

Legal Analysis of the Monopoly of Road Construction Service Tenders

(A Study of Ternate District Court Decision Number: 8/Pdt.Sus-KPPU/2021/PN.Tte)

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ABSTRACT

The procurement of goods and services in Indonesia must comply with the fundamental principles and legal provisions stipulated in existing laws and regulations. One significant aspect of such procurement involves tenders for public infrastructure projects, including road construction. The tender process must be conducted fairly, transparently, and in accordance with the law. Any form of collusion during the tender process indicates monopolistic practices that can lead to legal consequences and sanctions imposed by the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha—KPPU). This study examines the Ternate District Court Decision Number 8/Pdt.Sus-KPPU/2021/PN.Tte, in which PT. IBS and PT. HNG filed an objection against KPPU Decision Number 30/KPPU-L/2019. The KPPU had imposed administrative sanctions, including fines and a one-year ban from participating in procurement tenders. The objective of this research is to analyze the legal accountability of business actors engaging in monopolistic practices in road construction tenders and to explore the court's legal reasoning in reviewing the KPPU decision. Using a normative juridical research method with a statutory and descriptive approach, this study relies on secondary data obtained from primary, secondary, and tertiary legal materials. Data were analyzed qualitatively through document and literature review. The findings indicate that business actors proven to engage in tender monopolization may face three forms of legal liability: administrative sanctions, criminal fines ranging from one to twenty-five billion rupiahs, and additional penalties such as license revocation. These measures aim to ensure justice, transparency, and fair competition in Indonesia's public procurement system.

Keywords:

Monopoly,
Tender,
Construction
Services, Legal
Accountability

INTRODUCTION

The construction of road segments constitutes a form of construction work as defined in Article 1, Paragraph 3 of Law Number 2 of 2017 on Construction Services. According to this law, construction work encompasses all or part of the activities related to the establishment, management, maintenance, demolition, and reconstruction of a structure. Hence, road construction is understood as a building process realized through a regulated construction procedure (Marzuki, 2018).

Prior to determining the authorized entity responsible for executing construction work, a tender process must be conducted. This process is required to adhere strictly to prevailing legal provisions and binding contractual conditions. Properly executed tenders ensure that the winning contractor's rights and obligations are legally enforceable, establishing a legitimate legal relationship between the parties involved.

Such legal relationships emerge from the recognition and qualification of social interactions as legally binding relationships, producing reciprocal rights and obligations among the subjects involved (Rahardjo, 2012). These rights are

manifestations of the authority derived from legal norms that govern interactions among legal subjects.

In the era of globalization, the growing complexity of social, economic, political, and legal issues has intensified the need for effective infrastructure development and transparent governance. Economic growth and public infrastructure development have become key indicators of national progress. Consequently, maintaining fair business competition in the procurement of goods and services is vital to achieving economic efficiency and public welfare (Pakpahan et al., 2020).

Ensuring fairness and transparency in the tendering process is therefore essential, as monopolistic practices not only distort market competition but also undermine public trust in the government's procurement mechanisms. The enforcement of antimonopoly regulations and judicial review, as illustrated by the Ternate District Court Decision Number 8/Pdt.Sus-KPPU/2021/PN.Tte, provides a critical legal framework for assessing business accountability and strengthening Indonesia's rule of law in economic governance.

METHOD

In conducting a review of judicial decisions addressing minimum penalties for corrupt practices, this study adopts a normative juridical approach, which is effective in analyzing legal theories and statutory provisions as outlined within the Criminal Code. Understanding the complexities involved in corruption, especially within the state's legal framework, necessitates a robust legal basis derived from prior categorical definitions of criminal acts, as emphasized by research from Nasir and Nurdiantoro (Fahrizal et al., 2023). This is supported by Amelia et al., who highlight the critical alignment of criminal law policies with national values, such as the principles embodied in Pancasila (Amelia et al., 2025). Furthermore, the principle of legality serves as a cornerstone in ensuring enforceability against corruption, akin to what Syakbana and Soponyono discussed regarding public legal awareness and compliance (Syakbana & Soponyono, 2024). Given the multi-faceted nature of corruption crimes, employing a conceptual approach can elucidate legal principles affecting public perception and law enforcement, as discussed by Anggraeni and Amrullah (Anggraeni & Amrullah, 2023). Additionally, analyses from Husin highlight the importance of evolving regulations to maximize anti-corruption strategies, corroborating this study's examination (Husin, 2024).

Complementing the normative framework, an analytical-descriptive approach is applied to systematically illustrate the various disputes surrounding corruption within the legal sphere. This method aligns with Budiana and Damayanti's findings, which suggest a need for coherent legal standards when addressing the implications of corruption within criminal law (Budiana & Damayanti, 2024). The detailed exploration of statutory provisions, as articulated by Puspitono and Lumbuun, emphasizes the importance of understanding risks associated with corruption-related judicial outcomes (Puspitono & Lumbuun, 2024). The conceptual approach, as evidenced by Kartika et al., underscores the necessity to formulate effective enforcement strategies against corruption, highlighting the legal system's responsiveness to evolving societal needs (Kartika et al., 2023). This dynamic interrelationship of law and societal expectations is illustrated in the works of Gunawan, stating that clear communication

of legal frameworks is essential for proper execution—especially concerning corruption crimes (Gunawan, 2024). Importantly, a synthesis of these perspectives goes beyond mere theoretical constructs, focusing on the practical implications of reforms as presented in the new legislative adaptations essential for contemporary jurisprudence (Widijowati, 2023).

RESULTS AND DISCUSSION

1. Legal Responsibility of Business Actors Who Monopolize Tenders for Road Construction Services

Infrastructure development, including road construction, represents a key strategy for enhancing economic growth and public welfare. Regional development seeks to improve quality of life and promote social justice across all levels of society. Within this framework, government procurement of goods and services functions as an integral component of public administration. The procurement of construction services through a tender process constitutes one of the primary stages in the contractual arrangement of such projects.

According to Law No. 2 of 2017, particularly Article 38 paragraph (2), the contracting of construction services must proceed through two main stages: the selection of service providers and the signing of work contracts. In this process, the government acts as the service user, while business entities or individuals serve as service providers. Prior to the signing of the construction work contract, a company must undergo a competitive selection process to be designated as the entity entitled to carry out the project in question, including road construction (Herman Brahmana, 2015).

The regulation governing construction service tenders aligns with the very nature of legal norms themselves—specifically those pertaining to construction services—as rules designed to regulate production, implementation, and distribution while protecting the public from potential disputes or disorder. Legal development and reform must be implemented systematically, strategically, and in an integrated manner to ensure effectiveness and efficiency, particularly in the regulation of construction service tenders (Amran Suadi, 2019).

In the implementation of tenders for construction services, including road construction, reference must be made to Law No. 2 of 2017 concerning Construction Services. This law establishes two principal legal subjects in the tender process: the service user and the service provider. Article 39 paragraph (2) of the same law stipulates that the implementation of construction services must be based on fair and healthy business competition, thus explicitly prohibiting monopolistic practices.

Moreover, the obligation to conduct construction service procurement—such as for road development—through a tender mechanism is reaffirmed in Article 72 paragraph (2) of Government Regulation No. 14 of 2021. The explanatory note to this article clarifies that “development in the public interest” includes, for example, the construction of transportation infrastructure such as public roads, toll roads, tunnels, railway tracks, stations, and supporting facilities for railway operations.

All participants in the tender process are required to adhere to established procedures and bear full responsibility for compliance. Every party involved in the procurement of goods and services must observe ethical and regulatory standards,

refrain from engaging in conduct that could unduly influence the procurement process, and avoid unfair competition and conflicts of interest. These principles are codified in Article 7 paragraph (1) of Presidential Regulation No. 16 of 2018 on Government Procurement of Goods and Services. This prohibition corresponds with Article 22 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Consequently, if a company engages in monopolistic or anti-competitive behavior, it can be deemed to have violated statutory prohibitions and must bear legal responsibility.

Furthermore, business actors found in violation may face both administrative and criminal liability. In addition to fines and imprisonment, supplementary sanctions may include license revocation, disqualification from holding directorial or commissioner positions for two to five years, or termination of business activities causing harm to others.

2. Legal Analysis of the Ternate District Court Decision No. 8/Pdt.Sus-KPPU/2021/PN.Tte

Prior to conducting an analysis, it is important to acknowledge that judges possess broad discretionary authority in adjudicating cases, thereby exerting significant influence over the parties and the disputes brought before the court. A final and binding court decision serves as an essential mechanism for realizing the goals and functions of the law. Such a decision forms the basis upon which individuals may reclaim rights that have been infringed. Accordingly, judges must carefully consider all relevant aspects and elements before delivering a fair and reasoned judgment (Suhrawardi K. Lubis, 2015).

Generally, the authority of the judicial panel in adjudicating a case is guided by the provisions of Law No. 48 of 2009 concerning Judicial Power, which must be applied contextually to each case, including Ternate District Court Decision No. 8/Pdt.Sus-KPPU/2021/PN.Tte and other relevant legal frameworks. The dispute at issue in this decision concerns the monopolization of a road construction service tender through collusive practices.

In KPPU Decision No. 30/KPPU-L/2019, which was later challenged by PT. IBS and PT. HNG, the Competition Supervisory Commission (KPPU) imposed a range of sanctions, including fines and prohibitions on participating in future tenders. However, prior to imposing such sanctions, KPPU did not formally annul the tender deemed to be in violation of the law. In fact, as stated in the Ternate District Court Decision No. 8/Pdt.Sus-KPPU/2021/PN.Tte, the road construction project executed by PT. IBS was fully completed (100%) without any issues and was officially accepted by the North Halmahera Regency Government.

It is also noteworthy that KPPU failed to provide a detailed calculation of the fines imposed on the applicants. Despite this procedural deficiency, the judges of the Ternate District Court dismissed the objections submitted by the sanctioned companies. Upon reviewing the decision, it can be concluded that the ruling was legally sound, as it appropriately referred to Article 12 of Supreme Court Regulation No. 3 of 2019 and Article 22 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Based on the facts and evidence presented, PT. IBS and PT. HNG were indeed proven to have engaged in monopolistic conduct designed to ensure PT. IBS's victory in the tender process.

Nevertheless, a minor procedural flaw exists in the Ternate District Court Decision No. 8/Pdt.Sus-KPPU/2021/PN.Tte. Specifically, the court failed to evaluate the proportionality of the fines imposed on PT. IBS and PT. HNG, given that the original KPPU decision did not provide a clear rationale for the determination of these amounts. In the interest of justice and legal certainty, the fines should not have been imposed on PT. IBS, as the company had fully completed its contractual obligations without causing any state losses. The party suffering economic harm in this case was not the state but the competing firms that failed to secure the tender due to the monopolistic arrangement. Therefore, rather than imposing fines, a more equitable remedy would involve ordering compensation payments to the competitors adversely affected by the collusive conduct.

CONCLUSION

The legal liability of business actors involved in monopolizing tenders for road construction services can be classified into three main categories: administrative liability, criminal fines, and additional penalties. Administrative liabilities include the annulment of agreements, termination of vertical integration, cessation of monopolistic business activities, prohibition of abuse of dominant positions, annulment of mergers or acquisitions, compensation payments, and the imposition of fines ranging from a minimum of one billion rupiah to a maximum of twenty-five billion rupiah.

In addition to administrative measures, business actors may also face criminal sanctions and supplementary penalties, such as revocation of business licenses, prohibition from serving as directors or commissioners for a period of two to five years, or termination of activities that cause harm to other parties.

A legal analysis of the Ternate District Court Decision Number 8/Pdt.Sus-KPPU/2021/PN.Tte reveals that the ruling is fundamentally appropriate; however, it contains a minor flaw. The court failed to specify the calculation or rationale for the fines imposed on Respondent I (PT. IBS) and Respondent II (PT. HNG), as the earlier KPPU decision did not clarify the basis for determining these fines. For the sake of justice and legal certainty, the fine should not have been imposed on Respondent I, given that the company had fully completed its contractual obligations with satisfactory results. Consequently, the State did not incur any financial losses as a result of the monopoly. Instead, the losses were borne by other competing companies that failed to secure the tender.

Therefore, the more appropriate legal remedy would not be the imposition of fines payable to the State, but rather the enforcement of compensation payments to other companies adversely affected by the monopolistic conduct. This approach aligns with the provisions stipulated in Article 47 paragraph (2)(f) of Law Number 5 of 1999, which provides for compensation as an alternative legal sanction in cases of monopolistic practices.

Acknowledgment

The legal responsibility of business actors engaged in monopolistic tender practices should also encompass civil liability toward other companies that suffer losses as a consequence of such actions. Accordingly, sanctions should not be confined to administrative or criminal penalties but must also include civil remedies to ensure comprehensive justice.

In the Ternate District Court Decision Number 8/Pdt.Sus-KPPU/2021/PN.Tte, the Panel of Judges should have conducted a more holistic examination of the legal sanctions applicable to parties proven to have monopolized the tender for road construction services. Their analysis should have extended beyond the monopolistic acts themselves to include the impact and harm caused to other competing entities.

Thus, while the KPPU decision rightly established that the defendants engaged in monopolistic behavior, the Panel of Judges in this case should have exercised independent judicial reasoning to substitute the imposition of fines with an order for compensation payable to the aggrieved companies. Such an approach would not only uphold the principles of fairness and equity but also strengthen the legal enforcement mechanism in Indonesia's competition law framework.

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