

Protection For Tender Participants Businesses That Are Losses Due To Collection According To Business Competition Law

Oleh:

Imam Haryanto

imam.haryanto@upnvj.ac.id

Muthia Sakti

muthiasakti@upnvj.ac.id

Wirya Agung Kusuma Putra

wiryaagung@yahoo.com

Law Studies, Faculty of Law UPN "Veteran" Jakarta

Abstract

The development of the Indonesian economy is aimed at improving the lives of people who are just and prosperous. This is an ideal that has been mandated in the 1945 Constitution and Pancasila. One of the obstacles in the Indonesian economy is the existence of monopolistic practices and unfair business competition in business or business in Indonesia. Tender conspiracy is one of the forms of action prohibited in the Anti-Monopoly Law because tender conspiracy is fraudulent and detrimental, especially to other tender participants who do not conspire, because automatically in the tender, the winner cannot be regulated, but rather who does it. the best bid is the winner and apart from that bid rigging is an anti-competitive act. Regarding the conspiracy, there is a KPPU Decision relating to this matter, namely the KPPU Decision Case Number 6 / KPPU-L / 2015 regarding the construction of the Barito Kuala Regency DPRD building and its Land Development, in its decision the KPPU Commission Council stated that Reported Party I (PT. Citra Kharisma Persada), reported II (PT. Cempaka Mulia Perkasa), reported III (PT Sumber Nor Abadi), reported IV (Pokja I in the Human Settlements Division of the Public Works Office of Barito Kuala Regency Fiscal Year 2013) was proven legally and convincingly violating Article 22 of the Law Number 5 of 1999. This research will discuss legal protections for business actors participating in tenders who suffer losses due to conspiracy in the KPPU's decision.

Keyword: *Legal protection, business actors, conspiracy.*

I. INTRODUCTION

The development of the Indonesian economy is aimed at improving the lives of people who are just and prosperous and prosperous. This is an ideal that has been mandated in the 1945 Constitution and Pancasila. The Indonesian national economy is structured based on the principles of economic democracy as outlined in Article 33 of the 1945 Constitution, namely "The national economy is organized based on economic democracy with the principles of togetherness, the efficiency of justice, sustainability, environmental insight, independence, and balance of progress and national economic unity."

However, it cannot be denied that in the implementation of the principles of economic democracy there are still many obstacles faced in making the Indonesian economy better. One of the obstacles in the Indonesian economy is the existence of monopolistic practices and unfair business competition in business or business in Indonesia. This is because many business actors engage in fraudulent competition that is detrimental to other business actors, consumers, and even detrimental to the state. As a result, the Indonesian economy fell into a slump which then peaked in 1999 when Indonesia experienced a monetary crisis.

Therefore, to realize a better Indonesian economic development, the Government of Indonesia made efforts so that Indonesia could get out of the monetary crisis, among others, Indonesia received pressure from the International Monetary Fund (IMF), to make an Antimonopoly Law. With this pressure, finally in 1999 Indonesia made a regulation in the form of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, which hereinafter is abbreviated as Law Number 5 of 1999. The law was established with the principle of democratic economy in the Indonesian economy, where all business actors in carrying out their business activities must pay attention to the balance between the interests of business actors and the public interest.

In general, Law Number 5 the Year 1999 aims to maintain a competitive climate among business actors and make competition between business actors healthy. Apart from that, it also aims to avoid the exploitation of consumers by certain business actors and to support the market economy system adopted by a country. To support conditions of healthy, open business competition and aspirations of many business actors, a business competition policy is needed. The importance and necessity of a business competition policy owned by a country aim to minimize economic inefficiency caused by the behavior of business actors who tend to be anti-competitive and desire to practice monopolistic arbitrarily (Bahri, 2002). Juridically, the objectives of business competition which are regulated in Article 3 of Law Number 5 of 1999 are as follows:

- a. Safeguarding public interests and protecting consumers;
- b. Fostering a healthy business climate;
- c. Ensure the same business opportunity for everyone;
- d. Prevent monopolistic practices and or unfair business competition caused by business actors;
- e. Creating effectiveness and efficiency in business activities to increase national economic efficiency as an effort to improve people's welfare.

Thus it can be seen that it turns out that the purpose of business competition as regulated in Law Number 5 the Year 1999 does not only emphasize its vision on the aspect of the competition (compete) but also carries a vision as a behavior of conduct in the order of the business world, including protecting consumers. in Indonesia (Kagramanto, 2007). The most important thing in Law Number 5 of 1999 is the establishment of an independent institution that is authorized to handle problems related to unfair business competition as regulated in Law No. 5 of 1999 called the Business Competition Supervisory Commission (hereinafter referred to as KPPU). Since the establishment of KPPU, KPPU has handled many cases, one of which is concerning tender conspiracy.

Although the formulation of the title of Law Number 5 the Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business

Competition is negation in nature (prohibition), its substance is positive for realizing fair business competition in the Indonesian homeland. By looking at this positive essence, we do not need to have the perception that law as regulation has a close relationship with the connotation of trimming or hindering if it is seen from the side of negation alone (Margono, 2009).

The procurement of goods and/or services for a company or government agency project is often carried out through a tender process. This is intended by the tender organizer to get the lowest possible price of goods or services, but with the best possible quality. The main objective of a tender can be achieved if the process is fair and healthy so that the winner is determined by the bid (price and quality of the proposed goods or services) (Muhammad, 2010).

Tender conspiracy is one of the forms of action prohibited in the Anti-Monopoly Law because tender conspiracy is fraudulent and detrimental, especially to other tender participants who do not conspire, because automatically in the tender, the winner cannot be regulated, but rather who does it. the best bid is the winner and apart from that bid rigging is an anti-competitive act. The occurrence of a conspiracy will eliminate competition between business actors, in a market economic system relying on the competition process, making business actors act efficiently and innovatively. However, in practice, most business actors circumvent the competition itself. And make market domination by collaborating between business actors (Rokan, 2012).

Business competition law in Indonesia contains certainty about who is the holder of a tender for the procurement of goods and without any conspiracy. The term conspiracy in tenders is a cooperation between 2 (two) or more parties, openly or secretly by comparing tender documents before submission or creating artificial competition and agreeing, facilitating, and not refusing to take any action even though they know or should know that these actions are taken to regulate to win certain tender participants.

Robert Meiner distinguishes 2 (two) types of conspiracy when looking at the parties involved, horizontal conspiracy (horizontal conspiracy) and vertical conspiracy (vertical conspiracy). Horizontal conspiracy is a conspiracy held by parties who are fellow competitors. Meanwhile, vertical conspiracy is a conspiracy made by parties who are in the relationship between the seller (service provider) and the buyer (service user). Asril Sitompul also distinguished conspiracy into 2 (two), namely intra-company conspiracy and deliberate parallel conspiracy. Intra-company conspiracy occurs when 2 (two) or more parties in the same company take action that can hinder competition. Intentional parallel conspiracy occurs when several companies follow the actions of large companies (market leaders) who are competitors (Sitompul, 1999).

In general, the tender principles that do not violate Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition are:

- a. Open or transparent in nature and announced widely;
- b. Non-discriminatory in nature and can be followed by all business actors with the same competence;
- c. Does not contain requirements and technical specifications or brands that refer to certain business actors.

Meanwhile, in Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, the forms of the conspiracy that are prohibited and have the potential to cause unfair business competition are in the form of:

- a. Conspiracy to determine the winner of the tender (Article 22);
- b. Conspiracy to leak trade secrets (Article 23);
- c. Conspiracy to create trade barriers (Article 24).

In connection with the conspiracy to determine the tender winner, Article 22 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, states, "That business actor are prohibited from conspiring with other parties to regulate and or determine the tender winner, which may result in the occurrence of unfair competition.

"As for the meaning of conspiracy can be found in Article 1 point 8 of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, which states that, "business conspiracy or conspiracy is a form of cooperation between business actors and other business actors. to control the relevant market for the interests of conspiring business actors."

In a competitive climate, tenders aimed at obtaining winners must consist of at least 2 (two) or more business actors so that the basic idea for tender implementation in the form of obtaining the lowest price with the best quality can be achieved (Krisanto, 2005). On the other hand, however, tender conspiracy can also lead to collusive actions aimed at eliminating competition and raising prices.

In the context of business competition law, the prohibition norm has 2 (two) characteristics or approaches used in viewing agreements or activities of business actors, namely prohibitions that are Per Se Illegal in nature and approaches that are Rule of Reason in nature. A per se prohibition is a prohibition that is clear, firm, and absolute in the framework of providing certainty for business actors. Whereas in the rule of reason approach, penalties for acts accused of violating competition law must consider the situation and conditions of the case. In other words, the rule of reason requires a proof, evaluating the consequences of a particular agreement, activity, or dominant position to determine whether the agreement or activity impedes or supports competition. Therefore, Law Number 5 of 1999 explicitly stipulates 2 (two) types of sanctions that can be imposed on the tender conspiracy activities, namely administrative sanctions and criminal sanctions. The application of these sanctions requires coordination with the Police, the Attorney General's Office, and the KPK (Usman, 2004).

Regarding the conspiracy, there is a KPPU Decision relating to this matter, namely the KPPU Decision Case Number 6 / KPPU-L / 2015 regarding the construction of the Barito Kuala Regency DPRD building and its Land Development, in its decision the KPPU Commission Council stated that

Reported Party I (PT. Citra Kharisma Persada), reported II (PT. Cempaka Mulia Perkasa), reported III (PT Sumber Nor Abadi), reported IV (Pokja I in the Human Settlements Division of the Public Works Office of Barito Kuala Regency Fiscal Year 2013) was proven legally and convincingly violating Article 22 of the Law Number 5 of 1999. It has been proven that there has been a Horizontal conspiracy committed by reported I, reported II, and III as evidenced by the similarity of typing errors in the bid document, an affiliation relationship between reported I, reported II, and reported III, the similarity of Bid Security and Equipment Support Letter with number consecutive letters. Apart from that, it has been proven that there was a vertical conspiracy committed by Reported I and Reported IV as evidenced by the actions of Reported IV which still won Reported Party I even though it did not fulfill the Basic Capability requirements.

The occurrence of various irregularities in the procurement of goods and services, due to the negligence and incompetence of the executor and the procurement participants. One of them is an unfair business competition among business actors. Also, unfair business competition can result in closing opportunities for quality competition. Conspiracy to occur in the procurement of government goods and services can prevent bidders in good faith from being blocked from entering the market. Also, the climate of corruption and collusion between the bureaucracy and business actors related to the procurement of goods in tenders is one of the things that must be addressed. This has become a special concern for the Business Competition Supervisory Commission (KPPU).

The importance of legal protection for business actors in the right of the business actor so that they can carry out their business activities properly. This situation can encourage the creation of equal opportunities for every business actor to conduct the fair and fair business competition and to create a climate of healthy and competitive business competition in Indonesia, so it is necessary to know how the form of legal protection is given to business actors who suffer losses. Based on the background above, the formulation of

the problem in this paper is how is the protection for business actors participating in the tender who are harmed by conspiracy according to business competition law?

II. RESULT AND DISCUSSION

Along with the times at this time, the existence of national development going forward is a series of efforts to advance the development of national development in a better direction. The ideal economic system for Indonesia is a controlled free market economy. This system continues to open the widest possible opportunity to the market, while still being controlled by the Government as a guide. However, the market economic system requires a legal system capable of controlling effectiveness in the market.

If companies behave competitively and there are no externalities, then it can be said that free trade runs efficiently. As explained by Daniel Agustino in the Journal of Business Competition Law Issue 1, when a company is suspected of using excessive market power, after all, the Government of a country can use competition policies to follow up on such anti-competitive activities. For such a policy it is commonly called the anti-trust policy or competition policy.

The occurrence of various irregularities in the procurement of goods and services, due to the negligence and incompetence of the executor and the procurement participants. One of them is an unfair business competition among business actors. Unfair business competition can also result in closing opportunities for quality competition. Conspiracy to occur in the procurement of government goods and services can prevent bidders in good faith from being blocked from entering the market. Besides, the climate of corruption and collusion between the bureaucracy and business actors related to the procurement of goods in tenders is one of the things that must be addressed. This has become a special concern for the Business Competition Supervisory Commission (KPPU).

According to Riris Munadiya in the Journal of Business Competition Edition 5 of 2011; After passing 10 years of enforcement of the Business Competition law in Indonesia, various developments can be seen, both in terms of the number of cases handled and in terms of the substance of competition handled. Based on case handling statistics from 2000-2010, competition cases were still dominated by tender cases, which accounted for 69% of incoming cases. The remaining 31% were cases related to abuse of dominant position, cartel, monopoly, and share ownership. Based on the legal dictionary, conspiracy is a collaboration between two or more parties together to commit acts that violate the law. The practice of conspiracy in tenders is prohibited because it can lead to unfair competition and contradicts the objective of the tender, namely to provide equal opportunities to business actors to participate in offering competitive prices and quality. The tender process is expected to obtain the lowest price with the best quality.

The purpose of the enactment of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition about protected objects, among others is to:

- a. Protect business actors, especially business actors who are not dominant;
- b. Protecting consumers from a high-cost economy in which consumers are avoided from spending (high) according to the quality of the product received;
- c. Protecting the country from inefficiencies in economic activities that can reduce national welfare;
- d. Protecting the business competition process itself means protecting the fair market mechanism system, based on the enactment of the natural law of supply and demand so as not to be disturbed by an action by business actors or government policies.

Tender conspiracy can be detected from the start if we already know the indication of the collusion. Some collusive behavior can be seen from various case handling and business competition case studies in various other countries. The procurement of goods or services carried out by the government has the potential to be saved if the tender is carried out transparently and openly. However, the desire to obtain low prices and good

quality is still being challenged by business actors who want collusive tenders to gain economic benefits for their group only.

Tenders are closely related to the State Revenue and Expenditure Budget (hereinafter referred to as the APBN), where the APBN is the annual financial plan of the Indonesian Government approved by the DPR, containing a systematic and detailed list containing the state revenue and expenditure plan for 1 (one) fiscal year (starting from January 1 - December 31). APBN, APBN changes, and accountability for APBNs every year are stipulated by law. The State Budget preparation stage begins when the government submits the State Budget Draft in the form of the State Budget Bill to the DPR. After going through discussions, the DPR enacts a Law on APBN no later than 2 (two) months before the implementation of the fiscal year. After being stipulated by law, the implementation of the APBN will be further stimulated by a Presidential Regulation. In the middle of the budget year, based on existing developments, the APBN may undergo changes (revisions), for which the government must submit a Bill on Revision of the State Budget to obtain DPR approval. After the fiscal year ends, at the latest 6 (six) months after that the President must submit a Bill on Accountability for the Implementation of the State Budget to the DPR in the form of a Financial Report that has been examined by the Supreme Audit Agency (BPK). The APBN serves as an instrument to regulate state expenditure and revenue in the framework of financing the implementation of government and development activities, achieving economic growth, increasing national income, achieving economic stability and determining development directions and priorities in general. The APBN has several functions that make all revenues that are entitled and expenditures that are the obligation of the state in a fiscal year to be included in the APBN. The state revenue surplus can be used to finance state expenditures for the following fiscal year. The APBN has the following functions:

- a. Authorization function means that the state budget is the basis for implementing revenue and expenditure in the year concerned. thus, expenditure or income can be accounted for to the people.
- b. The planning function implies that the state budget can serve as a guide for the state to plan activities in that year. If an item of expenditure has been planned, the country can make plans to support that spending.
- c. The supervisory function means that the state budget must serve as a guideline for assessing whether the state administration's activities comply with the stipulated provisions. Thus, it will be easy for people to judge whether the government's action of using state money for certain purposes is justified or not.
- d. The allocation function means that the state budget must be directed at reducing unemployment and waste of resources as well as increasing the efficiency and effectiveness of the economy.
- e. The distribution function means that state budget policies must pay attention to a sense of justice and appropriateness.
- f. The stabilization function means that the government budget is a tool to maintain and strive for balance in economic fundamentals.

In preparing the APBN every year, the Government uses 7 macroeconomic indicators, namely Gross Domestic Product (GDP) in rupiah, annual economic growth (%), inflation (%), rupiah exchange rate per USD, 3-month SBI interest rate (%), Indonesian oil price (USD / barrel), and Indonesian oil production (barrel/day). The current APBN structure consists of State Revenue and Grants, State Expenditures, and Financing. The financing consists of Central Government Expenditure and Regional Expenditures. Furthermore, central government spending is further categorized into Personnel Expenditures, Goods Expenditures, Capital Expenditures, Morsal Debt Financing, Fuel and Non-Fuel Subsidies, Grant Expenditures, Social Expenditures (including Disaster Management), and other Expenditures. This study will focus more on goods and capital expenditures, which are often blamed for wasting the state budget.

Goods spending is the purchase of consumable goods and services to products marketed and non-marketed goods and services, which can be grouped into 3 (three) categories of expenditure, namely:

- a. Expenditures for the procurement of goods and services;
- b. Maintenance Expenditures; and

c. Shopping Travel.

Meanwhile, capital expenditures are defined as expenditures made in the context of capital formation which in nature add to fixed assets/inventories that provide benefits, including expenses for maintenance costs which maintain or increase the useful life, increase capacity, and asset quality. Capital expenditure can be categorized into 5 (five) categories, namely land capital expenditure, equipment and machinery capital expenditure, building and building capital expenditure, road capital expenditure, irrigation, and networks as well as other physical capital expenditure.

The conspiracy in the tender process was made possible by the weakness of regulations made by the Government. Also, a conspiracy may occur because the committee is not able to detect the behavior and early characteristics of the conspiracy itself. Several efforts can be made to prevent tender conspiracy, namely:

- a. Seek complete information before drafting a procurement process;
- b. Establish a tender process that allows potential bidders to participate;
- c. Define requirements clearly and avoid estimations;
- d. Designing a tender process that effectively reduces communication among bidders;
- e. Be careful in selecting criteria for evaluating and announcing the winning bidder;
- f. Raise awareness among tender participants about the risks of conspiracy in procurement.

Case Number 06 / KPPU-L / 2015 concerning alleged violations of Law Number 5 the Year 1999 regarding the Tender for the Construction of the Barito Kuala Regency DPRD Building and Land Development for Fiscal Year 2013-2015 (Multi years), there is an indication of conspiracy in the tender project. Conducted by PT. Citra Kharisma Persada (hereinafter referred to as Reported Party I), PT. Cempaka Mulia Perkasa (hereinafter referred to as Reported Party II), PT. Sumber Nor Abadi (hereinafter referred to as the Reported Party III), Working Group I in the Human Settlements Division of the Barito Kuala Regency Public Works Office for the 2013 Fiscal Year (hereinafter referred to as the Reported Party IV) and the

Authority for Budget User in the Human Settlements Division of the Barito Kuala Regency Public Works Office for the 2013 Fiscal Year (hereinafter referred to as Reported Party V).

The alleged violation in case Number 06 / KPPU-L / 2015 is a violation of Article 22 of Law Number 5 the Year 1999, with the source of funding coming from the 2013-2015 APBD with a total HPS value of Rp. 49,800,000,000, - (forty-nine billion eight hundred million rupiah). The alleged violation committed by Reported Party I, Reported Party II, Reported Party III, Reported Party IV, and Reported Party V is a horizontal conspiracy between Reported Party I, Reported Party II, and Reported Party III with indications of similar typing errors in the bidding documents of Reported Party I, Reported Party II, and Reported Party III. , there is an affiliation relationship between Reported Party I, Reported Party II and Reported Party III, there is a similarity of bid guarantees and equipment support letters with consecutive letter numbers, and there is a similarity in IP Addresses among tender participants. Also, there were vertical conspiracies carried out by Reported Party I, Reported Party II, Reported Party III, and Reported Party V which was indicated by the actions of Reported Party IV which still won Reported Party I even though it did not fulfill the Basic Capability requirements, and Reported Party IV's actions continued to win Reported Party I even though there was a mismatch. between List of Core Personnel and those required in the Procurement Document Selection Data Sheet.

Based on the Regulation of the Commission for the Supervision of Business Competition Number 2 of 2010 concerning Guidelines for Article 22 (hereinafter referred to as Guidelines for Article 22) what is meant by Horizontal Conspiracy is a conspiracy between business actors or providers of goods and services and fellow business actors or competitors of goods and services providers. Meanwhile, vertical conspiracy is a conspiracy between one or several business actors or providers of goods and services and the tender committee or auction committee or users of goods and services or owners or employers.

Thus, the actions taken by Reported Party IV and Reported Party V were by winning one of the tender participants even though the requirements were not fulfilled, so that the other tender participant business actors were disadvantaged. This is contrary to the objective of the enactment of Law Number 5 the Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Article 3 letter (b) aims to create a conducive business climate by regulating healthy business competition to ensure certainty for equal business opportunities for large, medium, and small business actors.

There are 2 (two) methods stipulated by Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, first the public or business actors who are disadvantaged in reporting to KPPU. Second, KPPU exercises its right of initiative to conduct preliminary and follow-up examinations after seeing and finding irregularities in the implementation of the process. Therefore, any person or party who is aggrieved knows that there has been or is reasonably suspected of having occurred tender conspiracy, can report in writing to KPPU with clear information about the occurrence of violations, attach the identity of the reporter to KPPU and any identity of the reporter will be kept confidential by KPPU. As stated in Article 38 of Law Number 5 the Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, which has provided legal protection for business actors who have suffered losses due to conspiracy to procure government goods and services.

Business actors as auction participants who feel that they have been disadvantaged due to conspiracy in the tender have the right to object twice. The first rebuttal is addressed to the committee and must be answered by the committee. If the participant feels dissatisfied with the answer from the committee, the participant who feels aggrieved can object to the appeal addressed to the Minister / Head of the Institution. Regulations regarding objections to Article 81 and Article 82 of Presidential Regulation Number 70 of 2012 concerning the Second Amendment to Presidential Regulation

Number 54 of 2010 concerning Government Procurement of Goods / Services.

Satjipto Rahardjo said that the presence of law in society is to integrate and coordinate interests that can collide with one another. The coordination of these interests is carried out by limiting and protecting these interests. The law protects a person's interests by giving him the power to act in fulfilling those interests. The granting of power, or what is often referred to as this right, is carried out in a measured, broad, and deep manner (Rahardjo, 2000). According to Paton, interest is the right target, not only because it is protected by law, but also because there is recognition of it. Rights not only contain elements of protection and interest but also will. Regarding the function of law to provide protection, Lili Rasjidi and B. Arief Sidharta said that the law is grown and needed by humans, precisely based on the product of human judgment to create conditions that protect and advance human dignity and to enable humans to live a fair life according to their dignity. Legal protection in English is called legal protection, while in Dutch it is called *rechtsbecherming*. Harjono tries to define legal protection as protection by using legal means of protection provided by law, aimed at protecting certain interests, namely by making the interests that need to be protected in a legal right (Harjono, 2008). It can be said that legal protection is a protection provided based on the law and legislation.

Legal protection is given to business actors who are harmed by imposing sanctions on business actors who are found to have committed conspiracy to reduce/inhibit/minimize and/or eliminate fair competition and/or harm others is also regulated in the Presidential Regulation of the Republic of Indonesia Number 70 of 2012 concerning the Second Amendment to Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods / Services. The legal protection for the business actor who has been injured must be real and be known by the business actor conducting the tender auction. This is so that their rights as business actors can be protected. In the case of Number 06 / KPPU-L / 2015 concerning alleged violations of

Law Number 5 the Year 1999 regarding the Tender for the Construction of the Barito Kuala Regency DPRD Building and Land Development for Fiscal Year 2013-2015 (Multi years), horizontal and vertical conspiracies have occurred in practice. Horizontal conspiracy, namely conspiracy between tender participants, namely conspiracy between business actors and fellow business competitors. Meanwhile, vertical conspiracy is a conspiracy between parties, namely conspiracy between business actors and the owner/job provider / tender committee or with certain parties. Disadvantaged business actors receive preventive legal protection, which is contained in Article 38 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The essence of Article 38 states that any person who is aware that a violation of this law has occurred or should reasonably be suspected of having occurred a violation of this law can report in writing to the commission with clear information regarding the occurrence of the violation and the losses incurred, including the identity of the reporter.

The use of this Article has been implemented and is appropriate to protect every business actor who is injured, it can be seen in the Decision on Case Number 06 / KPPU-L / 2015, it is not stated whom the reporter reported that there had been a conspiracy in the Tender for the Construction of the DPRD Building in Barito Kuala Regency and its Land Development. The fiscal Year 2013-2015 (Multi years). With the existence of Article 38 of Law Number 5 the Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, anyone who reports that they have discovered conspiracy practices that have occurred in the auction process does not need to be afraid of threats from outside, because the Law has guaranteed the confidentiality of the reporter's identity.

Other preventive legal protection given to business actors who have suffered losses can be done by rebutting. Although in the case no one has objected to the deviation of the provisions and procedures previously regulated in this Presidential Regulation, the regulations regarding the objection have been

regulated in Article 81 and Article 82 of Presidential Regulation Number 70 of 2012 concerning the Second Amendment to Presidential Regulation Number 54 of the Year 2010 concerning Government Procurement of Goods / Services.

Business actors who are disadvantaged in this case not only receive preventive legal protection but also receive repressive legal protection. The repressive legal protection provided is utilizing imposing sanctions on business actors known to have committed conspiracy to reduce/inhibit/minimize and/or eliminate fair competition and/or harm others. This protection is regulated in Presidential Regulation Number 70 of 2012 concerning the Second Amendment to Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods / Services. Article 118 which contains administrative sanctions, sanctions for inclusion in the Black List, civil lawsuits, and criminal reporting to the authorities. By looking at these conditions, the nature of the problem solving that occurs must always be based on the applicable regulations, pay attention to the balance of the interests of the parties, uphold justice and the solution must be complete.

Referring to the Regulation of the Head of LKPP Number 6 of 2012 concerning Technical Guidelines for Presidential Regulation Number 70 of 2012. In Chapter II of the Regulation of the Head of LKPP, the ULP Working Group states that the auction fails, if:

- a. The number of participants who passed the qualifications in the prequalification process was less than 3 (three), except in Limited Tenders;
- b. The number of participants who submitted their Bid Documents was less than 3 (three) participants, except in Limited Tenders;
- c. The rebuttals from participants who submitted their Qualification Documents against the pre-qualification results were true;
- d. No bids have passed the bid evaluation;
- e. In the evaluation of bids, evidence/indications of unfair business competition are found;
- f. The lowest bid price is corrected for the Unit Price Contract and the Lump Sum Combined Contract and the Unit Price is higher than the HPS;
- g. All incoming bid prices for Lump Sum Contracts are above the HPS;

- h. Rebuttal from participants who submit their Bid Documents on the implementation of the auction which is not per the provisions of Presidential Regulation No. 54 of 2010 which was last amended by Presidential Regulation No. 70 of 2012 along with the technical instructions and Procurement Documents turned out to be correct;
- i. The rebuttals from participants who submitted their Bid Documents on the substance of the Procurement Documents were correct;
- j. The potential winners and the potential winners for the 1st and 2nd reserves, after the evaluation, are deliberately not present in the clarification and/or proof of qualifications; or
- k. In method 2 (two) stages all incoming price bids exceed the total value of the HPS or after price negotiations, all participants do not agree to reduce the price so that it does not exceed the total value of the HPS.

PA / KPA stated that the auction failed, if:

- a. PA / KPA agrees with PPK that is not willing to sign SPPBJ because the auction process is not by Presidential Regulation No. 54 of 2010 which was last amended by Presidential Regulation No. 70 of 2012 and its technical instructions;
- b. Public complaints about allegations of KKN involving the ULP and / or PPK Working Groups are true;
- c. Allegations of KKN and / or violations of fair competition in the implementation of the auction are declared true by the authorities;
- d. Rebuttal from participants who enter the Bid Documents on the wrong procedure listed in the Procurement Documents of the Goods / Services Provider is correct;
- e. Procurement documents are not by Presidential Regulation Number 54 of 2010 which was last amended by Presidential Regulation Number 70 of 2012 along with its technical instructions;
- f. The auction is not appropriate or does not deviate from the Procurement Documents;
- g. Potential winners and reserve winners 1 and 2 have withdrawn; or
- h. The implementation of the prohibition violates Presidential Regulation Number 54 of 2010 which was last amended by Presidential Regulation Number 70 of 2012 along with its technical instructions.

The Minister / Head of Institution / Head of Institution declares the auction failed, if:

- a. Rebuttal of the appeal of the participants regarding the violation of procedures in the implementation of the auction involving KPA, PPK and / or the ULP Working Group, was true;
- b. Public complaints about the occurrence of KKN involving KPA turned out to be true.

The Regional Head declares the auction failed, if:

- a. The rebuttal of the appeal of the participants regarding the violation of procedures in the implementation of the auction involving the PA, KPA, PPK and / or the ULP Working Group, was true;
- b. Public complaints were declared a failure, the ULP Working Group notified all participants.

After the auction was declared a failure, the ULP Working Group notified all participants. As a follow-up to the failed auction, PA / KPA, PPK, and/or the ULP Working Group evaluate the causes of the failed auction, including:

- a. The possibility of a conspiracy;
- b. There are discriminatory requirements;
- c. Technical specifications are too high;
- d. Specifications refer to one particular brand/product, except spare parts;
- e. The total value of HPS procured is too low;
- f. The value and/or scope of work is too broad/large;
- g. Cheating in announcements.

After the notification of a failed auction, the ULP Working Group or the replacement ULP Working Group (if any) examines and analyzes the causes of the failed auction, to determine the next step, namely to do:

- a. Re-evaluation;
- b. Submission of Bid Documents;
- c. Re-auction; or
- d. Termination of the auction process.

If from the results of the evaluation the cause of the failed auction, requiring changes to the Procurement Documents, then a re-auction is conducted by first correcting the Procurement Document.

The ULP Working Group follows up on the failed auction with the following conditions:

- a. Except in the Limited Tender method if the number of participants who passed the pre-qualification is less than 3 (three), then the re-announcement of the prequalification is made to reach new participants other than participants who have passed the qualification assessment. Participants who have passed the qualification assessment do not need to be re-evaluated unless there is a change in the Qualification Document;
- b. Except for the Limited Tender method if the number of participants who submitted the Bid Documents is less than 3 (three), then a re-

- announcement is made to invite new participants other than those who have submitted bids;
- c. If the objection from the participant who submitted the Qualification Document to the pre-qualification is true, then a re-qualification assessment will be conducted and re-announce the result of the re-qualification assessment;
 - d. Perform re-auction, if:
 - 1) In the Unit Price Contract and the Combined Lump Sum and Unit Price Contract, all corrected bids submitted by participants through HPS;
 - 2) In a Lump Sum Contract, all bids are above the HPS; and / or
 - 3) The auction violates Presidential Regulation No. 54 of 2010 which was last amended by Presidential Regulation Number 70 of 2012 along with its technical instructions.
 - e. If in the bid evaluation there is unfair competition, then a re-evaluation or re-announcement is made to invite new participants other than those who have submitted bids. Participants who are involved in unfair competition, due to sanctions being included in the Black List;
 - f. If the auction is not by the provisions in the Procurement Documents, then a re-auction is conducted;
 - g. If no participant has passed the bid evaluation, then the Bid Documents will be resubmitted or re-tender;
 - h. If the implementation of the evaluation is not by the provisions in the Procurement Documents or the objection from the participant who submitted the Bid Documents for the error in the evaluation of the offer is correct, then the Bidding Documents will be resubmitted or re-tendered by re-announcing and inviting new participants other than the old participants who have entered the list of participants ;
 - i. If the objection from the participant who submits the Bid Documents on the substance of the Procurement Documents is correct, then after correcting the Procurement Documents, a re-auction is conducted by announcing again and inviting new participants other than the old participants who have entered the list of participants;
 - j. If the potential winners and the potential winners for the 1st and 2nd reserves after the evaluation, do not attend the clarification and / or verification of qualifications for reasons that cannot be accepted, the ULP working group:
 - 1) Re-inviting all participants listed in the list of participants except those absent, to submit a complete re-offer (administrative, technical, and price); and / or
 - 2) Conducting re-auction announcements to invite new participants; and
 - 3) Give sanctions to participants who do not attend in the form of:
 - a) Bid Security is disbursed and deposited in the State / Regional treasury; and
 - b) Put on the Black List, both business entities and their management.

- k. If the auction fails due to public complaints regarding the occurrence of Corruption, Collusion, and Nepotism (KKN) from the potential winners and the potential winners for reserves 1 and 2 turn out to be correct, the following conditions are regulated:
- 1) If the PA, KPA, PPK, and the ULP Working Group are not involved in KKN, the ULP Working Group:
 - a) Re-inviting all participants listed in the list of participants who are not involved in KKN, to submit a complete re-offer (administrative, technical and price); and / or
 - b) Conducting re-auction announcements to invite new participants.
 - 2) If the PA, KPA, PPK, and/or ULP Working Group are involved in KKN, then a replacement of the officials and/or ULP Working Group involved in KKN is carried out, then the Replacement ULP Working Group:
 - a) Re-inviting all participants listed in the list of participants who are not involved in KKN, to submit a complete re-offer (administrative, technical and price); and / or
 - b) Conducting re-auction announcements to invite new participants.
 - 3) If the ULP Working Group finds strong indications of KKN among the participants, the ULP Working Group:
 - a) Examining the fairness of the offer by checking the coefficient and base unit price of wages, materials, and tools and comparing with the nearest similar unit price;
 - b) Checking documentation that supports KKN;
 - c) Stopping the auction process, if the results of the research and examination lead to KKN.
 - 4) Participants involved in KKN are subject to sanctions:
 - a) Guarantee of bids is disbursed and deposited to the State / Regional Treasury;
 - b) Be included in the blacklist, both business entities and their management; and
 - c) Crime by the provisions of laws and regulations.
 - 5) PA, KPA, PPK, and/or ULP Working Groups involved in KKN, are subject to sanctions by the provisions of the legislation.
- l. If the auction fails because public complaints about the occurrence of procedural violations turn out to be true, then a replacement of officials and / or the ULP working group involved is carried out, then:
- 1) The replacement ULP Working Group invites all participants to submit a complete re-bid (administrative, technical and price); and
 - 2) PA, KPA, PPK, and/or members of the ULP Working Group involved, are subject to sanctions by the provisions of the legislation.

III. CONCLUSION

Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition has provided legal protection for business actors who have suffered losses. The public or business actors who feel that they have been disadvantaged may report the alleged violation in writing to the KPPU with clear information accompanied by a chronology of the occurrence of the violation. The tender participant who has been injured has the right to object 2 (two) times, namely objections and appeal objections. Business actors who are known to have committed conspiracy to harm others are given administrative sanctions, sanctions for inclusion on the blacklist, civil lawsuits, and criminal reporting to the authorities. Also, business actors who feel aggrieved can report suspected violations of Law Number 5 of 1999 and receive a guarantee that their identity is kept confidential by the Commission. As in the Case Decision Number 06 / KPPU-L / 2015 above, the identity of the reporter (the business actor who was injured) is not displayed or kept secret. With the existence of this Law, the procurement of goods and services has a legal binding force and has strict sanctions against cases of violations that occur.

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