

Procurement of Health Services In The Emergency of Covid 19

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ABSTRACT

The period of the Covid 19 pandemic made the central and regional governments work harder while still paying attention to the principles of good government governance. With the aim of saving the people from the Covid 19 virus, the government is implementing health programs, one of which is the provision of health and support facilities. It is necessary to apply the prudence of law in the process of procurement to avoid things that are against the applicable law. The purpose of this study is to examine the procurement during the Covid 19 pandemic. This research method uses a normative juridical method with a conceptual and statutory approach. Conclusion of research on the procurement of goods and services is a legal instrument to support public service activities, during the emergency of Covid 19, players in the procurement of medical devices / health support goods are encouraged to use legal aid if the price offered by the provider soars

Keywords: Covid 19, Procurement, Good Government

1. INTRODUCTION

Procurement of goods and services (PBJ) is important in government activities to serve public needs. The procedure of procurement are regulated to make procurement contracts. During the era of President Joko Widodo, he provided flexibility in the procurement to MSMEs for economic equality. The activity of procurement can lead to a crime if the perpetrator and provider violate the law that regulates matters that are contrary to the rules for procurement. It is hoped that internal and external supervision will provide a sense of security for procurement actors to work in their fields and provide opportunities for other business actors to obtain tenders from the government.

In Indonesia, there are often social problems and natural disasters that cause emergencies. One of the emergencies such as the disease outbreak in 2020, namely Covid 19, is very disturbing for the community and government. During the Covid 19 pandemic it had an impact on all aspects, especially on the health aspect. Problems in the field that often occur, such as a lack of medical equipment, personal protective equipment, support facilities and health workers in the context of handling Covid 19 have triggered sudden needs. In the process of procurement, sometimes the number of products and distribution of health goods is constrained, causing the price of goods to soar. Regulations regarding the handling of the procurement of emergency services regulated in LKPP Regulation Number 13 of 2018 concerning Procurement of Goods / Services in an emergency, regulation of LKPP Number 3 of 2020 concerning Explanation of the implementation of procurement of service goods in the context of handling corona virus disease and presidential regulation no 16 years 2018 and Presidential Instruction No. 4 of 2020. The purpose of this study is



to contribute ideas for students, business people, actors in the procurement. The issues of this study are Procurement to Support the Continuity of Public Service Activities for the Procurement of Goods and Services in the Health Sector during the Covid 19 pandemy and procedure of Procurement during COVID 19.

2. RESEARCH METHODS

This type legal research is normative legal research, which is a process to find legal rules, principles of law, and legal doctrines to answer legal issues (Peter Mahmud Marzuki, *Legal Research*, 2011). Researchers use the normative legal research, because this research is to find coherence between issues and legal principles, doctrine and whether one's actions are in accordance with legal norms or legal principles (Peter Mahmud Marzuki, *Revised Edition of Legal Research*, 2014) As this research is to find. In this study, researchers used a problem approach method, namely, a statutory approach, a conceptual approach.

The statute approach to finding about regulation are related to the legal issue being handled. [1] statute approach is finding the procurement law , doctrine, principle too. In this study based on LKPP Regulation Number 13/2018 about law of Procurement for emergency, LKPP reg Number 3 of 2020 contain implementation of the procurement of service goods in the context of handling the corona virus disease and goverment regulation no. 16 of 2018 and Presidential Instruction no. 4 of 2020.

The conceptual approach based on doctrines to developed in the science of law. Studying review and doctrines in legal science, researchers will find ideas that give birth to legal doctrine, legal concepts, and legal principles that are relevant to the issues at hand. In the conceptual approach, new concepts will be found in accordance with the objectives of this study. In this study, the theories and concepts used include the concept of code of ethics and the concept of responsibility and accountability. In this study, researchers used legal material sources, including. Primary legal are used authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions. Primary laws to be used in this research include LKPP Regulation Number 13 of 2018 concerning Procurement of Goods / Services in an emergency, LKPP Circular Number 3 of 2020 contain of regulation of implementation procurement during corona virus disease and presidential regulation no 16 years 2018 and Presidential Instruction No. 4 of 2020.

Secondary legal materials are in the form of all legal publications that are not official documents. Publications on law include text books, legal dictionaries, legal journals, and commentaries on court decisions. In this research, secondary legal materials used include: books in the field of law, papers, articles, and theses.



3. DISCUSSION

Procurement to Support the Continuity of Public Service in the Health Sector during the Covid 19 Emergency

Procurement is a important activities in Indonesian goverment. The government cannot be separated from the procurement. Fulfilling thing of procurement is an important part that cannot be separated in government administration. The availability of goods and services is part of the government's duties and responsibilities in an effort to meet the people's needs, as well as the needs of the government in running the government. (H, Purwosusilo, *Legal Aspects of the Procurement*, 2014. The term procurement is broadly defined, including an explanation of the stages of preparation, determination and implementation or administration of tenders for the procurement, scope of work or other services. Procurement is also not only limited to selecting project partners with *purchasing* or official agreements for both parties, but includes the entire process from the start of planning, preparation, licensing, determining the winner of the tender to the implementation stage and administrative processes in procument, jobs or services such as technical consulting services, financial consulting services, legal consulting services or other services.² Government procurement has the objective of obtaining goods and services at an accountable price in an appropriate quantity and quality and on time. Adhi Ardian Kustiadi, *Handbook for Preventing Corruption in the Procurement s*, 2006.).

Regulations regarding the procurement are regulated in Presidential Regulation of the Republic of Indonesia Number 16 /2018 about Government Procurement. PERPRES revokes several previous laws and regulations, including:

- a. Presidential Regulation Number 54 of 2010 concerning Government Procurement
- b. Presidential Regulation Number 70 of 2012 concerning Second Amendment to Presidential Regulation Number 54 of 2010 concerning Procurement
- c. Presidential Regulation Number 172 of 2014 concerning Third Amendment to Presidential Regulation Number 54 of 2010 Regarding Government Procurement
- d. Presidential Regulation Number 4 of 2015 Regarding the Fourth Amendment to Presidential Regulation Number 54 of 2010 concerning Government Procurement

Concept of Procurement according to the Presidential Decree The procurement is an activity of procuring thing / services by the Ministry / Institution / Regional apparatus financed by APBN / APBD, the process starts from identification of needs to the handover of work results. The scope of activities for the procurement according to Article 3 in this Presidential Regulation includes:

- a. Goods;
- b. Construction work;
- c. Consulting Services; and



d. Other Services.

Furthermore, the method or way for the government to carry out the procurement of goods / services as referred to in paragraph (1) is through:

- a. Self-management; and / or
- b. Provider.

A statutory regulation has the objective of establishing as in Article 4 of the Presidential Decree for the procurement / PBJ which includes:

- a. the right goods / services for every money spent, measured in terms of quality, quantity, time, cost, location, and Provider;
- b. increasing the use of domestic products;
- c. Increasing the participation of Micro, Small and Medium Enterprises;
- d. increasing the role of national business actors;
- e. support the implementation of research and utilization of research results / services;
- f. increase participation in creative industries;
- g. economic equity; and
- h. encourage Sustainable Procurement.

In the process of procurement, the government and business actors are expected to pay attention to legal principles and statutory regulations. Article 6 Perpres PJB for the Procurement applies the following principles:

- a. efficient;
- b. effective;
- c. transparent;
- d. open;
- e. compete;
- f. fair; and
- g. accountable.

The process of procurement involves public officials and business actors, referring to Article 8 of the PBJ Presidential Decree that the Goods / Services Procurement Actors consist of:

1. PA;
2. KPA;
3. PPK;
4. Procurement Officer;
5. Election Working Group;
6. Procurement Agent;
7. PjPHP / PPHP;
8. Self-management Operators; and



9. Providers.

A country is never free from a state of emergency, the PBJ decree accommodates of procurement during an emergency to guarantee the rights of citizens to obtain protection from the Government. With due observance of the legal principles in the PBJ Presidential Decree which is then stated in Article 59 of the PBJ Presidential Decree, it states that:

(1) Handling of emergencies is carried out for the safety / protection of the community or Indonesian citizens who are in the country and / or abroad whose implementation cannot be postponed and must be done immediately.

(2) The emergency includes:

a. natural disasters, non-natural disasters, and / or social disasters;

b. conducting search and rescue operations;

c. damage to facilities / infrastructure that can interfere with public service activities;

d. natural disasters, non-natural disasters, social disasters, development of political and security Situations abroad, and / or the enactment of foreign government policies which have a direct impact on the safety and order of Indonesian citizens abroad; and / or e. providing humanitarian assistance to other countries affected by disasters.

(3) Determination of the emergency as referred to in paragraph (2) letter a shall be carried out in accordance with the provisions of statutory regulations. (4) The emergency as referred to in paragraph (2) letter a includes emergency alert, emergency response and emergency transition to recovery.(5) For the handling of the emergency as referred to in paragraph (2), PPK appoints the closest provider who is carrying out the procurement of similar goods / services or other business actors who are deemed capable and meet the qualifications to carry out the procurement of similar goods / services. (6) Handling of an emergency can be carried out by means of the use of permanent construction, in the event that the delivery of permanent work is still within the emergency period. (7) Handling of emergencies which can only be overcome by permanent construction, completion of work can pass through the emergency period.

Judging from the description in the provisions above, it needs to be emphasized that the procurement of goods and services during an emergency can be carried out while still paying attention to legal principles and related legal regulations.

Procurement of goods and services carried out in the field may experience obstacles and may also be misused by irresponsible parties. To oversee the process of procurement, legal instruments related to supervision are needed. The PBJ Presidential Regulation regulates the supervision of the PBJ process in Article 76 paragraph (1) which states that the Minister / head of institution / regional head is obliged to supervise the procurement of goods / services through the internal supervisory apparatus at the respective Ministries / Institutions / Regional Governments. Supervision activities based on Article 76 of the Pperpres PBJ can be carried out through the



following activities:

- a. audit
- b. Review
- c. Monitoring
- d. evaluation,
- e. and / or implementing a whistleblowing system.

The PBJ process supervision activities can be started from planning, preparation, selection of Providers, execution of Contracts, and handover of work. PBJ supervision activities have a scope of supervision of the procurement of goods / services which includes:

- a. maximum benefit value;
- b. compliance with regulations;
- c. TKDN achievement;
- d. use of domestic products;
- e. backup and allocation of packages for small businesses; and
- f. Sustainable Procurement.

PBJ supervision can be carried out by institutions that have the task of administering government affairs in the field of state / regional financial supervision and national development. The results of supervision are used as a means of controlling the implementation of the procurement of goods / services.

The PBJ Presidential Decree provides a legal basis for the public to submit complaints or complaints related to the PBJ Process which is regulated in Article 77 of the PBJ Presidential Regulation by submitting a written letter accompanied by factual, credible, and authentic evidence to Law Enforcement Officials. Then the complaint is forwarded to APIP to be followed up according to its authority and to report the follow-up results of the complaint to the minister / head of institution / regional head. The report from APIP addressed to the Minister / head of institution / head of the region is given to the competent agency, if there is an indication that KKN is detrimental to state finances.

Urgency and Process of Procurement in the Conditions of COVID 19 pandemy

In handling emergencies, the government has an obligation to be present to provide services to the community so that emergencies can be immediately resolved and controlled. One of the handling in an emergency is the need for goods / services of an urgent nature which results in the level of fulfillment having priority speed and accuracy such as carrying out a rescue in a disaster condition, seeking human life help in an accident, damage to infrastructure that interferes with public service activities and / or endangers safety. community, or providing assistance / services for disaster victims. In general, the above conditions constitute a condition where the



fulfillment of the needs for goods / services is not planned in advance, both in terms of type, quantity and time that cannot be postponed and must be done as soon as possible. procurement in an emergency situation as described above, in accordance with the mandate of Article 91 paragraph (1) letter p of Presidential Regulation Number 16 of 2018 concerning Government Procurement/PBJ, a procedure for implementing the procurement of goods /PBJ in emergency handling is required provide value for money, based on the principles of effectiveness, transparency and accountability.

Purpose and Objectives The purpose of establishing the procedure for the PBJ in the handling of an emergency is to provide guidelines for the actors of the procurement /PBJ in carrying out the procurement /PBJ for handling emergencies. The purpose of establishing the procedure for the procurement /PBJ in the handling of an emergency is so that the procurement /PBJ can be carried out appropriately, quickly, and responsively and still observes the principles of the procurement of goods / services. **Criteria for an Emergency** An emergency is a situation that threatens and disrupts the life and livelihoods of a group of people / communities that requires immediate and adequate response.

Disaster emergencies can be caused by:

- a. Natural disasters such as earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, landslides;
- b. Non-natural disasters such as failed technology, failed modernization, epidemics, disease outbreaks; and
- c. Social disasters such as; social conflicts between groups or between communities, terror.

Search and Rescue Operations Activities carried out in an effort to find, help, rescue and evacuate people who are facing emergencies and / or hazards that may be caused by accidents (land, air and / or sea), disasters, or conditions that may endanger humans /Public.

Damage to facilities / infrastructure that can disrupt public service activities. Damage to facilities / infrastructure that can threaten safety, security and utilization, requires prompt and appropriate action to deal with the damage.

Emergency Status is a condition determined by the competent Official for a certain period of time in the context of overcoming an emergency. The process of procurement in an emergency is carried out by means of self-management and / or providers. Stages of the procurement process for goods and services Article 6 Regulation of the Government Procurement Policy Agency Number 13 of 2018 concerning the Procurement of Goods / Services in Emergency Handling:

(1) The stages of procurement of goods / services in handling emergencies include:

- a. procurement planning;
- b. procurement implementation; and
- c. payment settlement.



(2) Procurement planning as referred to in paragraph (1) letter a includes:

- a. identification of the need for goods / services;
- b. resource availability analysis; and
- c. determination of the method of procurement of goods / services.

(3) The implementation of the procurement of goods / services as referred to in paragraph (1) letter b through the Provider in the following stages:

- a. issuance of a Letter of Appointment of Goods / Services Provider (SPPBJ);
- b. joint examinations and preparatory meetings;
- c. handover of field;
- d. (SPMK) / (SPP);
- e. work implementation;
- f. calculation of work results; and
- g. handover of the work of the

Procurement of goods / services in the description above which is carried out through self-management in the following stages:

- a. coordinating other parties who will be involved in emergency handling;
- b. joint examinations and preparatory meetings;
- c. work implementation; and
- d. handover of work results.

The settlement of trade payments for emergency services is carried out by means of a contract stage. Payment, post audit.

The process of procurement during the emergency Covid 19 period can be abused by the provider of goods by reducing the price of goods for various reasons, besides that the authorized official can take the opportunity to abuse authority in various ways. To avoid acts of abuse of the situation Article 7 (1) Regulation of the PBJ/ Procurement Policy Agency Number 13 of 2018 concerning Procurement of Goods / Services in Emergency Handling authorizes APIP to supervise and provide assistance for the activities of the procurement of goods / services in handling an emergency situation from the planning process to payment. The task of APIP is to audit reports and / or complaints from the public regarding irregularities or abuse of authority in the procurement of goods / services for emergency handling, in accordance with the provisions of laws and regulations.

Procurement actors in carrying out the PBJ process can request legal assistance for those regulated in Article 8 (1) Regulation of the Government Procurement Policy Agency Number 13 of 2018 concerning Procurement of Goods / Services in Emergency Handling, Legal services in the form of providing legal assistance since the investigation process up to the stage of the court's decision regarding the implementation of duties in the field of goods / services procurement. Legal



services are provided by Ministries / Institutions / Local Governments. Ministries / Institutions / Local Governments in providing legal services can be assisted by Advocates. There is an exception that legal services are not provided in the event a Procurement Actor is caught in the act.

With the explanation described above, actors in the procurement of medical devices are expected to ask for legal assistance if the price of goods soar during the Covid 19 emergency.

4. CONCLUSION

Procurement of goods and services is a legal instrument to support public service activities and During the Covid 19 emergency, the perpetrator procurement of medical devices / health support goods is urged to use legal assistance if the bid price given by the provider soars

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