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The Application of Article 22 to Bid-Rigging Practices in High-Technology Procurement: The BRIN Case

Samuel Febrian Prima [a,*], **Grace Sharon** [a]

[a] *Faculty of Law, President University, Bekasi, Indonesia*

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Article 22; Bid-Rigging; Competition Law; Indirect Evidence; Public Procurement.

Abstract: This study examines the application of Article 22 of Law No. 5 of 1999 in KPPU Decision No. 02/KPPU-L/2024 concerning BRIN's procurement of Cryo-Electron Microscope and Transmission Electron Microscope equipment, and its annulment by the Central Jakarta Commercial Court in Decision No. 5/Pdt.Sus-KPPU/2024. It focuses on whether the elements of bid-rigging, especially agreement or concerted practice and conduct intended to determine the tender winner, were sufficiently proven. Using a normative juridical method, this article analyzes statutory rules, procurement regulations, KPPU guidelines, court reasoning, and open-access competition law literature. The study finds that many indicators relied upon by KPPU were technical rather than competitive in nature. In high-technology procurement, similarities in bid documents may result from manufacturer specifications, compatibility requirements, limited suppliers, and standardized technological systems. The Court emphasized that indirect evidence must be supported by behavioral or economic indicators, such as abnormal pricing, complementary bidding, bid rotation, or coordinated strategy. The article argues that Article 22 enforcement in technology-intensive procurement should distinguish technical alignment from collusion and apply a structured evidentiary framework combining economic and technological analysis. This approach promotes legal certainty while preserving cartel enforcement in specialized public procurement markets and preventing over-enforcement.

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1. Introduction

Public procurement constitutes a strategic instrument of economic governance because it absorbs a substantial proportion of public expenditure and directly affects market competition. In many developing economies, procurement spending accounts for a significant share of national budgets, making the integrity and competitiveness of procurement processes critical to economic efficiency and

* corresponding author: samuel.prima@student.president.ac.id

public accountability. However, procurement systems are often vulnerable to bid-rigging practices, whereby competing bidders coordinate their conduct to predetermine tender outcomes and eliminate competitive uncertainty. In Indonesia, bid-rigging is prohibited under Article 22 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (International Competition Network, 2025). The enforcement of this provision presents significant evidentiary challenges, as collusive conduct is rarely supported by direct evidence. Consequently, competition authorities rely extensively on indirect evidence and red flags, including similarities in bid documentation, communication patterns among bidders, and structural market indicators. International guidelines issued by the OECD and the International Competition Network (ICN) emphasize that such indicators must be assessed cautiously and supported by robust competitive analysis (Prabawani & Kholil, 2017; Hardiana, 2024; Tedjokusumo et al., 2024).

Several studies have examined the enforcement of Article 22 of Law No. 5 of 1999 in the context of public procurement. Previous research has generally focused on the procedural aspects of bid-rigging investigations conducted by the Indonesia Competition Commission (KPPU) and on the role of indirect evidence in establishing collusion. Scholars have highlighted that cartel enforcement frequently depends on circumstantial evidence because explicit agreements among competitors are rarely documented. This reliance on indirect evidence has been extensively discussed in competition law scholarship and institutional guidance, particularly in the works of Francis and Sprigman and in publications of the European Commission. Indonesian scholarship likewise regards bid-rigging conspiracies as a serious competition law concern in public procurement and underscores the importance of evidentiary standards, sanctions, and procurement integrity (Leslie, 2011). These sources consistently emphasize that an inference of collusion must be supported by evidence capable of excluding plausible independent explanations and demonstrating coordinated conduct among market participants (Law No. 5 of 1999).

However, limited scholarly attention has been devoted to the application of Article 22 in procurement markets involving high-technology products and a limited number of global manufacturers. In such markets, similarities in technical specifications and intensive pre-tender communications may result from objective compatibility requirements rather than anti-competitive coordination. The absence of a clear analytical framework for distinguishing technical alignment from collusive conduct creates a risk of overextending competition law enforcement in technologically specialized procurement markets. The case addressed in KPPU Decision No. 02/KPPU-L/2024 concerning BRIN's procurement of Cryo-Electron Microscope (Cryo-EM) and Transmission Electron

Microscope (TEM) equipment provides a valuable opportunity to examine these issues (KPPU Decision No. 02/KPPU-L/2024). The Commission concluded that the elements of bid-rigging had been established primarily on the basis of indirect indicators and red flags. However, the Central Jakarta Commercial Court subsequently annulled the decision through Judgment No. 5/Pdt.Sus-KPPU/2024, identifying deficiencies in both the evidentiary assessment and the legal reasoning applied (Judgment No. 5/Pdt.Sus-KPPU/2024/PN Niaga Jkt Pst).

This study aims to examine whether the elements of Article 22 were properly established in the BRIN procurement case and whether the judicial annulment reflects a more proportionate and context-sensitive application of competition law in high-technology public procurement. By integrating competition law doctrine, international cartel enforcement principles, and the regulatory context of public procurement, this research seeks to clarify the evidentiary boundaries of Article 22 and contribute to the development of a more precise analytical framework for assessing bid-rigging allegations in specialized procurement sectors. The study further contributes to competition law scholarship by clarifying how indirect evidence should be evaluated in markets where technical standardization and limited supplier structures influence bidding behavior. Beyond its doctrinal contribution, the BRIN procurement case illustrates a broader regulatory tension between competition law enforcement and the operational realities of technology-driven procurement. Procurement of scientific research infrastructure frequently requires detailed technical consultations between procurement authorities and prospective suppliers to ensure that highly specialized instruments can function effectively within existing laboratory environments. Such consultations may generate patterns of communication and technical similarities that, at first glance, resemble collusive conduct. Consequently, competition authorities must exercise caution when interpreting these indicators, particularly in markets characterized by technological standardization and limited supplier availability. By examining the manner in which the Commercial Court assessed these issues, this study seeks to clarify the application of evidentiary standards in a way that preserves both effective cartel enforcement and legal certainty in technology-intensive procurement sectors.

2. Methods

This research employs a normative juridical method that focuses on the interpretation of positive legal norms and the evaluation of legal reasoning in administrative and judicial decisions. This method is appropriate because the principal issue examined in this article is doctrinal in nature, namely whether the legal elements of Article 22 of Law No. 5 of 1999 and the applicable evidentiary threshold for bid-rigging were correctly applied in a technologically specialized procurement context.

The primary legal materials consist of Law No. 5 of 1999, particularly Article 22; relevant procurement regulations, including Presidential Regulation No. 16 of 2018, as amended by Presidential Regulation No. 12 of 2021; KPPU Regulation No. 1 of 2023 concerning the revocation of the previous guideline on conspiracy in tenders under Article 22; KPPU Decision No. 02/KPPU-L/2024; and the Central Jakarta Commercial Court Decision No. 5/Pdt.Sus-KPPU/2024. The secondary legal materials include open-access doctrinal scholarship on cartel enforcement and evidentiary standards, including indirect evidence and concerted practices, as well as international soft-law instruments, particularly guidance issued by the OECD and the ICN on the detection and proof of bid-rigging.

The analysis is conducted in three stages. First, the study develops a doctrinal "elements-and-proof" framework by identifying: (a) the constitutive elements of Article 22, namely business actors, agreement or concerted practice, conduct intended to influence the outcome of a tender, and distortion of competition; and (b) the evidentiary reasoning generally required to infer collusion when direct evidence is unavailable. Second, the study applies this framework to the BRIN procurement case by mapping the evidence relied upon by the KPPU to each legal element and assessing whether alternative non-collusive explanations, such as technical standardization, compatibility constraints, and procurement design, were adequately excluded. Third, the article examines the reasoning of the Commercial Court to determine whether the annulment reflects a more consistent application of evidentiary adequacy and proportionality in the enforcement of Article 22, particularly within technology-intensive procurement markets.

Accordingly, this research provides a structured doctrinal evaluation of the interaction between legal elements, evidentiary standards, and market context in bid-rigging adjudication, rather than an empirical or statistical assessment of procurement outcomes.

3. Results and Discussion

3.1. Fulfillment of Article 22 Elements in KPPU Decision No. 02/KPPU-L/2024

Article 22 of Law No. 5 of 1999 prohibits business actors from conspiring with other parties to arrange or determine the winner of a tender in a manner that results in unfair business competition (Organisation for Economic Co-operation and Development, 2009; International Competition Network, 2025). From a doctrinal perspective, this provision requires the establishment of at least four core elements: the involvement of business actors, the existence of an agreement or concerted practice, conduct intended to influence or determine the outcome of the tender, and a resulting distortion of competitive conditions within the tender process.

In KPPU Decision No. 02/KPPU-L/2024, the Commission classified the participating firms as business actors and concentrated its analysis on whether an agreement or concerted practice could be inferred from indirect evidence. The Commission primarily relied on similarities in bid-related documentation, patterns of interaction among suppliers and distributors, and the provision of technical support during the tender preparation stage. These findings were subsequently used to support the conclusion that the tender process had been orchestrated and that competition had been adversely affected. However, under competition law doctrine, the existence of an "agreement" cannot be presumed solely on the basis of parallel characteristics observed in tender participation. Although the concept of conspiracy under Article 22 does not necessarily require a written contract, it does require a persuasive evidentiary framework demonstrating that competitors substituted independent decision-making with coordinated conduct. Accordingly, the central analytical question is whether the identified indicators logically and convincingly demonstrate a coordinated intention to determine the tender winner and whether plausible non-collusive explanations have been adequately excluded (Busu & Busu, 2021).

This requirement becomes particularly significant in technology-intensive procurement processes. In such contexts, similarities in documentation may arise because bidders rely on identical manufacturer specifications, standardized technical descriptions, or compatibility-driven requirements embedded in the tender design. Where such similarities can reasonably be attributed to technical standardization or the structure of the procurement process, the inference of a concerted practice is substantially weakened. Consequently, the proper application of Article 22 requires not only the identification of red flags but also the demonstration of a clear evidentiary nexus, namely evidence of communication or coordination among competitors and competitive effects consistent with bid-rigging strategies, such as bid rotation, complementary bidding, or pricing anomalies. Absent such a nexus, the legal element of an agreement or concerted practice risks being established through inference alone rather than through a coherent and sufficiently substantiated evidentiary framework.

3.2. Evaluation of Indirect Evidence and Red Flags

Bid-rigging enforcement frequently relies on indirect evidence because cartel participants rarely leave direct traces of coordination. International practice recognizes "red flags" as useful screening tools rather than conclusive proof. The empirical screening literature likewise distinguishes between structural screening, which focuses on market and tender characteristics, and behavioral screening, which examines bidders' conduct and bidding data patterns (Law No. 5

of 1999). Guidance issued by the OECD and ICN generally regards document similarities, communication patterns, and structural market features as preliminary indicators that must be corroborated through competition analysis and additional linking evidence (Leslie, 2011).

A rigorous approach to indirect evidence requires distinguishing among three analytical layers. First, technical indicators—such as identical specifications, overlapping terminology, and standardized supporting documents—may be common in high-technology procurement, where bidders often rely on manufacturer-based documentation and compatibility requirements. Second, behavioral linkage indicators, including unusual communications among bidders, coordinated timing, shared drafting resources, or unexplained alignment in bidding strategies, may strengthen the inference of coordination. Third, economic indicators, such as abnormal pricing patterns, systematic bid rotation, complementary bidding, or predictable winning outcomes across tenders, generally provide the strongest basis for inferring collusion because they reflect its competitive effects. In the BRIN procurement case, the Commission emphasized indicators that were predominantly technical in nature, particularly similarities in documentation and interactions related to technical support during bid preparation. However, the decision did not clearly establish strong behavioral linkages among competing bidders, nor did it demonstrate economic outcomes commonly associated with bid-rigging. The absence of an explicit analysis of pricing anomalies, bid rotation, complementary bidding, or other indicators of anticompetitive effects weakens the inference that the tender outcome resulted from coordinated intent rather than from independent responses to technical requirements.

Accordingly, the principal doctrinal concern is evidentiary sufficiency. Indirect indicators must form a coherent evidentiary chain that links bidders to coordinated conduct, explains why independent behavior is unlikely, and demonstrates that the tender outcome reflects a distortion of competition. When the observed similarities can reasonably be attributed to technological standardization or procurement design, a finding under Article 22 becomes susceptible to judicial reversal because the evidentiary framework fails to exclude plausible non-collusive explanations. Moreover, the interpretation of red flags must take into account the institutional context in which procurement activities occur. Public procurement procedures are governed by administrative rules intended to ensure transparency, accountability, and efficiency in the use of public funds. These rules often require procurement authorities to provide detailed technical specifications and clarification mechanisms, enabling prospective suppliers to submit technically compliant bids. Although such procedures are essential for maintaining procurement quality, they may also create structural

conditions in which bidders respond to the same technical requirements and consequently produce similar documentation.

From a competition law perspective, this institutional context complicates the assessment of potential collusion. The mere existence of similar documentation or overlapping technical terminology does not necessarily indicate coordinated conduct when such similarities result from compliance with procurement regulations or manufacturer specifications. Competition authorities must therefore distinguish between similarities arising from legitimate institutional constraints and those resulting from deliberate coordination among competing bidders. This distinction is particularly significant in markets for complex scientific equipment. Because these instruments frequently rely on standardized technological architectures, suppliers may independently use the same manufacturer-provided specifications and technical descriptions when preparing their bids. Under such circumstances, technical similarity constitutes a weak evidentiary indicator unless it is supported by additional behavioral or economic evidence demonstrating coordinated conduct.

3.3. Market Structure in High-Technology Procurement

Procurement involving highly specialized scientific instruments, such as Cryo-Electron Microscopes and Transmission Electron Microscopes, is characterized by unique market structures. These instruments are manufactured by a limited number of global producers and often incorporate proprietary technological systems that require specific infrastructure and operational compatibility. In such markets, procurement specifications are frequently driven by technical requirements necessary to ensure the proper operation of the equipment within existing research facilities. Consequently, similarities in technical specifications and supporting documentation may arise naturally, without any coordinated conduct among bidders.

Furthermore, suppliers of highly specialized equipment commonly provide technical consultations during the procurement preparation stage to ensure compatibility with laboratory conditions and research objectives. Such interactions between suppliers and procurement authorities are a standard feature of technologically complex procurement projects and should not automatically be regarded as evidence of collusion. Therefore, competition authorities must carefully distinguish between technical alignment resulting from legitimate operational requirements and coordinated anti-competitive conduct among competing firms (Organisation for Economic Co-operation and Development, 2009).

The structure of high-technology procurement markets further complicates

the assessment of potential bid-rigging practices. Unlike conventional procurement markets, high-technology sectors often exhibit limited competition due to high barriers to entry, specialized knowledge requirements, and substantial research and development costs (Busu & Busu, 2021). As a result, the number of suppliers capable of providing certain scientific instruments may be extremely limited. These structural characteristics create market conditions in which similarities in technical proposals may emerge independently across suppliers. Suppliers frequently rely on standardized technical frameworks developed by manufacturers, while procurement authorities often establish specifications that align with existing laboratory infrastructure. Accordingly, the presence of similar technical submissions should not, by itself, be construed as evidence of coordinated behavior among bidders.

Another important feature of high-technology procurement markets is the strong technological interdependence between suppliers and end users. Scientific instruments such as Cryo-Electron Microscopes and Transmission Electron Microscopes are not standalone products; rather, they are integrated systems that must function within a broader research infrastructure. Laboratories often require specific environmental conditions, software compatibility, and specialized supporting equipment to operate these instruments effectively. Consequently, procurement specifications are frequently formulated to ensure compatibility with existing facilities and research capabilities.

This technological interdependence can significantly influence supplier behavior in procurement processes. In many instances, suppliers rely on standardized technical configurations established by original equipment manufacturers. These configurations often determine key features of the equipment, including operating systems, imaging capabilities, and supporting software platforms. As a result, suppliers may submit proposals that appear technically similar because they are based on the same underlying technological architecture. From a competition law perspective, however, such similarities must be distinguished from coordinated bidding strategies designed to manipulate tender outcomes. Parallel technical proposals may arise from the inherent technological characteristics of the products rather than from any communication or agreement among competitors (Leslie, 2011). This phenomenon is particularly prevalent in markets where technological standards are largely determined by manufacturers with proprietary designs.

Another structural characteristic of high-technology procurement markets is the limited number of suppliers capable of providing the required products. Scientific instruments such as Cryo-Electron Microscopes are manufactured by only a small number of highly specialized global producers. The development and production of these instruments require substantial research investment,

advanced technological capabilities, and extensive scientific expertise. These factors create significant barriers to entry that considerably limit the number of potential competitors. As a result, procurement outcomes may sometimes resemble collusive behavior on the surface. For example, similar pricing structures or closely aligned technical proposals may arise simply because suppliers operate under comparable cost structures and technological constraints. In such circumstances, competition authorities must exercise caution before interpreting these similarities as evidence of coordinated conduct (Organisation for Economic Co-operation and Development, 2025).

Therefore, the evaluation of potential bid-rigging behavior in high-technology procurement markets must incorporate a comprehensive understanding of market structures and technological constraints. Without such contextual analysis, competition authorities risk misinterpreting legitimate market dynamics as evidence of anti-competitive coordination. A careful assessment of technological factors, supplier capabilities, and procurement requirements is therefore essential to determine whether similarities in bidding behavior arise from independent market responses or coordinated conduct among competitors.

In addition to technological constraints, the procurement of highly specialized scientific instruments is influenced by global supply structures. Markets for advanced research equipment are often dominated by a limited number of multinational manufacturers possessing proprietary technologies and extensive research capabilities. The concentration of technological expertise within a small group of firms significantly shapes the competitive environment in which procurement occurs. In many instances, suppliers participating in public tenders are not independent producers but authorized distributors or representatives of these global manufacturers. This distribution structure may further complicate the assessment of potential collusion in procurement processes. Authorized distributors frequently rely on the same manufacturer documentation, technical descriptions, and product specifications when preparing their bids. Consequently, similarities in technical submissions may arise simply because the distributors represent the same underlying technological platform. Such similarities may therefore reflect supply-chain characteristics rather than a coordinated strategy among competing bidders.

Furthermore, the procurement of complex scientific equipment typically requires extensive pre-installation planning. Research institutions must ensure that the equipment is compatible with laboratory conditions, including temperature control systems, vibration stability requirements, and digital infrastructure. Suppliers often participate in technical discussions to evaluate

whether the equipment can be installed and operated effectively within the existing research environment. These interactions may involve site visits, technical feasibility assessments, and consultations regarding laboratory design. Although such activities may generate patterns of communication between procurement officials and suppliers, they generally constitute legitimate procurement preparation rather than evidence of anti-competitive conduct.

For competition authorities, these structural characteristics underscore the importance of conducting a detailed market analysis before reaching conclusions regarding potential collusion. Understanding the technological ecosystem within which procurement takes place enables authorities to distinguish coordinated bidding behavior from independent responses to shared technical constraints. Without such contextual analysis, competition law enforcement risks misinterpreting structural market characteristics as evidence of collusive conduct (Organisation for Economic Co-operation and Development, 2009).

3.4. Implications for Procurement Governance and Competition Compliance

The BRIN case also highlights a broader governance challenge at the intersection of procurement law and competition law. Public procurement regulations generally promote transparency, equal treatment, and value for money, whereas competition law seeks to prevent coordination that undermines competitive rivalry (Presidential Regulation No. 16 of 2018). In technologically complex procurement markets, however, these objectives may be difficult to reconcile. Procurement authorities often require extensive technical clarification to define specifications, assess compatibility, and ensure the operational feasibility of highly specialized equipment. Consequently, interactions between procurement officials and potential suppliers may occur during the pre-tender stage in ways that are less common in conventional procurement markets.

From a governance perspective, procurement institutions must therefore design tender procedures carefully to minimize the risks of information asymmetry and unintended signaling among potential bidders. In high-technology procurement processes, technical consultations and market-sounding activities are often necessary to ensure that procurement specifications accurately reflect operational requirements and available technological solutions (Organisation for Economic Co-operation and Development, 2025). However, without adequate safeguards, such interactions may inadvertently create opportunities for supplier coordination or give rise to perceptions of preferential treatment.

To mitigate these risks, procurement authorities should implement transparent and structured consultation mechanisms. Practical measures may include documenting all technical consultations, ensuring equal access to clarifications for all prospective bidders, and using neutral functional

specifications whenever feasible (Organisation for Economic Co-operation and Development, 2009). In addition, procurement entities should maintain a clear distinction between preliminary market consultations and the formal competitive bidding stage. These measures help ensure the transparency of the procurement process while preserving fair competition among potential suppliers.

From the perspective of business actors, compliance with competition law principles is equally important. Firms participating in public procurement processes should implement robust internal compliance programs governing communications with competitors, distributors, and procurement officials (Leslie, 2011). Such compliance frameworks may include internal guidelines on information exchange, training on competition law risks associated with tender participation, and clear protocols regulating interactions during the preparation of bidding documents. Importantly, these governance measures do not replace competition law enforcement. Rather, they help reduce ambiguity in procurement processes and assist enforcement authorities in distinguishing legitimate procurement practices from suspicious forms of coordination. By strengthening procurement governance and compliance mechanisms, authorities can improve the accuracy of competition law enforcement while minimizing the risk that legitimate technical interactions are misinterpreted as evidence of collusion.

In technology-driven markets, where technical similarities among bids are relatively common, effective procurement governance plays a complementary role in competition law enforcement. Clear procedures, transparent communication channels, and robust compliance systems help foster a procurement environment in which both competitive neutrality and technological feasibility are preserved. Strengthening procurement governance is therefore closely associated with enhancing the accuracy of competition law enforcement. When procurement procedures clearly document technical consultations, maintain transparent clarification processes, and ensure equal access to information for all bidders, the risk of misinterpreting legitimate procurement practices as anti-competitive conduct can be substantially reduced. Conversely, inadequately documented procurement processes may create ambiguity, complicating competition law investigations and increasing the likelihood of erroneous inferences of collusion. For this reason, the relationship between procurement regulation and competition law enforcement should be understood as complementary rather than conflicting. Effective procurement governance provides the institutional safeguards necessary to ensure fair competition, while competition law prevents bidders from exploiting procurement processes to engage in collusive conduct. The BRIN procurement case therefore illustrates how enhanced transparency and documentation in procurement procedures can contribute to more accurate and proportionate competition law enforcement.

3.5. Judicial Review of KPPU Decision

The Central Jakarta Commercial Court annulled KPPU Decision No. 02/KPPU-L/2024 through Decision No. 5/Pdt.Sus-KPPU/2024 (Judgment No. 5/Pdt.Sus-KPPU/2024/PN Niaga Jkt Pst). In its legal reasoning, the Court emphasized that the evidentiary assessment conducted by the Commission failed to sufficiently establish the existence of collusion among the parties involved in the procurement process. The Court found that the indicators relied upon by the Commission could be reasonably attributed to technical considerations associated with the procurement of complex scientific instruments. Accordingly, the evidence presented was deemed insufficient to prove the existence of an agreement or concerted practice among the bidders.

In evaluating the Commission's reasoning, the Court further stressed that the evidentiary framework must clearly demonstrate a connection between the identified indicators and the legal elements of bid-rigging under Article 22 of Law No. 5 of 1999 (Law No. 5 of 1999). The existence of an agreement or concerted practice cannot be inferred solely from similarities in bidding documents or from technical consultations conducted during the procurement preparation stage. Rather, such indicators must be supported by evidence demonstrating coordinated intent among competing business actors or by observable economic effects consistent with cartel behavior. In the absence of such corroborating evidence, the Court concluded that the indicators relied upon by the Commission were insufficient to establish liability for bid-rigging.

The Court also clarified BRIN's legal position as a public institution acting as a contracting authority rather than a market participant. Accordingly, the formulation of technical specifications and the conduct of technical consultations were interpreted as administrative functions performed within the framework of public procurement regulations (Presidential Regulation No. 16 of 2018). This reasoning highlights the importance of distinguishing legitimate administrative conduct from anti-competitive coordination among business actors when applying competition law provisions in procurement contexts. Judicial oversight plays a critical role in ensuring that competition law enforcement remains consistent with fundamental legal principles and evidentiary standards. Although competition authorities possess investigative and adjudicative powers in cartel enforcement, their decisions remain subject to judicial review to ensure compliance with principles such as proportionality, due process, and evidentiary sufficiency. Courts therefore serve as an essential safeguard against potential administrative overreach, particularly in cases involving complex economic or technological issues.

In the BRIN procurement case, the Commercial Court adopted a cautious

approach to the interpretation of indirect evidence. By emphasizing the absence of compelling economic indicators of collusion, the Court reaffirmed that competition law violations must be established on the basis of clear and convincing evidence rather than speculative inferences. The Court further noted that similarities in technical documentation and communication patterns may result from technological requirements and procurement design rather than coordinated conduct among competitors. The Court's reasoning is consistent with international competition law practice, which generally requires circumstantial indicators to be corroborated by persuasive economic evidence before cartel liability can be established. The decision therefore underscores the importance of contextual analysis in assessing alleged bid-rigging practices in technology-intensive procurement markets.

Ultimately, the Court's ruling demonstrates that the enforcement of Article 22 must remain within its intended legal scope. While preventing bid-rigging remains a central objective of public procurement regulation, enforcement actions must be grounded in a rigorous assessment of both legal and economic evidence. Absent such safeguards, legitimate procurement practices risk being erroneously characterized as anti-competitive conduct.

3.6. Author's Legal Assessment

From a doctrinal perspective, an inference of collusion must be supported by evidence demonstrating coordination among business actors that cannot reasonably be explained by independent market behavior. In the BRIN procurement case, the absence of clear economic indicators, such as price coordination, bid rotation, or complementary bidding patterns, substantially weakens the conclusion that the parties engaged in bid-rigging practices (Organisation for Economic Co-operation and Development, 2025). Although the indicators identified by the Commission may warrant further investigation, they do not, in themselves, establish the existence of anti-competitive coordination. Moreover, the specialized technological characteristics of the procurement process provide plausible alternative explanations for the observed similarities in bidding behavior.

This case illustrates the importance of adopting a contextual analytical approach in competition law enforcement when assessing procurement processes involving technologically complex products. In such markets, similarities in technical proposals or supporting documentation may result from shared technological constraints rather than coordinated conduct among competitors. Competition authorities must therefore carefully distinguish between legitimate technological convergence and anti-competitive coordination.

From a policy perspective, the BRIN procurement case further highlights the limitations of applying traditional bid-rigging indicators to highly specialized procurement markets. Conventional indicators of collusion were primarily developed in procurement settings involving standardized products and relatively competitive supplier markets. However, these indicators may not always be suitable for procurement processes involving advanced scientific equipment characterized by technological specialization and a limited number of suppliers. Consequently, reliance on indirect evidence should be complemented by rigorous economic analysis. Indicators such as abnormal pricing patterns, systematic bid rotation, or coordinated bidding strategies generally provide stronger evidence of collusion than technical similarities alone. In the absence of such economic indicators, any inference of collusion may remain speculative and risk undermining the credibility of competition law enforcement.

A key lesson from this case is that the enforcement of Article 22 should adopt an "exclusion of plausible alternatives" approach when relying on circumstantial indicators. Where the alleged indicators can reasonably be explained by market structure, procurement design, or technological constraints, the burden on the authority to establish coordinated intent becomes substantially greater. This does not suggest that collusion cannot occur in high-technology procurement markets. Rather, it highlights that the analytical pathway leading to a finding of collusion must be carefully developed and supported by persuasive evidence.

In practical terms, competition authorities may strengthen their evidentiary assessment by adopting a structured analytical framework that distinguishes among three categories of indicators: technical, behavioral, and economic. Technical indicators include specification overlap, standardized documentation language, and the use of common manufacturer terminology. Behavioral indicators encompass communication patterns, timing irregularities, and unusual interactions between bidders and distributors. Economic indicators include abnormal pricing patterns, predictable bidding outcomes, bid-rotation schemes, and complementary bidding strategies. Among these categories, economic indicators generally provide the most compelling evidence of coordinated conduct because they reflect the competitive effects of the alleged conspiracy.

The BRIN procurement case also underscores the importance of considering procurement governance factors. In technologically complex tenders, pre-tender engagement, technical clarification meetings, and supplier consultations often constitute legitimate components of procurement planning. If such interactions are automatically interpreted as suspicious, procurement institutions may become excessively risk-averse, potentially undermining the quality and effectiveness of procurement outcomes. OECD guidance similarly recommends that procurement design should mitigate collusion risks while ensuring adequate bidder

participation and maintaining clear functional specifications (Leslie, 2011). A more proportionate approach would therefore focus on whether such interactions created an unfair informational advantage, restricted access for other potential bidders, or facilitated coordination among competing suppliers.

Finally, the case suggests that Indonesian competition law doctrine would benefit from clearer guidance on the assessment of "agreements" and "concerted practices" in technology-driven markets. Clarifying the role of economic evidence, establishing minimum corroboration requirements for indirect indicators, and defining the treatment of technological standardization would significantly enhance predictability in competition law enforcement. In the long term, such developments would strengthen both deterrence against genuine bid-rigging practices and legal certainty for firms operating in specialized procurement markets. When competition authorities rely heavily on circumstantial indicators without adequately demonstrating economic effects or coordinated intent, enforcement outcomes may become susceptible to judicial reversal. Such outcomes affect not only the specific case but also the broader perception of competition law enforcement among market participants. Effective cartel enforcement requires a careful balance between investigative flexibility and evidentiary rigor. On the one hand, competition authorities must be able to rely on indirect evidence, as explicit agreements among cartel participants are rarely documented. On the other hand, the interpretation of such evidence must be grounded in a coherent analytical framework that integrates both legal doctrine and economic reasoning. Without such a framework, the risk of over-enforcement increases, particularly in markets where technological complexity naturally generates similarities among competitors.

The BRIN case therefore underscores the importance of strengthening analytical capacity within competition authorities when addressing technologically complex industries. Investigations involving specialized scientific equipment may require interdisciplinary expertise, including technological assessment, industry-specific knowledge, and economic analysis. By integrating these perspectives into competition law investigations, authorities can develop a more accurate understanding of market behavior and avoid mischaracterizing legitimate commercial practices as anti-competitive conduct. In addition, judicial review plays a constructive role in refining the application of competition law principles. Court decisions that critically assess evidentiary standards can contribute to the gradual development of clearer enforcement guidelines. Over time, this process may encourage competition authorities to adopt more robust analytical methodologies and provide greater clarity regarding the evidentiary requirements for establishing bid-rigging under Article 22 of Law No. 5 of 1999.

Ultimately, improving the interaction between administrative enforcement and judicial review may strengthen the institutional legitimacy of competition law in Indonesia. When enforcement decisions are supported by rigorous analysis and consistent evidentiary standards, market participants and procurement authorities are more likely to perceive competition law as a predictable and reliable regulatory framework. Another analytical dimension that warrants attention in the context of the BRIN procurement case is the role of technological standardization in shaping bidding behavior, particularly because competition analysis in technology markets often requires careful consideration of product architecture, platform effects, and technological constraints (Hovenkamp, 2021). In markets involving advanced scientific equipment, technological design, operational features, and documentation standards are frequently determined by the original manufacturers. These manufacturers typically develop proprietary technological systems that require specific software configurations, calibration procedures, and operational environments. Consequently, distributors and suppliers participating in procurement processes often rely on standardized technical descriptions and manufacturer documentation when preparing their proposals.

From a competition law perspective, such technological standardization may generate similarities across bidding submissions that could superficially resemble coordinated conduct. However, economic theory recognizes that similar market outcomes may emerge independently when firms operate under comparable technological constraints or production conditions. In oligopolistic markets characterized by a limited number of suppliers and highly specialized products, parallel conduct does not necessarily indicate collusion; rather, it may reflect rational responses to shared technological and commercial circumstances (Leslie, 2011). This distinction is particularly relevant in procurement processes involving scientific instruments such as Cryo-Electron Microscopes and Transmission Electron Microscopes. These instruments are designed according to highly specialized engineering standards and often depend on proprietary technological platforms developed by a limited number of global manufacturers. Suppliers participating in public tenders generally rely on manufacturer-provided specifications, technical manuals, and standardized performance descriptions. Consequently, similarities in technical documentation may arise naturally from the technological architecture of the equipment rather than from coordinated strategies among bidders.

Recognizing the implications of technological standardization is therefore essential to ensuring proportionality in competition law enforcement. If technical similarities are too readily interpreted as indicators of collusion, competition authorities risk discouraging legitimate market participation and technical

engagement in procurement processes. Firms may become reluctant to provide detailed technical information or participate in pre-tender consultations if such interactions could subsequently be construed as suspicious conduct. Accordingly, a balanced evidentiary approach that integrates legal analysis, economic reasoning, and technological understanding is necessary to ensure that competition law enforcement remains both effective and proportionate in technologically complex procurement markets.

Another important implication relates to the role of evidentiary clarity in preserving the credibility of competition law enforcement. When competition authorities rely heavily on circumstantial indicators without adequately demonstrating coordinated intent or anti-competitive effects, enforcement decisions may become vulnerable to judicial reversal. Such reversals not only affect the outcomes of individual cases but may also shape market participants' perceptions of the reliability and predictability of competition law enforcement.

Ensuring evidentiary rigor is therefore critical to maintaining institutional legitimacy. Authorities must demonstrate that the alleged conduct cannot reasonably be explained by independent market behavior and that the evidence establishes a coherent analytical framework linking the identified indicators to the legal elements of collusion. Particularly in technology-intensive procurement markets, where structural similarities among bids are relatively common, competition authorities must integrate legal analysis with economic reasoning and technological expertise. This interdisciplinary approach enables enforcement authorities to distinguish more accurately between legitimate market conduct and genuine anti-competitive coordination.

4. Conclusion

The BRIN procurement case illustrates the complex challenges faced by competition authorities in applying Article 22 of Law No. 5 of 1999 to technology-intensive procurement markets. Although bid-rigging constitutes a serious violation of competition law, its enforcement must be supported by rigorous evidentiary standards and a careful contextual assessment. The findings of this study indicate that, while the Indonesia Competition Commission identified several indicators suggesting potential coordination among the parties involved in the procurement process, many of these indicators were predominantly technical rather than competitive in nature. In procurement markets characterized by proprietary technologies, a limited number of global manufacturers, and a high degree of technical standardization, similarities in technical documentation and specifications may result from objective compatibility requirements rather than coordinated anti-competitive conduct. Under such circumstances, technical indicators alone are insufficient to establish the existence of collusion.

The judicial review conducted by the Central Jakarta Commercial Court therefore highlights the importance of distinguishing legitimate technical alignment from collusive coordination. By emphasizing the absence of economic indicators commonly associated with bid-rigging—such as abnormal pricing patterns, complementary bidding, or systematic bid rotation—the Court demonstrated that the evidentiary threshold required to establish collusion had not been sufficiently met in this case. The decision underscores the necessity of developing a coherent evidentiary framework that connects technical indicators with behavioral and economic evidence before concluding that anti-competitive coordination has occurred. More broadly, this case highlights the importance of adopting a contextual and interdisciplinary approach to competition law enforcement. Assessing procurement processes involving technologically sophisticated products requires not only legal analysis but also a comprehensive understanding of market structure, technological constraints, and procurement governance. Integrating these perspectives enables competition authorities to evaluate potential collusion more accurately while reducing the risk of mischaracterizing legitimate procurement practices as anti-competitive conduct. In the long term, strengthening evidentiary frameworks and incorporating international best practices in cartel enforcement will enhance legal certainty for procurement participants and reinforce the credibility of competition law enforcement in Indonesia. Such developments are essential to maintaining a balanced regulatory environment in which effective cartel enforcement coexists with the legitimate operational requirements of technologically complex procurement markets.

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