

Legal Problems Regarding Disputes In Government Procurement Of Goods And Services In Corrections Institutions

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<i>Article Info</i>	<i>Abstract</i>
<i>Received: 2024-11-2</i> <i>Revised: 2024-12-15</i> <i>Accepted: 2024-12-20</i> Keywords: Procurement ; Goods; Services; Dispute ; Law.	Procurement goods and services government is part important in operate wheel state administration , including in the environment institution correctional . However , in In practice , this process often face various problems law that triggers dispute . Research This discuss reason main dispute procurement goods and services in the institution correctional , such as mismatch procedure with applicable regulations , misuse authority , conflict interests , and minimal transparency . In addition , the obstacles in implementation the rules that are set in Presidential Decree No. 16 of 2018 concerning Government Procurement of Goods/Services participate to worsen situation . The dispute that arose often leading to a long legal process and impacting efficiency organization task socialization . Research This recommend existence improvement supervision , transparency , and implementation sanctions firm For minimize dispute in procurement goods and services in the institution correctional .

I. Introduction

Procurement of goods/services as an activity of procuring goods/services by Ministries/Institutions/Regional Government Agencies funded by the State Budget/Regional Budget, the process of which starts from identifying needs to handing over the work results. According to Presidential Regulation Number 12 of 2021 concerning Government Procurement of Goods/Services, Procurement of Goods/Services is an activity to obtain Goods/Services by Ministries/Institutions/Regional Government Work Units/Institutions, the process of which starts from planning needs to completing all activities to obtain Goods/Services. The philosophical basis for the birth of the Presidential Regulation is "Government procurement of goods and services has an important role in the implementation of national development to improve public services and develop the national and regional economy".¹

In essence, procurement of goods and services is an effort by the user to obtain or realize the desired goods and services by using certain methods and processes to reach agreements on price, time, and other agreements. In order for the nature or essence of procurement of goods and services to be carried out as well as possible, both parties, namely the user and the provider must refer to the philosophy of procurement of goods and services, namely obtaining the desired goods and services which is carried out on the basis of logical and systematic thinking (*the system of thought*), following applicable norms and ethics, based on standard procurement methods and processes.²

The essence of government procurement of goods and services is based on a contract document, called a procurement contract for goods and services. The government as the executor of procurement of goods and services is fully involved in a contractual relationship with a third party through an agreement. The agreement is regulated in Book III of the Civil Code (hereinafter referred to as the Civil Code). In Article 1313 of the Civil Code, an agreement is an act by which one or more parties bind themselves to one or more people. The procurement agreement for goods and services in its making still follows what is in *the Burgerlijk Wetboek*. For example, in a procurement agreement for goods and services, validity is an important thing in making the agreement. Validity in this case still follows what is in Article 1320 of *the Burgerlijk Wetboek*. The contract involves the government as a party, usually called a *government contract*. In this case, the government utilizes civil law instruments by the government, so that contracts made by the government have different characteristics when compared to private contracts in general.

The existence of elements of public law causes the rules and principles of law in

¹Consideration of Regulation Number 12 of 2021 concerning Government Procurement of Goods and Services .

² Zaenal Arifin and Ade Haryani, "Analysis of Procurement of Goods and Services". *Epigram* , Vol.11 No.2 (October 2014), p. 118

private contract law to not fully apply to contracts made by the government.³

Government contract is a contract in which the government is involved as a party and the object is the procurement of goods and services. ⁴Presidential Regulation No. 4 of 2015 in conjunction with LKPP Regulation No. 14 of 2012 explains that if the goods provider is proven to be in default, the goods provider is required to provide compensation for the employer. Based on Article 120 of Presidential Regulation No. 4 of 2015, the goods/service provider who is late in completing the work within the time period stipulated in the contract due to the fault of the goods/service provider, is subject to a late fine of 1/1000 (one per thousand) of the contract value or the value of the contract portion for each day of delay , one of which is in the correctional institution that needs under review the relation with alternative settlement dispute .The *restorative justice approach* is the answer to the solution of *prison overcapacity*.

2. Research Method

The legal research used in this research is empirical and normative legal research (*normative*). *legal research*). Empirical research method is a research that focuses on examining a phenomenon or condition of the research object in detail by collecting the facts that occur and developing existing concepts.

3. Results and Discussion

Analysis Legal to Causes and Solutions Dispute Procurement of Government Goods and Services in Correctional Institutions

Article 1 number 1 of Presidential Regulation No. 12 of 2021 concerning Government Procurement of Goods and Services explains more clearly that PBJP is an activity to obtain goods/services by ministries/institutions/regional work units/institutions (hereinafter referred to as K/L/D/I) whose process starts from planning needs until all activities to obtain goods/services are completed. In addition, the scope of PBJP as regulated in Article 2 of Presidential Regulation No. 12 of 2021 includes:

- a. Procurement of Goods/Services within the K/L/D/I environment, the financing of which is either partially or entirely sourced from the APBN/APBD.
- b. Procurement for investment in the Bank Indonesia environment, State-Owned Legal Entities and State-Owned Enterprises (BUMN)/Regional-Owned Enterprises (BUMD) whose financing is partly or wholly charged to the APBN/APBD.

³ Y. Sogar Simamora, *Understanding Several Aspects of Agreements* , (Bandung: Alumni, 1996) , p.41.

⁴ *Ibid.* p. 42

Investment here is capital expenditure as an addition to assets or to increase the capacity of the agency.

- c. Procurement of goods and services that are funded in whole or in part from loans or grants. Loans or grants in this case come from abroad received by the central or regional government.

According to Article 4 of Presidential Decree No. 12 of 2021, there are 4 (four) components of government procurement of goods and services, namely:

- a. Procurement of goods

Talking about procurement of goods, what comes to mind are tangible or intangible objects, moving or stationary, as long as they can be traded, used, utilized, or utilized by the user of the goods. Goods in the context of government procurement of goods and services include raw materials, semi-finished goods, finished goods or equipment, and living things.

- b. Procurement of work or construction

The second component is the procurement of work or construction of a building. The construction can include the construction of the whole or entire, or only part of it. Basically, the procurement of work or construction is divided into two, namely:

- 1) Implementation of building construction

Covers all or part of architectural, civil, mechanical, electrical, and environmental planning activities. Each of these works is accompanied by completeness in realizing the desired development.

- 2) Other physical development

Covers all or part of a building in terms of construction of transportation equipment, land clearing, excavation or land development, assembly of components related to factory equipment, demolition and cleaning work, and park greening work.

- 3) Procurement of consulting services

Procurement of consulting services is a professional service from individuals or institutions that have certain expertise in various scientific fields. This consulting service prioritizes thoughts or mindsets that will be carried out to support the performance of K/L/D/I agencies and other government agencies. The following are some services included in consulting services:

- a) Engineering services, include ideas on how to change or increase the capacity of machine-related equipment.

- b) Planning, design, and supervision services are interrelated to be applied in fields other than construction because construction services are regulated separately. The fields that are opened to be planned, designed, and supervised include all areas of life and professional expertise services that require certain expertise such as advisory services, assessment services, assistance services, technical assistance services, management consultant services and legal consultant services.
- 4) Procurement of other services

Procurement of other services includes services that prioritize skills, including:

- a) Catering services;
- b) Cleaning service;
- c) Outsourcing services;
- d) Insurance, banking and financial services;
- e) Health care services;
- f) Education, human resource development and population services;
- g) Advertising and information services;
- h) Book or paper printing and binding services;
- i) Maintenance or repair services for inventory items;
- j) Building maintenance services for pests, fogging, and other maintenance;
- k) Packing and expedition services;
- l) Convection services;
- m) Import-export services;
- n) Book or paper writing and translation services;
- o) Rental services;
- p) Diving services;
- q) Passenger accommodation and transportation services;
- r) Services for the implementation and transaction of certain financial instruments;
- s) Event organizer services;
- t) Asset security and management services; and
- u) Postal, telecommunications and internet services.⁵

In Presidential Regulation of the Republic of Indonesia Number 16 of 2018 it is stated that the scope of guidelines for implementing procurement of Goods/Services through providers includes:

- a. Preparation for procurement of goods/services;
- b. Preparation for selecting a provider;

⁵ Marzuki Yahya and Endah Fitri Susanti . Op. Cit., p. 7

- c. Implementation of provider selection through tender/selection;
- d. Implementation of provider selection other than tender/selection;
- e. Implementation of Contract; And
- f. Handover of Work Results.

While the basic principles of the implementation of procurement of goods and services apply the principles of efficient, effective, transparent, open, competitive, fair and accountable. That efficient means that by using optimal resources, Goods/Services can be obtained in the amount, quality, and time as planned. The principle of effectiveness means that the procurement of Goods/Services must be in accordance with the needs that have been set and can provide the greatest benefits in accordance with the targets set. Transparent means that all provisions and information regarding the procurement of goods and services, including technical requirements for procurement administration, evaluation procedures, evaluation results, determination of prospective providers of goods and services, are open to interested participants in the provision of goods and services and to the general public. And open means that the procurement of goods and services must be open to providers of goods and services who meet the requirements in accordance with applicable regulations. Competitive means that the implementation of procurement of goods and services must go through healthy competition among providers of goods and services that are equal and meet certain requirements/criteria based on clear and transparent provisions and procedures.

Fair means providing equal treatment for all prospective providers of goods and services and does not aim to provide benefits to certain parties. And accountable means being able to achieve targets both physically, financially and in terms of benefits for the smooth implementation of general government tasks and public services in accordance with the principles and provisions applicable in the procurement of goods and services.

In Presidential Decree No. 12 of 2021 concerning government procurement of goods and services, the determination of the method for selecting providers of goods and services consists of:

a. Contest

This method is carried out if the description of the work package is in the form of creative, innovative and domestic cultural industries in the form of goods that do not have a market price and the price/cost cannot be determined based on the unit price. This method requires a team of judges/team of experts in determining the winner of the tender.

b. Contest

The contest method of selection competes for original ideas, creativity and certain innovations in the form of services whose prices/costs cannot be determined based

on unit prices. Similar to the contest method, the contest method requires a team of judges/team of experts in determining the winner of the tender.

c. Direct Appointment

This method is carried out if the description of the work package is not in the form of a creative industry, but only in certain or special circumstances and in the procurement of special goods/services. The specific circumstances referred to are in accordance with those explained in Presidential Regulation No. 12 of 2021, which include the following:

- 1) Emergency handling that cannot be planned in advance and the completion time of the work must be immediate/cannot be postponed for national defense, security and public order.
- 2) Work that can only be carried out by 1 (one) provider of goods or services, such as procurement for providers of goods who are registered and have received permission from the copyright holder.

d. Direct Procurement

This method is carried out if the description of the work package is not in the form of a creative industry and is not in a specific or special condition, but rather based on the value or price of the work with a maximum amount of 200 million rupiah for procurement of goods/construction work/other services, and a maximum of 50 million rupiah for consulting services. This method is carried out without going through an auction/secretion/direct appointment.

e. Direct Election

This method is carried out if the description of the work package is in the form of construction work with a maximum package value of 5 billion rupiah.

f. Simple selection

This method is carried out if the work package description is in the form of consulting services with a maximum value of 200 million rupiah.

g. Simple Auction

This method is carried out if the description of the goods/services provider package is for work with a maximum value of 5 billion rupiah and for work that is not complex.

h. Limited Auction

This method is carried out if the description of the procurement package of goods/construction work and includes complex work, requires high technology, has high risks, and uses specially designed equipment. Limited auctions are carried out because prospective partners or providers are believed to be limited to

certain people/business entities.

i. General Selection

This method is carried out if the description of the work package in the form of consulting services is announced at least on the K/L/D/I website and the official notice board for the public so that the wider community and the business world that meets the requirements can follow it.

j. Public Auction

Other methods of selecting providers of goods/services for all work that can be followed by all other qualified providers of goods or services ⁶.

In the Regulation of the Government Goods/Services Procurement Policy Agency (LKPP) Number 9 of 2018 concerning Guidelines for the Implementation of Procurement of Goods/Services Through Providers, the method/way of selecting government procurement of Goods/Services in general can be done in the following ways:

- a. E-purchasing / electronic purchasing / is a procedure for purchasing Goods/Services carried out for Goods/Construction Work/Other Services through an electronic catalog system / which is already listed in the electronic catalog. Based on Presidential Regulation of the Republic of Indonesia Number 16 of 2018 in Article 50 paragraph (5), that the implementation of E-purchasing must be carried out for Goods/Services related to the fulfillment of national and/or strategic needs as determined by the Minister, Head of Institution, or Regional Head. Therefore, for Goods/Services that are outside the criteria for fulfilling national and/or strategic needs, procurement of Goods/Services is not required to be carried out through the E-purchasing method.
- b. Direct procurement, which is a method of selecting providers of goods or services implemented for Other Goods/Services with a value above Rp. 50,000,000,- (fifty million rupiah) up to a maximum value of Rp. 200,000,000,- (two hundred million rupiah); Construction Services with a maximum value of Rp. 200,000,000,- (two hundred million rupiah); Consulting Services with a maximum value of Rp. 100,000,000,- (one hundred million rupiah).
- c. Direct Appointment, which is a selection method to obtain Providers of Goods/Construction Work/Consulting Services/Other Services under certain circumstances. Criteria for Direct Appointment of Providers of Goods/Construction Work/Other Services include:
 - 1) Organizing the preparation of sudden activities to follow up on international commitments and attended by the President/Vice President;
 - 2) Goods/Services that are confidential for the benefit of the State include intelligence, witness protection, security for the President and Vice President,

⁶ R. Serfianto DP and Iswi Hariyani, *The Secret to Winning Tenders for Goods / Services*, (Yogyakarta: Pustaka Yustisia, 2011), p. 105

- Former Presidents and Former Vice Presidents and their families and state guests at the level of head of state/head of government, or other confidential goods/services in accordance with the provisions of laws and regulations;
- 3) Building construction work which is a single construction system and a single responsibility for the risk of building failure which as a whole cannot be planned/calculated in advance;
 - 4) Goods/Construction Work/Other Services that can only be provided by 1 (one) capable business actor;
 - 5) Procurement and distribution of superior seeds including rice, corn and soybean seeds, as well as fertilizers including urea, NPK and ZA to farmers in order to ensure the availability of seeds and fertilizers appropriately and quickly for the implementation of increasing food security;
 - 6) Work on infrastructure, facilities and public utilities in residential areas for low-income communities carried out by the developer concerned;
 - 7) Goods/Construction Work/Other Services that are specific and can only be carried out by the patent holder, or a party that has received permission from the patent holder, or a party that is the winner of the tender to obtain permission from the government;
 - 8) Goods/Construction Work/Other Services which fail after being re-tendered.
- d. Fast Tender is a method of selecting providers of goods or services that is carried out in terms of specifications and volume of work that can be determined in detail, and business actors have been qualified in the Goods/Service Provider Performance Information System (SIKaP). In the implementation of the selection through fast tenders, participants have been qualified in the provider performance information system and participants only enter price offers; evaluation of price offers is carried out through the application; and the determination of the winner is based on the lowest bid price.
- e. Tender is a method of selecting providers of goods or services to obtain providers of goods/construction work/other services which is carried out in cases where E-purchasing, Direct Procurement, Direct Appointment and Fast Tender cannot be used.

Resolution Efforts Legal Disputes in Procurement of Goods and Services in Correctional Institutions by Alternatives Completion Dispute

Alternative dispute resolution (APS) or known in English as Alternative Dispute Resolutions (ADR), is a formula to provide choices to the community if a dispute occurs, it can be resolved without going through the courts. Along with the development of

society, the idea emerged to integrate APS components into the Law on Arbitration⁷. This idea emerged to provide a clear legal umbrella, and so that dispute resolution outside the courts can develop rapidly, because there are several factors including;

- a. There is community participation in resolving disputes themselves (access to justice);
- b. To foster a healthy competitive climate for judicial institutions, a selection process will occur that reflects the level of public trust;
- c. As a way to increase competitiveness in attracting investors to Indonesia and to provide legal certainty including the availability of an efficient dispute resolution system;
- d. ADR institutions are expected to encourage dispute resolution institutions in the community to improve the image and trust of the community⁸.

The decreasing public trust in the courts as the party expected to be able to resolve disputes between the disputing parties, sometimes the courts are considered as an extension of power, tend to be corrupt, so that their decisions are considered to be biased and bring injustice⁹.

And there are more and more other factors that make APS become

As its use increases, APS is chosen by many

society, the factors include;

1. The demands of the business world;
2. There are various criticisms of the judicial institution;
3. In general, the judiciary is not responsive;
4. The court decision does not solve the problem;
5. The judges' abilities are generalist;
6. Various expressions that describe the image of the court; and
7. Preventing disputes from occurring will reduce disputes¹⁰.

In 1999, Indonesia issued UUAAPS as an effort to answer the wishes of the community. In UUAAPS, it states that APS is an institution for resolving disputes or differences of opinion through procedures agreed upon by the disputing parties through out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or

⁷Suyud Margono, *Alternative Dispute Resolution (ADR) Business Dispute Resolution*, (Bogor: Ghalia Indonesia, 2010), p. 107

⁸ *Ibid*

⁹Erman Radja Guk Guk, *Arbitration in Court Decisions*, (Jakarta: Chandra Pratama, 2010), p. 103.

¹⁰Yahya Harahap, *Some Reviews Regarding the Justice System and Dispute Resolution*, (Bandung: Citra Aditya Bhakti, 2007), p. 524

expert assessment ¹¹.

The formation of UUAAPS removes arbitration from APS, but does not separate arbitration from APS. However, in the discussion of the RUU and APS, it is stated that this law adopts a combination of processes, that arbitration can stand alone and can be part of APS or is called an alternative to litigation ¹².

The alternative legal basis for dispute resolution can be stated as follows:

- a. Article 1338 of the Civil Code states that all agreements made legally apply as laws for those who make them. This provision contains the principle of open agreements. This means that in resolving a problem, everyone is free to formulate it in the form of an agreement with any content that can be implemented in order to resolve the problem. Furthermore, as stipulated in Article 1340 of the Civil Code, an agreement only applies between the parties who make it. For non-litigation dispute resolution, this provision is important in terms of reminding the disputing parties that they are given the freedom by law to choose a path to resolve their problems that can be stated in an agreement, as long as the agreement is made legally, meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code.
- b. Article 1266 of the Civil Code states that the condition of cancellation is considered to always be included in a reciprocal agreement, when one party does not fulfill its obligations. This provision is important to remind the parties who make the agreement in resolving their problems that the agreement must be implemented consistently by the parties.
- c. Article 1851 to 1864 of the Civil Code on Peace. That peace is an agreement, therefore a peace agreement is valid if it is made in accordance with the requirements for a valid agreement and is made in writing. Peace can be made in court or outside the court. In non-litigation dispute resolution, peace is made outside the court, which is more emphasized on how legal disputes can be resolved by means of peace outside the court and the peace has the power to be implemented.
- d. Law No. 30 of 1999, states that arbitration is a method of resolving civil disputes outside the general courts based on an arbitration agreement made in writing before or after the dispute by appointing one or more arbitrators to make a decision on the dispute. Furthermore, what is meant by alternative dispute resolution is the resolution of disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the courts by means of consultation, negotiation, mediation, conciliation or expert assessment.

Alternative forms of dispute resolution can be divided into: First, *alternative to adjudication* consisting of negotiation and mediation; Second, *alternative to*

¹¹Article 1 number 10 UUAAPS

¹²Sudargo Gautama, *New Arbitration Law 1999*, (Bandung: Citra Aditya Bakti, 2009), p. 41.

litigation consisting of negotiation, mediation and arbitration¹³.

In Government Procurement of Goods/Services, Procurement of Goods/Services is a series of activity processes in frame to obtain goods / services that are initiated with planning need until with completed all over activity For to obtain goods / services. Results and notes in discussion existing changes in procurement goods / services government, obtained fact that there is various problems that arise in implementation contract. Things that often occurs in the problem in implementation contract covering mismatch understanding on provisions that have been agreed in letter agreement (contract), actions of the parties, or action default by the parties¹⁴.

For avoid the occurrence dispute contract in matter This is the Policy Institute Government Procurement of Goods/Services (LKPP) as *Lead Sector* in procurement goods / services the government in Indonesia launched Service Completion Dispute contract Government Procurement of Goods/Services (LPS LKPP) which is stated in the Regulation of the Government Policy Agency Government Procurement of Goods/Services Number 18 of 2018 concerning Service Completion Dispute Contract Government¹⁵ Procurement of Goods/Services. Service settlement dispute contract The purpose of LKPP Procurement of Goods/Services or LKPP LPS is For assist perpetrator procurement in matter This Official Maker Commitment to Ministries/Institutions/ Regional Governments in dispute the contract that occurred with party second that is Provider of Goods/Services. Settlement problem PBJ contracts include in realm problem civil, in matter This can done in a way litigation and non- litigation. Settlement non-litigation dispute which is regulated in Per-LKPP No. 18 of 2018 consists of from a number of alternative, namely deliberation, and if No can completed so there is option reconciliation, mediation, and arbitration¹⁶.

Apart from the dispute resolution methods as mentioned above which are based on Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and Per-LKPP No. 18 of 2018 concerning Dispute Resolution Services for Government Procurement of Goods and Services, in the Indonesian legal system this has been regulated in Law No. 48 of 2009 concerning Judicial Power as stated in Article 58 and Article 60, which in essence determines dispute resolution through mediation.

The regulation to obtain a peace deed for a peace agreement outside the court by filing a lawsuit may be seen as somewhat strange. How can a dispute that has basically been resolved peacefully, but then one party files a lawsuit against the opposing party who has made peace with him. However, if we look at the empirical situation that not

¹³Abdul Halim Barkatullah, Forms of Legal Protection for Consumers in the Settlement of International Electronic Transaction Disputes According to Law No. 1 of 2008. (Jakarta: Jurnal Hukum Bisnis, Vol. 29 No. 1, 2010), pp. 19-29.

¹⁴ Gemas, C. (2020), *Optimizing Government to Advance the Nation*. Retrieved April 26, 2024, from <https://christiangamas.net/layanan-penyelesaian-kasus-lps-lkpp>

¹⁵ Mary, S. (2019). *sintaposmaria.blog*. Retrieved 27 April 2024, from <https://sintaposmaria.blog/2019/03/31/siklus-dan-phase-pengadaan-barang-jasa/>

¹⁶Gemas, C. *Op.Cit.*

everyone who has entered into an agreement with another party is willing to comply with the agreement, then this regulation has a rational basis, why is it still necessary to have a requirement through filing a lawsuit even though the parties have made peace because the court is bound by procedural rules in the Indonesian legal system that the court can only carry out its functions on the basis of a lawsuit for disputes and an application for legal problems that are not disputes. Why is a certified mediator required is to encourage an increase in the quality of mediation services. Because people who have obtained a certificate through mediation education and training have the knowledge and skills of a mediator, so that they will not change the mediation process which is based on consensus and based on the autonomy of the parties into a decision-making process like arbitration

¹⁷.

Non-court mediation institutions are mediation institutions that provide services to the community to resolve disputes. Usually these institutions are legal entities of foundations or in other forms, which they provide mediation services for the community who want dispute resolution. One of the well-known mediation institutions is the national mediation *center* .

In addition, there are also institutions that provide mediation services, although they do not use the name of a mediation center. These institutions include ¹⁸the Indonesian National Arbitration Board or BANI, an agency established by the Indonesian government to enforce law in Indonesia in resolving disputes or differences of opinion that occur in various sectors of trade, industry and finance, through arbitration and other alternative forms of dispute resolution, including in the fields of corporations, insurance, financial institutions, manufacturing, property rights, intellectual property, licensing, franchising, construction, shipping/maritime, the environment, and others within the scope of international laws and customs. This agency acts autonomously and independently in enforcing law and justice ¹⁹.

The National Sharia Arbitration Board (BASYARNAS) is a change from the name of the Indonesian Muamalat Arbitration Board (BAMUI) which is one of the forms of Islamic Arbitration that was first established in Indonesia. Its founder was initiated by the Indonesian Ulema Council (MUI), the presence of the National Sharia Arbitration Board (BASYARNAS) is highly anticipated by Indonesian Muslims, not only because it is motivated by the awareness and interests of the people to implement Islamic law, but also more than that is a real need in line with the development of economic and financial life among the people. Therefore, the purpose of establishing the National Sharia Arbitration Board (BASYARNAS) as a permanent and independent body that functions to resolve the possibility of muamalat disputes that arise in trade relations, financial

¹⁷ *Ibid.*, p. 194

¹⁸ *Ibid.*, p. 336

¹⁹ *Ibid.*, p. 345

industry, services and others among Muslims ²⁰.

A peace agreement or peace agreement does not have legal force that provides legal certainty for the disputing parties. A peace agreement will have binding legal force when it has become a peace deed through a Court Judge's Decision. To become a peace deed, the peace agreement or agreement must be requested for power from the Panel of Judges. If this agreement has not yet formed a peace deed, then its power is very weak, because the agreement is only an agreement made by both parties, without any supervision by an authorized institution. In other words, if at some point there is a problem regarding the contents of the agreement, then even though the agreement has been approved by the mediator or other third party, the mediator cannot immediately take action on the occurrence of problems with the contents of the agreement, so that the parties can re-litigate the dispute.

Law is a valid norm.²¹ The basic norm of a legal order is the highest postulated rule that determines the creation and abolition of norms of the legal order.²² The basic norm of a positive legal order is none other than the fundamental rule on the creation of various norms of the positive legal order.²³ According to Kelsen, the basic norm is the source of law, meaning it determines the validity and effectiveness of law, such as statutes. Kelsen also said that every legal norm is the source of other legal norms whose formation is regulated by the legal norm in determining the procedure and content of the norm to be formed. Every "higher" legal norm is the "source" of a lower legal norm.²⁴ The consequence of all this is that lower regulations must be based on higher regulations, up to the basic (fundamental) norm ²⁵.

The formation of legal norms is usually the application of higher legal norms, which regulate their formation, and the application of higher legal norms is usually the formation of lower legal norms which are determined by those higher legal norms ²⁶. Law is the protection of human or societal interests.²⁷ Societies are always developing, so human interests also develop both macro and micro. As a protection of human interests, law follows the development of human interests. Law is dynamic (*historisch bestimmt*),

²⁰ *Ibid.*, p. 357

²¹ Fradhana Putra Disantara, Dicky Eko Prasetyo, and Badrudin Kurniawan, 'Ethical Challenges and Political Corruption in the 2024 Elections: A Perspective on Dignified Justice', *Nagara Law Journal*, 1.2 (2024), 13–27.

²² Fradhana Putra Disantara and others, 'EKSTENTIFIKASI KEWENANGAN MAJELIS KEHORMATAN MAHKAMAH KONSTITUSI DALAM MEMPERKUAT GAGASAN CONSTITUTIONAL ETHICS', *LITIGASI*, 1.24 (2023), 40–63 <<https://doi.org/10.23969/litigasi.v24i1.7232>>.

²³ Setiya Widayaka and others, 'DEONTOLOGI VS. KONSEKUENSIALISME : PANDANGAN FILOSOFIS DALAM PENEGAKAN HUKUM HAK ASASI MANUSIA', *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat*, 10.3 (2024), 649–64 <<https://doi.org/10.55809/tora.v10i3.406>>.

²⁴ I Gede Agus Kurniawan, Putu Aras Samsithawrati, and Lourenco De Deus Mau Lulo, 'Eksistensi Sanksi Administratif Bisnis Digital Dalam Perspektif Economic Analysis of Law', *Jurnal Ius Constituendum*, 8.1 (2023), 115 <<https://doi.org/10.26623/jic.v8i1.6281>>.

²⁵ Helmi, *Environmental Licensing Law*, First Edition, Second Printing, (Jakarta: Sinar Grafika, 2013), p. 286

²⁶ *Ibid.*, p. 287

²⁷ I Gede Agus Kurniawan, 'Putusan Mahkamah Konstitusi Terhadap Undang-Undang Cipta Kerja Dalam Perspektif Filsafat Utilitarianisme', *JURNAL USM LAW REVIEW*, 5.1 (2022), 282–98 <<https://doi.org/http://dx.doi.org/10.26623/julr.v5i1.4941>>.

always following developments. In its development, law seeks its ideal, namely the realization of three basic ideas in law, namely legal certainty (*rechtssicherheit*), benefit (*zweckmassigkeit*), and justice (*gerechtigkeits*).²⁸ These three elements are said by Gustav Radbruch to be the pillars of the ideal of law (*idee des rechts*). This ideal of law will guide humans in their legal life. These three basic values must exist in balance, but often these three basic values are not always in a harmonious relationship with each other, but rather confront, conflict, tension (*spannungs verhältnis*) with each other. In the event of In such a conflict, what should be prioritized is justice ²⁹.

In essence, law contains ideas or concepts that can be classified as something abstract, including ideas about justice, utility, and legal certainty. According to Leon Petrazycki as quoted by Siti Malikhatun Badriyah, justice is a concrete phenomenon that can be captured through our intuitive research. He said that:³⁰

The doctrine herein developed concerning law in general and intuitive law in particular comprises all the premises needed to solve the problem of the nature of justice: actually, justice is nothing but intuitive law in our sense. As a real phenomenon justice is a physical phenomenon, knowledge of which can be acquired through self-observation and the joint method.

Gunawan Setiardjo defines justice as follows: "Justice is (taken in a subjective sense) a habit, both the soul that drives humans with a constant and continuous will to give everyone what is their right" ³¹. Maria Farida Indarti Soeprapto stated that the formation of harmonious and easily implemented laws and regulations in society is one of the main pillars for the organization of a country. If we talk about the science of legislation, then we will also discuss the process of forming state regulations,³² and at the same time all state regulations that are the result of the formation of state regulations, both at the central and regional levels ³³.

Presidential Decree as a legal product, must be able to provide legal certainty for the community, must be beneficial in its implementation, and most importantly its substance must not be discriminatory, so that justice can be achieved. *Jean Jacques Rousseau* (1712-178) in *Du Contract Social* , stated that the law is a general will (volonte generale) that will create a general goal, namely the public interest. If in a particular society a law

²⁸ Ni Ketut Supasti Dharmawan and others, 'Model Penguatan Perlindungan Kekayaan Intelektual Komunal: Transplantasi Muatan Kebijakan Termasuk Benefit-Sharing Berbasis Undang-Undang', *Jurnal Ilmiah Kebijakan Hukum*, 17.2 (2023), 235 <<https://doi.org/10.30641/kebijakan.2023.V17.235-252>>.

²⁹Siti Malikhatun Badriyah, *Discovery of Law in the Context of the Search for Justice*, First Edition, (Semarang: Diponegoro University Publishing Agency, 2010), p. 1.

³⁰ *Ibid*, p. 3

³¹ *Ibid*

³² I Gede Agus Kurniawan and Lourenco De Deus Mau Lulo, 'Legal Protection Orientation And Formulation For Traditional Musical Instruments As Patents: An Inclusive Legal Paradigm', *Jurnal Dinamika Hukum*, 23.2 (2023), 325 <<https://doi.org/10.20884/1.jdh.2023.23.2.3629>>.

³³Jazim Hamidi, *Legal Optics, Problematic Regional Regulations, Initiating Responsive and Sustainable Regional Regulations*, First Edition, (Jakarta: Prestasi Pustaka Publisher, 2011, p. 139)

is formed that does not reflect the public interest, because it does not apply equally to everyone, then the law must be considered unfair ³⁴.

4. Conclusion

Procurement goods and services government in institutions correctional often face various problems potential law cause dispute . Factors like lack of transparency , abuse authority , violation procedures , and conflicts interest become reason main the occurrence dispute . Implementation regulations that are not optimal, such as Regulation Presidential Decree No. 16 of 2018 concerning Government Procurement of Goods/Services also worsens situation . Dispute This No only hinder efficiency of the procurement process , but also has an impact negative on service and function correctional in a way overall . Therefore that , is needed steps concrete For minimize potential disputes and escalate compliance to law .

SUGGESTION

Need existence more supervision strict from internal and external parties external during the procurement process ongoing . Periodic audits are also important For ensure procedure has run in accordance regulations and settlement models can done via APS.

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³⁴ *Ibid* , p. 79

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