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The Synergy between the National Arbitration Board and the Public Procurement Policy Agency in Resolving Government Goods and Services Procurement Disputes

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ABSTRACT: The goods or services procurement agreement is a process for fulfilling or providing the needs of goods and services, with contract or direct buying for fulfilling business needs. So many goods and services that needed through this process but in reality, the practice of the process sometimes could bring failures usually forming the basis of a dispute between the parties involved in the agreement. The resolves of the failures are needed. The resolves of the problem could happen in a court way or not. There are mediation, conciliation, or arbitration. The arbitration way could taken after the failure of mediation and conciliation way.

KEYWORDS: Goods or services procurement, Contract Dispute, Contract Dispute Settlement Services, Arbitration.

1. INTRODUCTION

With the advancement of time, the quantity and complexity of public needs also increase. People are continuously striving to fulfill a wide range of their needs. Among these, the most fundamental are the needs for goods and services. Both individuals and business entities seek to enter into contracts or agreements with various parties to meet these needs, particularly concerning goods and services procurement. In line with the government's aim to promote the welfare of its citizens, it carries out activities intended to advance public well-being, one of which involves the provision of infrastructure and facilities through Government Goods and Services Procurement activities (Sudjatmoko, 2004).

Goods and Services Procurement, as a contractual mechanism that significantly impacts national development, is primarily governed by Presidential Regulation No. 16 of 2018, which replaces Presidential Regulation No. 54 of 2010. The revision of this regulatory framework was prompted by several key considerations: 1) Government procurement activities are designed to deliver improved public services, thereby enhancing public welfare. 2) Good governance is partly realized through a well-structured public procurement system. 3) The use of technology as a means to enhance procurement efficiency is a strategic opportunity that must be harnessed. 4) National economic growth can be supported through policies favoring the use of domestic products, the empowerment of micro, small, and medium enterprises (MSMEs), and the promotion of sustainable economic development. Nonetheless, the formation of Government Goods and Services Procurement contracts remains subject to the provisions of the *Burgerlijk Wetboek* (Civil Code). For instance, the validity of such contracts is a crucial aspect of their formation. The legal validity of contracts is governed by Article 1320 of the *Burgerlijk Wetboek*, which stipulates four essential conditions for a valid agreement: 1) Mutual consent of the parties agreeing; 2) Legal capacity to enter into a contract; 3) A clearly defined subject matter; 4) A lawful cause.

Procurement agreements play a crucial role in the economic development of a country. Throughout the process, various sectors experience growth as a result of the ongoing Goods and Services Procurement activities. This development contributes significantly to national economic progress, as it ensures the availability of infrastructure and facilities across multiple sectors. When the goods and services needs of these sectors are met, the quality of public services improves, ultimately influencing national economic growth and development. This highlights the strategic importance of Goods and Services Procurement. Furthermore, the financial magnitude of state funds involved in these agreements is substantial, making procurement an effective tool in supporting economic development strategies.

The procurement process inevitably involves multiple stakeholders—at a minimum, two parties are required to enter into a legally binding contract. Each party to such an agreement typically has its own objectives and expects to derive some form of benefit or gain. However, the implementation of a contract may not always proceed as planned; the terms of the agreement may be only partially fulfilled—or not fulfilled at all—due to default (*wanprestasi*) or unforeseeable circumstances (*force majeure*). Failure to perform contractual obligations may provide legitimate grounds for the aggrieved party to terminate the agreement. Such terminations often lead to disputes, especially when one party feels disadvantaged as a result.

2. RESULT AND DISCUSSION

According to Article 1, paragraph 1 of Presidential Regulation No. 16 of 2018, Government Goods and Services Procurement refers to the procurement activities undertaken by Ministries, Institutions, or Regional Apparatuses, funded by the State Budget (APBN) or Regional Budget (APBD), encompassing the entire process from needs identification to final handover of deliverables. Government Goods and Services Procurement is categorized into four (4) types: 1) Goods, 2) Construction Works, 3) Consultancy Services, and 4) Other Services (Simamora, 2009). These procurement types can be executed independently or simultaneously in an integrated manner—covering the purchase of goods, services, and works in a single process.

In its implementation, Government Goods and Services Procurement involves multiple stakeholders to achieve its objective: fulfilling the needs for goods and services. This necessitates formal contracts or agreements among the involved parties. It is undeniable that disputes or misconduct can arise in such contractual relationships. Situations may occur where one party defaults (*wanprestasi*) or an unforeseeable event (force majeure) interrupts contract performance. When contractual obligations cannot be fulfilled, the disadvantaged party may seek to terminate the agreement. Yet fundamentally, Government Goods and Services Procurement represents a deliberate effort by budget users to obtain desired goods or services through specific methods and procedures, without violating applicable laws and regulations (Sutedi, 2003).

The existence of disputes within Goods and Services Procurement contracts or agreements clearly deviates from the provisions outlined in Article 7 of Presidential Regulation No. 16 of 2018 on Government Goods and Services Procurement, which outlines ethical standards for procurement. Therefore, a mechanism for dispute resolution is necessary to find a solution to such issues. Dispute resolution refers to the means or efforts undertaken by the disputing parties to protect or secure their respective interests.

Disputes may be resolved either through judicial (court) proceedings or by non-judicial (alternative) means. In practice, litigation is more commonly pursued, where disputing parties follow formal court procedures and submit to a final ruling rendered by a judge. However, court-based dispute resolution is often perceived as rigid, complex, and costly, potentially disadvantaging the parties involved. This reality stands in contrast to the fundamental principles of judicial proceedings, namely simplicity, speed, and affordability. Consequently, non-judicial dispute resolution is considered a viable alternative due to its procedural flexibility and avoidance of formal litigation.

Presidential Regulation No. 54 of 2010 previously used the term "dispute resolution" (*penyelesaian perselisihan*) as regulated under Article 94. This was later updated by Presidential Regulation No. 16 of 2018, which adopts the term "dispute settlement" (*penyelesaian sengketa*) and is governed by Article 85. This provision states that disputes arising from Government Goods and Services Procurement contracts may be resolved through Contract Dispute Resolution Services, arbitration, or litigation. The resolution service is provided by the National Public Procurement Agency (LKPP) and is intended for parties engaged in procurement-related disputes.

Government Goods and Services Procurement Disputes

A procurement dispute is defined as a conflict arising during the implementation of a Government Goods and Services Procurement contract between the project owner and the contractor, both of whom are bound by a contractual relationship (Perka LKPP, 2016).

From this definition, three (3) essential elements must be present for a conflict to be classified as a Procurement Dispute: 1) The dispute arises during the implementation of a Government Goods and Services Procurement contract. Contractual obligations—commonly referred to as *prestasi* in legal practice—can include: A promise to deliver or transfer goods, A promise to perform a specific act, A promise to refrain from doing something; 2) The dispute occurs between the project owner and the contractor. The project owner may be a Ministry, Institution, or Regional Work Unit represented in the contract by a Budget User (PA), Budget User Proxy (KPA), or Commitment Making Official (PPK). The contractor refers to a business entity or individual supplier of goods/services, which may be a state-owned enterprise (SOE) or a private entity; 3) There exists a binding contractual relationship between the project owner and the contractor. This means that a procurement dispute can only arise once a valid and binding written agreement exists between the parties concerning procurement activities financed by the State Budget (APBN) or Regional Budget (APBD).

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Dispute Resolution Procedures for Government Goods and Services Procurement

Referring to Presidential Regulation No. 16 of 2018, dispute resolution may be carried out through the following mechanisms:

- Contract Dispute Resolution Services
- Arbitration
- Court Proceedings

According to this latest regulation, the institutions authorized to handle disputes in Government Goods and Services Procurement are the National Public Procurement Agency (LKPP) the provider of contract dispute resolution services, arbitration institutions, and the judiciary.

Under LKPP Regulation No. 4 of 2016, dispute resolution was limited to arbitration. However, LKPP Regulation No. 18 of 2018 expanded the available options by including additional alternative dispute resolution (ADR) methods, namely mediation and conciliation.

Dispute Resolution Process for Government Goods and Services Procurement through Arbitration

Arbitration is defined as a method of resolving procurement contract disputes outside the court system, conducted by an Arbiter or an Arbitral Tribunal.

According to LKPP Regulation No. 18 of 2018: An Arbiter is an individual proposed by the disputing parties and/or appointed by the Secretary of the Contract Dispute Resolution Services to examine and decide on the procurement contract dispute. An Arbitral Tribunal is a panel consisting of an odd number of Arbiters at least three (3), proposed by the parties and/or appointed by the Secretary of the Contract Dispute Resolution Services.

In practice, the Arbitral Tribunal is established at the beginning of the arbitration process. Each party appoints one arbitrator, and the two appointed arbitrators then jointly select a third arbitrator. These three Arbiters then elect a Chair of the Arbitral Tribunal from among themselves, thereby formally constituting the Tribunal.

Alternative dispute resolution is categorized into three stages: Mediation, Conciliation, and Arbitration. These are not standalone options but rather form a progressive sequence—beginning with mediation, followed by conciliation, and culminating in arbitration if required.

Once mediation and conciliation stages have been exhausted following applicable provisions, the parties may proceed to arbitration. Upon receipt of a complete arbitration request, the arbitration process must be conducted and resolved within 90 (ninety) days—or no later than 30 (thirty) days after the expiration of the initial time frame.

Similar to mediation and conciliation, the arbitration process allows for the use of remote audiovisual communication, representation by legal counsel, and cost-sharing provisions. However, unlike mediation and conciliation, arbitration proceedings are not confidential and are conducted in an open manner.

Parties who suffer losses in the execution of a contract may submit a request through the Government Procurement Dispute Resolution Services at the National Public Procurement Agency (LKPP). The request must be made in writing and submitted to the Secretariat of the Procurement Dispute Resolution Services. The Secretariat will forward a copy of the request along with an order instructing the respondent to provide a written response. The respondent is obligated to submit a written response to the Secretariat no later than seven (7) calendar days from the date the request is received. Following the appointment of an arbitrator, the process proceeds with the determination of the hearing schedule. The examination process itself is relatively straightforward, consisting of the following stages: Preliminary Examination, Evidentiary Phase, Conclusion Phase, and Final Decision.

Based on Article 31(9) of LKPP Regulation No. 4 of 2016 and Article 60 of Law No. 30 of 1999, the decision issued by LKPP Arbitration is final and binding. It immediately carries permanent legal force and is enforceable. As such, the decision can be directly executed through the District Court. Consequently, the decision is not subject to appeal, cassation, or judicial review. Nevertheless, this does not eliminate the parties' right to file a request for annulment of the arbitration decision with the District Court, following the grounds and procedures stipulated in Chapter VIII (Articles 70 to 72) of Law No. 30 of 1999.

Public Procurement Agency (LKPP)

The National Public Procurement Agency (LKPP) is a non-ministerial government institution under and responsible to the President of the Republic of Indonesia. LKPP was established through Presidential Regulation No. 106 of 2007 concerning the National Public Procurement Development Agency.

Government procurement of goods and services funded by the State Budget (APBN) or Regional Budget (APBD) must be carried out more effectively and efficiently, prioritizing the principles of fair business competition, transparency, openness, and equal treatment for all parties. Given the wide scope and scale of government procurement—which crosses institutional and sectoral boundaries—it has direct implications for the development of small businesses, domestic production, and the overall business climate. Therefore, it was deemed necessary to establish an independent institution with the authority to formulate procurement strategies and policies, as well as to regulate government procurement legislation that aligns with both internal demands and external developments in a sustainable, integrated, focused, and coordinated manner.

Functions of the LKPP: 1) Formulating strategies, policies, and standard procedures in the field of government procurement, including procurement of business entities for Public-Private Partnerships (PPP); 2) Formulating strategies and policies for human resource development in the field of government procurement; 3) Monitoring and evaluating the implementation of procurement policies; 4) Developing and supervising electronic government procurement systems and information systems; 5) Providing technical guidance, legal advocacy, and legal opinions; 6) Managing administrative support for all organizational units within the LKPP; 7) Overseeing the execution of LKPP's duties and functions.

Indonesian National Arbitration Board (BANI Arbitration Center)

The Indonesian National Arbitration Board (BANI Arbitration Center) is an independent institution that provides a range of services related to arbitration, mediation, and other forms of alternative dispute resolution (ADR) outside of the court system.

BANI was established in 1977 by the Indonesian Chamber of Commerce and Industry (KADIN) through Decree No. SKEP/152/DPH/1977 dated 30 November 1977, and is managed and supervised by a Board of Management and an Advisory Board consisting of prominent figures from both society and the business sector.

To provide the institutional support necessary to function autonomously and independently in upholding law and justice, BANI has developed its own rules and procedures, including time limits within which the Arbitral Tribunal must render a decision. These rules are applied in both domestic and international arbitrations conducted in Indonesia. As of now, BANI has more than 100 arbitrators from diverse professional backgrounds, both Indonesian and foreign nationals.

In Indonesia, the interest in resolving disputes through arbitration has grown significantly since the enactment of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. This development aligns with the broader trend of globalization, in which out-of-court dispute resolution has become a preferred option for business actors in resolving their commercial conflicts. Arbitration offers several advantages: it is fast, efficient, and final, adheres to the principle of a win-win solution, and avoids lengthy proceedings since there are no appeal or cassation stages. The costs of arbitration are also more predictable due to the expedited process. Another notable advantage is that arbitral decisions are final (enforceable immediately) and binding, and the process is confidential. It means that hearings and decisions are not made public.

BANI was established with the following objectives: 1) To contribute to the enforcement of law in Indonesia by providing dispute resolution services for conflicts arising in various sectors such as trade, industry, and finance, through arbitration and other forms of ADR; 2) To provide services for dispute resolution through arbitration or alternative mechanisms such as negotiation, mediation, conciliation, and binding opinions, following the BANI Rules of Procedure or other procedures agreed upon by the parties involved; 3) To act autonomously and independently in the enforcement of law and justice; 4) To conduct research and academic studies, and to organize training and educational programs related to arbitration and alternative dispute resolution.

The Role of the National Public Procurement Agency and BANI in Resolving Government Procurement Disputes

The National Public Procurement Agency (LKPP) was established to ensure that government procurement of goods and services funded by the State Budget (APBN) or Regional Budget (APBD) can be carried out more effectively and efficiently, emphasize healthy competition, transparency, openness, and fairness to all parties. Considering the broad scope and scale of government procurement—spanning institutions and sectors—it has a direct impact on small business development, domestic production enhancement, and the overall improvement of the business environment. Therefore, it was deemed essential to establish a specialized agency with the authority to formulate procurement strategies, determine policies, and regulate procurement legislation in a manner that is sustainable, integrated, focused, and coordinated, in response to both internal and external developments.

In its role of supervising the implementation of government goods and services procurement, as previously explained, disputes may arise during the process. Various mechanisms can be pursued for resolving such disputes, including mediation, conciliation, and arbitration. Arbitration serves as the third and final step if both mediation and conciliation fail to resolve. In such circumstances, parties who suffer losses or feel aggrieved during the execution of a procurement contract may submit a formal request through the Procurement Dispute Resolution Service at LKPP. The request must be submitted in writing and officially registered with the Secretariat of the Procurement Dispute Resolution Service. Upon receipt, the Secretariat forwards a copy of the request to the Respondent along with a directive requiring a written response. The Respondent must provide this response to the Secretariat no later than seven (7) calendar days from the date of receiving the request. After the appointment of an arbitrator, the next stage involves scheduling the hearing. The examination process itself is relatively straightforward and consists of the following phases: Preliminary Examination, Evidence Presentation, Closing Arguments, and Decision Rendering.

The decision issued by the LKPP Arbitration body, according to Article 31(9) of LKPP Regulation No. 4/2016 and Article 60 of Law No. 30/1999, is final and binding, and therefore has immediate legal force and is enforceable against the parties involved. As such, the decision can be directly submitted for execution at the District Court and is not subject to appeal, cassation, or judicial review. Nonetheless, this does not preclude the right of the parties to file a petition for annulment of the arbitral award at the District Court, based on the grounds and procedures stipulated in Chapter VIII (Articles 70 to 72) of Law No. 30/1999.

It is important to note that BANI (the Indonesian National Arbitration Board) has the authority to adjudicate and issue decisions only when the disputing parties have previously agreed—in writing—to resolve disputes through BANI arbitration.

3. CONCLUSION

The National Public Procurement Agency (LKPP) serves as the institution responsible for managing and overseeing the implementation of government goods and services procurement. Within this process, disputes frequently arise, commonly referred to as procurement contract disputes among the involved parties. LKPP is also tasked with providing legal support in resolving such disputes. Considering the available dispute resolution mechanisms, which include mediation, conciliation, and ultimately arbitration, in collaboration with BANI (the Indonesian National Arbitration Board) as the designated arbitration institution, it is expected that such conflicts can be resolved effectively. Through these mechanisms, the issues faced by the parties can be addressed, and a clear and fair resolution can be achieved. This process is of significant importance to ensure that in the future, disputes in government procurement can be minimized or avoided.

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