

# Thugs Act of Community Organizations as a Cause of Unfair Business Competition in Procurement Tenders in Government Agencies

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## ABSTRACT

Intenders for the procurement of goods/services at government agencies, it is often monopolized by invisible hands. In fact, there are already anti-monopoly and unfair business competition arrangements as referred to in Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The results of preliminary research, it was found that there were elements of mass organizations who carried out thuggery actions by "begging" for projects for procurement of goods/services from government agencies, such as offices in provincial and district/city governments. The problems in this paper are how individual mass organizations carry out acts of thuggery in participating in procurement tenders in government agencies, and how the competition law sees the fact that there are elements of mass organizations who "force" to get job projects to the heads of local government agencies. This paper uses a normative research method with a qualitative approach. The data are sourced from interviews with Youth Organizations in the city of Medan, and field observations at related agencies under the Provincial and District/City Governments, especially Medan City. The results showed that: It turned out that there were elements in youth organizations (community organizations) who "forced" the heads of services in local government agencies, both provincial and district/city in North Sumatra, especially Medan City to be given work packages (projects). ) in the tenders to be implemented. After being given, it turned out that the work package (project) was not carried out, but was sold to another party. The aim is to secure the heads of these services from thuggery actions that will be carried out if they are not given. Furthermore, the business competition law considers that if the individual head of the agency commits a vertical tender conspiracy, then there is a strong suspicion that unfair business competition will occur which will lead to monopolistic practices.

**Keywords:** *Thugs, Tenders, Anti Monopoly*

## 1. INTRODUCTION

### 1.1. Background

In tenders for the procurement of goods/services at government agencies, it is often monopolized by invisible hands. There are already anti-monopoly and unfair business competition arrangements as referred to in Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

The Birth of Presidential Regulation No. 16 of 2018 concerning the Procurement of Goods and Services as amended by Presidential Regulation No. 12 of 2021, has presented a new dimension in more inclusive and

participatory development. The new regulation is the "entrance" for a new model of synergy between the Government and Community Organizations (Ormas) in strengthening the quality of public services at the forefront.

Seno Haryo Wibowo, Head of the Planning and Construction Supervisory Section of the Government Procurement Policy Institute (LKPP), Seno Haryo Wibowo, revealed that the involvement of mass organizations in the procurement of government goods and services is a form of expansion of participatory and collaborative development. With this partnership (between the government and mass organizations), together we can create an inclusive economy. That is the

goal of development, everyone is empowered, everyone is involved.

The results of the preliminary research, it was found that there were elements of mass organizations that carried out thuggish acts by "requesting" projects for the procurement of goods/services from government agencies, such as offices in provincial and district/city governments. If an individual organization is not given a project, it will always lead to criminal action.

In terms of business competition, organizations that do not meet the requirements to participate in the procurement of goods/services in government agencies will lead to unfair business competition. One of them is price inflation (mark up).

Therefore, the paper entitled "Trade of Community Organizations as a Cause of Unfair Business Competition in Procurement Tenders in Government Agencies", deserves to be studied and analyzed further.

### **1.2. Research Question**

The problems in this paper are: 1) How do civil society organizations carry out acts of thuggery in participating in procurement tenders in government agencies? and 2) How does the business competition law see the fact that there are elements of mass organizations who "force" to get job projects from the heads of local government agencies?

The purpose of this paper is to see the reality on the ground regarding the implementation of Presidential Regulation no. 16 of 2018 concerning the Procurement of Government Goods/Services in the context of the participation of Community Organizations (Ormas) in the procurement of government goods/services.

## **2. METHODS**

This paper uses a normative research method with a qualitative approach. The data is sourced from interviews with Community Organizations in Medan City, and field observations at related agencies under the Provincial and District/City Governments, especially Medan City.

## **3. RESEARCH RESULT AND DISCUSSION**

### **3.1. Government Procurement Regulations**

Presidential Regulation No. 16 of 2018 concerning the Procurement of Goods and Services presents a new dimension in more inclusive and participatory development. The new regulation is the "entrance" for a new model of synergy between the government and community organizations in strengthening the quality of public services at the forefront. The involvement of CSOs in the procurement of government goods and services is a form of expansion of participatory and collaborative development. With this partnership (between the

government and community organizations), both create an inclusive economy. That is the goal of development, all stakeholders are empowered, all are involved.

The limited manpower and competence make the Government unable to cover all aspects of development, particularly related to the Human Development Index (HDI). For this reason, in the procurement of goods and services, one of the most important elements in development, the Government is expanding the self-management scheme. Previously, the self-management scheme could only be carried out by government agencies and private parties, following the issuance of Presidential Regulation no. 16 of 2018 concerning the Procurement of Goods and Services as amended by Presidential Regulation No. 12 of 2021, which replaces the regime of Presidential Regulation No. 54 of 2010, then Community Organizations, currently can participate as "main actors" in development projects.

The Partnership between the Government and Community Organizations (Ormas) in the procurement of government goods and services uses Type III Swakelola. Type III Swakelola is one of the government's procurements of goods/services which has been implemented since Presidential Regulation no. 16 of 2018 concerning Government Procurement of Goods/Services. This procurement method allows the government to meet the needs of its goods/services through CSOs with financing from the State Revenue and Expenditure Budget (APBN) or the Regional Revenue and Expenditure Budget (ABPD). In the previous procurement arrangement, there was no available method for self-managed procurement from non-governmental non-profit organizations.

From the government's perspective, the regulation regarding Community Organizations as Implementers of Swakelola is deemed necessary with the consideration that there is a need for the Government to carry out activities/programs by involving Community Organizations that have the competence and broad reach in implementing Government activities/programs. The presence of Community Organizations as Implementers of Type III Swakelola can fill the gap in the need for Government goods/services that cannot be provided by Business Actors or through other types of self-management (Type I, Type II, or Type IV). This Type III Swakelola also provides an opportunity for the community not only to become the object of development but also to be involved in the procurement process that supports development.

Based on Presidential Regulation Number 16 of 2018 concerning the Procurement of Goods and Services, the purposes of procurement, among others: aim to produce the right goods/services for every money spent, measured from aspects: quality, quantity, time, cost, location, and provider. It is to create fair business competition and equal opportunities for business actors to participate in

the procurement of goods/services carried out by the government.

### ***3.2. Prohibition of Monopolistic Practices and Unfair Business Competition in Tenders for Procurement of Goods/Services in Government Agencies***

Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Anti-Monopoly Law) aims to reduce monopolistic practices and unfair business competition that was rampant in Indonesia during the New Order era. Monopoly practices and unfair business competition occur due to government policies that favor certain business actors.[ 1 ] The Anti-Monopoly Law is 22 (twenty-two) years old until now, but there are still weaknesses that need to be corrected. One of these weaknesses is that the Anti-Monopoly Law lacks detail in regulating the settlement of business competition cases, and especially the role of the judiciary in handling objections to the Decision of the Business Competition Supervisory Commission.[2]

The institution that will be the guardian for the enforcement of the Anti-Monopoly Law is an absolute requirement for the law to be implemented. Granting special authority to a commission to implement the regulation in the field of competition is a common practice in most countries in the world. For example, in the United States, the Department of Justice has an Antitrust Division to enforce the Sherman Act. The Department of Justice together with the Federal Trade Commission is tasked with enforcing the Clayton Act, while the task of enforcing the Robinson Patman Act, specifically relating to mergers, consolidations, and takeovers, is left to the Federal Trade Commission.[3] This also happens in Indonesia, law enforcement. The Anti-Monopoly Law is submitted to the Business Competition Supervisory Commission (KPPU), in addition to the Police, the Prosecutor's Office, and the judiciary. This commission is directly responsible to the President of the Republic of Indonesia. Therefore, KPPU obtains financial sources from the State Revenue and Expenditure Budget or other sources permitted by laws and regulations.[4]

### ***3.3. There are elements of community organizations who are "forced" in requesting the project***

According to research, Ryter, L., regarding Pemuda Pancasila, that Pemuda Pancasila fighting for national development (*memperjuangkan pembangunan nasional*) has, for the disenfranchised youth, come to mean dividing its blessings (*pembagian rezeki*) through seizing turf (*perebutan lahan*). If one considers that a large number of Pemuda Pancasila district and local managers

Based on the Decree of the President of the Republic of Indonesia Number 75 of 1999 as the basis for the establishment of law enforcement officers against the Anti-Monopoly Law, namely the Business Competition Supervisory Commission as referred to in Article 34. The Business Competition Supervisory Commission has several tasks, including supervising monopolistic practices and/or unfair business competition in Indonesia.[5]

Tender conspiracy in the procurement of government-owned goods and services is the most dominant case in the handling of cases by the Business Competition Supervisory Commission (KPPU). In 2019, 164 public reports have been handled by Business Competition Supervisory Commission. 62% are tender cases, and 38% are non-tender cases. From the perspective of case decisions, there were 33 decisions, 31 of which were declared to have violated the Anti-Monopoly Law, while 2 decisions did not violate. The total fine for the verdict that has been handed down is Rp. 165,624,174,188, - 54.5% came from tender conspiracy cases, 36.5% came from delays in notification of mergers and acquisitions, 6% cartels, and 3% monopolistic practices.[6]

The business competition case in the procurement of goods/services is related to tender conspiracy, either horizontally or vertically, or a combination of horizontal and vertical conspiracy.[ 7 ] Conspiracy in the US Antitrust Law is defined as a fraud in tender offers. Bid rigging is an agreement between bidders or competitors (or potential bidders/competitors) – either as sellers or buyers – to determine the winner in a particular contract offered.[ 8 ] whereas vertical conspiracy in the procurement of goods/services is caused by the conditioning of the tender committee, or its superior officials, either directly or indirectly, by intervening to determine the winner of the tender. In some cases, it is related to government policy issues.[9] In subsequent developments, although government policies regarding the procurement of goods/services have led to fair business competition, it turns out that there are still gaps that can be exploited by business actors to conspire.[10]

run construction companies or are involved in demolition for developers, it is reasonable for them to join in the fight for this “building-up” (*pembangurum*) known as national development. Even explicitly political actions in its defense—such as counter-demonstrations, or an appearance in support of Suharto at the DPR in May—tend to be expressed in terms of “projects” and winning

tenders. It is also illustrative to note that these material conditions have generated, in the New Order generally, but within Pemuda Pancasila particularly, their own idealist philosophies of materialism and the concrete. Both Yapto and Yorrys have published collections of short essays on such subjects as truth, human resources, national awakening, and the new spirit, which quote Socrates, Emerson, John F. Kennedy, and Fukuyama, among others. To achieve the goal of "reaching a better future," writes Yorrys, a "new spirit" (*semangat baru*) is required. What is this new spirit? "Spirit, in terms of an automobile, is the fuel which moves and animates the working mechanism of the car. Without fuel, the car can't do anything, at most it can be pushed." Spirit will drive you, in your private vehicle, to the prosperous future. Along the road, however, the highest value is to fill one's stomach—alias to work—*ini yang kongkrit*, this is what is concrete. Whatever else might be said about it, for many thousands of youths over the past decades, this philosophy worked. Given such prospects for youth struggle, it is easy to see how, to turn a phrase, die only way to be a spirited, patriotic *pemuda* during the New Order was to be a *preman*. [11]

Based on Ryter, L.'s research, it turns out that since Pemuda Pancasila is a Community Organization (Ormas) left by the New Order era (Soeharto) which has always been "maintained" by the ruling government to raise votes during general elections. In addition, after the party that was promoted became the winner of the election, then the elements of Pemuda Pancasila made "allocated" projects from tenders carried out by the government, both in the regions and at the center of government.

In addition, the Pancasila Youth Organization or Social Organization as one of the major social organizations in Indonesia has several members who were and are still state officials, including 1) Bambang Soesatyo (SK MPN Ormas PP No. 045.A2/MPN-PP/VII/2020), who served as Deputy Chairperson I of the Pancasila Youth MPN for the 2019-2024 term. Currently, Bambang Soesatyo serves as Chairman of the People's Consultative Assembly. Previously, he served as Chairman of the DPR-RI and Chairman of the Legal Commission of the DPR-RI; 2) La Nyalla Mahmud Mattalitti, Chairman of the Indonesian Regional Representative Council (DPD), also a member of the Pancasila Youth organization. Mattalitti served as the Regional Leadership Council (MPW) of the Pancasila Youth (PP) of East Java Province for the 2017-2022 period; 3) Zainuddin Amali, the Minister of Youth and Sports, holds the position of Deputy Chair of the Pancasila Youth Organizational Advisory Council (MPO) for the 2019-2024 term; 4) Tjahjo Kumolo, Minister of Administrative Reform and Bureaucratic Reform, is a member of the Pancasila Youth Organizational Advisory Council (MPO) for the 2019-2024 term; 5) Ahmad Riza Patria, the Deputy Governor of DKI Jakarta, is a member of the Pancasila Youth Organizational Advisory Council (MPO) for the 2019-

2024 term. In addition to these five people, there are many other officials and former officials who sit on the management of Pemuda Pancasila such as DPD RI member Yorrys Raweyai (deputy chairman of MPO PP), former defense minister Ryamizard Ryacudu (Chairman of the Honorary Council of PP), former chairman of the DPR Agung Laksono (member of MPO PP), former chairman of the DPD Oesman Sapta Odang (a member of the Pancasila Youth MPO), and others. [12]

Therefore, in this study, the existence of buying and selling projects between contractors wearing Pemuda Pancasila clothes, of course, can cause unfair business competition. This unfair business competition occurs due to markups, vertical and horizontal bid-rigging. Thus, thuggery from Social Organizations can be the cause of tender conspiracy and lead to unfair business competition.

Based on the results of in-depth interviews with informants, namely: 1) Members of the Regional People's Representative Council of Medan City; 2) Pancasila Youth Community Organizations (Ormas); 3) Community Organizations (Ormas) Youth Work Association; 4) Community Organizations (Ormas) of the Indonesian Youth National Committee; 5) Social Organizations (Ormas) Indonesian Youth Renewal Forces; 6) Communication Forum of Community Organizations (Ormas) POLRI Boys and Girls; 7) Indonesian Pancasila Social Organizations (Ormas). The interview method was conducted using semi-structured interview guidelines.

The results of interviews with members of the Regional People's Representative Council of Medan City said that the stigma that arose among the people of Medan City towards acts of thuggery and violence that occurred was still affiliated with Community Organizations (Ormas). This is because the Ormas Management in Medan City has not changed the image that has emerged among the public, that Ormas is an "*Organization of Thugs*". Information obtained from several informants can be concluded that the majority of the perpetrators of thuggery actions that have occurred among the people of Medan City recently were carried out by unscrupulous persons/individuals on behalf of youth organizations. Furthermore, according to an informant from the Medan City Regional People's Representative Council (DPRD), informing that there are Community Organizations (Ormas) requesting project allocations, both at the Medan City Regional People's Representative Council, as well as Medan City Government agencies. The project is carried out by the leaders of Community Organizations (Ormas) only. After getting the project, which is then traded, the elements of the Community Organization (Ormas) do not distribute the results of their income to their members.

Currently, Presidential Regulation No. 16 of 2018 concerning the Procurement of Government Goods/Services has provided an opportunity for Youth

Organizations (OKP) as Community Organizations (Ormas) to participate in the tender process in Regency/City Governments for all types of projects. So that these mass organizations can compete with other companies, and are not impressed by the occurrence of unfair business competition (monopoly).

From the six Community Organizations (Ormas) mentioned above, it was found that the findings in the field were that the majority of the CSOs interviewed had the vision and mission of the organization, all of which were beneficial to the community and the state, but in practice, the vision & mission in each Social Organization was not implemented and carried out by the administrators. the organization. Most of the members/management of mass organizations at the middle to the lower level are always involved in extortion (illegal levies) to the community and lead to acts of thuggery (violence). In terms of coaching carried out by the youth organization management to its members, it has not been carried out optimally. This has an impact on the implementation of the vision and mission of the organization.

#### 4. CONCLUSION

Based on the results of the discussion and discussion, it was found that there were elements in Community Organizations that "forced" the heads of services in regional government agencies, both provincial and district/city in North Sumatra, especially Medan City to be given work packages. (project) in the tenders to be implemented. After being given, it turned out that the work package (project) was not carried out, but was sold to another party. The aim is to secure the heads of these

Important points that can be drawn from interviews conducted with the administrators of Community Organizations who were respondents in this field research can be concluded as follows: 1) The thuggery acts that occurred in Medan City were mostly carried out by unscrupulous elements (members). from Social Organizations that carry the attributes of Social Organizations; 2) The administrators of Community Organizations assume that the activities carried out by their members are not acts of thuggery, but that these activities are security activities against the efforts of the community in their respective debarkation areas; 3) Individuals (members) from social organizations at the lower middle level are often involved in thuggery actions that disturb and unsettle the community. Meanwhile, elements at the district/city regional leadership level often establish relationships with heads of agencies in related government agencies. The goal is to request Direct Appointment (P.L) projects that cost Rp. 50 million up to Rp. 200 million. The reason is so as not to interfere with other projects being carried out by other contractors.

services from thuggery actions that will be carried out if they are not given.

The law on business competition sees that, if the person in charge of the agency commits a vertical tender conspiracy, then there is a strong suspicion that unfair business competition will occur which will lead to monopolistic practices. Preferably in the procurement of government goods/services, supervision is carried out by law enforcement officers on projects held by the government.

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