia's public tenders, several key measures should be implemented. First, the legal framework should be enhanced by introducing specific provisions targeting bid-rigging and collusion to ensure clearer and more effective enforcement. Transparency can be improved by making tender processes and related documents publicly accessible through digital platforms, allowing stakeholders to monitor and review procurement activities. Regulatory oversight should be increased by granting bodies like KPPU greater authority to investigate, audit, and impose

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<sup>28</sup> *Ibid.*

<sup>29</sup> Monique, C. (2024). Exploring the Role of Digital Forensics in Identifying Cyber Crime in Indonesia's Criminal Procedure Law. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, Vol. 23, No. 2, Juni 2024, pp. 2.

<sup>30</sup> OECD. (2019). Corporate Compliance Programs for Preventing Collusion in Tenders. *OECD Competition Best Practices Report*.

<sup>31</sup> *Ibid.*

penalties for violations. In addition, stricter sanctions should be introduced to ensure that the cost of non-compliance outweighs the potential benefits of engaging in anti-competitive practices.

Companies should be encouraged to adopt robust internal compliance programs to detect and prevent collusion, fostering a culture of integrity<sup>32</sup>. Strengthening the judicial review system will also be crucial, allowing for more efficient legal challenges and ensuring fairness in enforcement. Finally, ongoing training and capacity-building for regulators will enhance their ability to identify and address complex anti-competitive behaviours. These measures, collectively, will create a more transparent, competitive, and fair public procurement environment in Indonesia.

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<sup>32</sup> Wulan, D. N., Masruroh, A., & Rusydi. (n.d.). Persekongkolan tender dalam persaingan usaha menurut UU No. 5 Tahun 1999 tentang larangan praktik monopoli dan persaingan usaha tidak sehat.

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