

ABSTRAK

Pengadaan barang dan jasa pemerintah pada dasarnya diselenggarakan berdasarkan prinsip persaingan sehat, transparansi, keterbukaan, dan akuntabilitas. Namun, dalam praktiknya masih ditemukan dugaan penyimpangan yang berpotensi menimbulkan persaingan usaha tidak sehat, salah satunya pada pengadaan Laptop Chromebook oleh Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi. Pengadaan tersebut dilakukan melalui mekanisme e-purchasing, tetapi diduga terdapat pengondisian spesifikasi teknis, pembocoran spesifikasi kepada penyedia tertentu, serta pembatasan kesempatan bagi pelaku usaha lain untuk bersaing. Penelitian ini bertujuan untuk menganalisis apakah praktik pengadaan Laptop Chromebook berpotensi menimbulkan persaingan usaha tidak sehat berdasarkan Pasal 22 Undang-Undang Nomor 5 Tahun 1999 serta menganalisis karakteristik persekongkolan yang terdapat dalam pengadaan tersebut.

Jenis penelitian yang digunakan adalah penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan (*statute approach*) dan pendekatan kasus (*case approach*). Bahan hukum yang digunakan meliputi bahan hukum primer berupa peraturan perundang-undangan dan putusan, bahan hukum sekunder berupa buku dan jurnal ilmiah, serta bahan hukum tersier. Analisis dilakukan secara kualitatif menggunakan metode deduktif dengan penafsiran ekstensif terhadap ketentuan Pasal 22 Undang-Undang Nomor 5 Tahun 1999.

Hasil penelitian menunjukkan bahwa praktik pengadaan Laptop Chromebook oleh Kemendikbudristek memiliki karakteristik yang berpotensi memenuhi unsur-unsur Pasal 22 Undang-Undang Nomor 5 Tahun 1999. Potensi tersebut tercermin dari adanya pengondisian spesifikasi teknis yang mengarah pada penggunaan Chrome OS, keterlibatan pihak tertentu dalam penyusunan kajian teknis, dugaan pembocoran spesifikasi kepada penyedia tertentu sebelum proses pengadaan, pembatasan kesempatan bagi pelaku usaha lain untuk berpartisipasi, serta tidak optimalnya penerapan prinsip persaingan dalam mekanisme e-purchasing. Karakteristik tersebut menunjukkan adanya indikasi persekongkolan vertikal antara penyelenggara pengadaan dengan pihak tertentu yang berpotensi mengakibatkan persaingan usaha tidak sehat. Oleh karena itu, meskipun dilakukan melalui mekanisme e-purchasing, pengadaan barang dan jasa pemerintah tetap harus menjunjung tinggi prinsip persaingan sehat, keterbukaan, dan perlakuan yang setara bagi seluruh pelaku usaha guna mencegah terjadinya praktik persekongkolan.

Kata Kunci: Persekongkolan Tender, Persaingan Usaha Tidak Sehat, Pengadaan Barang dan Jasa Pemerintah, E-Purchasing, Chromebook.

ABSTRACT

Government procurement of goods and services is fundamentally conducted based on the principles of fair competition, transparency, openness, and accountability. However, in practice, allegations of irregularities that could potentially lead to unfair business competition remain, one example being the procurement of Chromebook laptops by the Ministry of Education, Culture, Research, and Technology. This procurement was conducted through an e-purchasing mechanism, but there were allegations of technical specifications being conditioned, specifications being leaked to certain suppliers, and limitations on opportunities for other business actors to compete. This study aims to analyze whether the procurement practice of Chromebook laptops has the potential to lead to unfair business competition under Article 22 of Law Number 5 of 1999 and to analyze the characteristics of collusion within the procurement.

The type of research used is normative legal research using a statute approach and a case approach. The legal materials used include primary legal materials in the form of laws and decisions, secondary legal materials in the form of books and scientific journals, and tertiary legal materials. The analysis was conducted qualitatively using deductive methods with an extensive interpretation of the provisions of Article 22 of Law Number 5 of 1999.

The results of the study indicate that the procurement practices of Chromebook laptops by the Ministry of Education, Culture, Research, and Technology have characteristics that potentially meet the elements of Article 22 of Law Number 5 of 1999. This potential is reflected in the conditioning of technical specifications that lead to the use of Chrome OS, the involvement of certain parties in the preparation of technical studies, allegations of leaking specifications to certain suppliers prior to the procurement process, restrictions on opportunities for other business actors to participate, and the suboptimal application of competition principles in the e-purchasing mechanism. These characteristics indicate indications of vertical collusion between procurement organizers and certain parties, which has the potential to result in unfair business competition. Therefore, even though it is conducted through an e-purchasing mechanism, government procurement of goods and services must still uphold the principles of fair competition, transparency, and equal treatment for all business actors to prevent collusive practices.

Keywords: *Tender Rigging, Unfair Business Competition, Government Procurement of Goods and Services, E-Purchasing, Chromebook*

KATA PENGANTAR