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Chapter 6 Kadin and Presidential Decree No. 18/2000 on the Procurement of Projects

6.1 Introduction

The case study to be discussed in this chapter is very much related to the case study of Chapter 5 on the anti-monopoly law of 1999, which aimed at enhancing fair competition. The case study in Chapter 6 also deals with policies of fair competition: it centers on the procurement of projects by the Indonesian government, and the way private companies can apply for them.

Periodically, the government of Indonesia allocates part of its budget to a wide range of governmental projects, which are to be executed by private companies. For instance, the Ministry of Education may require the annual supply of teaching materials, the maintenance of buildings, etc.; the Ministry for General Affairs\(^\text{365}\) may launch projects for the construction of railways, highways, bridges, buildings, etc.; the Department of Telecommunication may develop communication networks and construct communication facilities. Large amounts of money may be spent on such projects.\(^\text{366}\) Since these ‘office projects’ are extremely important for the Indonesian economy, it is in the public interest that the most qualified companies take them on in the most efficient way. The Ministry of Planning, Bappenas,\(^\text{367}\) is involved in the procurement of such projects. During the era of Soeharto, the projects were usually allocated to companies by direct assignment or by auctions. In the absence of transparent criteria, direct assignment could lead to corruption and certainly did not guarantee the choice of the most qualified companies. An auction was at least a process of selection, although this procedure showed a lot of arbitrariness.

Companies were entitled to participate in the auctions if they were officially registered and could provide the certificate *Tanda Daftar Rekanan*. In many cases, registration was only possible if the companies were members of one of three governmentally authorized business associations: Ardin,\(^\text{368}\) Inkindo,\(^\text{369}\) and

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\(^{365}\) Department Pekerjaan Umum is among other things responsible for the construction of public facilities.

\(^{366}\) For instance, in 2003 the total budget for such projects was 70 to 90 trillion rupiahs. See *Kontan* No. 37, 16 June 2003.

\(^{367}\) Bappenas: Badan Perencanaan Pembangunan Nasional: the National Development Planning Board, also called Ministry of Planning.

\(^{368}\) Ardin: Asosiasi Rekanan Pengadaan Barang dan Distribusi Indonesia (Business Association of Indonesian Suppliers and Distributors). Ardin represented enterprises (supplying both goods and services) in the non-construction sector.

\(^{369}\) Inkindo: Ikatan Kosultan Indonesia (National Association of Indonesian Consultants).
Gapensi. These requirements excluded many companies from other business associations and provoked a lot of annoyance, which was expressed particularly during the years after the collapse of the Soeharto regime.

In 2000, President Abdurrahman Wahid issued Presidential Decree No. 18/2000 to regulate the procurement of government projects. The decree replaced the previous system of government procurement; direct assignment was abolished, procurement of projects would take place through auctions. Companies that wanted to tender at such auctions had to be a member of an accredited association; the obligation to be a member of the three business associations Ardin, Inkindo and Gapensi was suspended.\textsuperscript{371} Moreover, companies needed a quality certification.

Following the issuance of this Decree, Kadin attempted to monopolize the organization of government procurements through a certification and accreditation scheme. This new role of Kadin was substantiated by the Presidential decree. Yet, Kadin’s attempts to become closely involved in government procurements raised controversy. Several agencies inside Kadin (i.e. Ardin and several other business associations) and outside Kadin (i.e. Bappenas) refuted Kadin’s role in monopolizing the organization of government procurement. The controversy ended when President Megawati (Abdurrahman Wahid successor) issued another decree making Kadin’s certification and accreditation optional for the business sector.

We will show that the implementation of Presidential Decree No. 18/2000 was very problematic. The controversial issues were the accreditation of associations, and especially the process of certification. Which institutes were authorized to provide certificates for companies to take part in the auctions? Bappenas and Kadin, major actors in the process of implementing Presidential Decree No. 18/2000, had very different views on these issues.

This chapter will focus on the functioning of Kadin as the representative of the business sector during the drafting and especially the implementation of Presidential Decree No. 18/2000. Section 6.2 embarks on the reasons for the decree. In the same way as it was the case for the anti-monopoly law of 1999 (see Chapter 5), the launching of Presidential Decree No. 18/2000 was to a large extent the result of dissatisfaction concerning practices of collusion and nepotism during the Soeharto regime.\textsuperscript{372} For a review of these practices, we refer to Section 5.2. Also, external pressure by IMF and World Bank played an important role.

In Section 6.3 the role of Kadin in the processes of drafting and

\textsuperscript{370} Gapensi: Gabungan Pelaksana Konstruksi Indonesia (National Indonesian Association of Construction Firms). Members of Gapensi were enterprises in the construction sector.

\textsuperscript{371} Bisnis Indonesia, 27 January 2000; see also Kontan, 21 February 2000.

\textsuperscript{372} Schwartz notes that during the last years of the Soeharto regime hardly any major infrastructure contract was granted without one of Soeharto’s relatives ‘having a piece of it’ (see Schwartz, 1999, p.136).
implementing Presidential Decree No. 18/2000 will be discussed in detail. We will show that the implementation was very problematic, mainly due to interventions by Kadin regarding the issuing of quality certificates to companies. These certificates allowed the companies to participate in the tender for government projects. The interventions by Kadin even led to conflicts between Kadin and some important business associations. Kadin’s functioning in general was challenged, for instance by SMEs that complained that their interests were not protected well enough and by businesses that were not happy about the way membership of Kadin was organized.

Section 6.4 describes the increasing tension between Kadin and the Indonesian government, in casu Bappenas, due to conflicting views of the authority of Kadin to issue certificates. Tension ran so high that a compromise was impossible and finally the President had to intervene. In the final section some conclusions are formulated concerning the role of Kadin in this case study.

6.2 Towards Presidential Decree No. 18/2000 on the Procurement of Projects

As was discussed in previous chapters (see e.g. Chapter 5, Section 5.3), during the regime of Soeharto, Kadin at several occasions demanded a transfer of authority on business-related matters from the government to the private sector, to Kadin and to business associations. During the days of Soeharto, Kadin had also tried to play a role in the auctions for the procurement of projects. In 1980, the Soeharto government had issued a Presidential Decree (No. 14/1980) in which companies’ participation in auctions for project procurement was regulated. If a company wanted to participate in the auctions, the certificate of Tanda Daftar Rekanan was required. The government issued this certificate and granted it to a company if certain conditions were fulfilled. One of these conditions was that the company had to be member of Kadin or another business association. Later the conditions became different for companies belonging to the three governmentally authorized business associations Ardin (enterprises in the non-construction sector), Inkindo (consultancy firms) and Gapensi (enterprises in the construction sector). For non-construction and non-consultancy firms, membership of Kadin or Ardin was required; for companies belonging to Inkindo or Gapensi, membership of the corresponding business association was required. In the case of Ardin, Kadin wanted to change the rules in such a way that for non-construction firms, membership of Kadin was

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373 The contents of this section is based on various publications and on interviews with Harmon Barnawi Thaib, the pr officer of Kadin Indonesia, who was also involved in the management of several programs of Kadin, including BARKI; see Section 6.3.

374 Soy Pardede, head of the Trade Department of Kadin, 23 January 1999.
required. Compulsory membership of Kadin to get access to procurement auctions would very much increase the prestige of Kadin. Ardin strongly opposed such a change, as it did not want to share its authority in matters of procurement auctions. Consultancy firms and construction firms that wanted access to auctions of ‘office projects’ had to be member of Inkindo or Gapensi, respectively.

Soon after the Soeharto period, a new Presidential decree was published dealing with some procedural changes in the processes of procurement of projects. With Presidential Decree No. 16/1999, the government granted a transfer of part of its authority to Kadin. According to this decree, companies that wanted to register for government procurement projects, had to be a member of a recognized business association and of Kadin. If companies that already had a Tanda Daftar Rekanan, were a member of Kadin, they were given priority. The fact that companies had to be a member of Kadin to get access to government auctions, added to Kadin’s prestige. Presidential Decree No. 16/1999 did not satisfy, and during the presidency of Abdurrachman Wahid it was replaced by the more elaborate Presidential Decree No. 18/2000.

The launching of Presidential Decree No. 18/2000 was to a large extent the result of foreign pressure. During Wahid’s presidency, there were many negotiations between IMF and the Indonesian government. As discussed in Chapter 5, the IMF imposed various conditions on the Indonesian government as part of a deal on financial assistance. Like the introduction of the anti-monopoly law of 1999, the implementation of transparent and fair procedures for tendering in government projects was a condition set by IMF. The World Bank, which considered an effective public procurement system to be essential for good governance, was prepared to help the Indonesian government setting up a new transparent procurement system.

Indonesia’s membership of AFTA (Asean Free Trade Area) and WTO (World Trade Organization) was also a reason for launching Presidential Decree No. 18/2000. This membership required a number of measures, e.g. official registration as companies involved in domestic and international trade, standardization of product, anti-monopoly legislation, and safety of product. Registered membership of recognized business associations, procedures of registration, criteria for membership, certificates of quality, criteria for quality and quality control as required according to Presidential Decree No. 18/2000 were important AFTA and WTO requirements as well. According to several

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375 Bisnis Indonesia, 20 January 2000.
378 Emphasized by M.W. Datubara (interview 3 July 2003). In his view the accreditation and certification schemes as introduced by Presidential Decree No. 18/2000 also contributed to the implementation of the anti-monopoly law of 1999 and to fair competition.
interviewees, the main factor behind the issuing of Presidential Decree No. 18/2000 was the IMF’s and World Bank’s pressure on the Indonesian government to make decision making more transparent. Transparency was considered to be one of the vital aspects of good governance. Presidential Decree No. 18/2000 was important to improving transparency in the relation between government and the business sector. According to these interviewees, foreign pressure had more effect than domestic factors like the pressure by Kadin. This does not make Kadin’s efforts to influence government policies less important. Pressure by Kadin showed that the aspirations of the business sector were in accordance with IMF and World Bank views. This harmony could strengthen the possibility of implementing the decree successfully.

6.3 Kadin and the Problematic Implementation of Presidential Decree No. 18/2000

Main Contents of Presidential Decree No. 18/2000

Presidential Decree No. 18/2000 deals with the procedure for companies to get access to government-induced procurement auctions. Any company that wanted to tender in such an auction, had to be registered as a member of an accredited business association and had to have a certificate as evidence of quality. A business association was entitled to provide quality certificates to companies under its jurisdiction, if it was accredited. The Presidential Decree was accompanied by a Technical Guidance, in which the responsibility of accreditation was accorded to Kadin.

Kadin and the Drafting of Presidential Decree No. 18/2000

Kadin’s involvement in Presidential Decree No. 18/2000 was formally justified by Law No.1/1987 on Kadin. As we have seen in Chapter 4, neither the

379 Dr. Tulus Tambunan and Professor Suryo Sediono, members of the LP3E Kadin, and Suprayitno, head of the Organization Department of Kadin and first secretary of the Tim Perumus Perubahan Keppres. No. 18/2000 Kadin. They emphasized that pressure by international financial institutions was more effective than Kadin recommendations. Harmon, a staff member of Kadin and second secretary of the Tim Perumus Perubahan Keppres. No. 18/2000, shared this view.

380 The quality certificate is supposed to authenticate a company’s competence to carry out procurement projects. The assessment of the competence is based on the assessment of the company’s performance in the last few years: for instance, the financial situation should be sound, and during the last five years there should not have been serious complaints by consumers (see Technical Guidance of Presidential Decree No. 18/2000, first appendix, part II, section I on certificates).

381 Juknis/Petunjuk Teknis: the technical guidance of the Presidential Decree is a supplementary to Presidential Decree No. 18/2000.
introduction nor the implementation of this law was self-evident. During the Soeharto era, the law even led to friction between the government and Kadin: for instance, according to Article 8 of Chapter IV, Kadin was responsible for various tasks, such as the registration of companies. The government, however, kept control of this registration; the Ministry of Industry handled it. This ministry had developed a complex system of registration and the issuing of certificates, in which several departments and institutions were involved. When later on during the Soeharto regime, Kadin wanted to claim a role in this registration process, it was faced with a lot of resistance. Governmental interests were too great. If Kadin had taken over this task, government departments would have to close down and people would lose their jobs. Therefore, and in order to maintain a good relationship with the Ministry of Industry, Kadin played down its claims. After 1998 however, the situation changed: the position of the government was weakened. The government agreed to transfer authority from the ministries to the Chamber of Commerce. Presidential Decree No. 18/2000 is an example of such a transfer.

In the process of drafting Presidential Decree No. 18/2000 Kadin did not make a good start. It became involved too late and was not represented at the highest level. This had serious consequences, as will be shown below. In the main text of Presidential Decree No. 18/2000, Kadin was not even mentioned. In the Technical Guidance, however, a supplement to the decree, Kadin was mentioned, because of its mandate according to Law No. 1/1987. The Technical Guidance was included as a lapiran, which is usually seen as an integral part of a new law or decree. However, the absence of Kadin in the main text of the Presidential Decree was much criticized.

In the Technical Guidance, Kadin was assigned an important role: it was responsible for the accreditation of the business associations for all non-construction enterprises supplying goods and services (both industries and consultants). Another organization, LPJK, the Institution for Construction Services Development, was given the mandate of accrediting business associations of both industries and consultants in construction. The accredited associations were entitled to issue certificates to companies under their jurisdiction.

Kadin’s Interventions to Implement Presidential Decree No. 18/2000
As mentioned, according to Presidential Decree No. 18/2000 business associations had to be accredited by an independent institute before they were

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382 A formal letter (WDP/Wajib Daftar Perusahaan) would confirm the registration of companies, which would give them access to auctions by government offices.

383 Although Kadin was supposed to attend early meetings of the Tim Perubahan Kepres No. 18/2000 on the presidential decree, only the regional branch of Kadin in Jakarta (Kadinda DKI) was represented. Vice-chairman Danubara was one of the representatives.

384 According to the interviewees Suprayitno and Harmon of Kadin.
allowed to issue certificates ensuring quality standards. According to the Technical Guidance of Presidential Decree No. 18/2000, Kadin was responsible for the accreditation of business associations in the supply of goods and services in non-construction. Because of this assigned mandate, Kadin established BARKI, which worked under its authority and was given the mandate to handle the accreditation of business associations. Usually, the accreditation of business associations by Kadin did not create many problems. But there were some issues that did raise some annoyance. In the Technical Guidance, the mandate of accreditation by Kadin was described in general terms, which left room for interpretation by Kadin. As part of the accreditation process, Kadin not only made an assessment of the business association as a whole, but also of specific branches of the business association. Thus, it could happen that Kadin allowed the business association to provide quality certificates for certain subsectors and production activities, but not for all. This practice challenged the competence of the business associations, which considered themselves to be better able to assess professional competence within its sector. This issue could even cause conflicts (e.g. between Kadin and Ardin, which will be discussed later). Still, on the whole, the accreditation of business associations by BARKI was hardly controversial and was widely accepted.

Some other decisions were controversial as well. The most striking decision concerned the issuing of certificates. In Kadin’s view, the process of certification, which in principle was done by the business associations, would create a lot of problems in real life. Some business associations were prepared for the task of issuing certificates, others were not. Some business associations had no regional branches, and yet they had to regulate certification in remote provinces. What would happen if business associations were not well-organized or willing to pay for procedures to provide certificates? What would happen with companies belonging to business associations that were not to be accredited? All these problems led Kadin to take the initiative to create its own organ to issue certificates, in particular for companies in the provinces. It was a joint committee, PBSP, consisting of members of Kadinda, i.e. Kadin-DKI, and of co-operating business associations. According to an official statement by Kadin, PBSP would issue certificates on behalf of the co-operating business

386 BARKI: Badan Akreditasi dan Registrasi Kadin Indonesia.
387 The number of ‘office projects’ for which private companies could tender, could amount to thousands each year. Both national and local governments could launch projects. Numerous companies wanted to take part in the auctions and applied for certificates. Tens of thousands of certificates had to be issued to companies in Indonesian provinces and were issued under the jurisdiction of about 250 different business associations (interview with Datubara, 3 July 2003).
388 PBSP: Panitia Bersama Sertifikasi Provinsi. PBSP was founded on 24 and 25 August 2000, which was attended by various Kadinda and business associations. In April 2001, PBSP had issued about 5200 certificates. See Bisnis Indonesia, 16 April 2001.
associations; Kadin would only be responsible for the coordination. PBSP would fill the gap if business associations lacked the capacity to issue certificates themselves.

Kadin’s initiative to create PBSP was justified by an article in the Technical Guidance of Presidential Decree No. 18/2000, which reads:

For non-construction companies, both consultants and industries supplying goods and services, certificates are issued by the business associations accredited by KADIN or by a Certification Committee set up and coordinated by KADIN in the case that the business association is not accredited or does not exist.

The creation of PBSP by Kadin, although formally justified, was very controversial and met with a lot of resistance within Kadin as well as outside. According to opponents, Kadin should not be involved in the process of certification, since businessmen within Kadin could have an interest in procurement projects and would not be independent. If there was a role to play by Kadin in the process of certification, they should be an independent monitor of the process of certification. If Kadin itself were to issue certificates, this would make its role as an independent monitor impossible.

**The Kadin-Ardin Conflict**

One of the business associations, which vehemently opposed to Kadin’s role of issuing certificates and the creation of PBSP, was Ardin, chaired by Palinggi. Ardin was a member of Kadin and was accredited by BARKI. The reason for Ardin’s opposition was the interpretation by Kadin of its mandate of accreditation as described above; Ardin, historically the most important business association in the non-construction sector, found it unacceptable that Kadin could decide on certificates for Ardin’s subsectors. The friction between Kadin and Ardin grew both at the national and at the regional level. In Jakarta, tension rose so much that the chairman of Ardin-DKI, Paskalis Poerba, threatened to take the chairman of Kadin-DKI to court.

As a reaction to Ardin-DKI’s opposition, on 22 November 2000 Kadin decided to expel Ardin-DKI. The clash between Kadin and Ardin had a lot of impact, especially on Ardin. In fact, it led to a split within Ardin. One part

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389 Technical Guidance, Appendix 1, Art. 3b.
390 The Indonesian Supplier and Distributor Association, Ardin, was one of the privileged associations under the regime of Soeharto; see introduction Chapter 6.
391 Ardin-DKI is the local branch of Ardin in Jakarta. Although not responsible at a national level, Ardin-DKI is still important, since it is located in Jakarta, the capital of Indonesia, where most big businesses are located.
392 Ardin-DKI was temporarily expelled from Kadin; Suara Karya, 21 March 2001; Bisnis Indonesia, 6 December 2000.
supported Kadin’s initiative of issuing certificates and creating PBSP, the other part did not. Under the leadership of Adhi Wargono, a new Ardin-DKI was established which supported Kadin. This new Ardin-DKI was recognized by Kadin and evidently strongly opposed by Paskali Poerba. Meanwhile, Paskali Poerba’s Ardin-DKI had issued a large number of certificates. However, because there were two Ardin-DKIs, government officials did not recognize the certificates issued by Paskali Poerba’s Ardin-DKI. This caused a lot of frustration amongst Ardin members who desperately wanted to take part in the auction. Because of the expulsion of Paskali Poerba’s Ardin-DKI and the rejection of the certificates by local governments, regional branches of Ardin called a meeting to discuss the deadlock. During this meeting they decided to establish a new Ardin, which would accept the authority of Kadin. Chairman Paskali Poerba was replaced by Victor Siregar, who took sides with Kadin in the conflict. In June 2002, Palinggi’s Ardin was officially expelled from Kadin. The replacement of Paskali Poerba by Siregar brought an end to the tension between Kadin and Ardin. However, soon Siregar’s Ardin-DKI started to issue about 600 certificates itself, without PBSP being involved. This again caused problems between Kadin and Ardin. The Kadin-Ardin conflict about PBSP also caused friction in other Kadinda, e.g. within Kadinda North Sumatra.

The Kadin-UKM Case

After the publication of Presidential Decree No. 18/2000, its implications were widely discussed in the media. Some involved parties organized a public seminar to discuss the issues of accreditation and certification. Main item was the large number of SMEs, which had problems to have access to the procurement auctions. Participants of the seminar claimed that the costs of

393 Bisnis Indonesia, 14 April 2001. About thousand companies were refused to take part in the local government (DKI) auctions because their certificates issued by Paskali Poerba’s Ardin-DKI were not accepted by the local governments.
395 Bisnis Indonesia, 23 March 2001; see also Bisnis Indonesia, 16 March 2001.
396 Victor Siregar also criticized the maneuver of the chairman of Ardin, Palinggi, to set up a separate Kadin-UKM to stand up for the interests of the SME’s (see later on in this chapter).
397 Four DPD Kadin (Aheh, DKI, East Java, Middle Java) demanded Kadin to expel Palinggi’s Ardin; Suara Karya, 26 July 2001.
398 One of the local Kadinda in North Sumatra, Kadinda Kota Medan, had issued seven hundred and fifty certificates to Ardin North Sumatra. Kadinda North Sumatra (Sumatra Utara), strongly disapproved this move and decided to expel Kadinda Kota Medan. This decision was criticized by nineteen Kadinda Tingkat II Sumatra Utara; see Bisnis Indonesia, 10 April 2001; Bisnis Indonesia, 12 April 2001.
399 Ardin, Gopieknas (Gabungan Pengusaha Kontraktor Nasional Indonesia; the Business Association of Indonesian contractors), business people, cooperatives and the NGO Pakkat Raya.
obtaining a certificate according to the rules of Presidential Decree No. 18/2000 were too high. The participants blamed in particular Kadin, which would not give enough attention to the severe problems of the numerous SMEs in Indonesia. The seminar had an important follow-up. A group of Kadin members took the initiative to establish a separate Kadin-UKM (Indonesian Chamber of Commerce and Industry for SMEs). Referring to Law No. 1/1987, Kadin argued that this initiative was unlawful and it refused to recognize Kadin-UKM. Nevertheless, the initiative was pursued. The new Kadin-UKM did not attract many members. Later the case was brought before court, which in 2005 prohibited the use of the name Kadin–UKM, and consequently Kadin-UKM was dissolved. Formally, Kadin had won the case, but there was not much reason for satisfaction because many SMEs felt disappointed about Kadin.

The Aspanji Case
One of the new business associations created after the publication of Presidential Decree No. 18/2000 was Aspanji. It was a business association consisting of firms providing goods and services in the non-construction sector. It was competing with Ardin. Firms preferred to join Aspanji rather than Ardin, if they expected Aspanji being more successful in lobbying with local or central government authorities to get access to procurement of office projects. Since its creation Aspanji gradually expanded.

Aspanji was one of the business associations supporting the creation of PBSP by Kadin. It worked closely together with PBSP to issue certificates to companies under its jurisdiction. In North Sumatra, a few thousands of certificates were issued. They were, formally, jointly issued by Kadinda North Sumatra and Aspanji North Sumatra. The adopted procedure caused frictions: Kadin wanted that the certificates would be issued by PBSP and by PBSP only. It insisted that PBSP certificates would replace the already issued certificates. Kadinda North Sumatra and Aspanji North Sumatra were very disappointed, to say the least. They even claimed a huge amount of money from Kadin, as compensation for all made costs. The tensions run high. After a few months, the relations between Kadin and Aspanji were restored by a settlement.

400 See also Chapter 4, Section 4.6
402 Elias Tobing from the NGO Pakkat Raya was one of the leading personalities behind the initiative; see Suara Karya, 7 April 2001.
405 Statement by the Chairman of Aspanji West Java Chapter, Gatot Tjahyono, in Pikiran-Rakyat, 20 November 2009.
406 Bisnis Indonesia, 8 December 2000.
The FNKA Case
One of the important organizations, which opposed the issuing of certificates by Kadin’s PBSP was FNKA (Forum Nasional Komunikasi Asosiasi, National Forum for Communication between business associations) that represented 32 business associations and associations of entrepreneurs. The forum was created in April 2001 in order to organize their opposition against the role of Kadin in government procurement procedures. Their opposition was much influenced by the criticism, expressed by three major business associations, about the membership of Kadin. These three business associations wanted a reform of Kadin because of the unbalanced membership of Kadin: business associations and Kadin were members of Kadin, but some individuals were granted the status of member as well. This privileged position of some individuals was a barrier to transparent and balanced decision making, and could be misused in the processes of accreditation and certification. The main reason of FNKA’s opposition was the view of many FNKA members that Kadin had not the authority to issue company certificates. The opposition was so severe, that about a hundred of businessmen went to the city council of Jakarta to request that the provision of certificates would be taken over from Kadin and would be handled again by the local government.

However, the main reason behind FNKA’s objection was the perception among FNKA members that Kadin was not equipped with the authority to issue company certification as stipulated in Presidential Decree No. 18/2000. Kadin insistence to issue company certificates raised strong reaction from the FNKA that mobilized a number of businessmen to protest in front of Jakarta city-council as discussed above.

The Inkindo Case

409 For instance the business associations for the pharmaceutical industries (Gabungan Perusahaan Farmasi); for the Mobile and Car industries (Gabungan Industri Alat-alat Mobil & Motor), for the industries producing Machineries to make Technical Tools (Asosiasi Industri Mesin Perkakas Indonesia); Real estate companies Realestat Indonesia (REI); for consultants (Ikatan Nasional Konsultan Indonesia/ Inkindo) and for steel companies (Asosiasi Industri Pengecoran Logam Indonesia) (Republika, 12 April 2001).
411 Asosiasi Perusahaan Jasa Barang Teknik Elektronik; Gabungan Perusahaan Farmasi Indonesia; Indonesia Gabungan Perusahaan Alat-alat Kesehatan dan Laboratorium
413 Some individual members occupied important posts within Kadin, for instance Bakrie, who was President of Kadin (see Chapter 4). Individual membership of Kadin was granted because of financial contributions to Kadin.
414 Severe criticism was raised: for instance, as Dewan Penasehat Kadin Jabar, Maman Husen Wangsaatmadja blamed PBSP for lack of competence, according to him, the PBSP certificates were not much more than the detested old TDRs (Tanda Daftar Rekanan); Bisnis Indonesia, 18 January 2001.
The collaboration between Kadin and Inkindo to implement Presidential Decree No. 18/2000 started almost as a success story. Inkindo was the first business Association that was accredited by Kadin through BARKI. Therefore, it was entitled to undertake its own certification, which was conducted without serious problems. However, there was a strong upheaval of members of Inkindo West Java. They tried to persuade four thousand consultant companies to resign from Kadin. They argued that Kadin was a sink of high costs and was incapable to satisfy members’ needs.

The cases discussed above shows that the formation of PBSP by Kadin was controversial indeed and created a lot of problems.

6.4 Tension between Kadin and Bappenas

From the very beginning of the drafting of Presidential Decree No. 18/2000 up until its implementation, there has been a lot of friction between Kadin and Bappenas, the main governmental department involved in the auctions for ‘office projects’. Basically, this was because of the totally different views on Kadin’s role in the procurement auctions. In Kadin’s perception, Law No. 1/1987 on Kadin put a responsibility on Kadin’s shoulders: Kadin had to help ensure that the governmental ‘office projects’, financed by the state, were carried out by the most qualified companies. This justified Kadin’s accreditation and certification interventions. Bappenas had a different view: they felt that the procurement of governmental projects had nothing to do with Law No. 1/1987. They stated that the procurement of government projects was a government affair only. The government was the ‘consumer’, and the companies provided a product or service. There was no need for a third party to be involved. Kadin and Bappenas never agreed on this issue.

Apart from the different views on Kadin’s authority concerning project auctions, the relation between Kadin and Bappenas also deteriorated because of the many problems that arose after Kadin created PBSP. The problems sometimes led to strange situations. For instance, during an official meeting of Kadin and Bappenas on 2 July 2002, two Ardins showed up together with their supporters. This led to chaos and caused a great deal of irritation in Bappenas, as they thought that this meant that Kadin was unable to solve its internal problems.

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418 Interview with Datubara (3 July 2003).
419 The old Ardin under Pallingi which was expelled by Kadin, and the new Ardin of Victor Siregar which was acknowledged by Kadin; interview with Datubara (3 July 2003).
Bappenas’ SKB
As a reaction to all the friction and chaos because of the establishment of PBSP, Bappenas and the Ministry of Finance decided to publish an joint official paper to make their position clear: SKB.\textsuperscript{420} In the SKB, the role of Kadin was limited to the accreditation of business associations; the certification was left to the business associations. Kadin responded at once by repeating all the arguments it had used to justify PBSP, in particular the argument that some business associations in the remote provinces did not have the capacity to issue certificates.\textsuperscript{421} Kadin strongly opposed the SKB and even suggested that SKB was intended to restore the former practice of the allocation of office projects as it was done in the days of Soeharto. Meanwhile, Kadin sent a letter to all Kadinda to ignore SKB and continue the PBSP certification.\textsuperscript{422}

Bappenas’ Draft of a New Policy for Government Procurement Auctions
Since the problems of certification continued to exist for so long, Bappenas decided to intervene again. In April 2003, it issued a draft for a new policy to organize the government project procurement auctions.\textsuperscript{423} The new policy implied a revision of Presidential Decree No. 18/2000. The revision would make it easier for SMEs to have access to the procurement of government projects, since projects with a budget of less than 1 billion rupiahs were to be carried out by SMEs only.\textsuperscript{424} Moreover, according to Bappenas, the new system would be much easier and cheaper than the old certification system. In fact, certificates were no longer required but became optional (i.e. also PBSP certificates were no longer obligatory, but optional). Tendering companies just needed to provide some basic information on the firm’s characteristics and the names of contacts. These documents were to be evaluated by the governmental office dealing with the auction. Malpractice by this office would be sanctioned\textsuperscript{425} and according to Bappenas, transparency was ensured by interventions of independent external auditors.

According to Agus Rahadjo, financial director of Bappenas, the accreditation and certification system would make the auctions too expensive.\textsuperscript{426} The certification system would only be effective for big projects; however, most

\textsuperscript{420} SKB: Surat Keputusan Bersama is a ‘policy’ paper issued on behalf of several ministries or government offices. The SKB was published on 10 November 2000; see Suara Karya, 30 November 2000.

\textsuperscript{421} Suara Karya, 4 December 2000; Republika, 2 December 2000; Media Indonesia, 2 December 2000; Kompas, 2 December 2000.

\textsuperscript{422} Republika, 30 November 2000.

\textsuperscript{423} The draft was supposed to be effective in 2004/2005. See Kompas, 4 September 2003, “Revisi Keppres. 18/2000 Baru Berlaku 2004”.

\textsuperscript{424} Media Indonesia, 26 Jan 2003, “Tender Satu Milliar Diserahkan kepada UKM”.

\textsuperscript{425} Up to 5 billion rupiahs.

\textsuperscript{426} The fees for accreditation and certification were not that high, but the cumbersome administrative procedures required skilled people and were very labor intensive.
projects (about 80 per cent) do not fall in this category. The new system was also supported by other government departments. The new policy document did not mention a specific role for Kadin because of Law No. 1/1987. In fact, the revision reflected Bappenas’ view that the procurement of government projects was government business.

Kadin reacted on the publication of Bappenas’ new policy draft by installing an ad hoc committee consisting of high rank Kadin people, in order to prepare an official collective response. This response was discussed and contained a strong protest against Bappenas’ new policy draft. Pungky Bambang Purwadi, chairman of Kadinda-KDI, formulated his views as follows:

Bappenas proposes a draft that does not show any attempt to execute more reliable auctions for government procurement. Certification is no longer relevant, and therefore the role of the business institutions like Kadin is undermined … Kadin opposes the Bappenas draft, which increases non-transparency of government procurement auctions and therefore is likely to lead to KKN.

H.W. Pawennei, former chairman of Ardin, was also skeptical about Bappenas’ policy revision, and especially about its claim that it would help SMEs. In his view, it would not help SMEs much, since in practice big businesses may disguise themselves as SMEs by forming groups of SMEs which they control. The fact that big businesses can register as SMEs is a real barrier for the effective implementation of the new policy. He also stated that many SMEs, even if they have been successful in the auctions, do not have the means to (pre)finance the projects, and therefore they have to find big businesses for financial support. Big businesses anticipate on these possible events. In some

427 For instance by Harmawan Kaeni, head of the Planning and Programming Department of the Ministry, responsible for public housing and regional infrastructure.
428 In my interview (on 3 July 2003) with Datubara he made it clear that he was very disappointed about this omission.
429 The committee (Tim Kadin Indonesia Untuk Mempersiapkan Usul Penyempurnaan/Perubahan Keppres. 18/2000 dan Petunjuk Teknisnya) was chaired by Pungky Bambang Purwadi, chairman of Kadinda-DKI. Several representatives, like Sofwan Arfan and Datubara, were members of the committee.
430 Most participants in the discussions were representatives from Kadinda, both at a national and a regional level, rather than from business associations.
431 On 26 April 2003 the committee (Tim Kadin Indonesia Untuk Mempersiapkan Usul Penyempurnaan/Perubahan Keppres. 18/2000 dan Petunjuk Teknisnya) organized a public conference where proposals by the committee for a collective response were discussed and amended.
432 This view is shared by Datubara, who in his interview stated that although SMEs are given access to auctions, in a competition they will be defeated by big companies because of the available finances. SMEs should be indicated specifically, as well as ‘SME projects’.
cases, SMEs that had secured a contract were unable to start the project because of the lack of capital. In such a situation, the SMEs tended to turn to the big businesses.

Kadin’s joint response also commented on the efficiency and costs of Bappenas’ proposed procedures. Kadin claimed that their certification schemes could be handled in less time and were less costly than the Bappenas procedures; this was in fact true since in the Bappenas scheme all procedures had to be repeated for each project. If companies wanted to tender for more projects (which was often the case), they had to deal with a huge amount of paperwork. The certificates issued by Kadin’s PBSP or by business associations would allow the participation in auctions for different projects.

Kadin’s main objections against Bappenas’ new system dealt however with the lack of transparency and Bappenas’ unwillingness to delegate economic power to extra-state actors. The new system would mean a setback in the process of the decentralization of economic power.

The divergences between Kadin and Bappenas reached a level that made compromises impossible. Finally, the dossier was handed over to President Megawati Soekarnoputri, the successor of Abdurrachman Wahid. Unfortunately for Kadin, in 2004 the President decided to make Kadin’s certification by PBSP optional rather than compulsory. Consequently, the importance of having such a certification procedure diminished dramatically. The entire issue was no longer seen as that important.

6.5 Summary and Conclusions

The case study of this chapter deals with the regulation of the procurement by the government of ‘office projects’ (e.g. the construction of railways and highways, the construction and maintenance of school buildings, teaching materials, etc.). In the days of Soeharto, such projects were allocated to private companies through direct assignment or auctions. Private companies could only participate in the auctions if they were officially registered. Registration was only possible if the companies were a member of one of the three official business associations. The criteria of assignment and registration were not at all transparent, and the procedure excluded many companies. Two years after

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433 In my interview (on 3 July 2003) with Datubara, he was very disappointed about this omission.
434 In August 2007 a process was started to create an influential institute dealing with government procurement; the institute was to be operational from 2008 (see Kontan, Minggu V, August 2007, “Jangan Sampai Menjadi Preman Tender”). This institute, linked to several important government institutes, will operate directly under the president and is called LKPP (Lembaga Kebijakan Pengadaan Barang dan Jasa Pemerintah). The institute will monitor auctions, may cancel the results of auctions, consult parties involved in the auctions, and will function as a mediator in dispute settlement.
Soeharto stepped down, President Abdurrachman Wahid issued Presidential Decree No.18/2000 to govern the future procurement of government projects. Direct assignment was abolished; procurement of projects would only take place at auctions. Companies could only tender in such auctions if they were a member of an accredited association. Moreover, they needed a quality certification. The power of accrediting business associations was given to Kadin.

The implementation of Presidential Decree No. 18/2000 was very problematic. The main controversy was the process of certification. Bappenas and Kadin, major actors in the process of implementing Presidential Decree No. 18/2000, had very different views on the issue. Bappenas shared the view of many business associations that it should be the business associations’ responsibility to issue quality certificates allowing the participation in auctions. In Kadin’s view, the proposed process of certification would create a lot of problems. Some business associations were not prepared for the task of issuing certificates, for instance because they had no regional branches, which would mean that certification in remote provinces could not be organized efficiently. These and other possible problems led Kadin to take the initiative and create its own organ to issue certificates, in particular for companies in the provinces; this organ consisted of a joint committee, PBSP, consisting of members of Kadinda and co-operating business associations. According to the official argumentation by Kadin, PBSP would issue certificates on behalf of the co-operating business associations, and Kadin would only be responsible for co-ordinating. PBSP would fill a gap if business associations lacked the capacity to issue certificates themselves. The creation of PBSP by Kadin was very controversial and met a lot of resistance both within and outside Kadin. According to the opponents, Kadin’s mandate should be limited to an independent monitor of the process of certification. If it were to issue certificates itself, this would make Kadin’s role as an independent monitor impossible. The issue continued to raise opposition by several important business associations and led to increasing tensions between Bappenas and Kadin. At some stage, when a deadlock seemed to have been reached, the dossier was handed over to the new President, Soekarnoputri, the successor of Wahid. In 2004 she decided to make Kadin’s certification by PBSP optional, which drastically reduced the importance of the issue; gradually, tension was reduced.

In no other case discussed in this thesis, the role of Kadin caused so many problems as in this case study. I will try to explain why Kadin’s role was so problematic and what went wrong. First, I would like to emphasize that it is not surprising that there are problems and friction as a reaction to a new policy to regulate procurement of office projects: after all, great economic interests were at stake. For most companies Presidential Decree No. 18/2000 implied new positions on the economic chessboard. Some business associations and companies lost influence and power (in terms of easier access to project...
auctions), other ones found new opportunities for gaining access to the auctions. It is no surprise that in a competitive environment, such changing positions lead to protests and friction. However, the extent to which Kadin’s interventions created problems went far beyond a ‘natural protest’ against a change in the rules of the game: the positions hardened, arguments were repeated again and again, and no compromise could be found.

In defending its interventions of accreditation and certification, Kadin kept referring to Law No. 1/1987 on Kadin, especially Chapter IV, Article 8, where it says that:

... the Indonesia Chamber of Commerce can also conduct: a. various services in forms of registration, arbitration, and recommendations on Indonesia business, including legalizing letters recognizing business companies …

From such texts Kadin deduced its claims to play for instance a role in the procurement auctions and to intervene by creating PBSP. The texts in Law No. 1/1987 were formulated vaguely, and carried all traces of a compromise between government and business sector. Kadin wanted a transfer of power to the private sector, the Soeharto government resisted. The interpretation of almost all texts left much room for maneuvering. They were in no way a foundation for a strong and well-defined position of Kadin; interventions by Kadin were rather ad hoc and depended on the approval of the government. Ever since 1987, Law No. 1/1987 on Kadin was never a sound legal foundation for Kadin’s claimed responsibilities. Why would this change after 2000?

Kadin insisting on Law No. 1/1987 was doomed to fail. Even if Kadin had been mentioned in the main text of Presidential Decree No. 18/2000 instead of in the Technical Guidance, this would probably not have changed a lot. The text of Law No. 1/1987 was too vague and ambiguous, and led to various interpretations. Instead of insisting on this act, it would have been much more useful if a dialogue between Kadin and Bappenas had taken place to address the main issues of the procurement of office projects. Bappenas made a point by arguing that the government was the ‘consumer’, and private companies were providing a product or service; why should a third party come in? This is a basic question. No government, anywhere in the world, is competent to judge the technical and managerial quality of proposals for office projects, that are related to so many domains of economic life. It has to rely on independent advisors, peers or institutions to evaluate project proposals. Many procedures could be set up to acquire independent quality advice; many scenarios are possible: one of them would be that the Chamber of Commerce were to play a role. This Chamber of Commerce may indeed mobilize enough expertise to furnish proper

advice or to monitor processes to furnish such advice.\textsuperscript{436} For quality advice, the government of Indonesia could certainly turn to Kadin, provided that it could expect the advice to be set up in an appropriate way: based on transparent and clear criteria, efficiently and independently, without any external influence or pressure from politics or people. Whether the present case study shows much evidence that Kadin could meet such expectations will be discussed below.

A role of Kadin as an independent monitor of processes of quality evaluation, and thus as an actor in procurement auctions, can only be successful if the government of Indonesia, in particular Bappenas, members of parliament and the public believe Kadin to be a competent and independent authority, capable of defending the interests of the whole business sector. To a large extent, this faith depends on the confidence that the business sector itself has in Kadin. Is Kadin seen as an independent organization, with transparent rules and regulations, with a management that is accountable and that does not favor influential members? Our case study shows that this was not the case (yet). In spite of many laudable efforts to have internal debates and procedures to arrive at collective responses, the case study shows that Kadin still showed institutional weaknesses. In fact, the dissatisfaction on Kadin’s envisaged role in the procurement of office projects led to a lot of criticism on the Kadin organization. One point of criticism refers to the issue of membership. Many Kadin members are not satisfied with Kadin’s regulations on membership and voting rights. Especially the privileged rights of some influential individuals are criticized. Also the relation between Kadin and the business associations and the autonomy of the business associations has not yet been sorted out. Last but not least, there is a lot of dissatisfaction among the SMEs, which claim that Kadin does not do enough to defend their interests. In particular in this case study, where the grand majority of the office projects are executed by SMEs, this point has raised a lot of unrest. These weaknesses challenged Kadin’s credibility as the organization defending the interests of the entire business sector.

To conclude the analysis in this chapter, the friction due to the problematic implementation of Presidential Decree No. 18/2000 made institutional weaknesses of Kadin visible. Kadin’s management and influential elite did not seem to be very aware of these.\textsuperscript{437} Due to this shortcoming, Kadin was not able to properly assess the feasibility of its own interventions in the process of implementation of Presidential Decree No. 18/2000.\textsuperscript{438} Kadin seemed

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\textsuperscript{436} Here many issues are at stake, the definitions of quality, criteria of quality, competence of the tendering companies, criteria of competence, etc.

\textsuperscript{437} In almost all interviews with officials of Kadin about this case study, the critical comments dealt with the reactions of opponents. A critical reflection on Kadin’s own functioning and its impact is lacking.

\textsuperscript{438} Kadin made also some strategic errors, the opponents were right by saying that Kadin’s decision to issue certificates itself would be inconsistent with its role of independent monitoring of processes of certification.
\end{small}
to be obsessed by its (justified) struggle for the transfer of economic power from the government to the private sector and for transparency of the procurement auctions. However justified this objective was, it was not the full problem. Even if a substantial part of the authority on the auctions had been transferred to the private sector and the auctions had been much more transparent, this would not guarantee that ‘the office projects were to be carried out by the most qualified companies in a most efficient way’. This last issue would require a lot of preparation, great involvement by and many discussions with business associations. Many more aspects play a role – not just procedures of accreditation and certification: quality measurement, quality control, standardization of product, international standards and requirements, safety, environmental constraints, pollution, etc. All these aspects are important in view of a growing need to adapt to international standards, required by, for instance, WTO and AFTA. Instead of a defensive struggle for authority, Kadin had better invested in increasing its credibility by building up competence to make sure ‘the office projects were to be carried out by the most qualified companies in a most efficient way’.