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Article Title

Realizing a Fair Competition in the Construction Procurement Process at the State Electricity Company: A Normative Review

Author(s)

Achmad Syabril Lessy*

Universitas Pekalongan, Indonesia || athelathief77@gmail.com

*Corresponding Author

S. Sami'an

Universitas Pekalongan, Indonesia || dosen.samian@gmail.com

Sarwono Hardjomuljadi

Universitas Pekalongan, Indonesia || sarwonohm2@yahoo.co.id

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ABSTRACT

Construction services procurement at PLN Ltd carries a high risk of unfair competition practices, which can hinder the development of national electricity infrastructure. This research aims to analyze the normative framework and evaluate the effectiveness of mechanisms for preventing unfair competition practices in construction services procurement at PLN Ltd. This normative legal research employs a statute approach and a conceptual approach, with library research techniques for data collection. The research findings indicate that the normative framework governing business competition in construction services procurement at PLN Ltd is comprehensive, encompassing Law Number 5 of 1999, Law Number 2 of 2017, Presidential Regulation Number 16 of 2018, and Board of Directors Regulation Number 0018.P/DIR/2023. Nevertheless, harmonization among regulations needs to be enhanced. Implementing prevention mechanisms, such as e-purchasing and internal oversight units, is not yet optimal due to system quality, independence, and stakeholder awareness. To enhance the effectiveness of prevention, it is recommended that the implementation of GCG at PLN Ltd be strengthened, synergistic oversight by KPPU and LKPP increased, and service provider compliance with fair competition principles improved.

Keywords: Construction Services; Fair Competition; Procurement; State Electricity Company.

INTRODUCTION

As the world's fourth most populous nation and Southeast Asia's largest archipelago, Indonesia is responsible for providing adequate infrastructure for its citizens (Sumantri et al., 2025). The availability of infrastructure, particularly in the electricity sector, serves as the cornerstone for sustainable economic growth and the enhancement of societal well-being (Wisnuaji et al., 2025). Without a reliable electricity infrastructure, economic activities, education, healthcare, and other facets of life would be impeded. Consequently, developing electricity infrastructure constitutes a strategic priority for the Indonesian government (Wisatrioda et al., 2025).

The significant surge in electricity demand in Indonesia, concomitant with population growth and economic development, has engendered intense competition among construction service providers (Sebastian et al., 2025). Construction companies, encompassing both State-Owned Enterprises (SOEs) and private entities, vie for contracts in electricity infrastructure development projects. Fair competition should foster innovation, cost efficiency, and improved project quality (Kautsar, 2024). However, unrestrained competition that disregards the principles of fairness can engender monopolistic practices, tender collusion, and other forms of unfair competition (Anindyajati, 2018).

PLN Ltd, as the SOE holding the primary mandate for electricity provision in Indonesia, plays a pivotal role in electricity infrastructure development. Given the immense scale of its projects, as reflected in an installed generating capacity of 72,976.30 MW and a transmission network spanning 70,933 km by the end of 2023, PLN Ltd is a key player in the construction services industry (PLN, 2024). The magnitude

of project value and the complexity of operations within PLN Ltd create opportunities for unfair competition practices, which could detrimentally impact the state and the public. It warrants serious concern, as the integrity of the construction procurement process at PLN Ltd is paramount to the successful development of national electricity infrastructure ([Indahwati et al., 2025](#)).

Comprehensive regulations and robust law enforcement are vital for preventing and addressing unfair competition practices. Indonesia has enacted Law Number 5 of 1999, which explicitly prohibits various agreements and activities that could impede fair competition. Furthermore, Law Number 2 of 2017 and Presidential Regulation Number 16 of 2018 mandate the principle of fair competition in all procurement processes, including construction services procurement. Despite the existing legal framework, its practical implementation, particularly within construction services procurement at strategic SOEs like PLN Ltd, remains a subject of considerable inquiry and necessitates in-depth examination.

Several prior studies have addressed the issue of unfair competition in the procurement of goods and services. [Purwadi \(2019\)](#) analyzed the decisions of the Commission for the Supervision of Business Competition (KPPU) about violations of Article 22 of Law Number 5 of 1999 concerning tender collusion in government procurement of goods and services during the 2015-2018 period and mentioned two KPPU decisions related to PLN Ltd. However, that research was general and did not specifically elaborate on cases at PLN Ltd. Meanwhile, [Undrizon et al. \(2024\)](#) examined the effectiveness of legal protections for infrastructure development, highlighting the role of PLN Ltd in allocating capital expenditures to support government programs. This research did not specifically examine the implementation of competition law in the construction procurement process. In contrast to these studies, this research will examine the legal aspects of business competition in construction services procurement at PLN Ltd by analyzing the legal framework, the effectiveness of prevention, and law enforcement against unfair competition practices.

Given PLN Ltd's strategic significance in developing national electricity infrastructure and the high potential risk of unfair competition in its construction services procurement processes, an in-depth and comprehensive study of the legal aspects of business competition within this SOE is crucial and imperative. This research addresses a research gap by explicitly analyzing the implementation of competition law in construction services procurement at PLN Ltd, an area of study that has not been extensively explored in Indonesian legal literature. The analysis focuses on the applicable legal framework, the effectiveness of prevention and enforcement mechanisms, and the factors influencing the successful implementation of fair competition principles.

This research aims to generate two primary contributions, both theoretically and practically. Theoretically, this research is expected to enrich legal scholarship, particularly in competition law and government procurement law, by offering a novel perspective on the dynamics of business competition in construction services procurement at strategic SOEs. Practically, the findings of this research are expected to provide concrete, evidence-based, and actionable policy recommendations for PLN Ltd, the KPPU, and other relevant stakeholders. These recommendations are geared towards fostering a fair, transparent, accountable, and ethical competitive environment in construction services procurement at PLN Ltd, which, in turn, will support the acceleration and optimization of national electricity infrastructure development.

METHOD

This research constitutes a normative legal study, emphasizing the analysis of law as a system of norms governing human behaviour (Qamar & Rezah, 2020). The primary focus of this research is on legal norms derived from statutory regulations, KPPU Decisions, and legal literature relevant to the issue of unfair competition in construction services procurement. Consequently, this research does not empirically test social phenomena but endeavors to comprehend, interpret, and systematize the prevailing legal norms.

This study employs two principal approaches to achieve the established research objectives: a statute approach and a conceptual approach. The statute approach is implemented to meticulously examine and analyze the statutory regulations that form the legal basis for regulating business competition and construction services procurement in Indonesia. This analysis encompasses Law Number 5 of 1999, Law Number 2 of 2017, Presidential Regulation Number 16 of 2018, Board of Directors Regulation Number 0018.P/DIR/2023, and other related statutory regulations. Through this approach, legal norms governing business competition, specifically within the context of construction services procurement, are identified, interpreted, and evaluated. Complementing this, the conceptual approach is utilized to deepen the understanding of key concepts central to the research focus. Concepts such as “unfair competition,” “tender collusion,” “abuse of dominant position,” and other relevant concepts are analyzed in-depth through literature review and KPPU Decisions. A comprehensive understanding of these concepts is expected to establish a robust analytical framework for examining the research problem with excellent acuity and depth.

The data for this research are derived from primary and secondary legal materials (Irwansyah, 2021). Primary legal materials encompass relevant statutory regulations, PLN Ltd’s construction services procurement documents, and KPPU Decisions concerning unfair competition cases in the construction sector, particularly

those involving PLN Ltd. Secondary legal materials include legal literature such as textbooks, scholarly journal articles, dissertations, theses, research findings, and other relevant sources that address the issues of business competition and government procurement of goods/services. The entire data obtained will be managed through Library Research Techniques.

Data collection and analysis are conducted through comprehensive library research techniques, encompassing the search, collection, classification, verification, and organization of relevant primary and secondary legal materials (Sampara & Husen, 2016). These legal materials are subsequently analyzed qualitatively through normative legal analysis, following a series of stages that include: (1) inventory of legal materials; (2) identification of legal norms related to business competition in construction services procurement; (3) systematization of legal norms to construct a coherent understanding; (4) interpretation of legal norms using methods of legal interpretation (grammatical, systematic, historical, teleological); (5) evaluation of legal norms to identify potential problems; and (6) legal construction as an effort to provide solutions to the identified problems, to subsequently arrive at a conclusion.

RESULTS AND DISCUSSION

A. Normative Framework for Business Competition in Construction Services Procurement at PLN Ltd

As an SOE with a vital role in providing national electricity infrastructure, PLN Ltd continuously procures construction services. This procurement process involves contractual interactions between PLN Ltd, as the service user, and various construction service providers, including both private companies and other SOEs (Safura, 2022). Given the large scale of projects and significant contract values, construction services procurement at PLN Ltd carries the potential risk of unfair competition practices, which not only financially harm PLN Ltd but can also hinder electricity infrastructure development and prejudice public interests. Therefore, a comprehensive and in-depth understanding of the normative framework governing business competition in construction services procurement at PLN Ltd is crucial.

The normative framework for business competition in construction services procurement at PLN Ltd is derived from the hierarchy of statutory regulations in force in Indonesia and PLN Ltd's internal regulations. At the highest level, Law Number 5 of 1999 serves as the primary legal basis governing the principles of fair competition. This law aims to create a conducive business climate, prevent monopolistic practices and unfair competition, and protect the interests of consumers and the broader public.

Law Number 5 of 1999 has highly significant implications in the context of construction services procurement. For instance, Article 4 of Law Number 5 of 1999 prohibits agreements that have the potential to control the production and/or marketing of goods and/or services, which may give rise to monopolistic practices and/or unfair competition. In construction services procurement, such agreements can manifest as tender collusion (bid rigging), where several service providers collude to predetermine the winning bidder, manipulate bid prices, or allocate projects among themselves (Tobing et al., 2024). Article 17 of Law Number 5 of 1999 is also relevant, as it prohibits business actors from engaging in market dominance that leads to monopolistic practices and/or unfair competition.

More specifically, Article 22 of Law Number 5 of 1999 expressly prohibits tender collusion in all its forms. Tender collusion is one of the most frequent forms of competition violations in government procurement of goods/services, including construction services procurement. This collusion can involve various parties, ranging from fellow service providers and individuals within PLN Ltd to other parties interested in the project (Wibowo, 2016). This practice harms state finances, diminishes the quality of construction work, and impedes fair competition.

Furthermore, Law Number 2 of 2017 also provides an important normative foundation. Article 39 section (3) of Law Number 2 of 2017 explicitly states that the engagement of construction services, which in the context of PLN Ltd refers to construction contracts, must be carried out based on the principles of fair competition and scientific accountability. This principle emphasizes the importance of fairness, transparency, and accountability in all stages of construction services procurement, from planning, provider selection, and work execution to supervision and evaluation. From a contract law perspective, this principle of fair competition embodies the principle of good faith, which must be upheld by all parties to the agreement (Wiraantaka et al., 2025).

Moreover, Presidential Regulation Number 16 of 2018, as amended by Presidential Regulation Number 12 of 2021, provides more technical regulations regarding the procedures for government procurement of goods/services, including construction services procurement at PLN Ltd (Yanuar et al., 2025). Article 1 point 36 of this Presidential Regulation defines a tender as a provider selection method that prioritizes fair competition. Subsequently, Article 51 section (2) points e and f, and Article 51 section (3) points d and e of this Presidential Regulation stipulate that tenders and quick tenders must be cancelled if there is evidence of corrupt, collusive, or nepotistic practices (KKN) or unfair competition. These provisions demonstrate the government's strong commitment, and by extension, PLN Ltd's

as an SOE, to prevent fraudulent procurement of goods/services (Kretarto & Rusdianto, 2024).

At the internal level, Board of Directors Regulation Number 0018.P/DIR/2023 serves as an important instrument in elaborating the principles of fair competition within PLN Ltd. Article 8 of this Board of Directors Regulation affirms PLN Ltd's commitment to good governance, which is realized, among other things, through a sound internal control system in the procurement of goods/services. Furthermore, the Annex of the Board of Directors Regulation explicitly mandates the application of competitive principles, which require that the procurement of goods/services at PLN Ltd be conducted openly, transparently, and accountably, providing equal opportunity to all qualified service providers. From a contract law perspective, this principle embodies the principle of responsible freedom of contract, where parties are free to enter into agreements but must adhere to the principles of fair competition and avoid causing harm to other parties (Yusro et al., 2024).

The abovementioned regulations, ranging from Laws to PLN Ltd's Board of Directors Regulations, constitute a comprehensive legal system for regulating business competition in construction services procurement at PLN Ltd. However, the mere existence of regulations is insufficient to guarantee fair competition. Harmonization and consistency among regulations, as well as practical and equitable law enforcement, are paramount (Junaedi et al., 2025). Moreover, a strong commitment from all stakeholders, both within PLN Ltd and from service providers, is required to uphold the principles of fair competition in every stage of construction services procurement.

B. Mechanisms for Preventing Unfair Competition Practices in Construction Services Procurement at PLN Ltd

Although comprehensive quantitative data regarding cases of unfair competition in construction services procurement at PLN Ltd are not continuously widely published, KPPU Decisions addressing violations in this sector, including those involving PLN Ltd, indicate that the risk of such practices remains significant. This reality underscores the importance of implementing effective and sustainable prevention mechanisms. These prevention mechanisms must be designed to mitigate potential risks early on and to create a procurement climate that is transparent, accountable, and characterized by integrity.

The potential for unfair competition practices in construction services procurement at PLN Ltd can manifest in various forms, each requiring specific prevention strategies. One of the most common and detrimental forms is tender

collusion (bid rigging). This collusion can involve various *modi operandi*, such as agreements among service providers to predetermine the winning bidder, artificial determination of bid prices, or clandestine project allocation. From a contract law perspective, tender collusion violates the principle of good faith and the principle of responsible freedom of contract, as it undermines the principles of fairness and transparency in the procurement process (Triwijaya et al., 2025).

Besides tender collusion, another potential unfair competition practice is abusing a dominant position by one or more construction service providers (Disyon & Gultom, 2022). This dominant position can arise from various factors, such as control over specific technologies, ownership of scarce resources, or extensive business networks. Service providers with a dominant position may abuse their power to impede competition, for example, by setting unfair prices, restricting market access for competitors, or engaging in discriminatory practices against other service providers.

Discriminatory practices, whether perpetrated by PLN Ltd officials or service providers holding a dominant position, also constitute a form of unfair competition that warrants vigilance. Discrimination can occur in various forms, such as providing preferential treatment to certain service providers during the tender process, setting irrelevant or discriminatory tender requirements, or conducting non-objective bid evaluations. These discriminatory actions violate the principles of fairness and equality in procurement and can also hinder the creation of a fair and competitive environment (Arrosyidah & Anggaraini, 2019).

Presidential Regulation Number 16 of 2018 has established comprehensive prevention foundations to prevent unfair competition practices. Implementing sound procurement principles – efficiency, effectiveness, transparency, openness, competitiveness, fairness, and accountability – constitutes a fundamental step in creating a procurement climate free from fraudulent practices. Transparency, for instance, necessitates open access to information regarding all stages of procurement, from planning to the selection of the winner and contract execution. This open access to information allows the public, including service providers and the general community, to monitor the procurement process and report any indications of violations.

In addition to general principles, Presidential Regulation Number 16 of 2018 also regulates more specific prevention mechanisms, such as the mandatory use of an electronic procurement system (e-marketplace), which aims to enhance transparency, efficiency, and accountability. Using an e-marketplace minimizes direct interaction between the procurement committee and service providers, which can be a loophole for collusion (Bareta et al., 2018). Strict and objective

service provider qualification requirements and the mandatory signing of an integrity pact by all parties involved in procurement are also important instruments in preventing unfair competition practices.

At the internal level of PLN Ltd, Board of Directors Regulation Number 0018.P/DIR/2023 concerning Guidelines for Procurement of Goods/Services, which prioritizes Good Corporate Governance (GCG), serves as an important foundation in the effort to prevent unfair competition practices. The consistent and comprehensive implementation of e-purchasing is a crucial step, including using e-catalogues for procuring standardized goods/services. The Success of Implementation e-purchasing relies heavily on the system's quality, the availability of supporting infrastructure, and competent and ethical human resources. Additionally, PLN Ltd needs to periodically conduct outreach and education to all parties involved in procurement, both internal and external, regarding competition regulations, procurement ethics, and the legal risks associated with unfair competition practices. The establishment of an independent internal oversight unit, as well as the provision of an effective and trustworthy whistleblowing system (Adawiyah et al., 2023), are also important elements in PLN Ltd's prevention system.

PLN Ltd needs to develop and implement relevant and measurable key performance indicators (KPIs) to measure the effectiveness of the implemented prevention mechanisms and identify areas requiring improvement. These indicators must reflect various aspects of fair competition in construction services procurement and align with the procurement principles mandated by statutory regulations. Developing appropriate indicators will provide PLN Ltd with objective feedback regarding the performance of its prevention system.

One crucial indicator that needs to be monitored is the level of service provider participation in the tender process. A high level of participation, where many qualified service providers participate in the tender, indicates that the business competition climate is reasonably fair and that there are no significant barriers for service providers to participate. However, a high level of participation alone is not sufficient. It is also necessary to analyze whether the participating service providers come from various market segments or are dominated by a particular group. Domination by a particular group may indicate the existence of entry barriers for new or small service providers. Conversely, if the participation rate is low or dominated by a few service providers, this could indicate problems, such as tender collusion, discriminatory tender requirements, or a lack of outreach regarding tender opportunities.

Another important indicator is the level of transparency in the procurement process. Transparency is a cornerstone in preventing unfair competition practices, as open access to information minimizes the opportunity for fraud and collusion. The level of transparency can be measured from various aspects, including ease of access to information regarding procurement plans, tender requirements, and evaluation results; clarity of procedures and evaluation criteria used; and the availability and effectiveness of complaint mechanisms for service providers who feel mistreated. Furthermore, ensuring the information published is accurate, complete, and up-to-date is also necessary. Inaccurate or incomplete information can create uncertainty and open up opportunities for manipulation.

Moreover, the level of procurement efficiency can also serve as an indirect indicator of the health of business competition. In this context, efficiency can be measured by comparing the received bid prices with the market price or the Owner's Estimate (HPS), which has been prepared relatively and professionally. If the winning bid price tends to be significantly below the market price or the HPS, this could indicate extreme competition (which could be positive), but it could also be a red flag for potential predatory pricing or tender collusion. However, it should be noted that the HPS itself must be prepared carefully and based on valid data. An HPS that is too high or too low can distort competition.

The final indicator that is no less important is the level of fairness in the procurement process. This fairness includes equal treatment of all qualified service providers, without discrimination based on irrelevant factors, such as political affiliation, closeness to PLN Ltd officials, or business scale. To measure the level of fairness, PLN Ltd can evaluate the objectivity of tender requirements, the consistency of the application of evaluation criteria, and the proportionality between service provider qualifications and the value of the tendered project. Furthermore, it is also necessary to ensure no conflicts of interest in the procurement process, either on the part of the procurement committee or the service providers ([Rahmiko et al., 2025](#)).

The measurement of these performance indicators must be carried out periodically, systematically, and well-documented ([Novindrastuti et al., 2024](#)). The measurement results are then analyzed to identify trends, anomalies, or potential problems in the prevention mechanism. This analysis must involve competent parties, and the results must be followed up with concrete improvement measures. This analysis serves as a basis for PLN Ltd to improve and refine its construction services procurement system continuously.

CONCLUSIONS AND SUGGESTIONS

Based on the findings and discussion, it can be concluded that the normative framework governing business competition in construction services procurement at PLN Ltd is comprehensive, encompassing Law Number 5 of 1999, Law Number 2 of 2017, Presidential Regulation Number 16 of 2018, and Board of Directors Regulation Number 0018.P/DIR/2023. These regulations explicitly prohibit unfair competition practices, such as tender collusion, abuse of dominant position, and discrimination, and establish sound procurement principles as the operational foundation. Although the existing normative framework is substantively adequate, harmonization among regulations, particularly concerning definitions, scope, and sanctions, must be enhanced to avoid potential overlaps or legal loopholes.

Implementing mechanisms to prevent unfair competition practices at PLN Ltd, as mandated by regulations, still faces challenges. Although PLN Ltd has implemented sound procurement principles, utilizes e-purchasing, has an internal oversight unit, and provides a complaint channel, the effectiveness of these mechanisms is not yet optimal. Factors such as the uneven quality of e-purchasing implementation, the need to strengthen the independence of the internal oversight unit, and the varying levels of participation and awareness among service providers are important determinants influencing the success of prevention. The gap between normative expectations and the reality of implementation indicates that the risk of unfair competition practices in construction services procurement at PLN Ltd remains.

Based on the above conclusions, it is recommended that relevant stakeholders take strategic and sustainable steps to enhance the effectiveness of preventing unfair competition practices in construction services procurement at PLN Ltd. These recommendations are directed at three main groups: PLN Ltd as the service user, the Government (KPPU and LKPP), and service providers.

PLN Ltd needs to strengthen the implementation of GCG throughout the procurement process. Improving the quality of the e-purchasing system, strengthening the independence and competence of the internal oversight unit, continuous outreach and education, and developing an effective whistleblowing system are crucial steps. Additionally, PLN Ltd needs to develop and implement measurable key performance indicators to monitor the effectiveness of prevention mechanisms periodically.

The government, through KPPU and LKPP (National Public Procurement Agency), needs to enhance synergy in the oversight and enforcement of competition law. KPPU needs to intensify monitoring and enforcement against unfair competition practices in the construction services procurement sector, including at PLN Ltd, not only at the tender stage but also at the planning and contract execution stages.

LKPP must continuously improve government procurement regulations, particularly regarding prevention mechanisms, considering implementation evaluations and best practices from other countries.

Construction service providers must uphold business ethics and comply with all applicable laws and regulations. Service providers must avoid all practices that could impede competition, such as tender collusion or abuse of dominant position. Active participation in prevention efforts, such as reporting suspected violations and raising internal awareness, is important to creating a clean and ethical procurement climate. Through synergy and commitment from all parties, it is hoped that construction services procurement at PLN Ltd will be clean, transparent, accountable, and free from Corrupt, Collusive, and Nepotistic practices (KKN).

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