



CIVIL LIABILITY OF OFFICIALS MAKING COMMITMENTS IN THE PROCUREMENT OF GOODS AND SERVICES WHO COMMIT BREACH OF ACTS

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ABSTRACT

It can be seen that in the process of procuring goods/services, it does not only involve PPK but also other parties who play a role in procuring goods/services which are interrelated, namely PA and KPA. Arrangements for agreements for the procurement of goods and services in Indonesia are regulated in Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services. The responsibility of the PPK position in procuring government goods/services is the responsibility for the validity (legality) of the use of authority in procurement by the PPK which is based on authority, procedure and substance, and gives rise to government/state accountability. Based on the research results, it is understood that the resolution of disputes in goods and services procurement agreements resulting from default is that the parties make peace efforts or in other words will resolve the dispute that occurs by means of deliberation and if an agreement cannot be reached by deliberation, then the parties agree to resolve the dispute. by taking legal action through the courts.

1. Introduction

One of its implementations is the issuance of Regulation of the Government Goods/Services Procurement Policy Agency of the Republic of Indonesia Number 8 of 2022 concerning Amendments to Regulation of the Government Goods/Services Procurement Policy Agency Number 6 of 2021 concerning Guidelines for the Preparation and Management of Action Plans for Fulfillment of Goods/Services Procurement Management. Goods/Services Procurement Management should be implemented in accordance with and in line with the mandate of Article 33 of the 1945 Constitution. The principles of regulated goods/services procurement are based on the principles of economic democracy, in order to realize national independence, efficiency of state finances, and maintain balance and unity of the national economy.





In the administration of national life, the government is constantly required to advance the general welfare. To carry out this obligation, the government is obligated to provide for the people's needs in various forms, including goods, services, and infrastructure development. Furthermore, the government also requires these goods and services to carry out government activities.

Good and clean governance (GCG) encompasses all aspects related to the control and oversight of the government's power in carrying out its functions through formal and informal institutions. To implement the principles of Good Governance and Clean Government, the government must uphold the principles of accountability and efficient resource management, and implement these principles through sound and orderly, impartial, independent actions and regulations, while ensuring fair, transparent, professional, and accountable economic and social interactions between stakeholders.

The scope of goods/services procurement begins with needs identification, acquisition, contracting, and disposal. Within this scope, the parties involved are the Budget User (PA)/Budget User Authorization (KPA) as the end user; the Commitment Making Officer (PPK); the working group (Pokja)/procurement officer/work result inspection committee (PPHP) as the purchasing/engineer; and the provider (supplier/contractor).

These three parties determine the procurement process. Therefore, procurement of goods and services is not merely about purchasing. The procurement process is not only about profit and loss, but also about efficiency and effectiveness. The procurement of goods and services is crucial because it affects people's lives. The slightest error can have widespread, long-term repercussions.

Furthermore, the procurement coordinator (PPK) is responsible for preparing specifications, which serve as the basis for determining the estimated price (HPS). The combination of specifications and the HPS forms the basis for drafting a contract, which will then be determined by the working group/official in the procurement documents. However, the procurement coordinator (PPK) fully delegates the vendor selection process to the procurement officer, although during implementation, the PPK may raise objections to the vendor selection process.

2. Research Method

The type of research used in this thesis is normative legal research (normative juridical), a research that places norms as the object of research, both legal norms in legislation and legal norms derived from statutes.



This research utilizes materials obtained from library research. In normative research, the data required is secondary data. This secondary data has a very broad scope, encompassing personal letters, diaries, and official documents issued by the government.

The study uses library research methods in the form of scientific books, laws and regulations, and other documentation such as magazines, newspapers, and other theoretical sources related to the civil liability of commitment-making officials in the procurement of goods and services that do not comply with the agreement's clauses.

Data analysis in this study uses a qualitative approach because this research will attempt to explain and analyze existing problems in a systematic manner to reach clear and correct conclusions. Qualitative means that data analysis is carried out based on research into the principles or principles as regulated in primary legal materials.

3. Results And Discussion

Results

Work Units or Procurement Officials/Committees are still required to possess knowledge in the general management of the State Budget/State Finances (fund disbursement mechanisms, etc.), as well as knowledge in other areas such as consulting services, physical construction, Information Technology, and others. Administrative guidance is needed in the government procurement process for goods/services to ensure accountability.

Technical procurement implementation still requires consideration of other provisions stipulated by the relevant Technical Ministers, such as Decrees/Regulations of the Ministers of Public Works and Public Housing, Health, and Decrees/Regulations of Heads/Institutions of other Institutions dealing with Information Technology. In practice, not all Budget User Authorization Officials/Commitment Making Officials or Procurement Officials/Procurement Committee members fully understand the provisions for goods and services procurement.

Operationally, the procurement provisions for goods/services cannot be implemented in each work unit, considering that the provisions regarding procurement of goods/services are not yet operational, complex, open to multiple interpretations, and scattered across various regulations. Management of activities by work units can be accounted for, both administratively, financially, and physically. Furthermore, findings from audits by supervisory



authorities can be minimized. A government procurement administration module for goods/services within the work unit needs to be developed.

Procurement of goods and services is conducted through public tenders. The tender is conducted by determining the work implementation and then handing over the work to a committee. Public tenders are open and widely announced through official bulletin boards, mass media, and electronic media, so that interested and qualified business communities can participate.

To implement procurement, the Commitment Making Officer is required to establish a procurement committee or appoint a procurement officer. A procurement committee must be formed for procurement packages exceeding Rp 50,000,000.00 (fifty million rupiah). For procurement packages valued up to Rp 50,000,000.00 (fifty million rupiah), a procurement committee or a procurement officer must be established.

Procurement committee members must be knowledgeable about procurement procedures, the substance of the work/activities involved, and the law of the agreement/contract. The procurement officer must be one person who understands the procurement procedures, the substance of the work/activities involved, and the provisions of the agreement/work order.

To effectively achieve the objectives of government procurement of goods and services, procurement principles are required, and these principles must be adhered to by all parties involved in the procurement process. Procurement of goods and services must be carried out based on procurement principles, applying the principles of efficiency, effectiveness, transparency, openness, competitiveness, fairness/non-discrimination, and accountability. This will increase public trust in the procurement process, as the results can be accounted for administratively, technically, and financially.

4. Discussion

The Civil Code, in addition to regulating liability for unlawful acts, also regulates civil liability for breach of contract. This begins with an agreement that creates rights and obligations. If, within the legal relationship based on the agreement, the party breaching the obligation (the debtor) fails to fulfill or violates the obligations imposed on them, they can be declared negligent (breach of contract), and on that basis, they can be held legally accountable for breach of contract. Civil liability for unlawful acts is based on the legal relationship, rights, and obligations derived from the law.

From a liability perspective, in practice, responsibility for irregularities in the government procurement of goods and services rests entirely with the





Commitment Making Officer (PPK), as implied in the provisions of the Presidential Regulation concerning Procurement of Goods/Services.

The existence of a PPK in a procurement of goods/services is indeed due to their position within the institutional structure of a government agency. However, the PPK is an individual appointed by their superior, in this case the PA/KPA. This is expressly stipulated in the Presidential Regulation on Government Procurement of Goods/Services. This provision states: "The PPK is an official appointed by the PA/KPA to carry out the Procurement of Goods/Services." The PPK's function is solely to conduct the Procurement of Goods/Services; it is not intended to undertake any other activities. Typically, once all matters relating to the Procurement of Goods/Services have been completed, they are relieved of their duties as long as there are no violations or deviations from applicable law.

The position of the Commitment Making Officer (PPK) in the Government Procurement of Goods/Services is based on Article 1, number 10 of the Presidential Regulation on Government Procurement of Goods/Services. The Commitment Making Officer, hereinafter referred to as the PPK, is an official authorized by the PA/KPA to make decisions and/or take actions that could result in maladministration in the use of authority or public service.

The legal standing of the Commitment Making Officer (PPK) serves as a benchmark/reference for legal accountability in determining the extent to which the PPK can be held criminally accountable for irregularities in government procurement of goods/services. This is in line with and relevant to the principle of justice as stipulated in Article 6 of Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services. Thus, it creates a sense of justice, considering that based on Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, it is apparent that in the procurement process of goods/services not only the PPK is involved, but there are other parties who also play a role in the procurement of goods and services that are interrelated with each other.

The agreement stipulates that a party's delay in fulfilling its obligations in accordance with the provisions and within the specified timeframe constitutes a form of breach of contract. "This violation of contractual rights gives rise to an obligation to pay damages based on breach of contract." The determination of breach of contract is closely related to a declaration of default, which is a message from one party notifying the party by what date they expect to see the performance. Therefore, the deadline for performance of the agreement itself is an integral part of determining a party's declaration of default.



This delay in fulfilling obligations can also occur in other forms of breach of contract, such as performing something that does not comply with the agreement. This form of breach must also be distinguished from the negligence of the second party, who fails to fulfill their obligations at all, as in such cases the second party cannot be considered late in fulfilling the performance.

In practice, under an agreement, if a loss occurs to one party, the party causing the loss is responsible for providing compensation to the injured party. The legal basis for liability is Article 1367 of the Civil Code, which states that a person is also responsible for losses caused by the actions of those they rely on or by assets under their control.

If a default is due to the fault of one of the parties, compensation will certainly be borne by the party causing the loss. However, if the failure to fulfill a performance is due to circumstances beyond the fault of the parties, which in this case means a sudden, unforeseen event that cannot be accounted for by the party suffering the loss.

Losses that can be claimed for compensation include not only actual costs incurred or actual losses to the debtor's assets but also lost profits, namely profits that would have been earned if the debtor had not been negligent.

Force majeure can be defined as a situation beyond the fault of either party that prevents the buyer from fulfilling its performance. However, this force majeure must be assessed to ensure that, logically or rationally, the performance is impossible. Or in other cases, the performance may still be possible, but must be balanced with a greater sacrifice than the intended benefit.

In the implementation of an agreement, certain limitations are generally established regarding force majeure, so that only such circumstances can be considered force majeure. This definition itself does not conflict with the principle of freedom of contract under the Civil Code. Force majeure is a situation where performance cannot be fulfilled due to an event not due to the party's fault, because the event was unknown or unforeseen at the time the agreement was made.

The ultimate goal of a breach of contract is to "provide compensation to the injured party; the methods for claiming such compensation are regulated in accordance with relevant regulations." A goods/services procurement agreement stipulates that if one party fails to fulfill its obligations as stipulated in the agreement, the party that failed to fulfill the obligation is considered to have breached its promise.

If one of the parties in a goods/services procurement agreement has been firmly asked to fulfill its promise but still does not fulfill its performance, then the party that does not fulfill its obligation is in a state of negligence or forgetfulness





which can result in being sued in court. If one of the parties does not perform at the specified time due to negligence or forgetfulness, then the injured party can sue in court for cancellation of the agreement or contract with or without additional compensation, costs and interest.

Demanding fulfillment of a promise by one party against a party who has caused harm to another party who is deemed negligent takes the form of a warning or reprimand issued by the injured party. If one party is in default, this must be preceded by a warning or reprimand requiring the party to perform the agreed-upon performance immediately or by a specified time, unless the party has expressly decided not to perform its obligations under the agreement.

Negligence or breach of contract by a party under this agreement must first be formally declared by giving a warning to the defaulting party. According to the law, such warnings must be in writing, but it is now customary to give verbal warnings as long as they sufficiently state the urgency to immediately fulfill the agreement.

The party in default can be held liable for compensation (Article 1365 of the Civil Code) to the injured party. Compensation here refers to a sanction for negligence on the part of the party in breach of contract. If one party fails to fulfill its obligations as stipulated in the agreement or fails to perform as promised, it is obligated to provide compensation. However, one exception to the penalty for providing compensation is in the event of force majeure. Force majeure is a situation under civil law that can prevent a right or obligation under an agreement from being fulfilled.

Breach of promise or default carries legal consequences. This is in accordance with Article 1338 of the Civil Code, which states: "All agreements legally made shall apply as law to those who make them." Article 1338 of the Civil Code above illustrates that, in principle, an agreement cannot be canceled unilaterally, as such cancellation would undoubtedly result in losses for the other party. Due to the default committed by the defendant based on the provisions above, it is legally appropriate for the defendant to return the Plaintiff's money as promised based on the agreement agreed in Deed no. 261, Deed no. 606 and Deed no. 326, thus the Plaintiff has been able to prove that the Plaintiff's deposit money and the defendant is obliged to hand over its assets and property to the Plaintiff for the return of the Plaintiff's deposit.

In practice, in the agreement to procure goods/services, the parties have agreed to first resolve the dispute through deliberation and if no agreement is reached through deliberation, it will be resolved through arbitration.

5. Conclusion





The regulation of goods and services procurement agreements in Indonesia is regulated by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services. The parties involved in the procurement of goods/services are each given the opportunity to participate in drafting the contract or agreement and review it, which is then agreed upon and implemented.

The civil liability of the Commitment Making Official who breaches the contract for procurement of goods and services is if the Public Procurement Officer (PPK) commits a deviation in the form of administrative errors (maladministration) in the government procurement process. Official liability will be imposed on the PPK. If the maladministration results in the fulfillment of the elements of a criminal act of corruption, the PPK will be personally liable, namely in the form of criminal liability, which carries a very severe penalty of up to 20 (twenty) years' imprisonment. The resolution of disputes in the procurement of goods and services agreement due to a default by a commitment official is that the parties make peace efforts or in other words will resolve the dispute that occurs through deliberation and if no agreement is reached through deliberation, then the parties agree to resolve the dispute by taking legal action through the courts.

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