



The analysis of government policies on bid rigging in private construction service companies in government project implementation

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Abstract

Private construction service companies play a vital role in developing infrastructure and public facilities, serving as strategic partners to the government in realizing national development programs. The central government regulates this partnership through various policies governing aspects such as contracts, procurement, supervision, and project implementation. Laws such as Law Number 28 of 1999 on Clean and Free from Corruption, Collusion, and Nepotism State Administration, along with its implementing regulations, form the legal framework that governs transparent and accountable management of government projects. This research aims to analyze the central government's policies towards private construction service companies in the implementation of government projects in Indonesia. The method used is normative with legislative and conceptual approaches. The conceptual analysis in this study highlights the importance of synergy between the government and private sector in achieving sustainable national development goals. Concepts such as public-private partnerships (PPP), risk management, and enhancing efficiency in project implementation are central to understanding the policy impacts on the country's economy and infrastructure. The research findings has shown that government policies need continuous evaluation and refinement to support a conducive business environment for private construction service companies. These steps are crucial to ensure transparency, fairness, and efficiency in the use of public resources and to support inclusive economic growth in Indonesia.

Keywords: Government policies, bid rigging, project implementation

Introduction

Infrastructure development is a crucial foundation for the country's economic growth. Good infrastructure not only supports connectivity between regions but also plays a role in increasing economic competitiveness, creating jobs, and improving the quality of life for the community. In Indonesia, an archipelagic country with a large population and complex geography, infrastructure development is crucial to overcome the existing geographical and socio-economic challenges.

Since 1998, Indonesia has experienced significant developments in the infrastructure sector to support inclusive and sustainable economic growth not only highways, bridges, and ports but also energy systems, clean water, and education and health facilities. However, challenges related to infrastructure quality, project management, and funding sustainability have become a primary focus in the national development agenda recently. The Indonesian government recognizes the importance of collaboration between the public and private sectors in implementing infrastructure projects. Private construction service companies become strategic partners of the government in realizing these large-scale projects. This collaboration is reflected in various government policies that regulate.

The vital role of private construction service companies

Private construction service companies play a vital role in infrastructure development in Indonesia because they not only provide technical expertise and managerial capacity to implement complex projects but also contribute to technological innovation and risk management. Their involvement helps the government accelerate the

infrastructure development necessary to support sustainable economic growth.

As strategic partners of the government, private construction service companies significantly contribute to achieve national development targets such as building highways to improve regional connectivity, constructing airports and ports to support trade and tourism, and providing telecommunications and energy infrastructure to support other economic sectors.

However, the involvement of the private sector in infrastructure projects does not always run smoothly. Various challenges are faced, including regulatory issues, coordination among stakeholders, project financing, and risk management. The government, as the regulator and main stakeholder in infrastructure development, has a significant responsibility to create a conducive environment for private investment.

Government policies and related regulations

The Indonesian government has issued various policies and regulations to regulate cooperation between the government and the private sector in infrastructure development. Law Number 28 of 1999 on Clean and Free from Corruption, Collusion, and Nepotism State Administration is as the primary legal foundation that governs the transparent and accountable management of government projects.

The derivative regulations from this law, such as government procurement regulations, public-private partnership (PPP) regulations, and project performance evaluation regulations, detailed procedures that must be followed in the implementation of infrastructure projects. The main objective of these regulations is to ensure that every step in the procurement and implementation process

of projects is conducted with high transparency, fairness, and efficiency.

Construction services play an important role in national development as they produce finished products in the form of buildings or other physical structures. The construction services business is the activity of creating buildings/structures that are integrated with the land or site as the final result, whether used for housing or other activities (Daryatno, 2000) ^[2].

Implementing construction projects require the coordinated expertise and collaborative interaction from various stakeholders, including architects, contractors, labor, and material service providers (suppliers). To achieve the desired construction, project owners usually select contractors often select qualified contractors through competitive bidding or tendering processes. (Dipohusodo, 1995) ^[3]

Government infrastructure projects are usually large, expensive, and impactful, requiring careful and specific planning, budgeting, procurement, implementation, and monitoring. Infrastructure projects also consider environmental, social, and economic aspects and require community and private sector participation (Harruma & Nailufar, 2022) ^[5].

Prequalification is mandatory for construction service companies that wish to conduct the government projects. This qualification stage can be considered the second tournament. Companies which do not pass the preliminary selection cannot participate in the next bidding/tender. Companies that pass the initial selection can participate in the subsequent competitive bidding process for projects. Competition for contracts/projects among construction service companies peaks during the tender process (Ibrahim & Jakti, 1997) ^[6].

The conceptual analysis in this study shows the importance of synergy between the government and the private sector in achieving sustainable national development goals. The concept of public-private partnerships (PPP) becomes a focal point in understanding the impact of policies on the country's economy and infrastructure. PPP is not just about sharing risks and benefits between the public and private sectors but also about creating significant added value for society.

Challenges and obstacles

Despite strict regulations, the implementation of infrastructure policies often faces complex challenges such as Inter-agency government coordination, complicated procurement processes, slow bureaucracy, and funding issues often hinder the implementation of infrastructure projects.

Moreover, risk management in infrastructure projects is often a major concern. The technical, environmental, social, and financial risks must be carefully managed so that projects can be completed on time and within the established budget. The government and private construction service companies need to work together to identify these risks and develop effective mitigation strategies.

Policy renewal and recommendations

The study aims to contribute by improving existing policies and identifying areas needing renewal, emphasizing the government's crucial role in continually evaluating and

reforming policies to enhance collaboration with the private sector in infrastructure development.

Policy recommendations may involve simplifying procurement procedures, strengthening oversight mechanisms, increasing transparency in project management, and developing fiscal incentives that support infrastructure investment. These steps are expected to improve infrastructure quality, accelerate regional economic development, and reduce infrastructure disparities between regions in Indonesia.

Therefore, this study comprehensively analyzed the central government's policies towards private construction service companies in the implementation of government projects in Indonesia. The method used is a normative approach with relevant legislation and conceptual frameworks to understand the policy impacts on the country's economy and infrastructure. The results of the study are expected to provide concrete policy recommendations to increase the synergy and effectiveness in the collaboration between the government and private sector in infrastructure development in Indonesia.

Research question

1. How are government policies on bid rigging in private construction service companies in the implementation of government projects?

Research objectives

1. To analyze government policies on bid rigging in private construction service companies in the implementation of government projects.

Method

This study used a normative legal research approach, which focuses on the norms outlined in legal regulations or laws (Mertokusumo, 2001) ^[8]. This method is called normative because it specifically examines the law as a positive norm expressed in books (Wignjosoebroto, 2002) ^[10].

The methods used in this study are the statute approach and the conceptual approach. This study focuses on literature studies, including primary legal materials such as legislation and secondary legal materials such as expert opinions, articles, and other related materials on bid rigging in government project implementation.

Discussion

Bid rigging is a harmful and illegal practice involving two or more companies secretly collaborating to set prices or manipulate competition in bidding for government projects or contracts. This often occurs in the construction industry, procurement of goods and services, and other sectors where tenders or auctions are used to select service or product providers

Definition of bid rigging

Bid rigging is a form of collusion or agreement among tender participants to control the outcome of the tender process in line with their interests. The main goal of this collusion is to avoid healthy competition and provide benefits to the parties involved (KPPU, 2004) ^[7].

All economic activities and business competition must be managed and maintained. In other words, when there are competition barriers in a certain market, these barriers will place actors such as consumers, producers, and the state in a

disadvantageous position. Therefore, we need to restore healthy business competition. Additionally, competition law also considers economic considerations in deciding cases. This means that any collusion to limit business competition is a total prohibition of collusion as a fundamental element in coordinating a company's competition policy (Silalahi, 2003) ^[9].

The mechanism regulated in Law Number 5 of 1999 in conjunction with Presidential Decree Number 80 of 2003 and Presidential Decree Number 67 of 2005 does not allow business actors to collude with other parties to organize tenders. This is a normative provision that prohibits making decisions on winners that can bring results.

The prohibition as per Presidential Decree No. 67 of 2005 includes the entire tender process, starting from planning procedures, bid opening, to the determination of the tender winner. (Elly, 1999) ^[4]

Article 1 point 8 and Article 22 of Law Number 5 of 1999 state that collusion requires cooperation between two or more parties and must meet two conditions: the parties involved and their agreement in the said contract. The purpose and effect of the collusion are bid rigging. (Anggraini, 2003) ^[1]

In practice, bid rigging in tenders can be carried out in several ways, including

1. **Division of territories or projects:** Tender participants who should compete for a project or contract agree to divide certain territories or types of projects among themselves. For example, company A agrees to take on projects in one area, while company B gets another area. Thus, they avoid direct competition and set high prices for their respective areas.
2. **Joint price setting:** Competing tender participants agree to set similar prices or raise prices together so that other participants cannot compete effectively. This can be done through informal meetings, email communication, or even using intermediaries.
3. **Bid coordination:** Tender participants may secretly cooperate to regulate competition by coordinating their bids. For example, they can learn each other's bid prices and deliberately raise or lower their bids to ensure a predetermined tender winner.

Negative impacts of bid rigging in tenders

Bid rigging in tenders has detrimental effects on all parties involved, including the government, honest contractors, and the general public. Some negative impacts include

1. **Financial deviation:** Bid rigging in tenders often results in the waste of public funds. Project or product prices are much higher than the actual market price due to the price setting by the collusion group.
2. **Quality reduction:** The quality of projects or goods provided can be sacrificed to increase the profit margins of the colluding participants. This can result in infrastructure or goods that are not durable and require more frequent maintenance.
3. **Obstacles to healthy competition:** Bid rigging hinders healthy and fair competition in the market. Small or new companies that should have a chance to compete with price or innovation can be shut out due to established collusion.

4. **Public distrust:** The public can lose trust in the government and the tender process if they feel that decisions have been predetermined or that the prices paid with their taxes are unfair.

Government policies to overcome bid rigging issues

The government has a key role in preventing and overcoming bid rigging practices in tenders. Some policies that can be implemented to address this issue include

1. **Strict regulations:** The government needs to establish clear laws and regulations on the tender process, including strict sanctions for those who engage in collusion. This includes regulations on registration requirements, audits, and reporting related to the tender process.
2. **Transparency and accountability:** The tender process must be transparent and accountable, with all information regarding the project and bids available to the public. This includes the publication of participant lists, bid details, and final decisions openly.
3. **Education and training:** Training for government officials involved in the tender and contract process is crucial. They must understand the signs of bid rigging and have the knowledge to identify and tackle unethical practices.
4. **Using technology:** The government can use technology to increase transparency and efficiency in the tender process. E-procurement systems and online platforms can help reduce the opportunities for collusion by ensuring that all participants have equal access to information and opportunities.
5. **Increasing the penalties:** Severe and effective sanctions need to be applied to those involved in bid rigging to create a deterrent effect and reduce the incentive to engage in this illegal practice.

Several well-known cases of bid rigging, such as construction cartels in various countries setting prices for large infrastructure projects, have led to investigations by anti-monopoly authorities or supervisory bodies, resulting in significant sanctions and fines against the involved companies.

In Indonesia, cases of bid rigging in tenders also frequently occur in the construction sector, procurement of goods and services, and other sectors. The government continues to strive to improve oversight and implement stricter policies to address this issue.

Conclusion and recommendations

Conclusion

Bid rigging in tenders is a harmful and illegal practice that affects fairness, transparency, and efficiency in the tender process. The government has the responsibility to enforce strict regulations, enhance transparency, and increase education to prevent this practice. With appropriate steps, the tender process can become fairer, more efficient, and provide maximum benefits for society and the overall economy.

Recommendations

Here are some recommendations to prevent and overcome bid rigging issues in tenders:

1. **Strengthening regulations and supervision:** The government needs to tighten regulations related to the tender process and strengthen the supervisory bodies responsible. The laws must clearly prohibit bid rigging practices, with strict and effective sanctions for violators.
2. **Full transparency:** The government must ensure that all tender processes are transparent and accountable. Information about projects, requirements, and bids must be available to the public, including final decisions and detailed evaluations.
3. **Training and education:** Intensive training and education for government officials involved in the tender process are crucial. They need to understand the signs and identification techniques of bid rigging and have the knowledge to handle potential situations.
4. **Technology implementation:** The use of technology such as e-procurement systems or online platforms can help increase transparency and minimize opportunities for bid rigging practices. Technology can also facilitate information access for all tender participants.
5. **Cooperation with private sector and civil society:** The government can collaborate with private companies and civil society to monitor the tender process. Their involvement can help detect potential bid rigging and provide input for process improvements.
6. **Incentives for reporting:** Encouraging the reporting of bid rigging by providing incentives to parties who provide valuable information or expose unethical practices. Legal protection is also important to safeguard whistleblowers from threats or retaliatory actions.
7. **Independent audits and evaluations:** Conducting routine independent audits and evaluations of the tender process and awarded contracts can help identify patterns or indications of bid rigging. Audit reports should be published to ensure accountability.
8. **Public awareness campaigns:** Educating the public about the importance of transparency in the tender process and the negative impacts of bid rigging can increase awareness and public participation in monitoring government policies.
9. **International collaboration:** The government can learn from best practices in other countries and collaborate in international forums to develop global standards in preventing bid rigging in tenders.
10. **Strict penalties:** Applying severe and strict sanctions against bid rigging offenders should be a priority. Adequate penalties will create a deterrent effect for those inclined to engage in unethical practices.

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