

## CHAPTER I

### INTRODUCTION

#### A. Background of Problems

Procurement of government goods and services is an important part that cannot be separated from the administration of government because if the government has met the needs of the people it means that the government has carried out its duties and responsibilities.<sup>1</sup> Government procurement of goods and services is a fundamental component of good governance. Procurement of government goods or services has quite clear objectives, namely, obtaining goods or services at a price that can be accounted for with the appropriate quantity and quality and on time. On time here can be interpreted as the right amount, the right quality, and the right time.<sup>2</sup>

In Article 1 number 1 of the Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services, it is stated that Government Procurement of Goods / Services is an activity of the procurement of goods/services by the Ministry / Institution / Regional Apparatus financed by the State budget (APBN) / Local budget (APBD) with process from the identification of needs, to the handover of the work.

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<sup>1</sup>Purwosusilo, *Aspek Hukum Pengadaan Bareng dan Jasa*, Kencana (Divisi dari Prenadamedia Group), Jakarta, 2014, page. 01

<sup>2</sup>Putu Jati Arsana, *Management Pengadaan Barang dan Jasa Pemerintah*, Group Penerbitan CV Budi Utama, Yogyakarta, 2016, page. 35

Based on the article above, it can be concluded that there are several keywords that can be seen, one of which is the procurement of goods and services, planning, needs, and activities. The keywords that have been explained are very substantial and give a warning to the manager of the procurement of goods and services that if doing the procurement of goods or services, the manager should not make it up. This is because the procurement of goods and services itself must be based on the identification of needs not based on the available budget, let alone based on desires.<sup>3</sup>

Currently, businesses from the private sector that can cooperate with the government in carrying out goods and service procurement activities have a concept that at first can provide benefits and have a positive value. So that in the activities of the procurement of goods and services carried out by the government in collaboration with the private sector, it creates fraud and only benefits certain parties, as occurs in the activities of procurement of goods and services carried out through a tender or auction process. The definition of goods itself is any object, both tangible and intangible, movable or immovable which can be traded, used, or utilized by the user of the goods, whereas what is meant by service consists of input, process, and/or output, while the provision of services itself consists from construction work, consulting services, and other services.<sup>4</sup>

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<sup>3</sup>*Ibid*, page. 36

<sup>4</sup>Samsul Ramli, *Sertifikasi Ahli Pengadaan Barang/Jasa Pemerintah*, Visimedia, Jakarta, 2014, page.

Procurement of goods or services on a company or government agency's project is often through a tender. This is intended by the tender organizer to obtain prices for goods or services that are by the standards and with the best possible quality. The main objective of tenders can be achieved if the process is fair and healthy so that the tender winner is really determined by the bid (price and quality of goods or services submitted). The opposite consequence can occur if a conspiracy occurs during the tender process.<sup>5</sup>

Regarding the procurement of government goods and services that are often through tenders, the government issued the Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, hereinafter abbreviated as Law Number 5 of 1999 which is intended to enforce the rule of law and provide equal protection for every business actor to create fair business competition. This law guarantees legal certainty to further accelerate economic development to improve public welfare, as well as an implementation of the spirit and spirit of the 1945 Constitution.

The Law Number 5 of 1999 applies to all companies that are established and legally domiciled in Indonesia. For this reason, the provision of Article 22 of Law 5 1999 does not only cover procurement activities carried out by the government but also procurement activities carried out by the state companies (BUMN / BUMD) and private companies. This is because in the implementation of the procurement of

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<sup>5</sup>Muhammad Yusuf Adidana, "Persekongkolan Tender sebagai Suatu Tindakan yang Anti Persaingan Sehat", [www.hukumonline.com](http://www.hukumonline.com), access on 20 November 2019, at. 21.00 PM.

government goods and services carried out by the central government or local governments, BUMN, and private companies there are still many arrangements for winning tenders.<sup>6</sup>

The tender itself is based on Article 1 number 36 of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods and Services, which is stated as a method of selection to obtain other providers of goods/construction work/services. Meanwhile, the Elucidation of Article 22 of Law Number 5 the Year 1999 states that a tender is an offer to submit a price, to take a job to procure goods or to provide services. The activity of conspiring to determine the winner of a tender is clearly a fraudulent act because basically the tender and the winner are not regulated and are confidential in nature.<sup>7</sup>

Business actors can commit conspiracy to tenders from the beginning of the process until the winner is determined. Business actors, who should compete openly, prefer to conspire to raise prices closer to the temporary benchmark price, reduce the quality of goods or services, and even further collude with the owner of the job..<sup>8</sup>

The high level of business competition in Indonesia makes business actors/business actors compete to get multiple profits, and in today's world the business world will be colored with the fairly tight business competition, therefore

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<sup>6</sup>Suhasril dan Mohammad Taufik Makar, *Hukum Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat di Indonesia*, Ghalia Indonesia, Bogor, 2010, page.65.

<sup>7</sup>Andi Fahmi Lubis, et.al., *Hukum Persaingan Usaha antara Teks & Konteks*, Jakarta, KPPU, 2009, page.147.

<sup>8</sup>Erwin Syahril, "Upaya Mencegah Persekongkolan Tender pada Belanja Barang dan Modal Pemerintah", *Jurnal Hukum Bisnis*, edition 7, year 2012.

we can see it from the official website of the Indonesia Competition Commission (ICC/KPPU). The Commission ICC/KPPU has many reports or cases of unfair business competition, such as tender disputes involving various government agencies and private parties.

These cases include cases of procurement of goods or services, licensing, and so on. One of them happened in the tender conspiracy case at the auction of the Mandala Krida Stadium project in Yogyakarta. The tender conspiracy in the Mandala Krida stadium project originated from the ICC/KPPU's investigation into the procurement of construction work for the construction of the Mandala Krida Stadium, 2016 Local budget (APBD), and 2017 Local budget (APBD).<sup>9</sup>

The reported party itself included the Commitment Making Officer (PPK) for the procurement of construction services/purchasing of a sports building during the construction of the Mandala Krida Stadium, 2016 Local budget (APBD), and 2017 Local budget (APBD); Procurement Service Section Working Group (POKJA BLP) at the Youth and Sports Center-DIY Education, Youth and Sports Office in 2016; Procurement Service Section Working Group (POKJA BLP) at the Youth and Sports Center-DIY Education, Youth and Sports Agency in 2017 and six other business actors<sup>10</sup>

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<sup>9</sup>Ristu Hanafi, Tender proyek Stadion Mandala krida bermasalah, <https://news.detik.com/berita-jawa-tengah/d-4349561/tender-proyek-stadion-mandala-krida-yogya-bermasalah>, access on 20 November 2019, at 16.00 PM.

<sup>10</sup> *Ibid.*

Regarding this case, the Commission Council on Case Number 10/KPPU-I/2017 has conducted a hearing to read the verdict of the Case, namely Regarding Alleged Violation of Article 22 of Law Number 5 the Year 1999.

Regarding the Procurement of Construction Work for the Construction of the Mandala Krida Stadium in the 2016 Budget Year and the Procurement of Construction Work for the Construction of the Mandala Krida Stadium for the 2017 Fiscal Year in the Special Region of Yogyakarta Province with a total value of HPS is IDR 85,829,789,000 (Eighty-five billion eight hundred twenty-nine million seven hundred and eighty-nine thousand rupiahs).<sup>11</sup>

The Commission Council decided that there had been a conspiracy both horizontally and vertically and stated that the Reported I, the Reported II, the Reported III, the Reported IV, the Reported V, the Reported VI, the Reported VII, the Reported VIII, and the Reported IX have violated Article 22 of Law No. 5 of 1999. The Commission Council imposed fine sanctions on the Reported IV, the Reported V, the Reported VI, the Reported VII, the Reported VIII, and the Reported IX with a total fine to be paid to the state treasury of Rp 7,901,000,000, - (Seven billion nine hundred one million rupiah). Apart from imposing fines, the Commission Council also prohibited the Reported Party from participating in the tender and

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<sup>11</sup>KPPU, KPPU Putus Perkara mandala Krida, <http://www.kppu.go.id/id/blog/2018/12/kppu-putus-perkara-mandala-krida-yogyakarta/>, access on 20 November 2019, at 16.00 PM.

imposed administrative sanctions on the Reported I, the Reported II, and the Reported III.<sup>12</sup>

This Mandala Krida project tender conspiracy is the first case related to tender conspiracy handled by ICC/KPPU in Yogyakarta and it is a ICC/KPPU initiative not based on reports from other parties. Therefore, it is interesting to study, besides the conspiracy that occurred in the Mandala Kirida Project in the form of vertical and horizontal involving many business actors.

## **B. Statement of Problem**

Based on the background of the problems above, the main problems of this study are:

1. How is the mechanism of 2016 construction service tender on the establishment of Mandala Krida Stadium in DIY Yogyakarta province?
2. What are ICC/KPPU's consideration deciding the Case No.10/KPPU-I/2017?

## **C. Objective of Research**

The objectives of this research are:

1. To find out the tender mechanism for construction services in the construction of the Mandala Krida Stadium in the Province of Yogyakarta in 2016.
2. To analyze ICC/KPPU's consideration in deciding the Case No.10/KPPU-I/2017

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<sup>12</sup>*Ibid.*

#### **D. Benefit of Research**

From the research objectives above, this study intends to provide benefits or contributions to:

##### 1. Theoretical Benefits

The results of this study are expected to provide benefits for the development of knowledge regarding the implementation of tenders for the differentiation of goods and services.

##### 2. Practical Benefits

The results of this study are expected to provide benefits to the community in practical terms. Research is likely to provide input in the implementation of tenders for the differentiation of goods and services.