

The Efforts of the Indonesian Competition Commission to Seek Judicial Review of the Tender Case Decision for the Revitalization of Taman Ismail Marzuki III

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Abstract

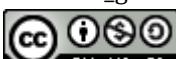
The case of the Revitalization of Taman Ismail Marzuki III with KPPU Decision No. 17/KPPU-L/2022 has given rise to legal uncertainty due to the dualism of Supreme Court cassation decisions: Decision No. 523K/Pdt.Sus-KPPU/2024, which annulled, and Decision No. 745K/Pdt.Sus-KPPU/2024, which upheld the ruling. This dualism not only obstructs execution but also undermines the authority of KPPU in enforcing competition law. This study aims to examine the legitimacy of KPPU in filing a Judicial Review (PK) and its implications for legal certainty and justice. The method applied is normative juridical with a statutory approach and judicial decision analysis. The findings show that Article 16 paragraph (2) of Supreme Court Regulation (Perma) No. 3 of 2021 bars KPPU from filing a Judicial Review, thereby depriving KPPU of legal certainty in executing its decisions, as the two rulings reflect a dualism. This study recommends the issuance of a new Supreme Court Regulation granting KPPU the authority to seek a Judicial Review to ensure justice and legal certainty in this case and in future cases.

Keywords: KPPU, Judicial Review, Legal Certainty

A. Introduction

Conspiracy in the business world is an act that harms other business people. Because the existence of a conspiracy in the business world will cause the closure of other business people's opportunities to run their businesses. The most common case of conspiracy is found in tender cases. According to Alfian Malik, the tender is a series of bidding processes that aim to select and consider and appoint suitable companies to work on the work package.¹ Broadly speaking,

¹ Mirza M. Haikal, "What is Tender? Everything About Tenders Need to Know!," *Mekarignum.Com*, 2024, https://mekarignum.com/id/blog/tender-adalah/?srsltid=AfmB0oo4lp5-T4liKGYDmrE_GoGuqKH8z8sbJT-NVL93D_gMFnEhGA_-.



tender is a process of competition for the supply of goods/services carried out by businessmen to meet the needs of government procurement.²

Usually the act of conspiracy is carried out in a group, in the way that one of the members of the group agrees to do something, in the case of a tender usually the members of the group who carry out the conspiracy agree to arrange the winner in a tender. This can lead to unfair business competition in the business environment. Realizing this, the government established the Business Competition Supervisory Commission, which in Indonesia is often abbreviated as ICC. This institution has the function to supervise, assess, take action and provide policy recommendations related to business competition, including but not limited to Conspiracy. ICC also plays a role in prosecuting and imposing administrative sanctions on the guilty reported parties so that it is expected to be able to create a healthy business environment for consumers, business actors and national economic growth.

Thus, ICC plays a very important role in maintaining a fair, competitive and conducive business climate through supervision, assessment, enforcement and providing policy recommendations related to alleged violations of business competition as contained in its legal basis, namely Law No. 5 of 1999 which regulates monopolies, cartels, abuse of dominant positions and unfair business competition. ICC, which has an important role in maintaining the business climate, is one example of a legal subject. According to Purbacaraka and Soekanto, the subject of law means parties who have a relationship with the legal system.³ The subject of law has a very crucial role in the realm of law, because only the subject of law can have legal authority and authority.⁴

Legal subjects or can also be called *rechtssubjects* are basically divided into two, namely human beings (*Natuurlijk Persoon*) and legal entities (*Rechtspersoon*) which have rights and obligations in the legal realm.⁵ In the view of Expert Martha Eri Shafira, M.H., legal entities can be divided into 2 types based on the authority of the legal entity, namely State Legal Entities and Private/Civil Legal Entities.⁶ Therefore, in accordance with this statement, ICC based on Law No. 5 of 1999 is a *rechtssubject* in the form of a legal entity. With ICC's status as a legal subject, ICC has a legal personality (*rechtspersoon*) which can be interpreted as having the legal authority to carry out various actions and has legal rights and obligations in accordance with the law.⁷ As a legal subject, ICC has the ability to issue legal decisions according to its authority, decision No. 17/ICC-L/2022 regarding tender conspiracies is valid and is one of ICC's responsibilities on the basis of maintaining a business climate.

² Haikal, "What is a tender? Everything about the tender to know!"

³ Hukumonline team, "Legal Subjects: Definition, Categories, and Examples," *Hukumonline.Com*, 2023, <https://www.hukumonline.com/berita/a/subjek-hukum-1t62ece10f037ce/?page=1>.

⁴ Gilang Rizki Aji Putra, "Human Beings as Subjects of Law," *is, Law and Justice Bulletin* 6, no. 1 (2022).

⁵ Aji Putra, "Man as a Subject of Law."

⁶ Martha Eri Safira, *Civil Law* (CV. Nata Karya, 2017).

⁷ Prananingrum, D. H. (2014). An examination of the essence of legal subjects: human beings and legal entities. *Legal Reflections: Journal of Legal Science*, 8(1), 73-92.



As a subject of law, ICC is also authorized to carry out legal remedies, although ICC has limitations, one of which is regarding Extraordinary Legal Remedies, such as Review regulated by law. PK (*civil request*) is a legal step to review court decisions at the first level, appeals, or cassations that have been *in kracht van gewijsde*.⁸ In accordance with article 16 Paragraph (2) of the Supreme Court Regulation No. 3 of 2021 which states that in a business competition case, the cassation effort is the highest legal remedy, final and cannot be reviewed, the ICC in this case is not authorized to conduct a review effort.

Then, due to ICC's lack of authority to conduct PK, there is confusion and legal uncertainty. One of them is in the case of Decision No. 17/ICC-L/2022 regarding the conspiracy to tender for the revitalization of Taman Ismail Marzuki. Consisting of Reported Party I, namely the tender executor PT Jakarta Propertindo (Perseroda), Reported Party II PT Pembangunan Perumahan (Persero) Tbk and Reported Party III PT Jaya Konstruksi Manggala Pratama Tbk. In the core of the case, it is proven that Reported Party I conspired to tender in the form of facilitating Reported Party II and Reported Party III to win the tender.

In its ruling, ICC judged that Reported Party I, Reported Party II, and Reported Party III were legally and convincingly proven guilty of violating Article 22 of Law Number 5 of 1999. Then the Reported Parties filed an Objection with two different register numbers at the Central Jakarta Commercial District Court, both of which were rejected, namely in Decision No. 9/Pdt.Sus-KPPU/2023/PN Niaga Jkt Pst and Decision No. 10/Pdt.Sus-KPPU/2023/PN Niaga Jkt Pst. Then the Reported Parties filed an Cassation at the Supreme Court which resulted in a decision number 523K/Pdt.Sus-KPPU/2024 and decision number 745K/Pdt.Sus-KPPU/2024 which contradicted each other. The result of the decision submitted by Reported Party I the Supreme Court rejected his Cassation and strengthened Decision No. 17/ICC-L/2022 and then on the decision submitted by Reported Parties II and III on the basis of his decision, the cassation was accepted and Decision No. 17/ICC-L/2022 was canceled.

In the Cassation decision no. 523K/Pdt.Sus-KPPU/2024, the judge considered that the alleged tender conspiracy between Reported Party I and Reported Party II and Reported Party III was considered unproven, because the judge considered that all policies carried out by Reported Party I were internal policies without any connection with Reported Party II and Reported Party III even though it benefited Reported Party II and Reported Party III. In addition, the judge considered that the absence of evidence, either direct or indirect, was the basis for the judge's consideration that Reported Party I did not the result of a conspiracy but only an internal decision without cooperation.

Then, the Judge's consideration to reject the Cassation in Decision No. 745K/Pdt.Sus-KPPU/2024 is that the methodology used by ICC in Decision No. 17/ICC-L/2022 has been able to prove that Reported Party I violated Article 22 of Law No. 5 of 1999. In addition, the judge also considered that the actions taken by Reported Party I gave exclusivity to Reported Party II and

⁸ Syahrul Sitorus, "LEGAL REMEDIES IN CIVIL CASES (Verzet, Appeal, Cassation, Review and Derden Verzet)," *Hikmah, STAIS North Sumatra* 18, no. 1 (2020).



Reported Party III, then the Judge also considered that the reasons for Reported Party I to file an Cassation were unacceptable. The two decisions create a dualism of the verdict and legal ambiguity, resulting in confusion by ICC to execute decision No. 17/ICC-L/2022 because in one decision the three reported parties both received administrative sanctions.

Normative research means researching using legal studies as norms, principles, principles, rules, doctrines, theories and literature to analyze and answer the problems being studied.⁹ By using normative research methods that use the Law approach and the case approach in this paper. The author will elaborate on how the legal certainty in the implementation of the tender as a result of the cassation decision No. 523K/Pdt.Sus-KPPU/2024 and the cassation decision No. 745K/Pdt.Sus-KPPU/2024 which in both decisions contradict each other and are dualistic because in essence the two decisions are the same case, namely Decision No. 17/ICCU-L/2022 regarding tender conspiracy but decided by the Supreme Court in contrast, one of which strengthens decision No. 17/KPPU-L/2022 while the other canceled decision No. 17/ICC-L/2022, so that the author concludes that this problem raises the lack of legal certainty over the problem of conspiracy to tender for the revitalization of Taman Ismail Marzuki III and makes ICC faced with uncertainties to implement decision No. 17/ICC-L/2022.

Then the author will explain how the possibility of a Review Effort by ICC on the Taman Ismail Marzuki III Revitalization Tender case in Cassation Decision No. 523K/Pdt.Sus-KPPU/2024 and Cassation Decision No. 745K/Pdt.Sus-ICC/2024 which contradict each other and cause legal uncertainty. On the subject of this issue, the author finds that the regulations governing extraordinary legal remedies for PK cannot be implemented in business competition cases in accordance with article 16 paragraph 2 of Perma No. 3 of 2021 so that ICC is not authorized to file a PK at the Supreme Court. By using the principle of legal certainty and progressive theory to make a Supreme Court Regulation (Perma) which regulates the permissibility of ICC to file a PK in order to resolve the case of dualism of the verdict that occurred in the Supreme Court's cassation decision Number 523K/Pdt.Sus-KPPU/2024 and the cassation decision Number 745K/Pdt.Sus-KPPU/2024 with *Novum* There is a formal defect in the objection decision issued by the Central Jakarta Commercial Court, namely the decision is contrary to the rules of Article 6 paragraph 1 of Perma No. 3 of 2021 which states that if there is more than one objection to the same ICC decision, it is necessary to combine objections/appeals in the case.

With the existence of a different decision number in the application for objection to a *quo* case, this gives rise to cassation decisions that have different and contradictory registration numbers, so a new Perma is needed that regulates ICC can submit PK efforts for this case and to get around similar cases in the future.

Therefore, the author is interested in examining more deeply related to two main issues, namely: What is the Legal Certainty of the Implementation of the Taman Ismail Marzuki III

⁹ Muhammin, *General Research Methods* (Mataram University Press, 2020).



Revitalization Tender as a Result of Cassation Decision No. 523K/Pdt.Sus-KPPU/2024 and Cassation Decision No.745K/Pdt.Sus-KPPU/2024? and What is the possibility of a Review Effort by ICC on the Taman Ismail Marzuki III Revitalization Tender case in the Supreme Court Decision No. 523K/Pdt.Sus-KPPU/2024 and Cassation Decision No.745K/Pdt.Sus-ICC/2024?

B. Research Methods

Legal research is an effort to trace, assess and analyze related to legal norms and performance in society by considering certain methods, systematics and thinking, in-depth audits, problem solving and having clear targets.¹⁰ The type of research that the author conducts is Juridical-Normative research or commonly referred to as doctrinal research.¹¹ Juridical research means researching using legal studies as norms, principles, principles, rules, doctrines, theories and literature to analyze and answer the problems being studied.¹² The author also complements this research with a *Statute Approach* and a *Case Approach*.

C. Discussion

1. Legal Certainty for the Implementation of the Taman Ismail Marzuki III Revitalization Tender as a Result of Cassation Decision No. 523K/Pdt.Sus-KPPU/2024 and Cassation Decision No.745K/Pdt.Sus-KPPU/2024

The definition of the law, according to Wasis SP, is a collection of rules that include written and unwritten norms made by parties with special authority with the aim of regulating people's lives. This rule is binding and must be obeyed by everyone, because there are consequences or sanctions that will be imposed on anyone who violates it. The purpose of the formation of the law is to bring order and provide justice in various aspects of people's lives.¹³ Law is an important element for human life, without law people will live with disharmony, chaos and disorder, besides that humans will do and act as they please without considering others or limitations so that it can be ensured that in the absence of law will cause conflict, insecurity and the absence of justice, then we must all agree that law is indispensable in life.

One of the legal foundations to create order, clarity and stability in society is the principle of legal certainty. *Gustav Radbruch* interpreted that the principle of legal certainty is a basic legal principle that requires the rule of law to be clearly formulated and stated in written form.¹⁴ According to Sudikno Mertokusumo, legal certainty is a legal principle that must be enforced, so that parties who have rights based on the law

¹⁰ Muhammin, Legal Research Methods (Mataram: Mataram University Press, 2020).

¹¹ Nur Solikin, Introduction to Legal Research Methodology (Pasuruan: CV. QIara Media Publisher, 2021).

¹² General Research Methods.

¹³ Yuhelson, *Introduction to Law* (Ideas Publishing, 2017).

¹⁴ Julyano Mario and Aditya Yuli Sulistyawan, "Understanding the Principle of Legal Certainty through the Construction of Legal Positivism Reasoning," *Crepidol Journal* 01, no. 01 (2019), <https://ejournal2.undip.ac.id/index.php/crepido/>.



can obtain their rights, and legal decisions can be implemented.¹⁵ Then the principle of legal certainty, according to Jan Michiel Otto, is a guarantee that under certain conditions, regulations that are not vague, harmonious and easily accessible will be applied consistently by the government.¹⁶ In addition, according to Utrecht, there are two meanings of the meaning of legal certainty, the first is interpreted as the existence of rules that have a universal nature and the second is as a guarantee of legal protection for the community from arbitrary government actions.¹⁷

Legal certainty can also be interpreted as a regulation that is not vague, not volatile and in its implementation this regulation is not affected by subjective circumstances.¹⁸ The principle of legal certainty can also mean ensuring respect for the rights that citizens have based on a decision or policy, which is thus aimed at creating

legal stability where decisions that have been made by the state or organization must have certainty and cannot be easily reversed or revoked.¹⁹

Therefore, the principle of legal certainty can be understood as a principle that ensures that the law applies consistently, clearly, predictably and includes all matters related to legal aspects and remedies.²⁰ In its application, the law must be applied in a non-capricious manner, so that the public knows what to expect from any legal decision. With this principle in place, people can plan their actions without fear of legal uncertainty, because the rules are clear and understandable.

The values in the principle of legal certainty must also always be considered because they are very important, namely the values of predictability, justice, order, protection of human rights, openness, and legality which make the hope of legal certainty not deviate and always on track.²¹

The existence of the principle of legal certainty that regulates clarity and regularity in every process related to the law, also affects the implementation of tenders that must be carried out fairly and transparently because of the importance of this so that the tender process not only meets legal principles, but also creates a climate of

¹⁵ Sudikno Mertokusumo, *Legal Discovery: An Introduction* (Yogyakarta: Atma Jaya University, Yogyakarta, 2010).

¹⁶ Ronald Janse, "A Turn to Legal Pluralism in Rule of Law Promotion?," *Erasmus Law Review* 3, no. 4 (2013).

¹⁷ Mario and Sulistyawan, "Understanding the Principle of Legal Certainty through the Construction of Legal Positivism Reasoning."

¹⁸ Siti Halilah and Mhd. Fakhrurrahman Arif, "The Principle of Legal Certainty According to Experts," *Siyasah: Journal of Constitutional Law* 4, no. 2 (2021).

¹⁹ Abdur Rahim et al., "The Relevance of the Principle of Legal Certainty in the Indonesian State Administration System," *JIIP (Scientific Journal of Education)* 6, no. 8 (n.d.): 2023.

²⁰ Rani Shahira and Surahmad Surahmad, "Consumer Protection in Buying and Selling Property (Case Study of PT Developer Properti Indoland)," *Al-Mashlahah : Journal of Islamic Law and Islamic Social Institutions* 10, no. 001 (2022), <https://doi.org/10.30868/am.v10i001.3585>.

²¹ Jeane Neltje and Indrawiency Panjiyoga, "The Values Encompassed in the Principle of Legal Certainty," *INNOVATIVE: Journal of Social Science Research* 3, no. 5 (2023).



healthy business competition as regulated in Law No. 5 of 1999 concerning the prohibition of monopoly practices and unfair business competition.

Tender, according to Guritno, is a business contract carried out by a contractor or supplier to provide goods or services whose implementation is through two mechanisms, namely through the *open bid tender* mechanism which means an open bid with price competition between the participants, besides that the tender can also be through a *sealed bid tender* mechanism which means a closed bid that is final and does not allow the change of property by the participants.²² We can also interpret tenders as auctions in the business world, especially in the procurement of goods and services where an organization or the organizer opens opportunities for the parties involved, namely contractors or providers of goods and services who want to submit bids.

This tender process is designed to select the most suitable bid from certain desired criteria. The purpose of the tender is to create equal or equal opportunities for business actors to participate in offering competitive prices and quality where the tender process is expected to produce offers at the lowest price while still maintaining the best quality.²³ Of course, in the implementation of tenders, transparency is needed because this can build public trust in the system implemented. In addition, transparency is also important so that all participants who participate in the tender, be they participants, the community or organizers so that fraud, conspiracy, corrupt practices such as manipulation, collusion or nepotism do not occur that damage the integrity of the procurement system.

Transparency is also important in addition to maintaining a healthy and fair business climate, as well as for the absence of monopoly practices and unfair business competition and as regulated in Law No. 5 of 1999 also to ensure that the tender participants have the same and fair information to submit bids and the opportunity to win the tender without any attempt to collude. The treatment of tender conspiracy itself is clearly regulated that there should be no conspiracy in the implementation of the tender to determine who is the winner of the tender as regulated in article 22 of Law No. 5 of 1999. In the article, it is also said that the procurement of goods and services using the tender method does risk causing unfair business competition if the process is carried out behind closed doors or without transparency. So we can conclude that it is important to carry out tenders transparently so that in the course there is no fraud, especially in the form of conspiracies that create unfair business competition.

²² Febri Yanti Raja Guk Guk and Indra Fauzi, "Analysis of the Cash, Credit, Tender and Concession Sales System at PT. Indofarma Global Medika Medan," *MSEJ: Management Studies and Entrepreneurship Journal* 4, no. 2 (2023).

²³ Lita Asyriati Latif et al., "Development of a Web-Based Decision Support System Application in Determining Tender Winners Using Bayes Method and Group Technology," *Journal of Research and Informatics* Post 7, no. 1 (2017).



In the articles of the Business Competition Law, it is formulated using two approaches, namely the *rule of reason* and *per se illegal*.²⁴ The *rule of reason* approach means that law enforcement must assess the context and anti-competitive impact of an act before declaring that the act is unlawful and conversely, in the *Per se illegal approach* prohibits certain actions that are considered to be infringing without the need to prove its negative impact.²⁵ Article 22 itself uses a *rule of reason* approach so that law enforcers before deciding on the alleged act must assess the surrounding circumstances whether there is a loss that actually occurs due to their actions.²⁶

In the case of the phase III Taman Ismail Marzuki revitalization tender in ICC Decision No. 17/ICC-L/2022 stating that the Reported Parties violated Article 22, namely conspiracy behavior regarding the tender, in its decision ICC also assessed that PT Jakarta Protindo (Reported Party I), PT Pembangunan Perumahan (Persero) Tbk (Reported Party II) and PT Jaya Konstruksi Manggala Pratama Tbk (Reported Party III) in the conspiracy had three main points that proved that they conspired in the tender. The first point is the action of Reported I, namely PT Jakarta Protindo which canceled the tender without a clear, valid and accountable reason, showing that PT Jakarta Protindo intentionally facilitated Reported Party II and Reported Party III as the winner of the tender.

Then it was strengthened by the second point, namely PT Jakarta Protindo which provided a special opportunity to Reported Party II and Reported Party III during the technical evaluation in the form of a request for presentation of the results of the evaluation by the Director of Human Resources and General Affairs to the Construction Management Consultant which was then followed by the cancellation of the tender without a valid and accountable reason and the implementation of the re-tender, which in the implementation of this re-tender there was a reconstruction of the assessment that resulting in a significant increase in the technical evaluation value of Reported Parties II and III resulting in a high score.

The decision also stated that although no direct communication was found between Reported Party I, with Reported Party II and Reported Party III, it was shown that there was an intervention by the Director of Human Resources and General Affairs to the Procurement Team during the tender process. Therefore, ICC in its decision stated that the Reported Parties were legally and convincingly proven to have violated Article 22 of Law No. 5 of 1999 concerning tender conspiracy in determining the tender winner.

²⁴ Ari Purwadi, "PRACTICE OF CONSPIRACY TO TENDER GOVERNMENT PROCUREMENT OF GOODS AND SERVICES," *Magnum Law Journal Opus* 2, no. 2 (2019).

²⁵ Purwadi, "PRACTICE OF CONSPIRACY TO TENDER GOVERNMENT PROCUREMENT OF GOODS AND SERVICES."

²⁶ Purwadi, "PRACTICE OF CONSPIRACY TO TENDER GOVERNMENT PROCUREMENT OF GOODS AND SERVICES."



Then the Reported Parties filed an Objection with two different registration numbers at the Central Jakarta Commercial District Court, which in its decision the two objections were rejected, namely in Decision No. 9/Pdt.Sus-KPPU/2023/PN Niaga Jkt Pst and Decision No. 10/Pdt.Sus-KPPU/2023/PN Niaga Jkt Pst. In the decision, both stated that it strengthened ICC's decision No. 17/ICC-L/2022. Then the Reported Parties filed an Cassation with two different numbers at the Supreme Court which resulted in the Supreme Court Cassation Decision No. 523K/Pdt.Sus-KPPU/2024 and Cassation Decision No. 745K/Pdt.Sus-KPPU/2024 which in the rulings contradicted each other.

From these two decisions, the author can conclude that after the *judex juris* and *judex facti* decisions are issued, there is still no binding and clear legal certainty from the tender case. The reason is that the two Supreme Court decisions make there is no legal certainty for ICC in carrying out the execution of ICC decisions. The Supreme Court Decision No. 523K/Pdt.Sus-ICC/2024 contains an order to cancel ICC Decision No. 17/ICC-L/2022 while Supreme Court Decision No. 745K/Pdt.Sus-ICC/2024 strengthens ICC Decision No. 17/ICC-L/2022. This creates legal uncertainty in terms of the implementation of ICC's decision, which must be subject to one of the cassation decisions.

2. ICC's Ability to File an Extraordinary Legal Appeal for Review of the Supreme Court Cassation Decision Number 523K/Pdt.Sus-KPPU/2024 and Cassation Decision Number 745K/Pdt.Sus-KPPU/2024 which Contradict Each Other

The Business Competition Supervisory Commission is an independent institution established on the basis of Presidential Decree No. 75 of 1999, the establishment of this commission is in accordance with Article 34 of Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, the establishment of this commission also aims to supervise the implementation of Law No. 5 of 1999. Therefore, ICC is authorized to enforce the law on unfair business competition. However, several other institutions are also authorized to resolve the case, such as the Commercial Court which is authorized to handle case objections to ICC's decision. In addition, the Supreme Court is also authorized to handle appeals for commercial decisions in business competition cases.

ICC itself has the same authority as the judicial institution where ICC is authorized in terms of investigation, prosecution, consultation, examination, adjudication and decision on business competition cases. Article 35 of Law No. 5 of 1999 explains in detail the seven duties that must be carried out by ICC. The seven tasks include conducting an examination of agreements that have the potential for monopolistic practices and/or unfair business competition. Then the commission is also tasked with assessing business activities and/or actions of business actors that have the potential to cause monopolistic practices and/or unfair business competition.

Furthermore, the commission is also tasked with conducting an examination regarding the existence or absence of abuse of dominant positions that have the potential for monopolistic practices and/or unfair business competition. The Commission is also tasked with taking action in accordance with its authority as stipulated in article 36 of Law No. 5 of 1999.

Then the commission is also tasked with providing input and consideration on government policies related to monopolistic practices and/or unfair business competition. The Commission is also tasked with formulating guidelines for the application of Law No. 5 of 1999 and/or publications related to the law, and the commission is also tasked with periodically reporting on the results of ICC's work to the President and the House of Representatives.

The authority of the Business Competition Supervisory Commission is listed in Article 36 of Law No. 5 of 1999 where the authority amounts to 12. The first authority is that ICC is authorized to receive reports from the public and/or from business actors about alleged monopolistic practices and/or unfair business competition. Then second, ICC has the authority to conduct further research related to allegations of business activities and/or actions of business actors that may result in monopolistic practices and/or unfair business competition. In addition, the Commission also has the authority to conduct investigations and examinations of reported cases, both from the public, business actors, and internal findings. Once the investigation is complete, the Commission will conclude whether it found monopolistic practices or unfair business competition based on the results of the investigation.

If the results of the ICC investigation find indicated violations, the Commission has the right to summon business actors who are suspected of committing violations. Not only that, ICC also has the right to present witnesses, experts, or other parties who have information to dig deeper into cases that are indicated to violate the Business Competition Law. In circumstances where the summoned parties refuse to comply with the summons, the Commission may request the assistance of investigators to ascertain their presence. The Commission can also dig up information from relevant government agencies in order to support the investigation and examination process. In addition, the Commission has the right to obtain, examine, and assess documents or other evidence relevant to the case being handled.

After all processes are completed, the Commission will determine whether there are losses experienced by other business actors or the community through a decision. If proven to be in violation, the Commission is authorized to impose administrative sanctions in accordance with the applicable legal provisions. Therefore, in accordance with the authority possessed by ICC, it is appropriate to handle the case of Decision No. 17/ICC-L/2022 regarding the conspiracy to tender for the revitalization of Taman Ismail Marzuki which consists of Reported Party I, namely the tender implementer PT Jakarta

Propertindo (Perseroda), Reported Party II PT Pembangunan Perumahan (Persero) Tbk and Reported Party III PT Jaya Konstruksi Manggala Pratama Tbk.

Extraordinary legal remedies are legal remedies that can be carried out with the aim of correcting judges' decisions that have permanent legal force.²⁷ From a civil law perspective, extraordinary legal remedies are divided into 2 types, namely Review and Third-Party Resistance (*Derden Verzet*), but in this discussion the author wants to focus on the Review.²⁸ Review can be done by submitting an application by a party who is dissatisfied with the previous decision to the Supreme Court to conduct a re-examination of the decision that has acquired permanent legal force (*Inkracht Van Gewijsde*).²⁹

Not just any case can apply for review, there are conditions that need to be met to apply for review, which include that there is deception in the decision, there is a *novum*, something that is not demanded is granted, the verdict is contradictory, a case is decided without consideration and there is a judge's error.³⁰ A review may be conducted within 180 days of the discovery of the new *novum*, with the time limit limiting and signaling that the review is not part of a legal remedy that can be done as freely as possible, but only on the terms of the review itself.³¹

In article 16 paragraph 2 of Perma No. 3 of 2021 which revokes Perma No. 3 of 2019, it is explained that the cassation decision in business competition cases is the final, binding and highest decision, so that in business competition cases it is not allowed to carry out legal remedies for Review. The reason, according to the Head of the Public Relations and Legal Bureau of the Supreme Court, Abdullah in 2019 said that the prohibition of PK was so that this business competition case would not drag on and the decision would not take long.³²

In this case, the Supreme Court needs to issue a new Perma that is in line with progressive theory to find legal certainty for the Supreme Court's decision that creates legal uncertainty in the realm of business competition. According to Satjipto Rahardjo, progressive theory does not stop at actual application textually or literally, but explores

²⁷ Syahrul Sitorus, "LEGAL REMEDIES IN CIVIL CASES (Verzet, Appeal, Cassation, Review and Derden Verzet)," *Hikmah* 15, no. 1 (2018).

²⁸ Sakila Andra and Fauziah Lubis, "DERDEN VERZET'S LEGAL EFFORTS AGAINST CONFISCATION OF EXECUTION FROM THE PERSPECTIVE OF CIVIL PROCEDURE LAW," *Quantum Juris: Journal of Modern Law* 06, no. 3 (2024).

²⁹ Bio J. Siregar et al., "Execution of Arbitral Awards in Civil Case Settlement," *Lex Privatum* 12, no. 1 (2023), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/49448>.

³⁰ Sitorus, "LEGAL REMEDIES IN CIVIL CASES (Verzet, Appeal, Cassation, Review and Derden Verzet)."

³¹ Sitorus, "LEGAL REMEDIES IN CIVIL CASES (Verzet, Appeal, Cassation, Review and Derden Verzet)."

³² Vendi Yhulia Susanto, *Prohibit PK, Supreme Court Wants Business Competition Cases Not to Protract*, (Jakarta), 2019, https://nasional.kontan.co.id/news/larang-pk-ma-ingin-perkara-persaingan-usaha-tidak-berlarut-larut#google_vignette.

the spirit and more essential meaning of a law and law in a broad sense.³³ Progressive law opposes the mainstream view that is tied to positivistic mechanisms, as well as seeks to reverse a legal view that focuses solely on formal rules.³⁴ Progressive law emphasizes the importance of breaking out of rigid attachments to the law, although the law still has an essential role. The essence of his thinking is to provide freedom from legal traditions that have been considered final and inviolable.³⁵ This theory also explains that the law must be adaptive to the times, responsive to changes that occur, and oriented to the public interest based on the moral integrity of law enforcement officials.³⁶ By using progressive theory, the Supreme Court should not just adhere to the formal rules of Perma 3 of 2021, but explore the essence of justice and the need for legal certainty for the community and the business world. Therefore, it is important to create a new Perma that opens up space for ICC to file a PK for cases that do not receive legal certainty, especially in this case.

Law has a role to provide legal certainty, because its main purpose is to maintain order in people's lives. Radbruch's view is that legal certainty can be seen in conditions when law is applied as a norm that is binding and must be obeyed.³⁷ Basically, this principle is interpreted as a situation that shows that the law is certain thanks to the existence of real forces inherent in the law.³⁸ Without legal certainty, people do not know what to do, what is right and what is wrong and in the end there is *uncertainty*. Thus, legal certainty emphasizes the importance of definite and clear legal enforcement.³⁹

In this case, it is clear that the dualism of the decision regarding this tender does not reflect the existence of legal certainty. Thus, with the principle of legal certainty and progressive theory, a new Perma is needed which later the Supreme Court Regulation regulates that ICC can carry out legal remedies for PK due to legal uncertainty due to the dualism of the decision and formal defects when the defendant filed an objection at the

³³ Deni Nuryadi, "Progressive Legal Theory and Its Application in Indonesia," *Scientific Journal of De Jure Law: Legal Scientific Studies* 1, no. 2 (2016).

³⁴ Afrohatul Laili and Anisa Rizki Fadhila, "Progressive Legal Theory (Prof. Dr. Satjipto Rahardjo, S.H.)," *Sinda Journal: Comprehensive Journal of Islamic Social Studies* 1, no. 1 (2021), <https://doi.org/10.28926/sinda.v1i1.966>.

³⁵ Malthuf Siroj and Ismail Marzuki, "PROGRESSIVE LAW ENFORCEMENT: EFFORTS TO REALIZE SUBSTANTIVE JUSTICE," *Journal of Islamic Law and Economic Law Studies* 1, no. 2 (2017), <https://doi.org/10.33650/jhi.v1i2.76>.

³⁶ Afrohatul Laili and Anisa Rizki Fadhila, *Loc Cit*.

³⁷ Mario Julyano and Aditya Yuli Sulistyawan, "UNDERSTANDING THE PRINCIPLE OF LEGAL CERTAINTY THROUGH THE CONSTRUCTION OF LEGAL POSITIVISM REASONING," *CREPIDO* 1, no. 1 (2019): 13-22, <https://doi.org/10.14710/crerido.1.1.13-22>.

³⁸ Siti Halilah and Muhammad Fakhrurrahman Arif, "PRINCIPLES OF LEGAL CERTAINTY ACCORDING TO EXPERTS," *Siyasah : Journal of Constitutional Law* 4, no. II (2021).

³⁹ R. Tony Prayogo, "The Application of the Principle of Legal Certainty in the Regulation of the Supreme Court Number 1 of 2011 concerning the Right to Physical Examination and in the Regulation of the Constitutional Court Number 06/PMK/2005 concerning Guidelines for Proceedings in the Testing of the Law," *Journal of Indonesian Legislation* 13, no. 2 (2016).

Central Jakarta Niaga Court, this regulation is also important for similar cases in the future experienced by ICC.

D. Conclusions And Suggestions

After the verdict was handed down, the tender case for the revitalization of Taman Ismail Marzuki III still left legal uncertainty. This was triggered by two contradictory Supreme Court decisions, so ICC did not have a clear basis in executing its decision. In Supreme Court Decision No. 523K/Pdt.Sus-ICC/2024, the Supreme Court ordered the cancellation of ICC Decision No. 17/ICC-L/2022, but in Supreme Court Decision No. 745K/Pdt.Sus-ICC/2024, ICC's decision No. 17/Pdt.Sus-KPPU/2024 was actually upheld. This situation causes legal confusion because ICC is required to comply with one of the contradictory cassation decisions.

These contradictory conditions show the weak legal certainty in the practice of law enforcement of business competition. This ambiguity does not only hinder ICC's authority in implementing its decision. Therefore, by using progressive theory to achieve the principle of legal certainty, a regulatory breakthrough is needed through the issuance of a new Perma that provides space for ICC to pursue extraordinary legal remedies for review (PK), so that the dualism of the decision can be overcome. This will also help for similar cases to come.

To ensure legal certainty in business competition cases, the Supreme Court should immediately draft and issue a Supreme Court Regulation (Perma) that expressly regulates the mechanism of legal remedies for review (PK) for ICC. This is important so that the dualism of contradictory decisions can be minimized, as well as provide procedural clarity for ICC in executing its decisions. In addition, consistency of decisions at the cassation level is also needed to maintain judicial integrity and increase the confidence of business actors in the business competition legal system in Indonesia.

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