

## Legal Protection For Deep Vendors Procurement Of Government Goods And Services

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**Abstract:** *The procurement of goods/services for government purposes is one of the instruments driving the economy; therefore, budget absorption through procurement is crucial. However, no less important is the implementation of effective, efficient, and economical procurement to maximize the benefits of budget utilization. This research is normative and employs a statutory approach. The data analysis method used is descriptive qualitative, in which data is presented descriptively and analyzed qualitatively. This study focuses on legal protection for goods/services providers in procurement agreements. Such legal protection is regulated under Article 85 of Presidential Regulation No. 12 of 2021, which establishes mechanisms for contract dispute resolution through dispute resolution services, arbitration, the Construction Dispute Board, or court proceedings. In the era of Disruption 4.0 and the challenges of VUCA (Volatility, Uncertainty, Complexity, Ambiguity), the government encourages the involvement of the private sector and society through e-purchasing via electronic catalogs. E-procurement serves as a solution to improving the efficiency of national financial management. Disputes arising from defaults in government procurement of goods/services may result in administrative sanctions or civil lawsuits, as stipulated in Presidential Regulation No. 12 of 2021..*

**Keyword :** *Legal Protection, Goods/Services Provider, Goods/Services Procurement Contract.*

## INTRODUCTION

Government procurement of goods and services is a legal process that involves a civil relationship between the Commitment Making Officer (PPK) and the goods/service provider, where both parties sign a contract as an effort to meet the needs of goods/service users. The agreement in this procurement is generally stated in the form of a letter of agreement or deed of agreement under hand, in accordance with the provisions of regulations that only require a written form without requiring the making of a notary deed.<sup>1</sup> As a civil contract, this agreement must meet the legal conditions as stipulated in Article 1320 of the Civil Code, namely the existence of an agreement, expertise, certain objects, and halal causes.<sup>2</sup> The regulations that are

<sup>1</sup> Lie, C., Clarosa, V., Yonatan, Y. A., & Hadiati, M. (2023). Pengenalan Hukum Kontrak Dalam Hukum Perdata Indonesia. *Jurnal Kewarganegaraan*, 7(1), 918-924.

<sup>2</sup> Syamsiah, D. (2021). Kajian Terkait Keabsahan Perjanjian E-Commerce Bila Ditinjau Dari Pasal 1320 Kuhperdata Tentang Syarat Sah Perjanjian. *Jurnal Inovasi Penelitian*, 2(1), 327-332.



the legal basis for this procurement include the Civil Code (Civil Code), Presidential Regulation Number 12 of 2021 concerning the Procurement of Government Goods/Services, and LKPP Regulation Number 9 of 2018 concerning Guidelines for the Implementation of Procurement of Goods/Services through Suppliers.

Legal protection in the procurement of government goods and services aims to provide legal certainty and guarantee the rights and obligations of the parties involved.<sup>3</sup> This form of legal protection is divided into preventive and repressive legal protection. Preventive legal protection allows the relevant parties to submit objections or opinions before a final decision is made, with the aim of preventing disputes. In the procurement of goods and services, this is realized through the preparation of transparent contracts, competitive auction mechanisms, and the opportunity for tender participants to file objections if they feel disadvantaged. Meanwhile, the protection of repressive law aims to resolve disputes that have occurred, either through administrative mechanisms, mediation, arbitration, or court channels, both in the general court and the state administrative court.

Every implementation of government procurement of goods and services has the potential to have legal implications, both for the implementation of contracts, providers of goods/services, and the government as users of goods/services. If one of the parties does not carry out its obligations as stated in the contract, then there may be a default that results in the imposition of sanctions, such as fines or unilateral termination of the contract. Providers of goods/services that are proven to have committed violations, such as manipulation of tender data, bribery, or the provision of goods that do not meet standards, can be subject to administrative sanctions in the form of blacklists to criminal sanctions.<sup>4</sup> On the other hand, the government as a user of goods/services also has a legal responsibility to carry out the procurement process in accordance with the principles of transparency and accountability. In the event of abuse of authority, the officials involved may be subject to administrative and criminal sanctions based on Law Number 31 of 1999 concerning the Eradication of Corruption.

Therefore, compliance with applicable regulations is a crucial aspect in the implementation of government procurement of goods and services. In addition to preventing potential disputes, this compliance also ensures that the procurement process takes place fairly and efficiently and provides optimal benefits for the government and the community. With a clear legal protection mechanism, it is hoped that the procurement of government goods and services can be carried out properly in accordance with the principles of justice, certainty, and legal utility. For this reason, further studies on the legal aspects in the procurement of government goods and services need to be carried out in order to better understand the legal consequences that arise and effective dispute resolution strategies in practice

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<sup>3</sup> Fista, Y. L., Machmud, A., & Suartini, S. (2023). Consumer legal protection in e-commerce transactions is reviewed from the perspective of consumer protection laws. *Binamulia Law*, 12(1), 177-189.

<sup>4</sup> Farghani, R. F., & Sulistiyono, A. (2024, December). Law Enforcement Of Unfair Business Competition In The Procurement Of Goods And Services. In *Proceedings Of The International Conference On Cultural Policy And Sustainable Development (Icpsd 2024)*. (P. 129). Springer Nature.

## METHOD

The research was conducted using the normative juridical approach method with analytical descriptive research specifications. Primary and secondary legal materials that have been successfully collected and inventoried through literature study techniques are sought to become a complete unit. Furthermore, the data is analyzed qualitatively so that clarity and answers about the problems that are the object of the research are obtained.

## DISCUSSION

The implementation of government procurement of goods/services has a lot of potential for violations of laws and regulations. Starting from abuse of authority, unlawful acts (onrechmatigedaad), and criminal acts of corruption. Consequently, government goods/services procurement organizations have responsibilities as civil servants and as individuals. The form of accountability can be sanctioned in the form of compensation claims, administrative sanctions, and criminal sanctions. Government procurement activities that have been regulated by various regulations still cause many problems that result in state financial losses. The implementation of government procurement of goods/services is very vulnerable to various types of violations of the law, ranging from non-fulfillment of contracts (defaults), tender conspiracies, abuse of authority, to corruption.<sup>5</sup> Based on this phenomenon, the researcher limited the scope of this study by trying to answer the following questions. 1. What are the legal aspects contained in government goods/services procurement activities. 2. What are the legal consequences of government goods/services procurement activities based on related legal aspects.

Government Goods/Services Procurement Mechanism Government goods/services procurement is an activity to obtain goods/services by other Ministries/Institutions/Regional Apparatus Work Units/Institutions whose process starts from planning needs to the completion of all activities to obtain goods/services.<sup>6</sup> The scope of government procurement of goods/services includes procurement within Ministries/Institutions/Regions/Institutions (K/L/D/I) whose financing, either partially or fully, is sourced from the State Budget/Regional Budget. In addition, it also includes procurement for investment within Bank Indonesia, State-Owned Legal Entities, and State/Regional Owned Enterprises whose financing is charged to the State Budget/APBD. The government's procurement policy aims to increase the use of domestic production to expand employment opportunities and strengthen the national industrial base. In addition, this policy is also oriented towards the independence of the defense industry, the main tools of the weapon system (Alutsista), and special material tools (Almatsus).

The procurement of goods/services is also directed to increase the participation of micro enterprises, small businesses, small cooperatives, and community groups, while still paying attention to the use of natural resources and environmental conservation to support sustainable development. The use of information technology and electronic transactions in the procurement process is an important part of increasing efficiency. In addition, simplification of regulations and procedures is carried out to speed up decision-making, as well as increase professionalism, independence, and responsibility in the implementation of

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<sup>5</sup> Susanto, E. A., & Widodo, E. (2024). Penegakan Hukum Terhadap Pelaku Tindak Pidana Korupsi Dalam Pengadaan Barang Pemerintah. *Jurnal Penelitian Ilmiah Multidisiplin*, 8(10).

<sup>6</sup> Seputra, G. N. M., & Ardana, D. M. J. (2023). Pelaksanaan Pengadaan Barang Dan Jasa Pemerintah Di Lembaga Penyiaran Publik Radio Republik Indonesia Singaraja. *Locus*, 15(2), 57-74.

procurement. This procurement also aims to increase state revenue through the tax sector, grow the role of national businesses, and encourage creative and innovative industries based on culture and domestic research results.<sup>7</sup> The use of research and development facilities in the country is part of the strategy in optimizing procurement. The entire procurement process must be carried out within the territory of the Republic of Indonesia, including at the Representative Office of the Republic of Indonesia, and publicly announced to the public.

In addition, the procurement of government goods/services must be carried out based on the main principles, namely efficiency, effectiveness, transparency, openness, fair competition, justice without discrimination, and accountability. Efficiency means the use of funds and resources to the minimum to achieve optimal results. Effectiveness refers to conformity with the needs and goals that have been set. Transparency ensures information disclosure to the public and prospective providers of goods/services. Openness allows all eligible parties to participate in procurement. Fair competition ensures that the procurement process runs competitively without interference that disrupts market mechanisms. The principle of fairness ensures equal treatment for all providers without benefiting any particular party.<sup>8</sup> Meanwhile, accountability requires compliance with applicable rules and regulations.

The parties involved in the procurement of government goods/services consist of users of goods/services and providers of goods/services. Goods/services users include procurement organizations, such as Budget Users/Budget User Powers (PA/KPA), Commitment Making Officials (PPK), Procurement Service Units (ULP)/Procurement Officials, and Work Result Recipient Committees/Officials. Meanwhile, goods/service providers are business entities or individuals, both micro, small, and cooperative enterprises, that meet the requirements according to Presidential Regulation No. 12 of 2021.

The approach used in research related to government procurement of goods/services is a normative juridical approach, which is a research procedure that aims to find the truth based on legal logic. An analysis was carried out on the legal aspects of the implementation of government procurement of goods/services and their legal impact based on Presidential Regulation Number 12 of 2021, which is associated with Law Number 17 of 2003 concerning State Finance and Law Number 1 of 2004 concerning the State Treasury. The procurement of goods/services starts from the needs of the government in the implementation of institutions whose implementation must be in accordance with the provisions of the law. This process must be done electronically (e-procurement) to increase transparency and accountability. All procurement activities must be well planned in the General Procurement Plan (RUP) so that the implementation is effective and efficient in accordance with the principles stipulated in Article 5 of Presidential Regulation No. 54 of 2010. In each stage of procurement, the provider of goods/services has a different role, starting from the auction participant, the winner of the auction after being determined, to the official provider after the contract signing.

<sup>7</sup> Surya, B., Menne, F., Sabhan, H., Suriani, S., Abubakar, H., & Idris, M. (2021). Economic Growth, Increasing Productivity Of Smes, And Open Innovation. *Journal Of Open Innovation: Technology, Market, And Complexity*, 7(1), 20.

<sup>8</sup> Neary, M. A. (2021). State Government Procurement Of Electronic Legal Services. *The Political Economy Of Legal Information*, 43-58.

In the position of a provider of goods/services, the provider deals directly with the PPK. The status as a provider is attached to the provider after the signing of the contract, where the provider is one of the parties that binds itself to carry out the procurement activities of goods/services as stated in the contract document. Rights and obligations in the procurement of goods and services are a legal agreement born by an agreement and have two sides, namely the obligations carried by one party and the rights or benefits obtained by the other party, namely the rights to the implementation of something that is covered by the agreement.

An agreement is generally reciprocal or bilateral, where each party not only acquires rights but also has obligations that are the opposite of those rights. The relationship between rights and obligations must be logical, so that the set of rights of a party is inversely proportional to the set of obligations, and so is the case with the other party. In the context of procurement of goods/services, the rights and obligations of the goods/services provider are inversely proportional to the rights and obligations of the users of goods/services. The provider of goods/services has the right to demand payment in accordance with the agreement in the contract and is obliged to complete the work on time and at the designated location. Meanwhile, the user of goods/services has the right to demand the completion of work in accordance with the contract, but is also obliged to prepare procurement planning, appoint a procurement committee, control the implementation of the agreement, and be administratively, physically, financially, and functionally responsible for the procurement.<sup>9</sup>

In the procurement of government goods/services, there is legal protection which is divided into several stages. The preparation stage is within the scope of the State Administrative Law, where the Budget User/Budget User Proxy (KPA) has full authority based on applicable regulations. The KPA establishes a general policy related to the procurement of goods/services that fall within the scope of *fries ermessen*, namely the freedom for officials to assess and consider an action in the government.<sup>10</sup> In addition to KPA, other parties involved in procurement are Commitment Making Officials (PPK), Procurement Service Units (ULP)/Procurement Officials, and Committees/Work Results Recipients. Procurement officials act personally in legal relations, so that in the event of a state loss, they are obliged to be personally responsible as stipulated in Article 18 paragraph (3) of Law No. 1 of 2004 concerning the State Treasury.<sup>11</sup>

Furthermore, at the stage of determining the provider of goods/services, the ULP or Procurement Officer is in charge of preparing an election plan, determining procurement documents, and announcing an auction through LPSE in the National Procurement Portal. After the goods/services provider is selected, they will sign a contract with the PPK as the basis for the engagement in the procurement of goods/services. According to the Civil Code, an agreement can be born from a law or agreement, and a contract is considered valid if it meets the requirements in Article 1320 of the Civil Code, namely the existence of an

<sup>9</sup> Husein, S. (2020). Implementasi Peraturan Presiden No 13 Tahun 2018 Dalam Pengadaan Barang/Jasa Pemerintah (Putusan Nomor 04/Kppu-L/2018). *Indonesian Notary*, 2(1), 39.

<sup>10</sup> Tahap Persiapan Berada Dalam Lingkup Hukum Administrasi Negara, Di Mana Pengguna Anggaran/Kuasa Pengguna Anggaran (Kpa) Memiliki Kewenangan Penuh Berdasarkan Peraturan Yang Berlaku. Kpa Menetapkan Kebijakan Umum Terkait Pengadaan Barang/Jasa Yang Masuk Dalam Ruang Lingkup *Fries Ermessen*, Yaitu Kebebasan Bagi Pejabat Untuk Menilai Dan Mempertimbangkan Suatu Tindakan Dalam Pemerintahan

<sup>11</sup> Albab, M. U., & Halim, A. (2020). Analisis Pelaksanaan Pengadaan Barang/Jasa Pemerintah (Studi Pada Unit Layanan Pengadaan Daerah Kementerian Keuangan Provinsi Daerah Istimewa Yogyakarta). *Abis: Accounting And Business Information Systems Journal*, 5(4).



agreement between the parties, legal competence, a clear object, and a halal purpose.<sup>12</sup> The form of contract in the procurement of government goods/services can be in the form of proof of purchase, receipt, Work Order (SPK), or agreement letter as stipulated in Presidential Regulation No. 12 of 2021.

The final stage is the handover of work or the expiration of the contract. As a reciprocal agreement, the right of the goods/services provider to receive payment can only be fulfilled after the obligation to complete the work is fulfilled. On the other hand, the user of the goods/services has an obligation to pay after the work is completed. If the provider of goods/services fails to fulfill its obligations, it can be categorized as a default or even an unlawful act as stipulated in Article 1365 of the Civil Code.<sup>13</sup> All stages of procurement of government goods/services cannot be separated from the aspect of Criminal Law, considering that the funds used come from the State Budget/APBD and are part of public law. If there is a violation, either by the user or the provider of goods/services, then they can be held accountable according to the applicable regulations.

This is in accordance with the principle of the Criminal Law "Geen straf zonder schuld" which means there is no punishment without guilt. The point prone to irregularities in the procurement of government goods/services, which is categorized as a criminal act, occurs at the procurement planning stage, such as indications of budget inflation or mark-up, the implementation of directed procurement, unification engineering and/or breaking procurement packages with the intention of collusion, corruption or nepotism (KKN) that is detrimental to the state. Other crime prone points can also occur at the company qualification stage, procurement evaluation stage, contract signing stage, and delivery of unqualified and low-quality goods that can cause state losses. Providers of goods/services are also not spared from criminal behavior, for example, forging documents, including borrowing flags and fictitious addresses from suppliers, breaking promises to carry out work (defaults) so that there are elements of unlawful acts that result in losses to the state.<sup>14</sup>

However, it is necessary to pay attention to the principle of "There is no crime without fault" in the Criminal Law. To impose a criminal sentence on a person who commits a criminal act, there must be an element of guilt in the person. Also known as the principle of "Presumption of innocence" or the principle of presumption of innocence, a person is presumed innocent before there is a judge's decision declaring him guilty and the judge's decision has permanent legal force.<sup>15</sup> In relation to the State Administrative Law, procurement has several legal consequences that will occur to government goods/services procurement organizations. Civil servants, who carry out the procurement of government goods/services of the

<sup>12</sup> Romli, M. (2021). Konsep Syarat Sah Akad Dalam Hukum Islam Dan Syarat Sah Perjanjian Dalam Pasal 1320 Kuh Perdata. *Jurnal Tahkim*, 17(2), 173-188.

<sup>13</sup> Aritonang, S., Siregar, M., Purba, H., & Leviza, J. (2022). Tanggung Jawab Kontraktor Terhadap Kontrak Kerja Konstruksi Yang Tidak Mencantumkan Rencana Umur Konstruksi (Studi: Kontrak Kerja Konstruksi Oleh Dan Antara Dinas Pupr Kabupaten Labuhanbatu Selatan Dengan Cv. Karya Jasa Utama). *Mahadi: Indonesia Journal Of Law*, 1(2), 259-281.

<sup>14</sup> Susanti, I., & Murniati, S. (2018). Analisis Yuridis Terhadap Aspek Hukum Pengadaan Barang/Jasa Pemerintah Beserta Akibat Hukumnya. *Sigma-Mu*, 10(2), 62-73.

<sup>15</sup> Aulia, A., Ramadhan, G. R., Fauzi, M., Doorson, S., Diaz, Y., & Siswajanthi, F. (2024). Penerapan Dan Pengaturan Asas Praduga Tak Bersalah Dalam Hukum Acara Perdata. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 2(1), 101-109.

organization, are bound by laws and regulations and are obliged to report the implementation of government procurement of goods/services in the accountability report.

Based on Law Number 1 of 2004 concerning the State Treasury, the Budget User Power of Attorney (KPA) has several authorities, including testing the material truth of the evidence submitted by the collecting party, examining the validity of documents that are requirements or completeness in government goods/services procurement agreements, and ensuring the availability of related funds. In addition, KPA is also authorized to charge expenditures in accordance with the relevant budget items and submit a request for payment for the burden of the State Revenue and Expenditure Budget (APBN) or the Regional Revenue and Expenditure Budget (APBD).<sup>16</sup> KPA also has the authority to test the material truth of the accountability report made by the Commitment Making Officer (PPK), as stipulated in Article 8 paragraph (2) of Law Number 1 of 2004. The responsibilities inherent in the PPK are personal based on position, not organ responsibilities. The PPK has the authority to examine the validity of evidence letters in the form of contracts made with suppliers of goods or services.<sup>17</sup> If there is a material inconsistency in the contract, this can be considered an act of infringement (*onrechtmatigedad*) or negligence. If the violation of the law or negligence causes state losses, the PPK can be subject to legal consequences in the form of compensation claims, administrative sanctions, or criminal sanctions.

The method of procurement of goods and services in the government procurement process consists of several ways, namely open auctions, direct elections, contests, direct appointments, direct procurement, direct purchases, beauty contests, and self-management.<sup>18</sup>

In terms of legal protection for suppliers of goods or services in procurement agreements, the provisions have been regulated in Presidential Regulation Number 12 of 2021 concerning the Procurement of Government Goods/Services. This regulation states that if the PPK defaults or damages the promise against the terms that have been agreed in the contract, then the PPK can be asked for compensation. The amount of compensation to be paid due to late payment is determined based on the prevailing interest rate in accordance with Bank Indonesia's regulations. In addition, compensation can also be provided in accordance with the terms listed in the contract

## CONCLUSIONS

Legal protection for suppliers of goods and/or services in procurement contracts has actually been regulated in Presidential Regulation Number 12 of 2021 concerning the Procurement of Government Goods/Services. This regulation emphasizes that if the Commitment Making Officer (PPK) defaults on the provisions of the contract, then the goods/services provider has the right to claim compensation. In the auction process, the provider's position is subject to dynamics. As auction participants, their position is getting stronger with the

<sup>16</sup> Tohopi, M. R., Akili, R. H., & Kadir, Y. (2024). Kedudukan Dan Kewenangan Kuasa Pengguna Anggaran (Kpa) Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum. *Journal Evidence Of Law*, 3(3), 323-339.

<sup>17</sup> Fadlan, M. (2022). *Rekonstruksi Pengaturan Pengadaan Barang Dan Jasa Pemerintah Berbasis Nilai Keadilan* (Doctoral Dissertation, Universitas Islam Sultan Agung).

<sup>18</sup> Suardhita, N., Rahman, A., & Martiwi, R. (2022). Implementasi Sistem E-Procurement Di Pt Taman Impian Jaya Ancol Unit Sea World Ancol Jakarta Utara. *Literatus: Literature For Social Impact And Cultural Studies Implementasi*, 4, 711-22.

simplification of administrative requirements. However, on the other hand, their position is also weakened because they are not allowed to file prequalification rebuttals or appeals. After being determined as the winner of the auction, the position of the goods/service provider is even stronger due to the removal of the deadline for the submission of implementation guarantees. However, in the contract implementation stage, their position can weaken again due to the ease given to the Procurement Service Unit Working Group (Pokja ULP) to appoint other providers in the event of unilateral contract termination by the PPK. This shows that even though legal protection is available, there is still an imbalance in its implementation that can have an impact on legal stability and certainty for goods/services providers.

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