

Stages of Objections as Irregularities Prevention of Government Goods/Services Procurement

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ABSTRACT--In an effort to realize the ideals of the Indonesian nation is to carry out the construction of facilities and infrastructure to support and drive the country's economy. Efforts to implement the construction of one of them carried out through tender for the government procurement of goods /services tenders. The purpose of this study is to analyze the irregularities of government procurement of goods/services and stages of objections in order to prevent irregularities in the field of procurement of government goods /services. This research method using normative juridical. The implementation of government procurement of goods/services tenders is still often found irregularities. Stages of objections as a filter to reduce irregularities in the implementation of government procurement of goods/services. Implementation stages of objections in a fair, objective, open and transparent manner will narrow the occurrence of irregularities in the procurement of government goods/services. So that government procurement of goods/services will be created that is efficient, effective, open and competitive, transparent, fair non-discriminatory and accountable.

Keywords: government procurement of goods/services, objections, corruption

I. INTRODUCTION

Procurement of goods/services for the benefit of the government is one of the tools to drive the wheels of the economy, in order to increase the national economy to prosper the life of the Indonesian people, because the procurement of goods and services especially in the public sector is closely related to the use of the State budget. The important point of this is the urgency of implementing effective, efficient and economical procurement to get the maximum benefit from the use of the budget. This is because the procurement of goods and services is largely funded by the state's diversity, both through the Indonesian Budget and non-The Indonesian Budget.[1]

There are several practices that cause criminal corruption in the procurement of government goods/services that start from the process of budgeting, planning, auction execution, inspection of goods, handover of goods and payments. The form of criminal acts encountered in the procurement of government goods/services, among others bribery, splitting or combining the package

of work, mark up, reduce the specification of goods/services, reduce the number of goods/services, direct appointment, the presence of collusion between the provider and the employer or with a fellow service provider. Cases of corruption that dealt with the Corruption Eradication Commission (KPK) around 70 to 80% occurred in the realm of goods procurement/services of the Government. These projects are very prone to disruption of related parties, other than by way of direct designation, as well as through the price-quotes (mark up) of goods and services.[2]

Prior the enactment of Presidential Association No. 54 year 2010 concerning on the Procurement of Goods/Services Government, the implementation of procurement of goods/services government still use conventional system is vulnerable to collusion, discrimination and not transparent, so in the implementation of deviation figures of goods/services are very high, the procurement of goods/services is ineffective, the wasteful budget and high state losses.

Based on the mandate of the Constitution of the Republic of Indonesia 1945, the state is obliged to serve every citizen to fulfill its rights and needs in a proper framework of public service. To conduct a better public service for all citizens, the government should play an active role in providing and facilitating common needs beneficial to the wider community, which can be accessed by all members of the community through the procurement of transparent and accountable goods/services. As an effort to fulfill the rights and needs of a decent public service required a solid legal foundation in the process of procurement of goods/services. Procurement of goods/services government should ensure the legal certainty and provide protection for every citizen and community from abuse of authority in the administration of goods services in order to create a conducive climate for procurement of goods/services.[3]

One of the government's efforts to fix the implementation of government goods/services is to implement an electronic auction or E-procurement. The E-procurement is required for procurement of goods/services held by the government can be carried out well, so as to increase and guarantee the occurrence of efficiency, effectiveness, transparency and accountability in the spending of state money. Thus, the availability of

goods/services can be obtained with the best price and quality, the process of administration is easier and faster, and with a lower cost, so will impact on the improvement of public services.[4]

The stages of procurement of government goods/service starting from the planning process, budgeting, the preparation of tenders, the implementation of tenders, contracts, job execution, handover job and payment of employment. Each stage of procurement of goods/services Government is very vulnerable to irregularities in the implementation process. Weak supervision, low quality of human resources, weak procurement arrangements and weak law enforcement are the causes of irregularities in the procurement of government goods/services.

Deviation at the stage of budgeting occur when there is a conspiracy between executives with the legislature and with entrepreneurs as has occurred in the process of budgeting medical equipment Education Hospital in Airlangga University and Udayana University involving members of the House of Representatives of Muhammad Nazarudin and officials in the university. In October 2015, the Corruption Eradication Commission (KPK) carried out a hand-catching operation against Dewie Yasin Limpo, a member of the Indonesian Parliament from the Hanura faction in a case of bribery in the budget of a Microhydro power plant project in Deiyai County, Papua.

Planning a procurement work of goods/services that should be based on the basis on the needs and improvement of public services becomes the business field of legislative, executive and entrepreneur to achieve personal profit. Deviation in the stage of tender procurement of the government goods/services will occur with the intervention of the legislature and the direct supervisor of the procurement committee of goods/services. The process of determining tender winners that are not transparent, fair and professional will harm the country's finances, because the tender offer with low and competitive price will lose with the partners who are the best of the officials.

Arief Budi Yulianto In his research said that the practice of procurement of goods/services, especially in the scope of the Ministry of Public Works and People's Housing (Ministry of PUPR), several objections filed to the committee did not occur because of one of the reasons and the basis for submitting the objections in accordance with the Presidential Regulation. The participants often made a objections just because they feel dissatisfied and disappointed to lose. In connection with this, the provider provides a objections without providing clear evidence and exposure regarding any deviation in procedures, engineering or abuse of the committee's authority.[5]

Deviations in the process of procurement of goods/services of the government besides harming the country's finances will also hamper development and low public service, causing weak competitiveness. Need improvement in the process of procurement of goods/services of government from upstream to downstream. The law governing the procurement of goods /services, improving the quality of human resources both from the bureaucracy and the service providers themselves and the supervision inherent in each process of procurement of government goods/services is expected to be able to create good procurement of goods/services. According to data from the Procurement Government Agencies (LKPP) in 2015, from the many disputes procurement of goods/services that exist, only 10% of the cases were disputed. Though there are recorded about 1,620 cases of disclaimers, 1510 complaints, 777 contract execution disputes and 251 black list cases.[6]

The handling of the objections carried out fairly, open, transparent, objective and professional will serve as an effective filter tool in preventing irregularities that occur in the process of procurement of goods/services government. Case of the mega corruption of the procurement of E-KTP in the Ministry of the Interior that is detrimental to the country amounting to Rp 2.3 trillion from the estimated project funds amounting to Rp. 5.9 trillion unloaded, starting from the proposed objections Olen Government goods/services provider ignored by the Procurement Committee, which is then followed up by the KPK after the complaint from the community.

Based on the explanation above then the formulation of the problem is how the deviation in the process of procurement of government goods and services and how the implementation of the objections stages that can prevent irregularities in the procurement of government goods /services?

II. RESEARCH METHOD

The approach method is useful for approaching objects of research or in collecting the necessary data. The method used in this research is the normative juridical approach.

According to Soerjono Soekanto, normative juridical approach is legal research conducted by examining the library material or secondary data as the basic material to be researched by conducting a search of the rules and The literature relating to the investigated issues.[7] The data sources used in this study are secondary data. These secondary data are obtained through library studies.

Analytical research is a research that describes the detailed social phenomena that are subject to problems.[8] The results of this research

are expected to provide a descriptive analytical representation. Being descriptive means that the research is expected to explain the idea of reconstruction of a objections arrangement to realize the procurement of goods/services of government based on the value of justice. Analytical means from the results of this research is expected to describe the findings of data both primary and secondary directly processed and analyzed in order to clarify the data in categories, structuring systematically and subsequently discussed or studied logically.

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Primary legal materials, tertier legal materials and secondary legal materials are outlined as follows ;

- a. The primary legal material consisting of statutory regulations.
- b. The secondary legal material that provides an explanation on the primary legal materials such as, academic texts, results of study, results of research and others.
- c. Tertier legal material that can provide support such as explanation and so forth. Analysis is the final step in the research activity. The collected data is analyzed for clarity of the problem discussed. Data analysis is done in qualitative normative.

III. FINDINGS AND DISCUSSION

Irregularities that occurred in the process of procurement of goods/services of the government is divided into 2 periods. The first period of government procurement of goods/services occurred during the process of procurement of goods/services of government implemented conventionally. Procurement arrangement at this time using the Presidential Decree 18 years 2000 about the Procurement of Goods/Services Government and Presidential Decree 80 year 2003 about the Procurement of Goods/Services Government. Weaknesses of conventional goods procurement such as transparency, efficient and effective and simple intervention to the auction committee, service providers or external parties. The implementation of conventional procurement requires greater time and cost.

Period of application of Presidential Decree 18 years 2000 about the procurement of goods/services The government has a lot of irregularities in the process of procurement of goods/services government. The deviation from the procurement of goods/services of government starts from the budgeting period, auction stage, post-auction, job execution, inspection of work until the payment of employment. The period of Presidential Decree 18 years 2000 the deviation started from the

budgeting process, and the presence of the mark up in budgeting planning. Deviations in the process of procurement of government goods/services at the auction stage begins with the establishment of an auction committee which will eventually help to conditioned a particular interest. Document creation will be made to benefit the interests of the goods provider/service group. The auction committee will drop the document on the supply of certain goods provider because it is not substantive or underlying. such as fault placement name labels on the envelope document offer can drop the offer.

Irregularities that occur at the announcement stage, the winner of the procurement of goods/services is not clearly and fully mentioned. The announcement of the winners of the auction is limited or through an tabloid or limited coverage media. The irregularities that occurred at this stage, the authorized officials set the winner did not master the problem regarding the process of procurement of goods/services of government, and only entrust the decision to the officials under it.

The disclaimer process is only limited formalities to fulfill the stage of the government goods/services procurement process. The answer of the objection or the disclaimer of appeals submitted by the competent authorities does not answer the substance of the problem and only legalize the procurement process of government goods/services. While the irregularities that occur at the execution stage of the work is by irregularities in the job specifications that do not comply with the contract. Construction of roads and bridges is often damaged before being inaugurated only because the technical specifications do not correspond to the contract documents.

Irregularities that occur at the inspection stage of the work and process of payment of work such as the existence of a work that has not been completed according to the contract but the date of implementation has passed the implementation schedule listed in the contract reportedly completed by the goods inspection committee so that at the payment stage can be paid in full by the project treasurer.

The period of E-procurement procurement implementation which is an implementation of Presidential Regulation No. 54 year 2010 about Procurement of Goods/Services Government and its changes overall stage can be said to decline because it has been done electronically through the Procurement Service Electronically Agencies (LPSE). As the announcement phase of the auction has not been able to be done because it has to be aired through LPSE so it will be widely seen by all prospective providers/services without limitation.

Irregularities that occurred during the validity period of Presidential Regulation No 54 year 2010 and its changes are more qualified. It is often the

object of deviations from the planning activities and budget planning that usually occurs between executives of the legislature in determining the type of activity, specifications and the size of the budget to be undertaken. There are collusion between the procurement committee/pokja, supplier of goods/services and suppliers that will supply according to the needs of the goods users. Irregularities that occur with method of operating like this usually occurs in the procurement work of goods/services that require special specifications such as the procurement of motor vehicles, laboratories, medical devices, clothing services, educational aids, textbooks, computers and others.

Irregularities in the bidding document stage until the closing of the offer document is the presence of hacker or server hacker LPSE. Hacking at LPSE occurs usually at the entry and closing stage of the offer document. The offer documents that have been encrypted and uploaded by prospective goods/services providers may be compromised so that the price quotation documents may be known or even unable to log in to the local LPSE server. Consequently, the offer documents that come from only a few providers of goods/services that are already conditioned can enter its offering documents. Such an incident occurred as an attempt to impede the competition of healthy business and open widest.

Irregularities that occur in the stage of the objections is with the handling of the objections is not transparent, accountable, fair and objective. The answer given to the procurement committee for the disclaimer still does not answer the substance of the problem of objections and only holds the rules that exist in the procurement document by ignoring the higher rules. It will also reduce the interest of the providers of goods/services that feel harmed.

For the answer of the appeal that is aimed at provincial level, the district is done by the head of the district, so that the provider of goods/services will think more if it is about to apply a bid to remember the risk of a security appeal will be disbursed if rejected. Opinions or suggestions from Government Procurement Agencies (LKPP) in answering the appeal is not mandatory to be implemented and often ignored in the implementation. For example, recommendation or advice from LKPP rejected is for the case of E-Identity card project by the Ministry of Home Affairs, which in the end the country was injured IDR. 2.3 trillion.

Arrangement of the objections on Presidential Regulation No. 16 year 2018 about the Procurement of Goods/Government Services is weaker. Objections was only arranged through the Institute regulation LKPP Number 9 year 2018 on the guidelines of implementation of goods/services procurement. It removed the stage of appeal for

goods procurement work. Another downside is the budgeting of the ethics of construction aimed at the budget user level/power of budget use. The law continues to evolve in line with the dynamics of the process of social, economic, cultural and religious interactions in the process of national development, where the interaction is always confronted with human consciousness and passion for the reality that occurs in society against the law can not be separated from the development of social life of society that occurs in life. In line with the condition, public assessment of the law can not be separated from the development of the social life of the community occurring in the process of development, so that "every social development, should be balanced with the development of the law, because every social change will essentially affect the development of the law.[9]

Likewise, the arrangement of procurement of goods/services of government should always develop following the development of the era and social life of society. The arrangement of procurement of goods/services governing government about E-procurement is one way of the government in dealing with the development of the era and technology that has left the auction conventionally. Procurement arrangement of government goods/services should be able to provide benefits and protect the community so that it will be achieved the purpose of the arrangement of the welfare of society.

The legality principle states that legislation is a principle that needs to be understood primarily by lawmakers so that in the legal system there is no conflict between the laws and regulations contained in the system of law. The need for harmonious and integrated legislation is an urgent, especially for the realization of order and protection of law.[10]

Law No 30 year 2014 on Government Administration also governs the administrative efforts of citizens who feel harmed by the decisions/actions of State officials or the superiors of state officials who stipulate and/or the decision and/or action in accordance with article 75 paragraph (1), whereas in paragraph (2) Declare administrative efforts as referred to in paragraph (1) consist of: a. objections and b. appeal. Pursuant to the provisions of clause 75 paragraph (1) and (2) of law No 30 of 2014, the elimination of the appeal in addition to violating the principle of procurement of goods/services government is also violating Law No 30 year 2014.

The absence of the process of appeal for the work of procurement of goods/services is also a form of injustice that violates the principles of procurement of goods/services government. Objections/appeal objections is an administrative effort of the community if there is a decision of state officials to harm them before being submitted to court, in accordance with law number 30 of

2014. It would be ideal if the administrative efforts were first implemented before filing a lawsuit or state administration dispute to the civil court of justice. The law of administrative efforts is to ensure the freedom of society and to prevent arbitrary acts of state officials. This administrative effort is also a form of service and government duties in the implementation of services to the community. Omission of the appeal as one of the administrative efforts on the decision of the state officials who are detrimental to the public is also a state unavailability in serving the community in the implementation of public services.

How can the process of Objections/appeal objections in the procurement of goods/services government is able to walk transparently, open, compete and fair if there are conditions that are incriminated and discriminatory for prospective government goods/services providers who do not feel justice in the process of procurement of goods/services.

The existence of transparency in the process of handling the objections by involving LKPP as external parties in answering the process of the appeal of course the parties who will engage in the deviation of goods/services will think a thousand times. Because of the irregularities that exist in the process of procurement of goods/services will stop the stage of the objections/appeal objections. It has become a common secret that the Governor/Regent/Mayor Many are involved in deviations of the procurement process of goods/services. How could they be as competent officials can be fair in the process of answering the appeal when they themselves engage in irregularities.

The handling process should be carried out openly and transparently in the LPSE application, so that people can supervise and control the handling process of goods procurement/government services. During this time handling has not been running transparently and openly, because only the provider as a supervisor and the procurement committee/power of users/budget users who know the process of objections.

Transparent here means that in the process answering the objections/objections appeal committee of procurement/power of users/budget users as authorized officers in carrying out their duties and authorities transparently and objectively, and involve external parties associated with a valid supporting document and valid. When the day of handling process of the objections/appeal objections is problematic law supporting documents will be evidence of reinforcement whether the process of handling the objections/objections is not in accordance with the prevailing provisions.

A transparent and fair handling of the objections, will make the objections a strong and decisive stage in minimizing the existence of irregularities in the process of procurement of goods/services of the government because it is implemented professionally. Professional means the handling of the objections is done according to the prevailing rules, honestly and with integrity. So the result of the stage of the objections can be accounted for.

IV. CONCLUSION

Deviation of procurement of government goods/services conventionally starting from the budgeting period, auction stage, post-auction, execution of the work, examination of employment until the payment of employment. There is a shift in the procurement of goods/services government by using E-procurement. Irregularities occur at the planning stage of activities and budget planning that usually occurs collusion between the legislature in the determination of types of activities, specifications and budgets. Deviation of goods/services procurement of government is still happening because of weak supervision and rules about the objections. The implementation of the objections in a fair, open, transparent, and professional is able to prevent irregularities in the procurement of government goods/services. Strengthening the arrangement about the procurement of goods/services in the form of legislation will be ideal to go towards the procurement of goods/services clean. The objections implementation should involve external parties to maintain the objectivity in the handling of objections.

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