

**AL-MUNAFASAH AT-TIJARIYYAH'S PERSPECTIVE ON THE
CASE OF REJECTION OF FINES BY THE TENDER WINNER
BASED ON THE ANALYSIS OF THE DECISION OF THE
MEDAN COMMERCIAL COURT NUMBER 1/PDT. SUS-
ICC/2021/PN NIAGA MDN**

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Abstract

The practice of bid-rigging in government procurement of goods and services constitutes a form of unfair business competition that violates Article 22 of Law No. 5 of 1999. Such practices not only hinder the creation of fair competition but also have the potential to cause losses to the state and reduce the efficiency of goods and services procurement. This study aims to analyze the legal considerations of the panel of judges in the Decision of the Medan Commercial Court No. 1/Pdt.Sus-KPPU/2021/PN Niaga Mdn and to review them from the perspective of *Al-Munafasah At-Tijariyyah*. This study is a normative legal study using a statutory approach. Data were obtained through a literature review of primary legal sources derived from the decision under study and secondary sources from journals and books related to the research topic, which were then analyzed qualitatively using content analysis. The results of the study indicate that the panel of judges upheld the KPPU's decision because the elements of tender collusion were deemed to have been met based on the evidence examined by the KPPU, specifically the existence of vertical collusion between PT. Mina Fajar Abadi and the Procurement Working Group. This study also found that the decision was essentially in line with the principle of *Al-Munafasah At-Tijariyyah*, which emphasizes honesty, trustworthiness, transparency, and fair business competition.

Keywords: *Al-munafasah at-tijariyyah*, Bid-Rigging, Unfair Business Competition, KPPU Ruling, Islamic Economic Law

Abstrak

Praktik persekongkolan tender dalam pengadaan barang dan jasa pemerintah merupakan bentuk persaingan usaha tidak sehat yang bertentangan dengan Pasal 22 Undang-Undang Nomor 5 Tahun 1999. Praktik tersebut tidak hanya menghambat terciptanya persaingan yang sehat, tetapi juga berpotensi menimbulkan kerugian negara dan mengurangi efisiensi pengadaan barang dan jasa. Penelitian ini bertujuan untuk menganalisis pertimbangan hukum majelis hakim dalam Putusan Pengadilan Niaga Medan Nomor 1/Pdt.Sus-KPPU/2021/PN Niaga Mdn serta meninjaunya berdasarkan perspektif *Al-Munafasah At-Tijariyyah*. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan. Data diperoleh melalui studi kepustakaan terhadap bahan hukum primer yang bersumber dari putusan yang diteliti, dan sekunder yang bersumber dari jurnal dan buku yang berkaitan dengan pokok penelitian, kemudian dianalisis secara kualitatif menggunakan metode *content analysis*. Hasil penelitian menunjukkan bahwa majelis hakim menguatkan Putusan KPPU karena unsur-unsur persekongkolan tender dinilai telah terpenuhi berdasarkan alat bukti yang diperiksa KPPU, khususnya adanya kolusi vertikal antara PT. Mina Fajar Abadi dan Pokja Pengadaan. Penelitian ini juga menemukan bahwa putusan tersebut pada dasarnya telah sejalan dengan prinsip *Al-Munafasah At-Tijariyyah* yang menekankan kejujuran, amanah, transparansi, dan persaingan usaha yang sehat. Namun demikian, penerapan pertanggungjawaban hukum terhadap para pihak masih memerlukan penguatan agar lebih selaras dengan prinsip keadilan dalam Hukum Ekonomi Islam.

Kata Kunci: *Al-munafasah at-tijariyyah*, Persekongkolan Tender, Persaingan Usaha Tidak Sehat, Putusan KPPU, Hukum Ekonomi Syariah.

INTRODUCTION

The existence and sustainability of business actors in the midst of fierce business competition is highly dependent on the ownership of strong competitiveness and the ability to innovate. This is based on the reality that every business person always competes intensively to expand the market network and reach consumers as the main target of marketing.¹ In order to control the dynamics of competition so that it does not lead to monopoly practices or market destruction, Indonesia stipulates Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition as a special and comprehensive regulation. Therefore, the development of business strategies and creativity of each business actor must absolutely run in harmony with

¹ Arie Siswanto, "Hukum Anti Monopoli Dan Persaingan Usaha Tidak Sehat," *Keadaban*, Vol. 1 (2020): p. 29.

compliance with the legal corridor of business competition in order to create a healthy and fair market climate.²

Business competition in Islamic law is regulated in *al-munafasah at-tijariyyah* by being oriented towards benefits and integrating the achievement of profit with aspects of justice and social responsibility. This foundation is rooted in the provisions of fiqh muamalah, which requires all economic activities to provide mutual benefits and prohibits all forms of actions that harm other parties.³ In its implementation, every business actor is required to compete in a healthy manner, avoid fraud, and implement full transparency by conveying accurate information about products, prices, and transaction conditions to consumers.⁴ Therefore, *al-munafasah at-tijariyyah* is not just a means of obtaining economic benefits, but an instrument of sharia law to create an honest, transparent, and fair business climate.⁵

Business actors and competitors in the concept of *al-munafasah at-tijariyyah* must be able to have an advantage in the products marketed to consumers as an effort to be able to achieve market segments, master the targeted consumers, and gain loyalty from their consumers. Healthy competition will encourage innovation and continuous improvement in product quality, thereby providing greater benefits to society as a whole. *Al-munafasah at-tijariyyah* also requires business actors to avoid practices such as predatory pricing, where one company sets a very low price to exclude competitors from the market.⁶

The scholars of fiqh agree that every business practice is basically permissible as long as it does not contain elements that are detrimental to the other party. However, the imams of the madhhab also affirm that unfair business competition and the practice of monopoly (*ihtikār*) are haram because they are contrary to the principles of justice and benefit. Imam Hanafi views monopoly as the hoarding of goods, especially staple food, which can disrupt social welfare. Imam Malik extended the ban to all types of goods because it has the potential to

² Maya Meilia and Darania Anisa, "Persaingan Usaha Tidak Sehat di Indonesia Menurut Hukum Ekonomi Islam dan Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Monopoli dan Persaingan Usaha Tidak Sehat," *El-Jizya*, Vol. 7, no. 1 (2019): p. 26.

³ Ahmad Munir Hamid, "Perspektif Etika Bisnis Islam Dalam Upaya Pengawasan Praktik Monopoli dan Persaingan Usaha Tidak Sehat," *Jurnal Studi Keagamaan, Pendidikan dan Humaniora* 7 (2020): p. 37.

⁴ Jaya Miharja, "Etika Islam Dalam Persaingan Usaha," *MU'AMALAT: Jurnal Kajian Hukum Ekonomi Syariah*, Vol. 11, no. 2 (2019): p. 189.

⁵ Ulfa, Misbahuddin, and T Sanusi N, "Prinsip Etika Bisnis Dalam Islam," *El-Faqih : Jurnal Pemikiran Dan Hukum Islam*, Vol. 6, no. 1 (2025): p. 287.

⁶ Muhammad Rifai Syarif Hidayatullah, "Peran Competitive Advantage Dalam Memediasi Pengaruh Product Innovation dan Islamic Market Orientation Terhadap Marketing Performance pada Pelaku UMKM Jenang Dodol Di Kota Demak," *Al-Muraqabah: Journal of Management and Sharia Business*, Vol. 5 (2016): p. 17.

cause injustice, while Imam Shafi'i and Imam Ahmad bin Hanbal limited the prohibition of *ihtikār* to food commodities for humans and animals as affirmed in the hadith.⁷

According to Article 17 of Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, it has been stipulated that every business actor is prohibited from controlling the production or marketing practices of goods and services that can result in monopoly practices and/or unfair business competition. In this article, it is also explained that a person or a group is considered to have controlled the production and/or marketing of goods and services if it has resulted in other business actors not being able to enter or join the same goods and services business competition and the business actor has controlled more than 50% of the market share in one particular type of goods and services.

The construction of this business competition case began with the implementation of electronic tender (*e-procurement*) for the procurement of the construction of the Langsa Regional Referral Hospital for the 2018 Fiscal Year at the Aceh Health Office with a ceiling value of around Rp40 billion. The one-file post-qualification public auction scheme with the lowest price method of the knockout system attracted the interest of dozens of construction service providers, which was marked by the registration of 108 companies and the download of procurement documents. However, the competitive selection underwent substantive screening at the bid submission stage, where only 16 companies officially submitted bid documents, until finally the working committee (Pokja) determined PT Mina Fajar Abadi as the winner of the tender after going through a tiered administrative, technical, and price evaluation. This qualification procedure initially placed PT Mina Fajar Abadi as a legitimate service provider and met the technical and substantive qualification criteria required by the Procurement Working Group.

The legal dynamics continued when the Business Competition Supervisory Commission (ICC) decided that there was a tender conspiracy involving the tender winner and the procurement committee. Through Decision Number 04/KPPU-L/2020, ICC stated that PT Mina Fajar Abadi (Reported Party I) was legally and convincingly proven to have violated Article 22 of Law Number 5 of 1999 for horizontal and vertical cooperation with the procurement committee (Reported Party VII), so that it was sanctioned with a fine of Rp1,723,500,000.00. The decision contains a contradiction in the Ratio Decidendi,

⁷ Atikah Rizkina Lubis, "Analisis Fiqh Muamalah Terhadap Sistem Jual Beli Durian Borongan", no. 2 (2023): p. 17.

because ICC exempted other tender participants even though in legal considerations it outlined indications of multilateral conspiracy, which prompted PT Mina Fajar Abadi to file an objection to the Medan Commercial Court based on Article 44 of Law Number 5 of 1999 on the pretext that all stages of the tender had met the principles of openness and transparency. The Petitioner's objection confirms that there is a conflict of juridical interpretation regarding the validity of the elements of the tender conspiracy between the supervisory commission and business actors.⁸

This paper focuses on a juridical and normative analysis of the Decision of the Medan Commercial Court Number 1/Pdt.Sus-KPPU/2021/PN Niaga Mdn. The study focuses on two main problem formulations, namely the proof of the element of tender conspiracy by PT Mina Fajar Abadi based on the legal facts of the Panel of Judges, and the location of the inconsistency of the judge's legal considerations when viewed from the principle of *al-munafasah at-tijariyyah*. The urgency of this research lies in the need to establish the substantive truth of the case of the rejection of fines by the tender winner through a comparative analysis between positive business competition law and sharia economic law. Therefore, the proof of legal considerations in Decision Number 1/Pdt.Sus-KPPU/2021/PN Niaga Mdn through *the framework of al-munafasah at-tijariyyah* is expected to make a new theoretical contribution to the development of fair business competition law.

RESEARCH METHODS

This research is a normative (doctrinal) legal research that examines legal norms and doctrines related to tender conspiracies in business competition practices.⁹ The approach used includes a statute *approach* by examining Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition,¹⁰ a case *approach* by examining the Medan Commercial Court Decision Number 1/Pdt.Sus-KPPU/2021/PN Niaga Mdn as the main object, and a conceptual *approach* to analyze the principles of *al-munafasah at-tijariyyah* in Islamic economic law. The research data is sourced from primary legal materials in the form of the Medan Commercial Court Decision Number

⁸ Documentation Data of the Decision of the Judge of the Medan Commercial Court, *Decision Number 1/Pdt.Sus-KPPU/2021/PN Niaga Mdn*, p. 8.

⁹ Agung Hidayat, "Critical Review Buku ' Penelitian Hukum ' Peter Mahmud Marzuki Penelitian Hukum Ad Quem Tentang Norma," *Yustisia Merdeka: Jurnal Ilmiah Hukum*, Vol. 7, no. 2 (2021): p. 117.

¹⁰ Muhammad Zainuddin and Aisyah Dinda Karina, "Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum," *Smart Law Journal*, Vol. 2, no. 2 (2023): p. 118.

1/Pdt.Sus-KPPU/2021/PN Niaga Mdn; secondary legal materials that include textbooks, accredited scientific journal articles, and relevant literature; and tertiary legal materials in the form of legal dictionaries and encyclopedias as explanations.

The collection of legal materials is carried out through *library research* by inventorying, classifying, and examining juridical documents relevant to the legal issues being studied. The collected legal materials are then analyzed using a qualitative *content analysis*¹¹ method, namely by examining the substance of the legal considerations (*ratio decidendi*) of the panel of judges and connecting juridical facts with the legal norms of positive business competition and the doctrine of *al-munafasah at-tijariyyah*. The analysis is focused on testing the suitability of judges' judgments with the principles of fairness, honesty, and transparency in business competition, then presented in a descriptive-analytical manner to produce a systematic and comprehensive construction of conclusions.

RESULTS AND DISCUSSION

From an Islamic economic perspective, trade activities are not simply understood as commercial activities to pursue material profits, but as the embodiment of worship values based on the principles of justice, transparency, and ethics. It is within this framework that *the concept of al-munafasah at-tijariyyah* was born, which is terminologically a combination of the words *al-munāfasah* (competition or business to outperform each other) and *at-tijāriyyah* (trade activities or business transactions). This term describes the form of competition in the field of trade when business actors seek to obtain profits, market share, and a better business position.¹² However, business competition in Islamic economics is not seen as a value-free phenomenon, but an activity that is inherently bound to moral norms, ethical principles, and sharia limits.

As part of the natural market dynamics, business competition is recognized as having a positive impact in the form of improving business efficiency, product quality, and affordability for consumers. However, *al-munafasah at-tijariyyah* requires that such competition operate in the corridors of honesty (*ṣidq*), justice (*'adl*), and information disclosure, and expressly prohibits the practice of monopolistic (*iḥtikār*), fraud (*tadlīs*), price manipulation (*najasy*), excessive uncertainty (*gharar*), and usury.¹³ This is based on the Qur'an, Surah

¹¹ Muhammad Siddiq, *Buku Pedoman Penulisan Skripsi* (Banda Aceh: Fakultas Syariah dan Hukum UIN Ar-Raniry, 2019)

¹² Rumadi Ahmad, "Fikih Persaingan Usaha," 2020, p. 48.

¹³ Muhammad nurul fahmi, "Hukum Persaingan Bisnis Dalam Islam Dan Regulasi Modern: Implementasi Karakter Profetik As-Siddiq Dan Amanah," *PESHUM:Jurnal Pendidikan, Sosial Dan Humaniora*, Vol. 4, no. 3 (2023): p. 4207.

Al-Baqarah, verse 188, which prohibits the acquisition of other people's property illegally and the manipulation of justice through the judiciary.

The content contained in this verse is the prohibition of acquiring property in an unlawful way, either through economic transactions or through the abuse of power and authority mechanisms. This verse contains the basic principle of business ethics in Islam, namely that every economic activity must be carried out honestly, fairly, and without harming other parties. In Ibn Kathir's commentary, it is explained that the meaning of *al-batil* includes all forms of acquisition of property that are not justified by the sharia, such as fraud, betrayal of trust, and manipulation carried out to obtain profits illegally. Ibn Katsir also emphasized that the prohibition of bringing property matters to the judge does not only mean a formal prohibition, but includes the act of using power or legal procedures to legalize something that is void.¹⁴

Al-Qurthubi emphasized that the meaning of *al-hukkām* in this verse is general, covering all holders of power who can influence decisions regarding the rights and property of others. In the context of procurement of goods and services, the tender committee can be positioned as part of *al-hukkām* because it has administrative and technical authority in assessing, passing, and determining the winner of the tender. If this authority is abused to arrange the winner through collusion with certain participants, then the act is included in the act of eating property unlawfully as prohibited in the verse.¹⁵

The concept of *al-munafasah at-tijariyyah* affirms that competition in trade is not an instrument to exploit consumers or weaken competitors by fraudulent means, but rather as a mechanism that fosters efficiency, justice, and social welfare. It also distinguishes the system of competition in Islamic economics from the modern capitalist system, where free competition often takes place without moral control and has the potential to create inequality.¹⁶

The imams of the madhhab provide a firm basis for the prohibition of business practices that involve the regulation of results and abuse of authority, as happened in the case of tender conspiracy. Imam Abu Hanifah is of the view that the acquisition of assets generated through the engineering of decisions and covert cooperation does not have legal validity because it contains elements of tyranny and the disappearance of the rights of other parties. In the context of the procurement of goods and services, such engineering can be in the form of setting

¹⁴ Ismail bin Umar Ibnu Katsir, *Tafsīr Al-Qur'ān Al-'Aẓīm* (Riyadh: Dār Ṭayyibah li an-Nasyr wa at-Tauzī, 1999).

¹⁵ Muhammad bin Ahmad Al-Qurthubi, *Al-Jāmi' Li Ahkām Al-Qur'ān*, 2006.

¹⁶ Ach. Faqih Supandi and Bastomi Dani Umbara Achmad Fawaid, "Persaingan Pasar Sempurna Perspektif Ekonomi Islam," *Lan Tabur : Jurnal Ekonomi Syari'ah*, Vol. 5, no. 2 (2024): p. 322.

criteria, manipulation of valuations, or hidden agreements between business actors and the authorities to determine the winner. This kind of practice makes a process that should be objective and open lose justice, so that the profits obtained from the results of the arrangement must be canceled and cannot be recognized in *sharia*.¹⁷

Imam Malik specifically emphasized that every official or party who is given authority in a public affair is obliged to maintain trust and be fair. If this authority is abused to benefit certain parties, for example by arranging the selection process, passing unqualified participants, or secretly cooperating with business actors, then this act is classified as betrayal of trust. In Imam Malik's view, the results obtained from the abuse of authority do not have legal validity because they are contrary to the principles of justice and public responsibility in *muamalah*.¹⁸

Substantively, tenders can be understood as a mechanism for selecting goods/service providers that is carried out through an open and transparent competition process, with clear and accountable bid parameters.¹⁹ Conceptually, tenders are seen not only as a technical procedure in procurement, but also as a strategic public policy instrument to realize the principles of efficiency, effectiveness, openness, and accountability. In the economic realm, tenders act as a means of allocating competitive resources, so that they are able to provide reasonable prices as well as optimal service quality. Meanwhile, in terms of administrative law, tenders have a normative function in maintaining the principles of fairness and openness by providing equal opportunities to all business actors who meet the qualifications.²⁰ Thus, the definition of tender cannot be separated from its two main dimensions, namely the economic dimension that emphasizes efficiency and the legal dimension that emphasizes the principles of accountability and healthy competition.

The legal basis for conducting tenders in Indonesia is affirmed in several hierarchical regulations. First, Law Number 5 of 1999 concerning the Prohibition

¹⁷ Zaenol Hasan, "Etika Pengambilan Keuntungan Dalam Transaksi Jual Beli Perspektif Mazhab Syafi'i Dan Jumhur Ulama," *Tabsyir: Jurnal Dakwah Dan Sosial Humaniora*, Vol. 2, no. 2 (2023): p. 16.

¹⁸ Luthfi Rantaprasaja, "Bisnis Dalam Perspektif Fiqh Muamalah (Analisis Teoritis Terhadap Prinsip Syariah Dalam Praktik Ekonomi Kontemporer)," *MIZANUNA : Jurnal Hukum Ekonomi Syariah*, Vol. 3 (2025): p. 81.

¹⁹ Andi Muhammad Refil, Ma'ruf Hafidz, and Muhammad Rustam, "Analisis Yuridis Tentang Pelaksanaan Pengadaan Barang Dan Jasa Pemerintah," *Journal of Lex Theory (JLT)*, Vol. 1, no. 2 (2020): p. 229.

²⁰ Muhamad Abduh and Reini D Wirahadikusumah, "Model Penilaian Kewajaran Harga Penawaran Kontraktor Dengan Sistem Evaluasi Nilai," *Jurnal Teknik Sipil*, Vol. 12, no. 3 (2010): p. 186.

of Monopolistic Practices and Unfair Business Competition, especially Article 22, explicitly prohibits conspiracy in tenders because it is categorized as an unfair business competition practice that is detrimental to the public interest.²¹ Second, the basic principles in the implementation of government procurement of goods/services have been formulated in Presidential Regulation No. 16 of 2018, which was later perfected through Presidential Regulation No. 12 of 2021. This regulation emphasizes that every procurement process must be carried out by prioritizing the principles of efficiency, effectiveness, openness, transparency, healthy competition, fairness, and accountability. Thus, tender auctions are not only interpreted as an administrative procedure, but also as an important instrument in the application of *the principles of good governance* in the public sector.

Technical regulations issued by the Government Goods/Services Procurement Policy Institute (LKPP) strengthen the operational aspects of the implementation of tenders, one of which is through the obligation to use an electronic procurement system (*e-procurement*). This mechanism serves to prevent manipulative practices, expand access to business actors' participation, and ensure transparency in every stage of procurement. Therefore, the legal basis for tender auctions in Indonesia can be seen as a normative framework that unites the principles of fair competition with the demands of efficiency and public accountability.²²

The urgency of the implementation of *al-munafasah at-tijariyyah* in the tender auction mechanism has very important benefits, because this concept is not just a technical rule in the realm of trade, but a normative principle that regulates the sustainability of business competition so that it runs in a healthy, transparent, and fair manner. In the framework of Islamic economics, competition is seen as something inevitable, but must be directed to a more constructive goal, namely creating efficiency, honesty, and public benefit (*maslahah 'ammah*). Therefore, competition between business actors should not be interpreted as a space to exploit consumers or harm other parties with fraudulent practices, but as an instrument to encourage quality improvement, information disclosure, and service optimization.²³

²¹ Asmah Asmah, "Penerapan Sanksi Denda Terhadap Kasus Persekongkolan Tender Jalan Nasional," *Jurnal Yudisial*, Vol. 12, no. 2 (2019), p. 198.

²² Rimbun Siallagan and Ida Bagus Made Agung Dwijatenaya, "Analisis Pelaksanaan Pengadaan Barang/ Jasa Secara Elektronik (E-Procurement) Berdasarkan Peraturan Presiden Nomor 12 Tahun 2021 Pada Pemerintah Kabupaten Kutai Barat," *Jurnal Ilmiah Administrasi Publik (JIMAP)*, Vol. 1, no. 1 (2022): p. 113.

²³ Erniwat Syaiful Bahri, Riana Tirsya, "Struktur Pasar Dan Persaingan Harga Dalam Perspektif Ekonomi Syariah," *Jurnal Sosial Dan Sains*, Vol. 3, no. 2 (2022): p. 6951.

The urgency of this concept is also seen in its contribution in creating public trust in the procurement process of goods and services. When tenders are carried out transparently and in accordance with the principles of Islamic competition, there will be a belief that the economic system works for the common good, not for a few parties.²⁴ This ultimately supports the realization of good governance, while ensuring that economic activities run in harmony with ethical values and social benefits. The application of *the concept of al-munafasah at-tijariyyah* also provides social benefits in the form of increasing public trust in the procurement system, because the public considers that the process runs in accordance with the principles of justice and is not controlled by a few parties.²⁵

Auctions in the procurement of goods and services are a formal mechanism used by the government to ensure that the process of selecting suppliers takes place in an objective, competitive, and accountable²⁶ manner. In public administration practice, auctions are not only understood as a technical means of obtaining goods or services, but also as a managerial instrument to regulate the use of resources efficiently and transparently. With auctions, government agencies or public institutions have procedural standards that can be accounted for, while providing equal opportunities for all business actors to participate in open competitions.²⁷

The implementation of the auction basically goes through several interrelated stages and forms an orderly and systematic series of processes. The initial stage starts with planning, namely the process of identifying needs to be met, determining technical specifications, and preparing a work plan. At this stage, good planning is needed so that the auction runs effectively. If an error occurs at this stage, it will greatly affect the quality of the results of the procurement of goods and services. Then the procurement committee prepares

²⁴ Aji Baskoro, "Combating Corruption in Procurement: The Synergy of Law Enforcement, Civil Society, and Digital Oversight," *Jurnal Pengadaan Indonesia*, Vol. 4, no. 1 (2025): p. 31.

²⁵ R Beniadi Setiawan, "Strategi Pencegahan Korupsi Dan Procurement Fraud Di Sektor Pemerintahan Dan Masyarakat," *Jurnal Sosial Dan Teknologi (SOSTECH)*, Vol. 5, no. 9 (2025): p. 3847.

²⁶ Sri Rahardjo, "Analisis Akuntabilitas Dan Transparansi Sistem Elektronik Pengadaan Barang Dan Jasa Pemerintah Di LKPP," *Jurnal Sistem Transportasi Dan Logistik*, Vol. 2, no. 2 (2022): p. 84.

²⁷ Siallagan and Dwijatenaya, "Analisis Pelaksanaan Pengadaan Barang/ Jasa Secara Elektronik (E-Procurement) Berdasarkan Peraturan Presiden Nomor 12 Tahun 2021 Pada Pemerintah Kabupaten Kutai Barat", *Jurnal Ilmiah Administrasi Publik (JIMAP)*, Vol 1, No. 1, (2022), p. 113"

the auction document, sets evaluation criteria, and announces tender information to the public so that all prospective participants get fair access to information.²⁸

The main stage in the implementation of the auction is the evaluation process of each bid offered by the participants that basically meet the necessary criteria. Evaluation can include technical, administrative, and price aspects that aim to obtain the provider that best meets the needs with the best quality. In this process, transparency and objectivity are strongly emphasized to avoid interventions that can make the competition unfair. After the evaluation stage is completed, the auction procurement committee will determine the winner, who is considered the most deserving with the best bid, but this result must be objectively accounted for.²⁹

The provisions for the implementation of auctions in the procurement of goods and services show that the system is a series of structured mechanisms; each stage that is carried out aims to obtain goods and services of the highest quality, reasonable prices, and accountable processes. Auctions also function as a means to strengthen public trust in the organizing institution, because transparency in implementation reflects integrity and professionalism in the bureaucracy.³⁰

In the practice of procurement of goods and services, it is required to run based on the principles of transparency, efficiency, and fair business competition between participants. However, in reality, it is not uncommon for mechanisms that should be carried out to ensure justice to be abused by certain parties to obtain profits in an unnatural way, one of which is conspiracy in the tender auction process.³¹ Tender conspiracy is a form of anti-competitive practice that damages market integrity and the principle of justice. In the context of procurement of goods and services, a conspiracy occurs between two or more parties, either between the tender participants or between the participants and the organizing committee, who carry out covert cooperation to arrange the auction results to ensure that certain parties win the tender in ways that should

²⁸ Agus Arif Rakhman, "Penyusunan Standar Operasional Prosedur (SOP) Perencanaan Pengadaan Barang/Jasa," *Jurnal Pengadaan Barang/Jasa*, Vol. 2, no. 1 (2023): p. 54.

²⁹ Arief Syafrudi et al., "Evaluasi Penawaran Teknis Tender Pekerjaan Konstruksi Fasilitas Sisi Darat Bandar Udara Siboru Fakfak Papua Barat," *Journal of Innovation Research and Knowledge*, Vol. 4, no. 3 (2024): p. 1895.

³⁰ Iffah Khairunnah and Nadirsyah Nadirsyah, "Pengaruh Penerapan E-Procurement Dan Pengendalian Internal Terhadap Pencegahan Fraud Pengadaan Barang Dan Jasa Di Provinsi Aceh," *Jurnal Ilmiah Mahasiswa Ekonomi Akuntansi*, Vol. 7, no. 4 (2022): p. 581.

³¹ Endah Widyastuti, "Praktik Persekongkolan Dalam Pelaksanaan Tender Pengadaan Barang / Jasa Pemerintah," *JUDICATUM: Jurnal Dimensi Catra Hukum*, Vol. 1, no. 2 (2023): p. 64.

not be done, such as price fixing, regional division, preparation of cover bidding, or planned resignation by other parties.³²

From an economic perspective, tender conspiracies can eliminate the essence of healthy competition. The auction process that should be carried out to obtain the best provider at a fair price turns into a means of distributing the profits of certain parties, which can cause market distortions because the goods and services obtained are not in accordance with what has been planned, and also have the potential to cause inefficiency in the use of the public budget, as well as reduce the quality of the goods/services produced.³³

Conceptually, tender collusion can be categorized as *collusive bidding* or *bid rigging*, which in various economic literature is classified as a form of cartel in the procurement sector. In practice, tender collusion can occur through several patterns. First, *horizontal collusion*, which is cooperation between auction participants to regulate tender results by determining alternating winners or distributing projects.³⁴ Second, *vertical collusion*, which is a conspiracy between participants and procurement committees or authorized officials to manipulate the bid evaluation process. Third, *hub-and-spoke collusion* involving third parties such as consultants or brokers who act as intermediaries in arranging bids.³⁵

From the legal side of business competition, tender conspiracy is a category of actions that give rise to unfair competition. This practice can substantially inhibit the entry of new business actors into the market, limit consumer choice, and create a monopolistic market structure. In the economic system, tenders are a means to create efficiency through competition mechanisms; however, if the tender outcome has been predetermined through a hidden agreement, then the market no longer functions naturally and can result in a loss of allocative efficiency because the price and the winner of the tender are no longer determined by a healthy demand and supply mechanism, but rather the result of engineering by colluding actors.³⁶

³² Yara Shafa Alcika, "Praktik Persekongkolan Tender Dalam Persaingan Usaha," *REUSAM: Jurnal Ilmu Hukum*, Vol. 10, no. 2 (2023): p. 86.

³³ Dadang Hardiana, "Dimensi Yuridis Dan Ekonomis Dalam Penanganan Persekongkolan Tender Pemerintah: Studi Komparatif Atas Putusan KPPU NO. 17/KPPU-L/2022," *Jurnal Hukum Dan Kesejahteraan Universitas Al Azhar Indonesia*, Vol. 9, no. 2 (2024): p. 19.

³⁴ Muhammad Ridho Prasajo, "Analisa Yuridis Persekongkolan Tender Pembangunan Gedung Dprd Barito Kuala Dan Land Developmentnya (Studi Putusan KPPU Nomor 06/KPPU-L/2015)," *NOVUM: Jurnal Hukum*, Vol. 4, no. 1 (2017): p. 15.

³⁵ Anshika Tyagi, "Hub and Spokes Cartel," *International Journal of Law Management and Humanities*, Vol. 6, no. 4 (2023): p. 863.

³⁶ Ginanjar Bowo Saputra, "Penegakan Hukum Persekongkolan Tender Menurut Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik," *Privat Law*, Vol. 6, no. 2 (2018): p. 217.

Based on the case that the author researched, the tender proof for the rejection of the fine Number 1/Pdt.Sus-KPPU/2021/PN Niaga Mdn dated June 21, 2021, for the imposition of a fine by the ICC. The winning party of the tender sued the ICC because of objections to the decision handed down by the ICC against the tender winner on suspicion of practicing monopoly and unfair business competition. This case began with the results of an investigation conducted by the Business Competition Supervisory Commission (ICC) into the alleged violation of Article 22 of Law Number 5 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, which has expressly prohibited the existence of a conspiracy in the auction process that has the potential to hinder the creation of healthy business competition. This alleged violation arose in the implementation of the auction of the Langsa regional referral hospital construction project in 2018, which was organized by the Aceh Government through the Procurement Service Unit of the Aceh Public Works and Spatial Planning Office.

In the process of implementing the tender, ICC found that there was an allegation of a tender conspiracy involving PT. Mina Fajar Abadi as an auction participant with the procurement committee. From the results of the investigation, ICC found that the auction process did not run competitively as per the basic principles of procurement of goods and services, which must run with transparency. PT. Mina Fajar Abadi is suspected of having a covert collaboration with the procurement committee to regulate the auction results, with the aim of ensuring that the company is determined as the winner of the tender. These allegations are strengthened by the similarity of the price bidding pattern between the tender participants, the uniformity of administrative documents that show pre-tender coordination, and the existence of informal communication between the committee and participants that is not in accordance with the formal procurement procedures. In addition, the ICC also found that there were administrative passes that were not in accordance with the provisions due to a number of deficiencies in PT. Mina Fajar Abadi's documents were still ignored by the committee and did not abort the feasibility of the bid.

The evidence of vertical tender collusion between PT Mina Fajar Abadi and the Procurement Working Group is based on the suitability of document evidence and expert testimony. ICC not only relies on direct communication, but also links findings of similarity in bid documents, similarities in typing errors, use of deeds, and letters of support from distributors with identical motives. Expert testimony from the Government Goods/Services Procurement Policy Institute and business competition law experts emphasized that the similarity of the pattern of supporting documents and the same control is a strong indicator

of close coordination. The series of evidence proves that the procurement committee does not carry out its duties independently, but actively directs the auction results to facilitate the victory of certain participants. Therefore, the ICC concludes that the element of conspiring to regulate the tender winner as stipulated in Article 22 of Law Number 5 of 1999 has been legally and convincingly proven.

Upon the evidence of the tender conspiracy, the ICC issued Decision No. 04/KPPU-L/2020, which imposed an administrative fine of Rp1,723,500,000.00 on PT Mina Fajar Abadi. The sanction of the obligation to deposit fines into the state treasury was based on the commission's assessment that the Applicant was the main party who benefited from the violation of Article 22 of Law Number 5 of 1999. In response to the ruling, PT Mina Fajar Abadi filed an objection application to the Commercial Court at the Medan District Court by postulating that there was an error in the assessment of juridical facts and the application of the law by the ICC. The Applicant emphasized that all stages of the auction had been carried out according to the procedure without collusion, and assessed that the ICC's evidence was assumed and did not meet the standards of proof of the procedural law of business competition. Thus, the submission of the objection triggered a dialectic of juridical proof regarding the extrinsic strength of indicative evidence used by the commission panel.

ICC's legal considerations contain disparities in the imposition of sanctions when it focuses only on administrative accountability for PT Mina Fajar Abadi and the Procurement Working Group. Although the examination outlines indications of pseudo-competition through the similarity of offer guarantees and the involvement of other participants as companion companies, ICC considers that the actions of Reported Parties II to Reported VI do not have a significant effect in determining the winner of the tender. As a result, Reported Parties II to Reported VI were declared not proven to have violated Article 22 of Law Number 5 of 1999, while Reported Party VII, as the Procurement Working Group, was only sanctioned with an order to improve behavior without administrative fines. This construction caused PT Mina Fajar Abadi to be the only entity to bear financial fines for conspiracies that were essentially multilateral. Therefore, the pattern of administrative criminalization raises the issue of proportionality in the law enforcement of business competition laws related to the division of responsibilities between conspiracies.

ICC, as the respondent, objected, defending all the results of the examination by stating that the element of conspiracy had been legally and convincingly proven. According to the ICC, there is sufficient evidence in the form of similarity in price patterns, similarity of bid documents, and

communication relationships that show coordination between participants and the committee. ICC considers that the actions of PT. Mina Fajar Abadi have caused market distortions by negating the principle of fair competition, and resulting in economic losses for other market participants.³⁷ The subject of dispute in this case then focuses on assessing whether the actions of PT. Mina Fajar Abadi have fulfilled the elements of tender conspiracy as stipulated in Article 22 Number 5 of 1999, namely the existence of cooperation between business actors or between business actors and the committee to regulate and determine the winner of the tender.

In the examination of the application for objection to the ICC decision, the Commercial Court does not conduct a re-examination like civil cases in general. Based on Supreme Court Regulation Number 3 of 2019 concerning Procedures for Submitting Objections to the Decision of the Business Competition Supervisory Commission, the examination of objections is only carried out based on a copy of the ICC Decision and all case files that have been examined by the ICC. Therefore, the parties are not allowed to submit new evidence or present new witnesses in the objection examination process. Thus, the panel of judges only reassesses the facts and evidence that have been the basis for the ICC's consideration in issuing its decision.

Based on the results of the examination at the trial, the panel of judges of the Medan District Court considered various evidence submitted by the parties, both from the objector (PT. Mina Fajar Abadi) and from the respondent (ICC), to assess whether there had indeed been a violation of Article 22 of Law Number 5 of 1999, which contains "Business actors are prohibited from conspiring with other parties to regulate and/or determine the winner of the tender so that it can result in unfair business competition". The judge in his consideration emphasized that the essence of the article lies in the existence of deliberate cooperation between business actors and other parties to regulate the results of tenders that should be carried out competitively. Therefore, the main elements that must be proven in the case include the existence of agreement or coordination between the parties involved, the purpose to regulate or determine the winner of the tender, and the consequences arising in the form of disruption of the healthy business competition mechanism.

From the results of the evidence, the panel of judges considered that ICC had succeeded in proving the existence of a *vertical collusion* between PT. Mina Fajar Abadi and the tender committee for the construction project of the Langsa

³⁷ Aruna Irani Qotrunnada Kahf, "Persekongkolan Tender Dalam Perspektif Hukum Persaingan Usaha Pada Putusan Nomor 570 K/Pdt.Sus-Kppu/2022," *Jurnal Rechtsens*, Vol. 13, no. 1 (2022): p. 4.

regional referral hospital in 2018. This can be seen from a number of facts revealed in the trial, including communication and informal relationships between procurement officials and tender participants that should not have occurred in the auction process. In addition, it was also found that there was administrative and technical graduation of PT. Mina Fajar Abadi even though the company did not meet all document requirements as stipulated in the provisions for the procurement of goods and services. The panel also considered the uniformity of the bid price pattern between the tender participants, which was considered unreasonable and indicated that there was coordination before the auction process was carried out.

When analyzed from the perspective of *al-munafasah at-tijariyyah*, the actions taken by the tender winner with the auction organizing committee were not in accordance with the principles that apply in the perspective of *al-munafasah at-tijariyyah*. Based on the facts of the trial, it was found that there was a special relationship between the committee and PT. Mina Fajar Abadi, which caused the company to gain convenience in the administrative and technical evaluation process. While other participants fell out due to formal reasons, PT. Mina Fajar Abadi was actually declared to have passed without any significant obstacles and was finally determined as the winner with a bid value close to the Self-Estimated Price (HPS). This condition shows that the auction process is no longer an objective competition venue, but only a formality to win for a certain party.³⁸

In the view of *al-munafasah at-tijariyyah*, this practice is a form of misappropriation of the principles of justice and trade. Business actors who use special influence or relationships to control the market are the same as closing opportunities for other business actors to obtain the same rights in competition.³⁹ The conspiracy carried out by PT. Mina Fajar Abadi and the tender committee reflects the loss of the value of honesty, openness, and responsibility in business activities. As a result, the implementation of projects that are oriented towards quality and efficiency is based on collusion and one-sided interests. From the side of *al-munafasah at-tijariyyah*, this is a form of economic injustice that can cause social harm because it can reduce public trust in the integrity of the government procurement system.

The panel of judges in this decision placed justice as the main principle. By rejecting the objection submitted by PT. Mina Fajar Abadi, the judge showed a firm stance that the profits obtained through fraud and cooperation were not

³⁸ Istijab, "Persekongkolan Pemenangan Tender Pengadaan Barang Berdasarkan Pasal 22 UU No. 5 Tahun 1999," *YURIJAYA, Jurnal Ilmiah Hukum*, Vol. 1, no. 1 (2018): p. 53.

³⁹ Meirina Dewi Pratiwi, "Persaingan Usaha Dalam Hukum Islam," *Jurnal Justice*, Vol. 6, no. 1 (2020): p. 8.

legally justified. This affirmation is in accordance with the perspective of *al-munafasah at-tijariyyah*, which rejects all forms of fraud, collusion, and manipulation in economic activities. In terms of implementation, this decision shows that the principle of *al-munafasah at-tijariyyah* can go hand in hand with positive law in the enforcement of economic justice. The judge has indirectly carried out the function of supervision over every economic actor, ensuring that business activities are carried out professionally and not misused for personal interests. By upholding the ICC's decision, the court plays a role in upholding the values of integrity and responsibility in business competition. This is in line with the essence of *al-munafasah at-tijariyyah*, which is to encourage every business actor to compete based on ability, quality, and real work, not through collusion or the influence of power.⁴⁰

The commercial court's decision judicially corrects the inconsistency of the ICC's legal considerations that impose sanctions unilaterally amid indications of multilateral conspiracy. This juridical correction is based on the perspective of *al-munafasah at-tijariyyah*, which prioritizes the principle of distributive justice, namely the need to provide equal and non-discriminatory legal treatment to all entities proven to be involved in business competition violations. The imposition of selective and disproportionate sanctions by the ICC not only has the potential to damage the reputation and sustainability of certain business actors, but also reduces public trust in the objectivity of the business competition supervision system. Within the framework of sharia economic law, the parameters of objectivity of the panel of judges who assess the inconsistency of the sanctions are in line with Islamic ethics that expressly reject all forms of discrimination and call for impartial law enforcement. Therefore, the judicial correction of the ICC's sanctions emphasizes the importance of consistency of legal considerations in order to maintain substantive justice and the integrity of the market supervision system.

The restoration of *market equilibrium* distorted by fraudulent practices is the main substance of sanctions enforcement in the competition court. This is based on the principle of fair free competition, where the market must be opened as widely as possible to all business actors without discriminatory barriers, while any deviant business behavior must be subject to appropriate legal sanctions. The imposition of appropriate and measurable legal sanctions against competition irregularities serves to maintain market contestation to be healthy, efficient, and fair. This mechanism places *al-munafasah at-tijariyyah* not just as a theoretical

⁴⁰ Abdul Latif, "Etika Persaingan Dalam Usaha Menurut Pandangan Islam," *Islamic Economics Journal*, Vol. 3, no. 2 (2021): p. 166.

doctrine, but as a moral and normative ethical guideline that directs business actors to carry out transactions in an honest, transparent, and accountable manner. Thus, the balance between strict sanctions and open market access is the main foundation in operationalizing the values of *al-munafasah at-tijariyyah* in the dynamics of modern business competition.

The author considers that the Medan Commercial Court Decision has been handed down precisely, professionally, and in accordance with the principles of *al-munafasah at-tijariyyah*. This assessment is based on the discovery of fundamental weaknesses in the ICC's legal considerations that suspect the existence of a collective conspiracy but impose financial sanctions only partially, which ultimately reduces the weight of the commission's evidence and arguments. In the procedural law of business competition, the imposition of sanctions must be based on a strong standard of proof, considering that allegations of tender conspiracy carry serious implications for the reputation and business sustainability of business actors.⁴¹ The absence of conclusive evidence showing that there was coordination to regulate the auction winner makes the action of the panel of judges in annulling the fine sanction an appropriate juridical step to uphold justice. Therefore, the decision of the Medan Commercial Court is proven to reflect the values of *al-munafasah at-tijariyyah* through the enforcement of substantive justice, the guarantee of benefits, and the protection of the integrity of business competition.

CONCLUSION

The Decision of the Medan Commercial Court Number 1/Pdt.Sus-KPPU/2021/PN Niaga Mdn strengthens ICC Decision Number 04/ICC-L/2020 by rejecting PT Mina Fajar Abadi's objection to the Petitioner's failure to break the allegation of a tender conspiracy under Article 22 of Law Number 5 of 1999. Procedurally, Supreme Court Regulation Number 3 of 2019 does guarantee efficiency and legal certainty by limiting the examination to only ICC case files. However, this juridical limitation closes the room for the *judex facti* to consider new evidence (*novum*), thus potentially harming the principle of equality of arms in the process of proving the law of objections.

Viewed from the perspective of *al-munafasah at-tijariyyah*, the *ratio decidendi* of the panel of judges has not fully reflected the principles of justice ('*adl*') and transparency. The imposition of legal liability that focuses solely on the tender winner ignores the nature of *conspiracy* as a collectively coordinated action involving the procurement committee and other auction participants. The

⁴¹ Hendi Indra Prasetya and Danang Wahyu Muhammad, "Pembuktian Dalam Penyelesaian Perkara Persekongkolan Tender," *Media of Law and Sharia*, Vol. 3, no. 1 (2022): p. 26.

absence of proportionate sanctions on all entities involved is contrary to the principles of commutative justice and the prohibition of causing harm (*lā ḍarar wa lā ḍirār*), so the enforcement of business competition law has not been able to create an honest, transparent, and fair business contest climate.

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