

# Artificial Intelligence in Bid Rigging Case Settlement Process: Law and Ethic

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## Abstract

Bid rigging is one of the forms of unfair business competition. One of the indications of bid rigging is similar documents. Artificial Intelligence (AI) can be used in detecting indications of bid rigging make it a challenge as well as a potential renewal of detection tools in the bid rigging case settlement. This causes the need to regulate the concept of using Artificial Intelligence to ensure the settlement of bid rigging can run effectively. The process of bid rigging case settlement also needs to consider ethics. This study is a normative juridical research using statutory approach and conceptual approach. The data used is secondary data. The data was collected by literature study method, analyzed by qualitative normative method, and presented descriptively. This study aims to know that Artificial Intelligence can be applied as a tool to detect the similarity of bidding documents so that the committee can immediately identify the potential of bid rigging including at the stage of: research or monitoring of business actors and preliminary examination. The use of Artificial Intelligence technology needs to pay attention to the ethics in the implementation of Artificial Intelligence technology including inclusiveness, humanity and security, transparency, credibility and accountability.

**Keywords:** *Artificial Intelligence, Bid Rigging, Ethic.*

## INTRODUCTION

In every business activity, there is business competition so that business competition law is needed. According to Arie Siswanto, competition law is a legal instrument that determines how competition should be conducted [1]. According to Hermansyah, competition law is a set of legal rules that regulate all aspects related to business competition, which includes things that can be done and things that are prohibited by business actors [2]. Business competition law regulates business competition so that unfair business competition does not occur, including bid rigging. Bid rigging can be detected to several indications, one of them is the similarity of tender documents. The existence of similar documents can be detected by technology, especially Artificial Intelligence so the settlement of bid rigging cases is faster than usual.

The use of Artificial Intelligence in detecting indications of bid rigging is a challenge as well as a potential renewal of detection tools in the settlement of bid rigging. This causes the need to regulate the concept of Artificial Intelligence usage to ensure that the settlements of bid rigging can run effectively. The process of resolving bid rigging cases also needs to consider ethics, including the use of Artificial Intelligence as a detection tool for document similarity. This affects the assessment of whether Artificial Intelligence is referred to as a judge or only as a detection tool.

## METHOD

This research is a normative juridical research. Normative juridical research is conducted by examining library materials which are secondary data, also called library legal research [3]. This research uses a statutory approach and conceptual approach. The statutory approach is intended to find out the overall legal regulations used while the conceptual approach provides an analytical point of view on a problem seen from the legal aspect. The data used is secondary data obtained from laws and regulations, books, articles, and legal dictionaries. The data was collected by literature study method, analyzed by qualitative normative method, and presented descriptively.

## RESULTS AND DISCUSSION

### 1. The concept of using Artificial Intelligence in finding indications of bid rigging

Technology is developing rapidly to the various new discoveries, including Artificial Intelligence. Artificial Intelligence is a branch of computer science that focuses on developing computers that have human-like abilities and behavior [4]. Artificial Intelligence can help human work in all sectors, including business, health, even law. According to Wicipto, the potential of AI in making regulations, and the use of artificial intelligence in order to assist the work of practitioners in the legal field is currently very important [5]. Artificial Intelligence plays a role in various fields, including regulation drafting. An AI could be used to identify the need for and subsequently draft legislation. An AI has powers delegated to it that allow it to make rules that directly relate to the public [6]. AIs can be used to identify the need for laws and to draft, debate and pass legislation [6].

Artificial Intelligence role is not only limited to lawmaking, but also in other fields. Artificial intelligence is considered to be the latest innovation in today's digital era. The use of machine learning concepts makes artificial intelligence products more capable of making decisions based on cases [7]. In New Zealand, AI helps judges, court officials, court members, and judicial support staff. The move marks a significant evolution in increased efficiency, accessibility, and technological advances in justice [8]. This is stated through the Guidelines for using AI in courts and tribunals for judges [9]. For lawyers and court officials, AI assist in legal research, present precedents, and provide up-to-date information about the law relevant to a case. Some AI systems are more efficient than humans at certain tasks such as mimicking the voices and images of others to influence people and create political change [10]. Beside that, Thailand also implementing AI in some sectors. In particular, the Thai government views that AI is a tool to enhance the country's competitiveness, especially in the industry, service, and health sectors [11]. Additionally, AI has been widely applied in all sectors of society. AI is thought to make things easier and to improve growth in a system or work process [12]. If the very real technological challenges are put to one side, the use of AIs in this way is the familiar refrain: AIs can make decisions more efficiently and more accurately humans [6].

One of the possible future rules of Artificial Intelligence is a tool to detect bid rigging. Bid rigging is regulated in Article 22 of Law Number 5 of 1999 on the Prohibition of monopolistic Practices and Unfair Business Competition that stated "business actors are prohibited from conspiring with other parties to arrange and/or determinate the winner of a tender as to result in unfair business competition". The explanation of it states that attender is an offer to submit price, procure a job, conspiring to determinate the winner of a tender is clearly

fraudulent act because basically the tender and the winner are not regulated and are confidential. So the tender includes bids to submit prices for: 1) procure or carry out work; 2) procure goods or services; 3) purchase goods or services; and 4) sell goods or services [13].

Actually, bid rigging is contrary to justice, because it does not provide equal opportunities to all bidders to obtain the object of goods and/or services offered by the organizer [14]. Bid rigging is one of the acts that harm the state because there is element of bid price manipulation, and tends to make benefits to the parties involved in bid rigging [15]. Based on the behavior, bid rigging can be divided into several forms: [16]

- a. *Bid suppression*, occurs when the parties agree to refrain from the tender process or withdraw from the tender offer in the hope that the predetermined parties can win the tender.
- b. *Complementary bidding*, occurs when several parties agree to submit a very high bids or propose special conditions that will not be accepted by the owner of the project.
- c. *Bid rotation*, bid price as opposed to complementary bidding where the parties submit bids but take a position as the lowest-priced bidder.
- d. *Subcontracting*, occurs when the business actors agree to not submit a bid by receiving compensation for subcontracting a job or becoming a supplier to the winner

Based on Article 83 paragraph (1) President Regulation Number 54/2010, the indication of bid rigging are determined where to prove existence of a bid rigging, at least the following two indications must be met:

- a. There are similarities in technical documents, including work methods, expert qualifications, and/or descriptions of non-personnel expenditures,
- b. All bids from providers are close to budget ceiling,
- c. The parties of several providers under one control,
- d. The similarities or mistakes in bidding documents, including similarities or mistake in typing, composition, and writing format,
- e. The bid guarantee is issued from the same guarantor with consecutive serial numbers.

The similar documents can be an indication of bid rigging so that technology is needed to detect it so the settlement of bid rigging cases is faster. Electronic public procurement also helps save public spending, as the papers and tools used in public procurement operations are provided [17]. Artificial Intelligence can be applied as a tool to detect the similarity of bidding document so the committee can immediately identify potential bid rigging. Artificial Intelligence is applied to the process of resolving bid rigging include at stage of:

- a. Research or monitoring of business actors.  
Research and clarification are conducted to provide clarity and completeness about alleged violations based on reports by the public that have been received by law enforcement, in this case KPPU. In this stage, the use of Artificial Intelligence is expected to be able to detect the potential for bid rigging.
- b. Preliminary examination.  
Examination of reported party and request for willingness to terminate the agreement. Examining parties with documents supported by the findings produced by Artificial Intelligence.

## 2. The use of Artificial Intelligence in finding bid rigging related to ethics

The implementation of Artificial Intelligence raises ethical issues in various fields. Chatterjee presented the impact of applying artificial intelligence (AI) on human rights. The research results could be used as input for policy makers and government authorities to formulate comprehensive policies that are urgently needed to regulate AI in the context of protecting citizens' human rights [7]. AI should be: (1) lawful, complying with all applicable laws and regulations; (2) ethical, ensuring adherence to ethical principles; and (3) robust, both from a technical and social perspective, in order to avoid unintended adverse impacts [18]. In addition, ethical considerations need to be taken into other sectors. Ethical considerations are crucial as they impact individual rights, privacy, and societal trust. In Indonesia, balancing freedom of expression with protections against malicious AI-generated content requires a nuanced regulatory approach that respects constitutional rights while addressing ethical concerns [19]. Artificial Intelligence, including robots, is expected to help human. On the other side, robots can be misused and act as monitoring devices, and in dystopian scenarios, robots could be purposefully exploiting private aspects of citizens or even enforcing compliance in totalitarian regimes [20]. Notably, among the most common normative principles proposed to underpin ethical and responsible AI are transparency, justice, fairness, responsibility, and privacy. However, deeper theoretical assessments reveal foundational ambiguities within the ethical terms used to evaluate and justify AI ethics within existing frameworks [21]. As Artificial Intelligence continues to transform the creative industries, the imperative to evolve our legal frameworks becomes more pressing [22]. The ethics of artificial intelligence is the response to a new dilemma that demands international society to provide a legal response to the many ethical challenges artificial intelligence creates. International society needs now, more than at any previous time, to consider the ethics of AI [23].

The Indonesian Government through the Minister of Communication and Information issued a regulation regarding the ethics of Artificial Intelligence. Based on Letter of Minister of Communication and Information of the Republic of Indonesia Number 9 of 2023 on ethic of Artificial Intelligence which is intended for business actors of Artificial Intelligence-Based programming activities, electronic system providers in the public scope and electronic system provider in the private scope in the field of business related to Artificial Intelligence to increase productivity, optimize business process, and provide more personalized services to customers. The implementation of Artificial Intelligence includes consulting, analysis, and programming. Ethical use of Artificial Intelligence includes inclusivity, humanity, security, accessibility, transparency, credibility, accountability, protection of personal data, sustainable development and environment, and intellectual property. The implementation of Artificial Intelligence need to pay attention to the ethics, including:

### a. Inclusivity

The implementation of Artificial Intelligence needs to pay attention to the values of equality, justice, and peace in producing information and innovations for the common interest. The implementation of Artificial Intelligence in bid rigging is expected to fulfill justice to achieve peace by using innovative ways.

### b. Humanity and security

The implementation of Artificial Intelligence needs to pay attention to human values while maintaining human rights, social relations, beliefs, and opinions of thoughts of each person.

It is also necessary to pay attention to the security aspects of users and data in order to maintain privacy and personal data. This is implemented into maintaining the privacy of suspected parties of bid rigging.

c. Transparency

The implementation of Artificial Intelligence based on the transparency of the data used to avoid misuse of data developing technological innovations. This can be implemented as transparency when the process of detecting data similarities in bid rigging uses Artificial Intelligence.

d. Credibility and accountability

The implementation of Artificial Intelligence needs to prioritize the ability to make decisions from the information or innovations produced. Information generated through Artificial Intelligence must be credible and accountable.

The implementation of Artificial Intelligence technology in bid rigging needs to be carried out with full responsibility in accordance with the ethic and code of conduct of the bid rigging resolution committee. KPPU need to provide an education program on the implementation of technology in the form of Artificial Intelligence implementation in detection of bid rigging as a supporting tool to create a fair business competition. KPPU needs to ensure that the implementation of Artificial Intelligence is online as a tool, not as policy maker or decision maker. AI systems should not be given complete autonomy, and humans should always retain control over critical decision-making processes [21]. KPPU also needs to implement ethical guidelines for Artificial Intelligence so it will be implemented with transparency and accountability.

## CONCLUSION

The similar document can be an indication of bid rigging and technology is needed to detect these similarities so that the resolution of bid rigging cases is faster. The use of Artificial Intelligence can be applied as a tool to detect the similarity of bidding documents so that the committee can immediately identify the potential for bid rigging. Artificial Intelligence is applied to the process of resolving bid rigging including at the stage of research or monitoring of business actors and preliminary examination.

The use of Artificial Intelligence technology in resolving bid rigging has not been regulated, but at least it needs to pay attention to the ethics including inclusiveness, humanity and security, transparency, credibility and accountability. The use of Artificial Intelligence technology in resolving bid rigging needs to be carried out with full responsibility in accordance with ethics. KPPU needs to provide an educational program on the use of technology in the form of Artificial Intelligence in the detection of bid rigging as a supporting tool to create fair business competition. KPPU also needs to ensure that the implementation of Artificial Intelligence not as a policy maker or decision maker.

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