

LEGAL REVIEW OF GOVERNMENT PROCUREMENT OF GOODS AND SERVICES ADMINISTRATION

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Abstract: Indonesia is now actively pursuing development in all lines, one of which is carrying out government procurement of goods and services carried out by government agencies. The procurement process of goods and services must involve various related parties, so that the application of ethics, norms, and procurement principles is needed as a basis for determining appropriate policies in the procurement of goods and services. The regulatory function in administrative law plays a crucial role in forming an accountable procurement paradigm. However, the rampant practice of corruption in the procurement of goods and services currently shows that the regulatory function in administrative law is still not optimal. One example is the requirement for companies to participate in tenders, where existing regulations have not been fully able to encourage companies to build integrity, such as through anti-bribery certification. Therefore, administrative law through its regulatory function should be able to play a role as an instrument in building a procurement paradigm of goods and services based on the principle of accountability.

Keywords: Legal Review, Administration, Procurement of Government Goods and Services.

Introduction

Indonesia is now actively pursuing development in all sectors, one of which is carrying out government procurement of goods and services carried out by government agencies, especially in its status as a developing country (growing country). (Musa Darwin Pane, 2017). Procurement of goods and services by the government aims to improve social justice and the welfare of society throughout Indonesia. To achieve this goal, the government must meet various community needs, including in the provision of infrastructure, services, and goods. The procurement process must be based on the principle of accountability in order to produce effective procurement in improving community welfare and ensuring the protection and fulfillment of human rights. However, procurement of goods and services often becomes a loophole for corrupt practices in various government institutions and agencies, both at the central, regional, and other levels.

The procurement process for goods and services must involve various related parties, so that it is necessary to apply ethics, norms and procurement principles as a basis for determining appropriate policies in the procurement of goods and services. (Adrian Sutedi, 2010). The government is trying to regulate procurement policies for goods and services, based on regulations:

1. Law of the Republic of Indonesia Number 17 of 2003 concerning State Finance;
2. Law of the Republic of Indonesia Number 1 of 2004 concerning State Treasury;
3. Law of the Republic of Indonesia Number 15 of 2004 concerning Audit of Management and Accountability of State Finance;

4. Presidential Regulation of the Republic of Indonesia Number 70 of 2012 concerning Amendments to Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods and Services.

In the implementation of procurement of goods and services, there are often deviations that are classified as criminal acts of corruption. This problem carries legal risks for Procurement Officers, Users of goods and services, and Providers of goods and services, starting from the budget planning stage, procurement preparation, to the payment handover process, supervision, and accountability. Problems in procurement are not only a matter of administrative procedures that must be managed professionally and accountably, but also reflect the need for a more transparent system. In addition, procurement audits tend to be formal in nature rather than audits that assess material substance.

Literature Review

Government Procurement of Goods and Services

In running public services, every agency or institution requires various operational goods so that the service process can run optimally. When public services run effectively and without obstacles, the level of public satisfaction will increase (Jawade Hafidz Arsyad, 2018).

Public goods or services are products whose use is related to the interests of the wider community, both in groups and in general. Meanwhile, private goods or services are products that are only used by certain individuals or groups. Based on this classification, a good or service can be categorized as a public or private good, depending on how it is used.

Public goods or services refer to goods whose use is related to the interests of the wider community, either in a group or in general. Meanwhile, private goods or services are goods whose use is limited to certain individuals or groups. Based on this classification, a good or service can be categorized as a public good or a private good, depending on the purpose and method of use.

In order to meet the needs of goods and services for agencies or institutions, the government carries out the procurement process of goods and services known as public procurement. Public procurement refers to the procurement of goods and services carried out by the government. According to the legal dictionary, procurement of goods and services is defined as the activity of contracting out work or assigning another party to carry out all or part of the work in accordance with the provisions of the contract that have been agreed upon by both parties before the implementation of the contract (Marzuqi Yahya, 2012).

Performing work means handing over, providing, or transferring a task to another party to do all or part of the work with certain provisions that have been agreed upon in an agreement or contract before the work begins. The party given the responsibility to carry out the work must have adequate expertise and understanding in the relevant field.

In the process of government procurement of goods and services, there are various parties that are related to each other. Each party involved must understand and exercise their rights and obligations in accordance with applicable regulations. A transparent attitude and open communication are needed so that the procurement process can run smoothly without harming any party. Although good cooperation between the related parties is highly recommended, the authority held must not be misused to obtain personal gain that has the potential to harm state finances.

Method

A study cannot be said to be research if it does not have a research method (Simatupang, 2024). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out

naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Rahimah, 2022). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Zainuddin 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Koto, 2021).

Result and Discussion

State administrative law is basically a collection of regulations that regulate guidelines for government institutions in carrying out their duties and functions. This is in line with the views of H.D. van Wijk and Willem Konijnenbelt in Ridwan HR, which states that state administrative law includes all legal regulations relating to government, administration, and the legal system. State administrative law contains provisions that regulate various government activities (Ridwan HR, 2021).

According to S.F. Marbun, the functions of administrative law include:

1. Strategies used by state administration to coordinate, balance, and manage the interests of different communities;
2. To create legal certainty, provide legal protection to citizens and state officials;
3. Control the ways in which the community can influence the formulation of public policy;
4. Establish systematic management of government operations to prevent illegal activities (onrechtmatige overheidsdaad), arbitrary behavior (willekeur/a bus de troit), and abuse of authority (detournement de pouvoir);
5. Ensure responsibility, openness, effectiveness, and improve good governance;
6. Form a mindset, cultural pattern, and behavioral attitude in order to realize democratic, impartial, and professional state management;
7. Lay the foundation for the implementation of good governance (S.F. Marbun, 2018).

The previously explained legal functions are closely related to building a paradigm. Administrative law plays a role in shaping mindsets, attitudes, and culture, both for the government and the community. In the context of procurement of goods and services, for example, the administrative legal aspect functions as a control instrument to ensure a transparent and accountable procurement process. This role is in line with one of the main functions of administrative law, namely as a regulatory tool.

The regulatory function in administrative law plays a crucial role in forming an accountable procurement paradigm. However, the rampant practice of corruption in the procurement of goods and services currently shows that the regulatory function in administrative law is still not optimal. One example is the requirement for companies to participate in tenders, where existing regulations have not been fully able to encourage companies to build integrity, such as through anti-bribery certification. Therefore, administrative law through its regulatory function should be able to act as an instrument in building a procurement paradigm based on the principle of accountability. The existence of administrative law as a tool to form a new paradigm, especially in the procurement of goods and services, cannot be separated from the function of law as a means of control and social engineering (law as a tool of social engineering), as stated by Roscoe Pound. Thus, law functions as an instrument to renew and engineer society, one of which is through regulation in administrative law.

Procurement of goods and services is a process to obtain or realize the goods and services needed with methods and time in accordance with applicable regulations. This process is carried out by parties who have expertise in the field of procurement. Budget User (PA) is an official who has the authority to manage the budget at a Ministry, Institution, or Regional Work Unit (SKPD). Officials appointed by the PA are responsible for the use of the State Budget (APBN) or are appointed by the Regional Head to manage the Regional Budget (APBD). Budget User Authorization (KPA) at Ministries, Institutions, and other central institutions are officials appointed by the PA, while at the Regional Government level, the KPA is appointed by the Regional Head or upon the PA's proposal. For deconcentration funds and assistance tasks, the KPA is appointed by the PA at other central Ministries/Institutions/Institutions or upon the proposal of the Regional Head. The KPA has the authority granted by the PA through the delegation of authority.

The Commitment Making Officer (PPK) is an official who is responsible for the implementation of procurement of goods and services. PPK has the task and authority to prepare technical specifications for goods or services to be programmed, determine the Self-Estimated Price (HPS) as the upper limit of the permitted contract value, sign procurement contracts with providers of goods and services, supervise the implementation of contracts, and make decisions in the event of disputes or problems during the implementation of the contract. The Goods/Services Procurement Work Unit (UKPBJ) is a government organizational unit that functions as a center of excellence in the procurement of goods and services in Ministries, Institutions, or Regional Governments. UKPBJ consists of procurement officials who have the status of Civil Servants (PNS) and have a certificate of expertise in the procurement of goods and services in order to carry out procurement tasks professionally.

Conclusion

Regulations and provisions related to Government Procurement of Goods and Services, including the stages and procedures that have been established, can be said to be quite good. However, in practice in the field, there are still frequent deviations committed by government officials and providers of goods and services. Administrative law has an important role in shaping attitudes, mindsets, and cultural norms that can be applied in the procurement process, both for the government as a service user and for business actors as providers of goods and services. As an instrument of social engineering and control, law functions to encourage change and the formation of a more transparent system. In this case, administrative law plays a special role in building a new paradigm that is more accountable in the procurement of goods and services.

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