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**JURIDICAL ANALYSIS OF THE CONSPIRACY OVER THE INK
PROCUREMENT PROJECT AT THE GENERAL ELECTION COMMISSION WAS
REVIEWED BASED ON LAW NUMBER 5 OF 1999 CONCERNING THE
PROHIBITION OF MONOPOLY PRACTICES AND UNFAIR BUSINESS
COMPETITION (STUDY OF ICC DECISION NO. 08/ICC-L/2004)**

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Abstrack: *The procurement of fingerprint ink in the 2004 General Election became a serious concern due to indications of collusion in the tender process involving bidding participants and KPU officials. This case reflects the complexity of violations that are not only related to competition law as regulated in Article 22 of Law No. 5 of 1999 but also involve elements of corruption as stipulated in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001. This study employs a normative juridical method to analyze the forms of collusion that occurred, its implications for the procurement system, and the coordination between the Indonesian Competition Commission (KPPU) and law enforcement authorities in handling this case. The findings indicate that weak oversight and lack of synergy between institutions hinder the effectiveness of law enforcement, highlighting the need for regulatory reforms and increased transparency to prevent similar practices in the future. The KPK and the Prosecutor's Office, on the other hand, can provide training to ICC investigators so that they can better understand the criminal aspects of the cases they handle, so that they can help in compiling stronger reports and can be used as a basis for further investigations. In addition to the technical aspects, challenges in coordination are also related to institutional and regulatory factors. Therefore, it is necessary to increase transparency, independent supervision, and enforce strict sanctions to ensure procurement integrity and maintain public trust in the implementation of elections*

Keywords: *Corruption, Tender Collusion, Competition Law*

1. Introduction

General elections are the main pillar of democracy that relies on the principles of honesty, justice, and transparency at every stage.¹ One of the important aspects of organizing

¹ Arif Prasetyo Wibowo, Eka Wisnu Wardhana, and T. Heru Nurgiansah, "General Elections in Indonesia in the Perspective of Pancasila," *Journal of Citizenship* 6, no. 2 (2022): 3217–25.

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elections is the procurement of goods and services, including fingerprint ink as an identification tool for voters who have exercised their voting rights. The existence of this ink aims to ensure that each voter can only cast his vote once, so that it can prevent fraudulent practices such as double voting.

Therefore, the process of procurement of election ink must be carried out with the principles of accountability, transparency, and healthy business competition. However, in reality, the procurement of goods and services in elections is often a loophole for corrupt and collusion practices involving various parties, both from providers of goods and from election officials. The case of ink procurement in the 2004 Legislative Election is a clear example of how a system that should run openly is actually infiltrated by certain interests that harm the state and hurt public trust in the democratic process.

The process of procuring fingerprint ink in the 2004 election involves a tender mechanism that should run in accordance with the principles of transparency and fair competition. However, in its implementation, strong indications were found of a conspiracy between various parties, including tender participants and KPU officials. This conspiracy takes various forms, such as price fixing among auction participants, the selection of companies that do not meet technical and administrative requirements, and the manipulation of documents to win contracts. In fact, there is evidence that some tender participants have received information related to ink needs before the auction is officially announced, which shows information leaks and disagreements with applicable procedures.

In addition, the travel of several KPU officials abroad financed by partners shows strong indications of a conflict of interest that leads to corrupt practices. This condition not only harms the state financially, but also hurts public confidence in the integrity of the election administration. The alleged violations in this case include violations of Article 22 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, which states that "Business actors are prohibited from conspiring with other

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parties to regulate and/or determine the winner of the tender so that it can result in unfair business competition." In addition, there are indications of violations of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, especially Articles 2 and 3 which regulate the abuse of authority that can harm state finances.

In this case, the practice of conspiracy not only has an impact on the aspect of healthy business competition, but can also be categorized as an act of corruption if it is proven that there is an abuse of office for personal or certain group gains.² This is further exacerbated by the alleged bribes or gratuities given to relevant officials, thus allowing certain parties to win tenders even though they do not meet the requirements that have been set.

The conspiracy in this tender is also contrary to Presidential Decree No. 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods and Services, which is supposed to regulate the auction process in a transparent and competitive manner. However, in its implementation, there are various irregularities involving illegal bidding price changes, direct appointments without a clear basis, and pressure on tender participants to follow a pre-arranged scheme.

In addition, in the tender implementation process, there is an administrative manipulation practice where companies that do not have experience in the required field are still passed in the prequalification selection. This condition shows that there is interference by certain parties in determining the winner of the auction without going through the proper procedures. Thus, this problem is not only a violation of business competition regulations, but also reflects the weak supervision mechanism in the procurement system of goods and services in the government environment.³

The significance of this case is not only limited to the legal aspect of business competition, but also extends to the criminal law aspect because of the potential for

² S. H. Cita Citrawinda, *The Law of Competition* (Jakad Media Publishing, 2021).

³ W. Riawan Tjandra and M. SH, *Law on Procurement of Goods and Services* (Prenada Media, 2022).

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corruption. The state's losses due to conspiracy practices in the procurement of election ink are estimated to reach Rp 2,159,233,800, which indicates the misuse of public funds on a large scale. In addition to the financial impact, this case also shows how corruption in the electoral process can have implications for the quality of democracy as a whole.⁴

If the process of procurement of goods and services in elections is filled with corrupt practices, then the results of the election have the potential to not reflect the will of the people purely. Therefore, coordination between ICC and other law enforcement agencies, such as the Corruption Eradication Commission (KPK) and the Prosecutor's Office, is crucial in handling this case comprehensively. There is a need to strengthen regulations and stricter supervision mechanisms so that similar cases do not recur in the future, especially in the context of elections that should run in a clean and fair manner.

In this study, the author will analyze in depth how the form of conspiracy in the procurement of fingerprint ink by the KPU violates Article 22 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. In addition, this study will also examine the complexity of the violations that occur, where this case not only involves aspects of business competition, but also has the potential to enter the realm of corruption crimes in accordance with the provisions of Law Number 31 of 1999 jo. Law Number 20 of 2001. Finally, this study will discuss how ICC and other law enforcement officials, such as the KPK, coordinate in handling this case, given the potential for overlapping authorities in the law enforcement process, especially between ICC's jurisdictions that handle business competition and the KPK that focuses on corruption crimes.

⁴ Muhammad Revan Fauzano Makarim and Khairul Fahmi, "Problems and Impacts of the Implementation of the Open Proportional Election System on the Political System," *Journal of Social and Policy Issues*, 2022, 50–57.

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2. Method

This research uses normative juridical legal research methods⁵ with a legislative and case approach⁶. This method is used to analyze the applicable legal norms related to the procurement of goods and services in the election and their application in the case of alleged conspiracy in the procurement of fingerprint ink in the 2004 election.

The legislative approach is carried out by examining various relevant regulations, such as Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption, and Presidential Decree Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods and Services. Meanwhile, the case approach was carried out by analyzing ICC's decision related to the procurement of election ink as well as documents related to the auction process and indications of conspiracy.

The data collected in this study is in the form of secondary data consisting of laws and regulations, legal doctrines, and decisions of ICC and related institutions. The analysis was carried out qualitatively by examining the suitability between the applicable regulations and their implementation in the case under review.

3. Analysis or Discussion

A. Forms of Conspiracy in the Procurement of KPU Fingerprint Ink in Violation of Article 22 of Law No. 5 of 1999

The conspiracy in the procurement of fingerprint ink by the KPU in the 2004 election is a manifest form of violation of business competition regulations. Article 22 of Law Number

⁵ Fitria Widiyani Roosinda et al., *Qualitative research methods* (Zahir Publishing, 2021).

⁶ Elijah Ardyan et al., *Qualitative and Quantitative Research Methods: Qualitative and Quantitative Methods Approaches in Various Fields* (PT. Sonpedia Publishing Indonesia, 2023).

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5 of 1999 expressly prohibits the practice of conspiracy in tenders that can hinder healthy competition between providers of goods and services.⁷ Conspiracy in the context of competition law refers to the actions of two or more parties who work together to regulate the outcome of a business process, such as tenders for the procurement of goods and services, with the aim of obtaining unlawful profits.⁸ These conspiracies aim to create profits for certain parties in an unnatural way, often to the detriment of the country or society at large. The form of conspiracy in the procurement of goods and services can be classified into three main types, namely horizontal conspiracy, vertical conspiracy, and administrative manipulation.⁹ Horizontal conspiracy occurs when several companies that are supposed to compete in the tender actually work together to arrange the auction results. The mode used includes determining the price of a pre-agreed bid so that one of the participants wins. In addition, there is a practice of *cover bidding* or pseudo-bidding, where some companies deliberately bid higher or less competitive to ensure that a particular company is the winner.¹⁰

Vertical conspiracy occurs when tender participants collude with KPU officials who are responsible for the procurement process. In this case, there were indications that some KPU officials provided exclusive information to certain parties before the tender was opened. This benefits certain participants as they can tailor the tender documents and requirements to predetermined criteria. In addition, administrative manipulation is also part of this

⁷ Amanda Ayu Rizkia and Suci Rahmawati, "Factors Affecting Anti-Monopoly and Unfair Business Competition: Economic Globalization, Business Competition, and Business Actors. (Ethics Literature Review)," *Journal of Applied Management Science* 2, no. 5 (2021): 631–43.

⁸ Endah Widyastuti, "The Practice of Conspiracy in the Implementation of Tenders for the Procurement of Government Goods/Services," *JUDICATUM: Journal of the Dimension of Legal Studies* 1, no. 2 (2023): 63–69.

⁹ M. Afif Hasbullah, "Conspiracy in the Procurement of Government Goods and Services in the Perspective of Business Competition Law," *Journal of Education and Development* 9, no. 4 (2021): 681–86.

¹⁰ Muhammad Afdal and Ning Adiasih, "Juridical Analysis of Complementary Bidding Actions in Tender Conspiracies According to Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition," *Tribuere* 2, No. 1 (2024): 1–10.

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conspiracy. One of the main indications is the passing of companies that actually do not meet the technical or administrative requirements. Some tender documents submitted by certain companies also show signs of manipulation, such as the use of false documents or alterations of technical specifications to suit the capabilities of certain providers. In the case of the procurement of election ink in 2004, a combination of vertical conspiracy and administrative manipulation was found. The vertical conspiracy can be seen from the involvement of KPU officials who provided information to certain participants before the official tender process began. This gives certain parties an advantage in adjusting their documents and bidding strategies. Meanwhile, administrative manipulation is evident from the passage of companies that actually do not meet the technical or administrative requirements, which indicates intervention from the tender organizers.

Based on the analysis of three categories of conspiracy, this case is most predominantly included in the category of vertical conspiracy and administrative manipulation. This is due to the cooperation between tender participants and KPU officials in providing access to exclusive information, as well as efforts to manipulate administrative documents to win contracts illegally. Thus, in addition to violating the principle of fair business competition, this action also has the potential to become a criminal act of corruption in accordance with Law Number 31 of 1999 jo. Law Number 20 of 2001. This practice not only harms the state's finances but also weakens public trust in the holding of elections, so it is necessary to strengthen the supervision system and impose stricter sanctions on those involved in this conspiracy practice.

B. The Complexity of Violations: The Intersection of Business Competition Law and Corruption Crimes

The case of conspiracy in the procurement of fingerprint ink by the KPU in the 2004 election is not only limited to violations of Law No. 5 of 1999 concerning the Prohibition of

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Monopoly Practices and Unfair Business Competition, but also has a more complex dimension with potential violations of Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption. This complexity arises because the conspiracy practices that occur in the procurement process of goods and services not only have an impact on unfair business competition, but also result in state losses due to abuse of authority and indications of corruption involving KPU officials and tender participants.

From the perspective of business competition law, conspiracy in the tender violates Article 22 of Law No. 5 of 1999 which prohibits business actors from cooperating in regulating and determining the winner of the tender. However, in a broader context, this act can also be categorized as a criminal act of corruption based on Article 2 and Article 3 of Law No. 31 of 1999 jo. Law No. 20 of 2001. Article 2 stipulates that any act that is done unlawfully with the aim of benefiting oneself or others that harms the state's finances can be categorized as corruption. Meanwhile, Article 3 emphasizes that abuse of authority by officials that results in state losses is also a criminal act of corruption.

In the case of the procurement of election ink, indications of a conspiracy involving KPU officials and tender participants indicate a conflict of interest that leads to the practice of bribery and gratuities. The strong allegation of bribery in the form of financing the travel of KPU officials abroad by tender participants is proof that the relationship between the auction committee and the service provider is no longer professional and neutral. This indicates an abuse of authority, where officials who are supposed to act as supervisors collude with the provider to win tenders in an illegal way. In the context of criminal law, this act can be categorized as bribery or gratuity¹¹ in violation of Article 12B of Law No. 31 of 1999 jo. Law No. 20 of 2001, which states that any gratuity received by a civil servant or state

¹¹ Asliani Asliani and Riska Syafriana, "Juridical Review of Gratification as an Original Act in the Case of Corruption Crimes," in *National Seminar on Law, Social and Economic*, Vol. 3, 2024, 139–45.

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administrator in connection with their position is considered a bribe if it is not reported to the KPK within the specified period of time.

The intersection between business competition law and corruption in this case poses challenges in the aspect of law enforcement. On the one hand, ICC has the authority to investigate and impose administrative sanctions on business competition violations. However, on the other hand, if evidence is found of state losses and elements of abuse of authority, then this case also becomes the domain of the KPK and other law enforcement officials to be followed up as a criminal act of corruption. This shows that cases of conspiracy in the procurement of goods and services cannot be seen as a matter of competition law alone, but also as a form of corruption that requires further action based on criminal law.

The complexity of the infringement in this case shows how conspiracy in tenders not only impacts unfair business competition, but also has broader implications for a clean and transparent system of governance.

C, Coordination of ICC and Law Enforcement Officials in Handling Cases

Coordination between the Business Competition Supervisory Commission (ICC) and law enforcement officials such as the Corruption Eradication Commission (KPK) and the Prosecutor's Office became crucial in handling the 2004 election ink procurement case. ICC has the authority to investigate and impose sanctions against violations of business competition,¹² while the KPK and the Prosecutor's Office have the authority to take action against cases related to corruption crimes.¹³ However, in practice, inter-agency coordination often encounters obstacles, both in terms of jurisdiction and investigation mechanisms. One

¹² Ramazaky Teddy, "Juridical Analysis of the Authority of the Business Competition Supervisory Commission (ICC) in the Investigation of Antitrust Criminal Cases Based on Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition" (PhD thesis, Andalas University, 2022).

¹³ I. Made Artha Rimbawa, "The Authority of the KPK in Eradicating Corruption," *Yustitia Journal* 15, no. 2 (2021): 87–93.

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of the main challenges in coordination between ICC and law enforcement officials is the difference in authority and investigation mechanisms owned by each institution. ICC is authorized to provide administrative sanctions for violations of business competition law based on Law Number 5 of 1999. However, ICC does not have the authority to conduct investigations that lead to criminal prosecution. On the other hand, the KPK and the Prosecutor's Office have jurisdiction to handle corruption crimes, but sometimes it requires preliminary evidence from ICC to corroborate indications of bribery or abuse of authority in the procurement of goods and services.

This imbalance can lead to ineffectiveness in handling cases, especially when there are indications that conspiracy in tenders not only impacts unfair business competition, but also involves corrupt practices. In some cases, the investigation conducted by ICC stopped at the stage of imposing administrative sanctions on business actors without any follow-up to the criminal realm, even though indications of significant state losses were found. On the other hand, the KPK or the Prosecutor's Office often has difficulty accessing initial information related to the pattern of conspiracy that has been identified by ICC. To overcome this obstacle, there needs to be a clearer cooperation protocol between ICC, KPK, and the Prosecutor's Office. This protocol can include a mechanism for exchanging data and evidence, harmonizing investigative procedures, and a firmer division of authority in handling cases that intersect between competition law and corruption. One of the efforts that can be made is to establish an inter-agency coordination forum that functions to integrate information from the initial stage of investigation to the prosecution stage in court.

In addition, in practice, ICC can be more proactive in reporting indications of corruption crimes to the KPK or the Prosecutor's Office after the initial investigation is carried out. This is important to ensure that cases are not only resolved within the scope of competition law, but also examined from the criminal law aspect if sufficient evidence is

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found. The KPK and the Prosecutor's Office, on the other hand, can provide training to ICC investigators so that they can better understand the criminal aspects of the cases they handle, so that they can help in compiling stronger reports and can be used as a basis for further investigations. In addition to the technical aspects, challenges in coordination are also related to institutional and regulatory factors. Currently, there is no regulation that explicitly regulates the working relationship between ICC and the KPK in handling cases related to conspiracy in the procurement of goods and services. Therefore, there is a need for a revision of regulations or the issuance of new regulations that regulate this cooperation mechanism in more detail. For example, through a memorandum of understanding between ICC and the KPK that establishes standard procedures in handling conspiracy cases that also contain elements of corruption.

In the long term, increasing the effectiveness of coordination between ICC and law enforcement officials must be supported by institutional reforms that allow for an early detection system of conspiracy practices in the procurement of goods and services. One of the steps that can be implemented is to build a joint monitoring system that allows ICC, the KPK, and the Prosecutor's Office to share information and supervise the procurement process of goods and services in real-time. Thus, potential violations can be detected early before harming the country on a large scale. The settlement of the election ink procurement case must be used as a precedent to improve the mechanism of inter-institutional cooperation, so that the practice of conspiracy and corruption in the procurement of goods and services can be minimized in the future. With stronger coordination between ICC, the KPK, and the Prosecutor's Office, not only business competition violations can be effectively dealt with, but also the accompanying corruption crimes can be processed more thoroughly to maintain transparency and integrity in the implementation of elections and the government system as a whole.

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3. Conclusion

1. The case of conspiracy in the procurement of fingerprint ink by the KPU in the 2004 election showed the weakness of the procurement system against collusion and manipulation, which harmed the state and damaged public trust. The dominance of vertical conspiracies and administrative manipulation reveals structural weaknesses in the tender process. Therefore, it is necessary to increase transparency, independent supervision, and enforce strict sanctions to ensure procurement integrity and maintain public trust in the implementation of elections.
2. The case of conspiracy in the procurement of fingerprint ink for the 2004 election reflects the complexity of violations of the law which not only includes unfair business competition as stipulated in Article 22 of Law No. 5 of 1999, but also has the dimension of corruption crimes based on Law No. 31 of 1999 jo. Law No. 20 of 2001. Indications of bribery, gratuities, and abuse of authority by KPU officials in the procurement process show that there is a conflict of interest that leads to state losses. The intersection between business competition law and criminal law in this case emphasizes the need for stronger coordination between ICC and the KPK so that law enforcement can be carried out more effectively and comprehensively.
3. Coordination between ICC, KPK, and the Prosecutor's Office in handling the case of conspiracy to procure ink in the 2004 election still faces jurisdictional constraints and investigation mechanisms. Imbalances of authority often hinder the effectiveness of law enforcement, requiring clearer cooperation protocols, including data exchange mechanisms and the division of authority. Institutional reforms and joint monitoring systems should be strengthened so that similar cases can be handled more effectively, ensuring transparency and integrity in the procurement process of goods and services in the future.

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