

DECLARATION PAGE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the undergraduate thesis under the title “**UNFAIR COMPETITION IN TENDER: A CASE STUDY OF DIRECT APPOINTMENT IN PROCUREMENT OF GOODS AND/OR SERVICES BY STATE OWNED ENTERPRISE**” and its contents are truly my own work and I did not do plagiarism or quotation in ways that are inconsistent with the prevailing ethic in the scientific community. On this statement, I am ready to bear the risk/any sanction imposed to me in accordance with applicable regulation, if in the future found a breach of scientific ethics, I am willing to accept the sanctions.

Written by

Name : Reza Fahlevi
Student Number : 20140610474
Faculty : Faculty of Law
Major : International Program for Law and Shariah (IPOLS)
University : Universitas Muhammadiyah Yogyakarta

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Reza Fahlevi

MOTTO PAGE

Pray not because you need something but because you have a lot to be thankful
for.

(Reza Fahlevi)

There are only two way to live your life. One is as though nothing is a miracle.
The other is as though everything is miracle

(Albert Einstein)

Be thankful for what you have; you'll end up having more.
If you concentrate on what you don't have you will never ever have enough.

(Oprah Winfrey)

DEDICATION

This Under Graduate Thesis dedicate to:

My one and only Allah SWT

Prophet Muhammad SAW

My Beloved Family

Farizal, Best Father

Rohani, Best Mother Forever

Zelviani, S.Ked

Dani Akbar, S.Ked

Lely Indriani, S.Ei., M. Art.

Kevin Rosmohan Akbar

FOREWORD

Alhamdulillah, thank you Allah SWT, The Most Merciful and Most Gracious who has given me His blessing and an opportunity to accomplish my Undergraduate Thesis entitled **“UNFAIR COMPETITION IN TENDER: A CASE STUDY OF DIRECT APPOINTMENT IN PROCUREMENT OF GOODS AND/OR SERVICES BY STATE OWNED ENTERPRISE”**.

My sincere thanks are addressed to my one and only advisors, Bapak Dr. Mukti Fajar ND, S.H., M. Hum., who has guided me with patient, wisdom, and compassion, and also let me express my deepest gratitude to all lecturers of IPOLS and the staffs at the Faculty of Law for their assistance during my four-year study at Universitas Muhammadiyah Yogyakarta.

My sincere gratitude goes to my parents who always there for me through up and down, who can accept my imperfection, all my weakness and thanks for everything, I know I am not good enough as your daughter but you have put your happiness on me, your pray, support, guide, and affection which become my strength all the way through my life. I love you so much. Thank you to my lovely brothers and sister for the unconditional love and support that has been given to me.

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which I randomly choose you as my close friends thanks for all, I know I am not good enough to express how lucky I am because you are always beside me, support me, hear my lament 24/7. The name of those people soon will be added by “S.H.”.

Reza Fahlevi

LIST OF STATUTES

Law No. 5 of 1999 on Prohibition of Monopoly Practice and Unfair Business Competition.

Law No. 19 of 2003 on State Owned Enterprises.

President Regulation No. 54 of 2010 on Procurement of Goods and/or Services of Government

President Regulation No. 4 of 2015 on Fourth Amendment of President Regulation No. 54 of 2010 on Procurement of Goods and/or Services of Government.

Presidential Decree No. 75 of 1999 on Business Competition Supervisory Commission.

State Owned Enterprises Ministry Regulation No. PER- 5/MBU/2008 on the General Guidance of Implementation of Goods and/or Services Procurement

State Owned Enterprises Ministry Regulation No. PER- 15/MBU/2012 on the amendment of the State-Owned Enterprises Ministry Regulation No. PER- 5/MBU/2008 on the General Guidance of Implementation of Goods and/or Services Procurement

Business Competition Supervisory Commission Regulation No. 5 of 2009 on Guide of Article 22 on the Prohibition of Tender

Implementation Guidelines of Article 19 letter d of Law No. 5 of 1999 on Prohibition of Monopoly Practice and Unfair Business Competition

Implementation Guidelines of Article 50 letter a of Law No. 5 of 1999 on Prohibition of Monopoly Practice and Unfair Business Competition

Business Competition Supervisory Commission Case Decision No. 03/KPPU-L/2006 on Direct Appointment in the Project of CIS-RISI PLN, dated 27 September 2006.

Business Competition Supervisory Commission Case Decision No. 02/KPPU-L/2006 on Direct Appointment in the Project of Pertamina New Logo, dated 13 September 2006.

Business Competition Supervisory Commission Case Decision No. No. 07/KPPU-L/2004 KPPU on Selling Tender of Two Unit Tanker of Pertamina

Attachment of Business Competition Supervisory Commission Regulation No. 3 of
2011 on Guide of Article 19 letter d (discrimination practice) Law No. 5
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LIST OF ABBREVIATIONS

Rp = Rupiah

IPR = Intellectual Property Rights

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