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Unhealthy Business Competition in Government Procurement of Goods/Services in Indonesia: An Analysis of the Friedman Legal System

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Abstract

This study aims to analyze unfair business competition practices and their resolution mechanisms in government procurement of goods and services in Indonesia using Lawrence M. Friedman's legal system theoretical framework.

The study method used is normative legal research with a legislative, conceptual, and case study approach, which is analyzed qualitatively through a review of legislation, decisions of the Business Competition Supervisory Commission (KPPU), and relevant legal literature. Case studies were conducted by analyzing three KPPU decisions that represent patterns of tender collusion in procurement, namely the Revitalization of Taman Ismail Marzuki (TIM) Phase III case, the provision of clean water in North Lombok, and the construction of the Prabumulih Mall.

The novelty of this research lies in the simultaneous integration of weaknesses in legal structure, legal substance, and legal culture to assess the effectiveness of antitrust law enforcement in the procurement sector.

The results of the study show that the main obstacles to the enforcement of business competition law not only stem from regulatory loopholes and definitions of norms that are not yet operational, but are also influenced by institutional capacity constraints, weak inter-agency coordination, and a permissive culture towards collusion in procurement practices. This study emphasizes that strengthening the effectiveness of law enforcement requires practical measures such as refining the norms prohibiting collusion, integrating sanctions and a database of violations into the national e-procurement system, and strengthening the synergy between KPPU and LKPP through a post-decision monitoring mechanism to prevent repeat violations.

The conclusion of the study states that regulatory reformulation, strengthening of supervisory institutions, and renewal of the culture of compliance are key prerequisites for the realization of transparent, fair, and accountable procurement governance.

Keywords: Government Procurement; Law Enforcement; Unfair Business Competition

Abstrak

Penelitian ini bertujuan *menganalisis praktik persaingan usaha tidak sehat serta mekanisme penyelesaiannya dalam pengadaan barang/jasa pemerintah di Indonesia dengan*

menggunakan kerangka teori sistem hukum Lawrence M. Friedman.
***Metode penelitian** yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan studi kasus, yang dianalisis secara kualitatif melalui telaah peraturan perundang-undangan, putusan-putusan Komisi Pengawas Persaingan Usaha (KPPU), serta literatur hukum yang relevan. Studi kasus dilakukan dengan menganalisis tiga putusan KPPU yang merepresentasikan pola persekongkolan tender dalam pengadaan, yaitu perkara Revitalisasi Taman Ismail Marzuki (TIM) Tahap III, penyediaan air bersih di Lombok Utara, dan pembangunan Mall Prabumulih.*
***Kebaruan** penelitian ini terletak pada integrasi simultan antara kelemahan struktur hukum, substansi hukum, dan budaya hukum untuk menilai efektivitas penegakan Undang-Undang Antimonopoli pada sektor pengadaan.*
***Hasil penelitian** menunjukkan bahwa hambatan utama penegakan hukum persaingan usaha tidak hanya bersumber dari celah regulasi dan definisi norma yang belum operasional, tetapi juga dipengaruhi keterbatasan kapasitas kelembagaan, lemahnya koordinasi lintas lembaga, serta budaya permisif terhadap kolusi dalam praktik pengadaan. Penelitian ini menegaskan bahwa penguatan efektivitas penegakan hukum memerlukan langkah aplikatif berupa penajaman norma larangan persekongkolan, integrasi sanksi dan basis data pelanggaran dalam sistem e-procurement nasional, serta penguatan sinergi KPPU–LKPP melalui mekanisme pemantauan pasca-putusan untuk mencegah pelanggaran berulang.*
***Kesimpulan** penelitian menyatakan bahwa reformulasi regulasi, penguatan institusi pengawas, dan pembaruan budaya kepatuhan merupakan prasyarat utama bagi terwujudnya tata kelola pengadaan yang transparan, adil, dan akuntabel.*
***Kata Kunci:** Pengadaan Pemerintah; Penegakan Hukum; Persaingan Usaha yang Tidak Adil*

1. INTRODUCTION

Fair business competition is an important prerequisite for the creation of an efficient, fair, and sustainable economic system. In the Indonesian context, this principle is legally grounded in Law No. 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition (Anti-Monopoly Law), as amended by Law No. 6 of 2023. The presence of this regulation is not only aimed at preventing market domination and harmful business practices, but also at ensuring equal business opportunities, protecting the public interest, and strengthening national economic governance. However, the reality of business competition law enforcement still faces serious challenges, especially in sectors that involve large state budgets and have a high potential for irregularities.[1]

The establishment of the Business Competition Commission (KPPU) as an anti-monopoly supervisory authority aims to monitor business practices that are detrimental to the market.[2] As an institution tasked with overseeing monopolistic practices, KPPU has the authority to take action against business practices that are considered unhealthy, ranging

[1] Ridel Jhonatan Toar Rombot, Harold Anis, and Rony Sepang, "Peranan Komisi Pengawas Persaingan Usaha (Kppu) Dalam Menyelesaikan Sengketa Usaha Perdagangan Menurut Undang-Undang No. 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat," *Lex Privatum* 8, no. 4 (2020): 125–135.

[2] Enno Selya Agustina, Relys Sandi Ariani, and Nada Hasnadewi, "Analisis Upaya Penegakan Hukum Terhadap Tindakan Kemitraan Dalam Perspektif Persaingan Usaha Tidak Sehat," *Jurnal Studia Legalia* 4, no. 01 (2023): 13–20, https://doi.org/10.61084/jsl.v4i01.61. https://doi.org/10.61084/jsl.v4i01.61

from monopolies to collusion in the procurement of government goods and services. In addition, KPPU also plays an important role in providing input on competition policy to the government. Since its establishment, the KPPU has worked to develop business competition guidelines and has begun investigating public complaints about unhealthy business practices.[3] In the institutional context, KPPU has a strategic position as the main institution that carries out the function of supervising and enforcing business competition law, including in handling alleged tender collusion in the procurement sector. However, the effectiveness of the KPPU's role still faces various structural obstacles, including limited human resources, technical and technological capacity in proving cases, and weak inter-agency coordination, particularly with the Government Goods/Services Procurement Policy Agency (LKPP) as the institution that manages the procurement system and policy. These obstacles have implications for the slow enforcement process, weak deterrent power, and the possibility of repeated violations through increasingly complex collusion patterns.

This urgency is even more relevant when linked to the dynamics of business competition in Indonesia. Although the business competition index (IPU) has shown an upward trend in recent years, the fact remains that unfair competition practices continue to occur. According to the Business Competition Index (IPU) data, business competition in Indonesia increased from 4.63 in 2018 to 4.91 in 2023 and is projected to increase to 4.95 in 2024.

Regulations in the business competition sector continue to be strengthened with the enactment of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law. This law strengthens the scope and provisions related to fair business competition, in line with the goal of creating national economic efficiency and public welfare. In practice, the biggest challenge faced by KPPU is related to monopolies and unfair business competition, which are still commonly found in various economic sectors, including in the procurement of government goods and services.[4] In the context of collusion and irregularities in government procurement of goods and services, this undermines efficiency and fairness in the use of the state budget.

One of the sectors most vulnerable to unfair business practices is government procurement of goods and services. This sector manages budgets sourced from the state budget (APBN) and regional budgets (APBD), thus carrying a high level of risk for abuse of authority and manipulation of processes. In practice, various forms of violations are still commonly found, such as bid rigging, price mark-ups, manipulation of technical specifications to benefit certain parties, and manipulation of bid evaluations. These conditions not only reduce the efficiency of state budget utilization, but also have an impact on the decline in the quality of procurement results, weaken the principle of transparency, and erode public trust in the integrity of the government process. This situation shows that

[3] Dave David Tedjokusumo, "Praktik Persekongkolan Tender Dalam Pengadaan Paket Pembangunan Revetment Dan Pengurungan Lahan Di Pelabuhan," *Jurnal Ius Constituendum* 8, no. 3 (2023): 343–58, https://doi.org/10.26623/jic.v8i3.7193. https://doi.org/10.26623/jic.v8i3.7193

[4] Adrian Sutedi, *Aspek Hukum Pengadaan Barang Dan Jasa* (Jakarta Timur: Sinar Grafika, 2012).

government procurement of goods and services is not merely an administrative process, but a strategic arena that can lead to market distortions if not effectively supervised.[5] This problem is exacerbated by the low level of transparency and accountability in several procurement projects, which leads to unfair competition. To strengthen oversight, the government has also enacted Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods/Services, which has been updated with Presidential Regulation No. 12 of 2021. This regulation emphasizes improving the quality of goods/services procurement planning in order to create legal certainty and prevent abuse, both by the government and the private sector.[6]

Despite progress in implementing regulations, obstacles to law enforcement against monopolistic practices include challenges in inter-agency coordination, resistance from economic actors with significant interests, and limited resources available to the KPPU.[7] In this regard, further research is needed to evaluate the effectiveness of the implementation of the Antimonopoly Law in various sectors and to identify improvements that can be made to achieve the goal of fair business competition.

Developing countries also often face problems in creating healthy business competition. They must learn from the positive experiences of countries that have successfully overcome competition regulation challenges. With the increase in high-quality services and more competitive prices, the success of the Antimonopoly Law in Indonesia will have a positive impact on the general public, especially consumers. This article will examine how the Antimonopoly Law and other factors still hinder the achievement of a fair business climate in Indonesia by looking at the development of the business competition index and the effectiveness of existing regulations.

A number of previous studies have examined this issue from various perspectives. The first study highlights KPPU supervision of the construction services sector as a key measure to prevent fraudulent practices in infrastructure development,[8] this study focuses solely on the construction services sector and identifies the importance of KPPU supervision to ensure fair business competition in government procurement of goods and services, particularly in infrastructure development. The second study shows that monopolies, unfair business competition regulated by the Anti-Monopoly Law, and the KPPU's difficulty in handling cartel cases due to a lack of investigative authority. This study focuses more on the limitations of

[5] CNN Indonesia, "KPPU Longgarkan Aturan Penegakan Hukum Karena Covid-19," *cnnindonesia.com. diakses pada October 21, 2024*, last modified 2024, https://www.cnnindonesia.com/ekonomi/20201111213314-92-568774/kppu-longgarkan-aturan-penegakan-hukum-karena-covid-19.

[6] Agus Arif Rakhman, "Pengembangan Konsep Formulasi Dokumen Perencanaan Pengadaan Barang/Jasa Pemerintah," *Jurnal Pengadaan Barang/Jasa* 1, no. 1 (2022): 40–52, https://doi.org/10.55961/jpbj.v1i1.12. https://doi.org/10.55961/jpbj.v1i1.12

[7] Nur Kholis et al., "Urgensi Penegakan Hukum Dan Penguatan Peran Pengawasan KPPU Di Era Industri Digital Abstrak," *Cendekia Niaga Journal of Trade Development and Studies* 8, no. 1 (2024): 40–56, https://doi.org/10.52391/jcn.v8i1.899. https://doi.org/10.52391/jcn.v8i1.899

[8] Zaenal Arifin, Muhammad Amirullah, and Tri Nugroho, "Praktik Persaingan Usaha Tidak Sehat Dalam Pengadaan Barang/Jasa Pemerintah Di Sektor Jasa Konstruksi," *Jurnal Usm Law Review* 7, no. 2 (2024): 757–67, https://doi.org/10.26623/julr.v7i2.8368. https://doi.org/10.26623/julr.v7i2.8368

the KPPU's investigative authority in handling cartels and monopolistic practices, which has an impact on weak law enforcement.[9] Finally, research focusing on the imbalance between users and providers of goods or services, and raising the issue of contractual fairness in procurement, emphasizes the importance of balancing the rights and obligations of providers and users of goods/services.[10]

Although these three studies make significant contributions, there has been no research that comprehensively integrates the analysis of legal structural weaknesses, legal substance, and legal culture within Lawrence M. Friedman's legal system theory framework to assess the adequacy of regulations and challenges in enforcing the Antimonopoly Law in the government procurement sector. To fill this gap, this study offers an original contribution by simultaneously identifying structural barriers, normative deficiencies, and legal cultural factors that influence the enforcement of competition law in procurement. This approach is important because unfair competition practices in procurement do not solely stem from regulatory loopholes, but are also related to institutional capacity problems, weak inter-agency coordination, and a permissive culture of collusion that influences the process of enforcing norms. This research is expected to contribute to the development of legal science, particularly in the field of competition law and procurement of goods/services, as well as serve as a reference for policymakers in improving transparent, fair, and accountable procurement governance. This research aims to analyze unfair competition practices and their resolution mechanisms in government procurement of goods/services.

2. METHOD

This study uses a normative (doctrinal) legal research design aimed at examining legal regulations and assessing the enforcement of business competition law in the practice of government procurement of goods and services.[11] To achieve these objectives, the study applied a legislative approach to examine the norms and policies governing business competition and procurement, as well as a conceptual approach[12] as a basis for strengthening analysis through Lawrence M. Friedman's legal system theory, as well as a case study approach by examining KPPU decisions related to alleged tender collusion and other forms of unfair business competition in the procurement sector. The legal materials used include primary legal materials in the form of relevant laws and regulations (including Law No. 5 of 1999 as amended by Law No. 6 of 2023 and relevant procurement regulations), Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods/Services and its amendments, secondary legal materials from scientific literature,

[9] Ria Sintha Devi, "Persaingan Usaha Tidak Sehat Berdasarkan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat," *Jurnal Ilmiah Metadata* 6, no. 1 (2023): 1–10. https://doi.org/10.47652/metadata.v6i1.469

[10] H. I. Putra et al., "Asas Keseimbangan Dalam Kontrak Pengadaan Barang Dan Jasa," *Locus: Jurnal Konsep Ilmu Hukum* 3, no. 3 (2023): 176–186, https://doi.org/10.56128/jkih.v3i3.297. https://doi.org/10.56128/jkih.v3i3.297

[11] Peter Mahmud Marzuki, *Legal Research (Revised Edition)* (Jakarta: Kencana Prenada Media Group, 2005).

[12] Muhaimin, *Metode Penelitian Hukum* (Mataram, NTB: Mataram University Press, 2020).

journal articles, and previous research results, as well as tertiary legal materials to support conceptual understanding through legal dictionaries and encyclopedias. All of these legal materials were analyzed qualitatively through normative content analysis, namely by identifying legal issues, classifying legal materials, interpreting norms and legal considerations in decisions, then systematically compiling them to produce prescriptive conclusions and recommendations for improvements oriented towards strengthening the structure, substance, and culture of law in the enforcement of business competition law in government procurement of goods/services.

3. DISCUSSION

3.1 Analysis of Unfair Business Competition in Government Procurement of Goods/Services

Unhealthy business competition in Indonesia, particularly in the procurement of government goods and services, is an ongoing problem that affects the country's economy. Within the framework of Friedmann's legal system theory, there are three main components that need to be analyzed to understand these dynamics: legal structure, legal substance, and legal culture.[13] These three components help explain the challenges faced in overcoming practices that harm the state and society, such as corruption, collusion, and nepotism (KKN).

The KPPU plays an important role in law enforcement related to business competition.[14] Although it has the authority to investigate and handle alleged violations, the effectiveness of KPPU is often hampered by limited human resources and technological infrastructure. Due to these constraints, investigations take longer and are less effective. In addition, coordination between KPPU and related institutions such as LKPP is ineffective. This hinders the comprehensive implementation of the law and reduces the benefits of monitoring unfair business competition practices.[15]

The Anti-Monopoly Law, which was refined by Law No. 6 of 2023, provides a strong legal basis for combating monopolies and unfair business practices.[16] However, the vague definition of "unfair business competition" in Article 1 letter f of the law still opens up opportunities for business actors to exploit legal loopholes. This provides opportunities for business actors to manipulate legal provisions and engage in harmful practices without clear sanctions. This condition is exacerbated by the weak enforcement of rules on the procurement of goods and services, which are often vague and prone to abuse. Cultural

[13] Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (2018): 148, https://doi.org/10.35586/.v4i2.244https://doi.org/10.35586/.v4i2.244. https://doi.org/10.35586/.v4i2.244

[14] Nofita Ariyanti, "Peran KPPU Dalam Melindungi Konsumen Dari Perilaku Usaha Tidak Sehat," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 885–96, https://doi.org/10.53363/bureau.v3i1.222. https://doi.org/10.53363/bureau.v3i1.222

[15] P. M. Hadjon, *Perlindungan Hukum Bagi Rakyat: Perspektif Hukum Administrasi Negara* (Yogyakarta: Gadjah Mada University Press, 2007).

[16] Biro Hukum, "Undang-Undang (UU) Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang" (Jakarta: Pemerintah Pusat, 2023).

factors also play a major role, with a permissive legal culture and low legal awareness among government officials and business actors encouraging the proliferation of corruption and collusion. In fact, officials with supervisory authority are often part of the problem, creating a vicious cycle of abuse. As a result, the legal objective of creating a healthy competitive environment is not achieved, and the law loses its deterrent and coercive power.

This problem is exacerbated by Indonesia's permissive legal culture. Due to low legal awareness among government officials and business actors, corruption and collusion are increasingly accessible. Government officials who are supposed to be responsible for oversight are often involved in illegal practices,[17] Meanwhile, many businesses choose collusion as a method that is considered "safer" than fair competition. The inability to consistently enforce the law creates an environment that is prone to corruption.

Solutions that can be implemented to address this issue cover three main aspects. First, reformulating norms by revising derivative regulations or explanations of laws that provide a clear, detailed, and operational definition of "unfair business competition," thereby reducing the potential for biased interpretation. Second, strengthening law enforcement by increasing the capacity and integrity of supervisory officials and developing an information technology-based monitoring system to minimize human intervention that is prone to collusion. Third, changing the legal culture through legal education and public awareness campaigns targeting business actors and government officials, accompanied by the application of strict, consistent, and impartial sanctions against violators, including officials involved. The integrated implementation of these three steps is expected to create a more transparent and fair business competition system that contributes to sustainable economic efficiency.

The four main stages in the government procurement process are preparation, procurement, contract drafting, and contract implementation. Irregularities such as price markups, tender manipulation, and other fraudulent practices can occur at any stage.[18] Collusion between business actors and procurement committees, as well as criminal acts of corruption such as bribery and gratification, are the most common ways to find these irregularities. Inequity in the selection process is one of the components that influences unfair competition in business. Many entrepreneurs obtain their jobs through non-transparent and discriminatory means.

The government procurement process for goods and services, which ideally should be conducted in a transparent, efficient, and competitive manner, is highly susceptible to irregularities at every stage of its implementation. At the preparation stage, irregularities can occur through inaccurate or adjusted planning of requirements to benefit certain parties, for

[17] Novita Mayasari Angelia, Lingga Abi Rahman, and Maulida, "Analisis Tanggungjawab Hukum Administrasi Negara Dalam Penanganan Korupsi Di Sektor Publik," *Jurnal Hukum Dan Sosial Politik* 2, no. 3 (2024): 92–100, https://doi.org/10.59581/jhsp-widyakarya.v2i3.3409. https://doi.org/10.59581/jhsp-widyakarya.v2i3.3409

[18] Dwi Prasetyanto et al., "Kajian Faktor-Faktor Yang Mempengaruhi Kepuasan Konsumen Bus Trans Metro Bandung Menggunakan Metode Structural Equation Modeling - Partial Least Square (Studi Kasus Pada TMB Koridor 3 Cicaheum Cibeureum)," *Jurnal Teknik Sipil* 28, no. 1 (2021): 107–16, https://doi.org/10.5614/jts.2021.28.1.11. https://doi.org/10.5614/jts.2021.28.1.11

example by setting technical specifications that can only be met by one particular supplier. At the procurement stage, practices such as price mark-ups, bid rigging, or bid evaluation manipulation are often found.[19] Furthermore, during the contract drafting stage, clauses that are favorable to the provider may be changed, such as leniency in terms of time frame, scope of work, or payments that do not comply with the provisions. Finally, during the contract implementation stage, irregularities arise in the form of reduced quality of goods/services, deliberate delays, or reductions in the agreed volume of work, all of which are detrimental to the state and create an unhealthy business competition climate. In addition, transparency and fair opportunities for all business actors are crucial. The public must also be given legal protection as consumers, by ensuring that the information provided about products and services is accurate and not misleading.

The main causes of these irregularities can be seen from two perspectives: internal and external. Internally, weak supervision, low integrity among procurement officials, and a lack of competence in understanding regulations are the dominant factors. Externally, a permissive legal culture, political pressure or certain interests, and a lack of courage among business actors to compete fairly also exacerbate the situation. In addition, the lack of optimal use of information technology in the procurement system leaves opportunities for collusion and manipulation wide open. These factors ultimately create conditions in which the procurement of goods and services is no longer oriented towards quality and efficiency, but rather towards unilateral profits that are detrimental to business competition.

The solution to this problem must be comprehensive. First, regulations and law enforcement must be strengthened, including the application of strict and impartial sanctions for perpetrators of irregularities, both from the government and the private sector. Second, the electronic procurement system (*e-procurement*) must be optimized with real-time data transparency, digital auditing, and cross-agency integration to close opportunities for manipulation. This study found a legal vacuum because there are no regulations that explicitly govern the authority and oversight mechanisms of the National Public Procurement Agency (LKPP) regarding issues that arise in the procurement of goods and services, particularly at the auction stage. As a result, LKPP does not have an integrated data system from all LPSEs related to various crucial issues in auctions, such as complaints, objections, appeals, and the process and results of their resolution. In fact, this information is a very important control instrument to ensure accountability, identify patterns of irregularities, and prevent unfair business practices, including tender collusion. This study recommends strengthening regulations that explicitly provide a legal basis for LKPP to conduct data-based supervision of procurement dynamics, while also building national integration between LKPP and LPSE so that all complaint and objection data can be monitored transparently, documented digitally, and audited systematically. Through these regulatory and integration enhancements, e-procurement will not only serve as a digitization of procedures but also

[19] Zaenal Arifin, "Tindak Pidana Korupsi Dalam Proses Pengadaan Barang Dan Jasa Pemerintah," *Jurnal Hukum Responsif* 5, no. 5 (2017): 54–62.

become an effective oversight system to close loopholes for manipulation and achieve a fair, transparent, and competitive procurement process. Third, enhancing the capacity and integrity of procurement officials through continuous training and accountability-based performance evaluation mechanisms. Fourth, changing the legal culture by encouraging business actors and the public to actively participate in oversight, for example through secure and responsive public reporting channels. With these steps, it is hoped that irregularities in procurement can be minimized, public trust increased, and a healthy business competition climate can be realized in a sustainable manner.

In order for the recommendations made to be more than just normative, their implementation needs to be accompanied by clear performance measures so that they can be monitored and assessed on a regular basis. Strengthening regulations and law enforcement, for example, can be evaluated through the consistency of handling violations as reflected in the number of cases followed up, the form and level of severity of sanctions imposed, and changes in the level of business compliance after enforcement, including indications of a decline in patterns of repeated violations in certain sectors or regions. The optimization of the electronic procurement system can also be measured through the level of openness of procurement information, the use of digital audit features, and the effectiveness of data integration between institutions, as seen in the system's ability to detect anomalies more quickly, such as unreasonable bids, document similarities, and indications of winner rigging. Furthermore, improvements in the competence and integrity of procurement officials can be assessed from the achievements of training and certification, the results of accountability-based performance assessments, and the reduction of administrative violations found in internal and external audits. Meanwhile, changes in legal culture can be seen from increased public and business involvement in oversight, including through the number of reports submitted, the speed and quality of follow-up on these reports, and improved public perception of transparency and trust in the procurement process. With these measurable indicators, the solutions offered become more operational and applicable, while also providing a basis for evaluation for continuous improvement to achieve transparent, fair, and competitive procurement.

Irregularities in government procurement of goods and services that trigger unfair business competition can be analyzed using Lawrence M. Friedman's legal system theory, which covers three main elements: legal structure, legal substance, and legal culture.[20] From a legal perspective, problems arise due to weak institutional capacity, such as limited human resources and expertise, suboptimal technological infrastructure, and poor coordination between agencies, for example between the Business Competition Supervisory Commission (KPPU) and the Government Goods/Services Procurement Policy Agency (LKPP). This situation opens up opportunities for irregular practices, such as price mark-ups, bid rigging,

[20] Fahrizal S Siagian, "Optimalisasi Teori Sistem Hukum Lawrence Meir Pidana Korupsi Di Indonesia," *JUSTICES : Journal of Law* 2, no. 4 (2023): 185–201, https://doi.org/https://doi.org/10.58355/justices.v2i4.93.

and bid evaluation manipulation, because the monitoring and enforcement processes are not effective.

From a legal substance perspective, although the Anti-Monopoly Law, which has been revised through Law No. 6 of 2023, provides a strong legal basis for prohibiting monopolistic practices and unfair business competition, there are still significant normative weaknesses. One of these is the overly broad definition of "unfair business competition" in Article 1(f), which opens up opportunities for biased interpretation and can be exploited by business actors to avoid legal consequences. In addition, the vagueness and lack of detailed operational regulations in the implementing regulations for procurement make it difficult to prove violations and prone to dismissal at the adjudication stage.

Meanwhile, from a legal culture perspective, low legal awareness among procurement officials and business actors is a major factor exacerbating irregularities. A permissive culture toward collusion, corruption, and nepotism has taken root, so that the procurement process is often not directed toward obtaining the best provider, but rather toward accommodating the interests of certain groups. In fact, in many cases, those with supervisory authority are directly involved in tender collusion, creating a vicious cycle of irregularities that is difficult to break.

Based on this analysis, improvements must be made simultaneously to all three elements of Friedman's model. In terms of structure, institutional strengthening is needed through improving human resource competencies, optimizing supervisory functions, and maximizing the use of information technology. In terms of substance, revisions to legal norms and a sharpening of the definition of unfair business competition, accompanied by clear and firm operational regulations, are absolutely necessary to close legal loopholes. In terms of legal culture, reforming values through legal education, increasing transparency, and public participation in oversight are strategic steps to build integrity in the procurement system.[21] With these comprehensive improvements, irregularities in procurement can be minimized and a healthy and fair business competition climate can be realized.

The concretization of unfair business competition practices in government procurement of goods and services can also be seen from a number of KPPU decisions that reveal patterns of systematic tender collusion. One important example is the case of bid rigging in the Ismail Marzuki Park (TIM) Revitalization Phase III project, in which the KPPU proved that there was coordination between business actors in determining the winning bidder through the similarity of bid documents and non-competitive bidding patterns. In this case, the KPPU imposed administrative fines worth billions of rupiah on business actors as a form of enforcement of Article 22 of the Anti-Monopoly Law. Another example can be found in the case of bid rigging in a clean water supply project in North Lombok, which involved a regionally-owned enterprise (BUMD), where the KPPU assessed that the procurement process had been directed from the outset to favor certain parties through the arrangement

[21] Farida Pahlevi, "Pemberantasan Korupsi Di Indonesia Perspektif Legal System Lawrence M. Freidmen," *El-Dusturie* 1, no. 1 (2022): 24–42, https://doi.org/10.21154/eldusturie.v1i1.4097.

of requirements and bid evaluations. These cases show that unfair business competition practices in procurement are not incidental, but rather occur in a structured and repetitive manner, involving private actors and institutions that have close ties to the procurement organizers. Thus, the existence of these empirical examples confirms that the problem of unfair business competition in procurement is a real phenomenon that requires stronger oversight and more consistent law enforcement, not only at the normative level but also in practical implementation.

To strengthen laws related to business competition and procurement of goods/services, it is important to create a fair competitive environment.[22] This involves stricter supervision, a more transparent selection process, and empowering the KPPU with adequate resources. In addition, there needs to be a transformation of the legal culture that promotes integrity and compliance with the law and an understanding of the importance of fair and transparent competition for the economic and social growth of the country.

3.2 Legal Resolution of Unfair Business Competition in Government Procurement of Goods/Services

The principle of Indonesian unity as enshrined in Pancasila emphasizes the importance of collaboration in creating justice, including in the enforcement of business competition law. This principle requires synergy between the KPPU, LKPP, and other legal institutions in building a healthy business climate. However, coordination between these institutions still faces significant obstacles, so that the effectiveness of law enforcement is often less than optimal. The Anti-Monopoly Law provides a legal basis for the establishment of an independent supervisory agency.[23] The KPPU was established as a quasi-independent institution that reports directly to the President, thereby freeing it from interference by other parties. As such, the KPPU plays a strategic role in creating a conducive business climate that is free from monopolies or unhealthy practices.[24]

The KPPU has the primary task of assessing agreements, business activities, and dominant positions that have the potential to violate business competition rules. In addition, the KPPU has the active authority to investigate, collect evidence, and impose administrative sanctions, as well as the passive authority to receive reports from the public regarding alleged violations. In practice, law enforcement is often hampered by legal structures and cultural contexts as described in Friedman's legal system theory. The substance of competition law also needs to be revised to adapt to actual challenges in the field, especially in dealing with cases of collusion in government procurement of goods and services (PBJ).[25]

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[22] Jafar Ali Barsyan, "Persaingan Dalam Pengadaan Barang/Jasa," *setkab.go.id. diakses pada October 21, 2021*, last modified 2021, https://setkab.go.id/persaingan-dalam-pengadaan-barang-jasa/.

[23] Zaini Munawir and Abdul Lawali Hasibuan, "Faktor Penyebab Tidak Terbukti Secara Hukum Bentuk Dan Indikasi Persekongkolan Dalam Tender," *Jupiis: Jurnal Pendidikan Ilmu-Ilmu Sosial* 9, no. 2 (2017): 196, https://doi.org/10.24114/jupiis.v9i2.8247. https://doi.org/10.24114/jupiis.v9i2.8247.g6935

[24] Aisyah Dinda Karina, "Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Terhadap Pelaku Usaha Di Pasar Tradisional," *Jurnal Ilmiah Dunia Hukum* 3, no. 2 (2019): 55–67. http://dx.doi.org/10.56444/jidh.v3i2.1360

[25] Yuliana Juwita, "Larangan Persekongkolan Tender Berdasarkan Hukum Persaingan Usaha, Suatu Perbandingan Pengaturan Di Indonesia Dan Jepang" (Universitas Indonesia, 2012).

The KPPU plays a central role in enforcing competition law, including in the government procurement sector. One case that has come under the spotlight is the collusion in the Revitalization of Taman Ismail Marzuki (TIM) Phase III tender, in which PT Pembangunan Perumahan (Persero) Tbk and PT Jaya Konstruksi Manggala Pratama Tbk were found to have violated Article 22 of the Anti-Monopoly Law. In this case, the KPPU imposed administrative sanctions in the form of fines amounting to IDR 16,800,000,000.00 (sixteen billion eight hundred million rupiah) on PT Pembangunan Perumahan (Persero) Tbk and IDR 11,200,000,000.00 (eleven billion two hundred million rupiah) to PT Jaya Konstruksi Manggala Pratama Tbk. This case demonstrates that significant financial sanctions can be used as an effective law enforcement instrument to deter business actors.[26]

Another relevant case is the collusion in a tender for a clean water supply project in North Lombok, involving Perumda Air Minum Amerta Dayan Gunung. The KPPU imposed an administrative sanction in the form of a fine of billions of rupiah after it was proven that there had been collusion to determine the winner of the tender illegally.[27] This phenomenon confirms that unfair business practices in procurement are not only carried out by private companies, but also involve regionally-owned enterprises (BUMD) and local government officials. These sanctions are important to maintain the integrity of the procurement process at the local level and demonstrate that KPPU does not discriminate based on the status of the perpetrator in its law enforcement.

In the case of the construction of the Prabumulih Mall (KPPU Decision No. 15/KPPU-L/2007), the business actor was imposed with administrative sanctions in the form of cancellation of the auction results, prohibition from participating in tenders in all local government agencies for two years, and a fine of IDR 1,000,000,000.00 (one billion) if the prohibition is violated.[28] Combined sanctions such as these-which include market access restrictions and financial penalties-have the potential to be more effective deterrents than fines alone. However, their effectiveness still requires an integrated monitoring system to ensure that the prohibitions are implemented in accordance with the ruling.

Although the KPPU has imposed various forms of administrative sanctions, their effectiveness in preventing bid rigging still faces challenges. First, the amount of fines is often not proportional to the economic benefits gained by businesses from fraudulent practices, thereby limiting the deterrent effect. Second, the implementation of non-financial sanctions such as blacklisting has not been fully integrated into the national procurement system managed by the Government Goods/Services Procurement Policy Agency (LKPP), making it easy to circumvent through new company identities or affiliates. Third, coordination between law enforcement agencies and procurement supervisors still needs to

[26] Dadang Hardiana, "Penanganan Persekongkolan Tender Pemerintah: Studi Komparatif Atas Putusan KPPU No. 17/KPPU-L/2022," *Jurnal Hukum Dan Kesejahteraan Universitas Al Azhar Indonesia* 09, no. 17 (2024): 13–23. Diakses 14 Agustus 2025.

[27] Hardiana.

[28] Nurul Fitriani, "Wewenang KPPU Terhadap Pemberian Sanksi Pada Pihak Lain Dalam Kasus Persekongkolan Tender," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 1 (2021): 169, https://doi.org/10.33087/jiubj.v21i1.1241.

be strengthened, especially if the irregularities involve government officials.[29] KPPU sanctions in cases of unfair business competition in government procurement of goods and services should be understood not merely as a form of normative compliance, but also as an instrument that should be able to encourage changes in business behavior and prevent repeat violations in the future. In practice, administrative sanctions in the form of fines, cancellation of tender results, or restrictions on participation in the procurement process can have a deterrent effect if they are applied consistently and supported by an integrated procurement system, as business actors will consider the financial and reputational consequences, as well as the risk of losing market access.[30] However, the effectiveness of these sanctions may be reduced if the fines are not commensurate with the profits gained from collusion, or if non-financial sanctions such as blacklisting are not effectively linked to the system managed by the National Public Procurement Agency (LKPP), so that they can still be circumvented through the use of affiliated companies or the establishment of new business entities. In order for KPPU sanctions to have a broad and sustainable impact, it is necessary to strengthen post-decision monitoring mechanisms, update the database of business actors and their records of violations in e-procurement, and promote inter-agency synergy to ensure that sanctions are effective and capable of improving the integrity of the public sector in the implementation of procurement.

In the context of resolving unfair business competition in government procurement of goods and services, transparency and oversight remain important instruments, but their effectiveness is largely determined by the consistency of law enforcement and the enforceability of sanctions imposed. The KPPU, as the law enforcement agency for business competition, has imposed various administrative sanctions, ranging from the cancellation of tender results, fines worth billions of rupiah, to recommendations to restrict business actors' participation in procurement. Normatively, these sanctions serve as a deterrent effect and a signal that tender collusion is a serious violation of the principles of fair competition. However, it is important to critically note that the impact of sanctions on changing the behavior of business actors is not always automatic, because in practice there are still loopholes to avoid consequences, such as the use of company affiliates, the formation of new entities, or the weak integration of sanctions (e.g., blacklisting) in the national procurement system. This condition shows that the success of KPPU sanctions does not only depend on the amount of fines, but also on post-decision monitoring mechanisms, the integration of the procurement information system, and inter-agency coordination to ensure compliance and prevent repeat violations. Therefore, strengthening the integrity of the public sector and the behavior of business actors in procurement must be directed towards a combination of proportional enforcement of sanctions, measurable information disclosure,

[29] Desi Apriani et al., "Revisi Sanksi Denda Administratif Menurut Hukum Persaingan Usaha Indonesia Pasca Undang-Undang Cipta Kerja: Suatu Analisis Hukum," *Journal Equitable* 8, no. 1 (2023): 95–110, https://doi.org/https://doi.org/10.37859/jeq.v10i2.9045.

[30] Asmah Asmah, "Penerapan Sanksi Denda Terhadap Kasus Persekongkolan Tender Jalan Nasional," *Jurnal Yudisial* 12, no. 2 (2019): 197, https://doi.org/10.29123/jy.v12i2.280.

and system-based supervision that is capable of detecting and closing patterns of collusion on an ongoing basis.

Administrative sanctions imposed by KPPU include cancellation of agreements, orders to cease unhealthy activities, cancellation of company mergers, and compensation.[31] with fines ranging from Rp.1,000,000,000.00 (one billion rupiah) to Rp25,000,000,000.00 (twenty-five billion). The purpose of these sanctions is to deter individuals from committing violations. A comprehensive analysis of procurement documents, evidence of collusion, and the tender process is part of the KPPU's investigation into PBJ. Transparency in PBJ is an important element in preventing collusion between business actors and government officials.[32] Transparency in PBJ is an important step in curbing collusion and corruption. To ensure that PBJ is implemented fairly and properly, an effective monitoring system is necessary.

The need for substantive legal revisions, including harmonization with government procurement policies, is a priority for improving the effectiveness of competition law enforcement. These revisions are expected to address existing challenges, such as the complexity of collusion cases in public procurement. With strict supervision and firm sanctions, business actors are expected to no longer dare to engage in unhealthy practices. The KPPU plays a role in ensuring that business actors compete fairly and provide benefits to the community.[33]

Effective enforcement of competition law requires synergy between institutions, substantive legal adjustments, and a transparent monitoring system. As the frontline in monitoring, KPPU plays a strategic role in creating a fair, healthy, and monopoly-free business ecosystem.

4. CONCLUSION

This study concludes that unfair business competition in government procurement of goods and services in Indonesia is a systemic problem that is simultaneously influenced by weaknesses in the legal structure (institutional capacity and coordination of oversight), legal substance (norms that are not sufficiently operational and regulatory loopholes), and legal culture (tolerance of collusion) as explained in Lawrence M. Friedman's theory of the legal system. Friedman's legal system theory. To improve the effectiveness of competition law enforcement and prevent repeated violations, more measurable policy recommendations are needed, namely sharpening the norms prohibiting tender collusion in derivative regulations,

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[31] Mochamad Januar Rizki, "Melihat Ketentuan Sanksi Denda Di PP Anti-Monopoli Dan Persaingan Usaha Tak Sehat," *hukumonline.com. diakses pada Maret 8, 2021*, last modified 2021, https://www.hukumonline.com/berita/a/melihat-ketentuan-sanksi-denda-di-pp-anti-monopoli-dan-persaingan-usaha-tak-sehat-lt604604f5258a5/.

[32] Saut Wolker Sihaloho, Dani Ariza, and Agus Munandar, "Efektifitas E-Katalog Pada Kegiatan Pengadaan Barang Dan Jasa (Pbj) Dalam Upaya Pemerintah Mencegah Fraud," *Economic, Accounting, Management and Business* 7, no. 1 (2024): 219–30, https://doi.org/10.37481/sjr.v7i1.798. https://doi.org/10.37481/sjr.v7i1.798

[33] Alya Anindita Maheswari, "Batasan, Wewenang, Dan Keteribatan KPPU Dalam Kasus Persekongkolan Tender Menurut Hukum Persaingan Usaha," *Jurist Diction* 3, no. 5 (2020): 1581–1596. https://doi.org/10.20473/jd.v3i5.21967

strengthening the integration of LKPP –LPSE data integration so that complaints, objections, and violation histories can be monitored in real-time, and synchronization of KPPU sanctions (including blacklisting) into the e-procurement system as an effective preventive instrument. In addition, strengthening the capacity of the procurement apparatus and the post-KPPU decision monitoring mechanism needs to be prioritized so that sanctions do not stop at formal decisions, but actually shape changes in business behavior and increase the integrity of the public sector. Academically, this research contributes to enriching the development of competition law in Indonesia by offering a more integrative analytical framework for assessing the effectiveness of law enforcement in the procurement sector, while emphasizing that regulatory reform must go hand in hand with institutional reform and the establishment of a culture of compliance so that transparent, fair, and accountable procurement governance can be realized in a sustainable manner.

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