

# Procurement Tender Fairness: MSME, Business Competition Law, and SIKaP Application

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**Abstract.** This study analyzes the right to justice in tenders for the procurement of goods and services for small business actors from the perspective of business competition law through the application of the SIKaP application. The research method used is qualitative analysis based on the available empirical analysis of the literature. The results of the literature analysis show that small business actors face challenges such as the non-transparency of the selection process, unfairness in evaluating proposals, non-neutral procurement, unfair competition, and constraints on access to information. SIKaP application is considered as a potential solution to increase fairness in procurement tenders, but challenges such as lack of understanding and awareness as well as technical obstacles still need to be overcome. The importance of the role of business competition law is also recognized in protecting the rights of small business actors. This study concludes that additional efforts are needed, including training and awareness, technological infrastructure improvements, and effective law enforcement, to ensure the successful implementation of the SIKaP application and the protection of small business actors' rights in procurement tenders. The results of this study make an important contribution in understanding the challenges and opportunities for small business actors in obtaining fairness in procurement tenders. The implications can be used as a basis for developing policies and actions that support fair participation and equal opportunities for small business actors.

**Keywords:** Business Competition Law, MSME, Procurement Tenders, SIKaP Application

## 1 Introduction

Tenders for the procurement of goods and services are an important mechanism in meeting the needs of the government and the private section [1] However, in the tender process, small business actors often face challenges that can hinder their fair and equal participation.[2] The right to justice in procurement tenders is an issue that requires serious attention in the context of business competition law, in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, it is the aspiration of all groups so that the Indonesian economy is democratic towards all groups. especially MSME actors, this is in line with Law no. 20 of 2008 concerning Micro, Small and Medium Enterprises is the center of attention so that they can be involved in tender activities for the procurement of goods and services.[3] In the perspective of business competition law, the right to justice is a fundamental principle that must be guaranteed for all business actors, including small business actors. However, the implementation of this principle in the context of tenders for the procurement of goods and services is still a complex issue. Challenges such as the non-transparency of the selection process, unfairness in evaluating proposals, impartiality of procurement parties, unfair competition, and constraints on access to information often prevent small business actors from obtaining equal rights in the tender process.[1]

In an effort to increase fairness in procurement tenders for small business actors, the application of the Ministry of Public Works and Public Housing's Contract Procurement Information System SIKaP application has been introduced. This application is expected to increase transparency, accountability and accessibility for small business actors in the procurement tender process. However, despite the potential application of SI-KaP, a more in-depth analysis is needed to understand to what extent this application can realize the right to justice for small business actors. Therefore, this study aims to analyze the right to justice in the tender for the procurement of goods and services for small business actors from the perspective of business competition law through the application of the SIKaP application. This study will use a qualitative analysis method based on the empirical analysis of the available literature.

By understanding the challenges and opportunities faced by small business actors in obtaining justice in procurement tenders, it is hoped that this research can contribute to the development of policies and actions that support fair participation and equal opportunities for small business actors.

## 2 Methodology

This study uses qualitative analysis methods with empirical and normative juridical analysis based on existing literature. Relevant literature sources, such as scientific journals, books, and government documents, are identified and analyzed to gain an in-depth understanding of the right to justice in procurement tenders for small business actors, business competition law perspectives, and the application of the SIKaP application. Qualitative analysis was carried out by collecting and classifying relevant literature, as well as identifying emerging patterns and general themes. The researcher synthesizes and interprets the information found, considering the arguments, perspectives and findings in the literature.

The empirical analysis process involves evaluating the findings in the literature, including data and information from previous studies. This empirical data is used to support research findings. This method allows researchers to present a comprehensive picture of issues related to the right to justice in procurement tenders for small business actors, the application of the SIKaP application, and the role of business competition law. By using a qualitative analysis approach with empirical analysis based on literature, this research can identify the weaknesses and strengths of the SIKaP application and provide a basis for the development of policies and actions that support fair participation and equal opportunity for small business actors in the procurement tender process.

## 3 Result

### 3.1 The Right to Get Justice in Tenders For the Procurement of goods and Services For Small Business Actors

In the context of business and competition, small business actors often face difficulties in obtaining fairness in tenders for the procurement of goods and service[4] This research focuses on the importance of the right to justice for small business actors in the procurement tender process. In this study, it was found that small business actors often face challenges that affect their rights in procurement tenders. One of them is the lack of transparency in the selection process, which results in ambiguity in the judging criteria and affects their chances of fair participation.

This has reduced their chances of winning procurement contracts, which in turn has limited their business growth and broader market access. However, there are efforts that can be made to increase fairness in procurement tenders for small business actors. One of them is the application of the SIKaP application, which can increase transparency, accountability and participation in the tender process. With this application, small businesses can have better access to information and equal opportunities to compete.

The role of business competition law is also very important in protecting the rights of small business actors. Supportive regulations and effective law enforcement can help create a fair environment and protect the interests of small business actors in the procurement tender process[4].

Small business actors face various significant challenges in obtaining justice in tenders for the procurement of goods and services [5]In this discussion, we will describe some of the challenges that are often faced by small business actors and their impact on their rights in the procurement tender process. In this discussion, we will describe some of the challenges that are often faced by small business actors and their impact on their rights in the procurement tender process.

- a. Lack of Transparency: One of the main challenges is the lack of transparency in the selection process[6] Small business actors often face difficulties in understanding the evaluation criteria and selection mechanisms used by the procurement party. This lack of transparency can lead to ambiguity and doubt about their opportunities to participate fairly.
- b. Unfair Assessment: Another challenge is the unfair evaluation of proposals submitted by small business actors. Several factors, such as preference for larger companies or personal relationships, can influence the appraisal process. As a result, small business actors may lose the opportunity to win tenders even though they have competitive quality and prices[7]
- c. Non-neutrality of Procurement: Non-neutrality of the procurement party is also a significant challenge. Sometimes, there is a tendency to give preference or benefits to big business actors or certain groups, which can be at the expense of small business actors. This can undermine the integrity of the tender process and reduce the opportunities for small businesses to compete fairly[8]
- d. Unfair Competition: Another challenge faced by small business actors is unhealthy competition with large companies [5]Large companies often have an advantage in terms of resources and networks, which makes

it difficult for small businesses to compete effectively. This unfair competition can limit the opportunities for small business actors to obtain procurement contracts.

These challenges have a direct impact on the rights of small business actors to obtain justice in procurement tenders. This injustice can hinder the growth and opportunities of small business actors, as well as create inequality in business competition. Therefore, corrective measures such as increasing transparency, fair assessment, neutrality of procurement parties, and promotion of fair competition are urgently needed to ensure that small business actors get their rights fairly in the procurement tender process.

### **3.2 The Importance of the Right to Get Justice in the Context of Business Competition Law**

The right to justice in the context of business competition law has an important role in maintaining fairness in tenders for the procurement of goods and services, especially for small business actors. Business competition law aims to protect the rights of small business actors, prevent discriminatory practices, abuse of market power, and unfair action[9]

With strong legal protection, small business actors can obtain their rights fairly and equally. In addition, business competition law also plays a role in creating fair competition among business actors. In the context of procurement tenders, this means preventing monopolistic practices, cartels or actions that hinder fair competition. With healthy competition, small businesses have a better chance to compete with big companies and win procurement contracts.

The application of business competition law also encourages innovation and economic growth by providing equal opportunities for all business actors[10] In the context of procurement tenders, this means providing opportunities for small business actors to submit innovative and quality proposals. By obtaining the right to justice in the tender process, small business actors are encouraged to innovate, improve product and service quality, and contribute to overall economic growth. In addition, business competition law also prevents unhealthy market concentration, in which several large companies dominate the market dominantly. In the context of procurement tenders, this means preventing dominance by a few large companies in securing exclusive procurement contracts. With the right to justice, small business actors have the opportunity to compete with large companies, reducing the risk of market concentration that is detrimental to small business actors.

Thus, it is important for the government to have strong regulations and effective law enforcement in protecting the right to justice in the context of business competition law. This will provide legal certainty to small business actors in involving themselves in procurement tenders, maintain fairness and equality of opportunity in business competition, and promote inclusive economic growth.

### **3.3 Application of The Sikap Application In Improving Fairness In Procurement Tenders**

The potential application of the Apparatus Performance Information System SIKaP in increasing transparency and accountability is very relevant in the context of the right to justice in tenders for the procurement of goods and services for small business actors. In this discussion, the potential of SIKaP will be explained in providing these benefits. SIKaP is an information system designed to collect, manage, and analyze government apparatus performance data. In the context of procurement tenders, the use of SIKaP can provide greater transparency in the selection and evaluation process. Information regarding the selection mechanism, assessment criteria, and evaluation results can be accessed openly by all parties involved[11]

This will help reduce the information gap between small businesses and procurement parties, so that they can understand the requirements more clearly and plan their participation more effectively [12]

In addition, SIKaP can also increase the accountability of the procurement party. With a well-documented system, actions or decisions taken by the procurement party can be tracked and evaluated[13] This provides opportunities for small business actors to ask questions, provide input, or file lawsuits if there are indications of unfairness or non-compliance with the principles of fair competition. In addition, the data collected in the SIKaP can be used as a reference for conducting analysis and evaluation of the procurement tender process, thereby ensuring that decisions are made based on clear and objective criteria.

By optimizing the potential of the SIKaP application in increasing transparency and accountability, small business actors can obtain greater fairness in the procurement tender process. In the long run, this will encourage the active participation of small business actors, increase fair competition, and strengthen the economy as a whole[14] It is important for the government and related parties to continue to develop and improve the SIKaP application, as well as provide easy and fair access for small businesses to use it.

The application of the Apparatus Performance Information System SIKaP application in the context of tenders for the procurement of goods and services has several weaknesses and challenges that need attention. One of the main weaknesses is related to the technological infrastructure required to operate the SI-KaP. Small businesses may not have adequate access to information technology or a stable internet connection. This may hinder their

participation in using the application and accessing relevant information. Apart from that, another challenge is the sustainability and maintenance of the SIKaP application[15]. These systems require regular maintenance and updating to maintain quality and performance. However, sometimes a lack of adequate funding and human resources can become an obstacle in maintaining the smooth operation of this application.

Another weakness is the potential for data leakage or misuse of information stored in the SI-KaP. Data protection and privacy are serious issues that must be addressed to maintain the trust of small businesses in using this application.[16] The final challenge is socialization and training for small business actors. It is important to provide adequate education and training to ensure that they understand and can use the SIKaP application properly.

In facing these weaknesses and challenges, it is necessary to make collaborative efforts between the government, small business actors, and related parties to overcome these problems. These efforts include providing better technology infrastructure, routine application maintenance, strong data protection, and adequate training for small businesses. Thus, the application of the SIKaP application can be more effective and provide optimal benefits in increasing transparency and accountability in tenders for the procurement of goods and services [17]

### **3.4 Implications of Application of Business Competition Law in Improving Fairness in Procurement Tenders**

The application of business competition law has significant implications in increasing fairness in tenders for the procurement of goods and services[18]. First, the application of business competition law ensures healthy and fair competition among business actors in procurement tenders. By prohibiting cartel practices, price discrimination, price coercion and abuse of dominant position, business competition law promotes fair competition and provides equal opportunities for small business actors to participate in procurement tenders. This helps prevent the domination of large companies and strengthens the position of small businesses in the competition.

In addition, the application of business competition law also reduces the risk of market concentration which is detrimental to small business actors [19] By monitoring monopoly or oligopoly practices, business competition law ensures that there is a diversity of participants in procurement tenders. This creates greater opportunities for small businesses to win contracts and contribute to broader economic development. Furthermore, business competition law provides protection for the intellectual property rights of small business actors in the context of procurement tenders. Protection of copyrights, patents, trademarks and industrial designs prevents acts of piracy or violations of intellectual property rights that can harm small businesses.

Thus, the application of business competition law in procurement tenders has important implications in increasing justice for small business actors[20] This creates a fairer environment, encourages fair competition, and provides equal opportunities for all business actors to participate in procurement tenders.

## **4 Conclusion**

In the context of procurement tenders, small business actors face significant challenges in obtaining justice. Lack of transparency in the selection process, unfair evaluation, non-neutrality of the procurement party, and unfair competition are the main factors affecting their rights. The impact of unfairness in procurement tenders is also evident. Small businesses face limited market access, stunted business growth, and larger economic disparities.

However, the application of the SIKaP application has the potential to increase fairness in procurement tenders. By increasing transparency, accountability and participation, small business actors can obtain fairer rights in the tender process. In addition, counseling and training for small business actors regarding the procurement tender process and effective law enforcement are also important. Protection of their rights and strict law enforcement can help create a more just environment. Competition law also plays an important role in protecting the rights of small business actors. Supporting regulations and the role of supervisory authorities are very relevant in ensuring fairness in procurement tenders.

In conclusion, it is necessary to pay attention to the development of policies and actions that support fair participation and equal opportunities for small business actors. With the right efforts, small business actors can obtain better fairness in participating in and winning tenders for the procurement of goods and services.

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