

Legal Foundation for the Establishment of General Procurement Guidelines for Goods and/or Services in Regional Government-Owned Enterprises (BUMD) to Realize Legal Certainty

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Abstract

Regional Government-Owned Enterprises (BUMD) are established not only to develop regional economies but are also expected to meet community needs by providing goods or services according to the needs and characteristics of the respective regions while considering the potential of the region itself. To fulfill these objectives, BUMD are managed based on good corporate governance principles, and in running their business and supporting operations, they cannot be separated from activities to procure goods and services. This research is compiled to analyze the legal foundation for establishing general procurement guidelines for goods and/or services in BUMD to realize legal certainty. This research concludes that the regulation of general procurement guidelines for goods/services in BUMD is urgently needed. The need for such regulation is based on philosophical, juridical, sociological, political, ecological, economic, and cultural arguments, so that with the existence of guidelines from the central government, it is expected that the implementation of procurement of goods and services in BUMD can be realized in accordance with the purpose of its establishment and to end regulatory disharmony at the regional level so that legal certainty can be achieved.

I. Introduction

Through regional autonomy based on the principle of decentralization, the Central Government can provide or delegate the implementation of part of government affairs to Regional Governments. In implementing government affairs, Regional Governments have obligations, one of which is managing regional finances based on principles

determined in the Law Number 23 of 2014 concerning Regional Government, namely effectiveness, efficiency, transparency, and accountability. Related to regional financial management, there is one element in revenue that is sought by the region itself, which comes from separated regional assets.

Regional Government-Owned Enterprises or known as BUMD, as corporate entities that can only be established by Regional Governments, as regulated in government regulations on regional financial management, are categorized as separated regional assets (Cahyadi, 2018). The establishment of BUMD can be done by including capital in the form of money or assets. BUMD are established not only to develop regional economies but are also expected to meet community needs by providing goods or services according to the needs and characteristics of the respective regions while considering the potential of the region itself.

BUMD are business entities that become important assets for regional governments, established with the aim of participating in implementing national and regional economic development. Unlike other economic actors, BUMD in conducting their activities always strive to meet community needs in the region and seek to increase regional revenue (Muryanto, 2017). Additionally, the purpose of establishing BUMD includes providing benefits to the community by providing quality goods and/or services for the community (Afriyanto et al., 2024). To fulfill these objectives, BUMD are managed based on good corporate governance principles, which is also mandated by laws and regulations. This becomes a central issue because as business entities, they should be supported by good governance and operational standards, especially in planning and careful strategic arrangements in running their business.

As business entities, BUMD certainly play a role in regional economic development and can actively contribute to improving the standard of living of people in the region. Additionally, labor absorption in the region is also a goal of establishing BUMD, where absorbed labor will provide a domino effect for regional economic development. Besides economic development goals in the region, BUMD in running their business are also expected to actively play a role in promoting sustainable and socially and environmentally responsible business practices (Muryanto, 2017).

BUMD in running their business and supporting operations cannot be separated from activities to procure goods and services. This becomes part of the operational standards of BUMD as determined in BUMD regulations (Cahyaningrum, 2018). The procurement of goods and services in BUMD is needed to meet the operational needs of BUMD, which can be consumables, infrastructure needs, or needs to provide facilities for serving the community.

Based on the rules regulating BUMD in procuring goods/services, namely Article 93 of Government Regulation Number 54 of 2017 on BUMD, the concept of goods/services procurement is not explained in detail and only mentions that other provisions are

stipulated in Regional Head Regulations. The reality is that the regulation of goods and/or services procurement is entirely delegated to Regional Heads, but general guidelines for regulating this matter have never been established, so regional leaders have the freedom to issue regulations on this matter for their respective BUMD in their territories. However, this certainly becomes a problem because there are no general guidelines regulating this matter, which ultimately raises concerns that regulations are made in such a way as to accommodate the interests of those in power. What happens is that between one region and another, there is non-uniformity where established regulations refer to different rules.

In reality, some Regional Governments regulate goods or services procurement in BUMD environments by following the provisions in Presidential Regulation Number 16 of 2018 on Government Goods/Services Procurement as amended by Presidential Regulation Number 12 of 2021 on Amendments to Presidential Regulation Number 16 of 2018 on Government Goods/Services Procurement. However, other Regional Governments form regulations following the provisions in State-Owned Enterprise Ministry Regulation Number PER-08/MBU/12/2019 of 2019 on General Guidelines for Implementation of State-Owned Enterprise Goods and Services Procurement. Although this State-Owned Enterprise Ministry Regulation has now been revoked through State-Owned Enterprise Ministry Regulation Number PER-2/MBU/03/2023 on Guidelines for Governance and Significant Corporate Activities of State-Owned Enterprises. When examined further, these rules hierarchically are not directly related to BUMD regulations themselves, so the relevance and hierarchical appropriateness of using these rules as the basis for regional regulations in implementing goods and services procurement in BUMD certainly still needs to be reconsidered for legal certainty and to achieve legal unification.

Additionally, the Government Regulation regulating BUMD actually mandates that the regulation of procuring goods and services is delegated to Regional Heads to regulate as stated in Article 93 paragraph (2). This policy seems to show how the intervention of Regional Governments or regional leaders in BUMD governance, particularly regarding goods and services procurement, gains legitimacy. As regional authorities, they then hold absolute control in making regulations for goods and services procurement activities by BUMD along with their rules of the game.

As the classic adage *"power tends to corrupt, and absolute power corrupts absolutely,"* stated by Lord Acton, a professor of modern history at Cambridge University, England (Sanusi, 2009), gives us an illustration that power is very close to corrupt behavior, because absolute and unlimited power will create opportunities for power holders so that corrupt behavior can occur (Labolo, 2017). Corruption itself is often interpreted as a form of improper use of power to obtain benefits for oneself or others. Similarly, in this context, where regional leaders are given absolute authority by laws and regulations to regulate goods or services procurement activities in BUMD that are

notionally established by regional governments, it is feared that this will become a means to perpetuate interests that are not necessarily aligned with the mission of BUMD. The close relationship between corruption and power cannot be denied (Zaki et al., 2022).

The envisioned idea is to establish general BUMD goods/services procurement guidelines formed by the Central Government so as to fill the existing legal vacuum, thereby realizing uniform procurement standards for BUMD throughout Indonesia while still considering regional characteristics and narrowing opportunities for corrupt behavior in its implementation.

Based on these problems, this research examines the Legal Foundation for establishing general goods/services procurement guidelines for BUMD with legal certainty. Previous similar research has mostly examined the implementation level or case studies in specific BUMD, such as research by Mansawan (2021); Pohan (2023); Zainul (2023). Meanwhile, this research focuses more on the legal regulatory aspects broadly and attempts to formulate general guideline arrangements that can apply nationally. Thus, this research is expected to provide academic contributions as well as input for legal drafters of laws and regulations in realizing legal certainty in BUMD goods/services procurement.

2. Research Method

This research is normative legal research that examines problems from the perspective of norms, concepts, theories, and legal principles. The approaches used include statutory approach to examine the juridical framework for regulating goods/services procurement in BUMD and conceptual approach to understand the concepts of BUMD goods/services procurement, law formation, and good corporate governance. Primary legal materials consist of relevant laws and regulations, while secondary legal materials include books, journals, and relevant research results (Marzuki, 2011). Legal material collection techniques are conducted through literature study and legal regulation searches (Mertokusumo, 2016). Analysis is conducted descriptively and qualitatively by describing legal materials in regular, coherent, logical, non-overlapping, and effective sentences, as well as using systematic and teleological legal interpretation to produce comprehensive legal construction.

3. Results and Discussion

Goods and services procurement is a long and complex process that starts from needs planning to procurement completion. In Indonesia, there are no general guidelines regulating goods and services procurement in BUMD nationally, thus creating a legal vacuum. To realize legal certainty, the government needs to immediately establish general regulations that apply uniformly. In forming such regulations, legal principles play an important role as basic guidelines, as they become the foundation for the birth

of good and fair laws and regulations (Satjipto, 2000). Additionally, in national legal development, it must be conducted in an integrated, planned, and sustainable manner to realize the ideals as a Legal State as mandated by the 1945 Constitution of the Republic of Indonesia. Every law and regulation can be said to be good (good legislation), legally valid (legal validity), and effectively applicable because it can be reasonably accepted by society and applies for a long time, thus must be based on the foundation of laws and regulations. The establishment of general guidelines for goods and services procurement in BUMD must be based on the foundation for forming laws and regulations. These foundations are as follows (Astawa & Na'a, 2008): 1) Philosophical Foundation, 2) Juridical Foundation, 3) Sociological Foundation, 4) Political Foundation, 5) Ecological Foundation, 6) Economic Foundation, and 7) Cultural Foundation.

The establishment of Regional Government-Owned Enterprises (BUMD) philosophically represents the manifestation of the mandate for regional government administration in optimizing regional financial management, particularly in exploring regional original revenue sources through the utilization of separated regional assets. BUMD are positioned as strategic regional-owned business entities aimed at supporting national and regional economic development and meeting community needs. Unlike private economic actors, BUMD have dual responsibilities: running commercial functions (profit making) while simultaneously performing social functions (public service). This is reflected in Article 331 paragraph (4) of Law Number 23 of 2014 on Regional Government, which emphasizes that the establishment of BUMD aims to encourage regional economic growth, provide quality goods and/or services for the community, and obtain profits that can be used to support development. In implementation, the application of good corporate governance (GCG) principles becomes crucial to ensure effective, efficient, professional, independent, transparent, and accountable BUMD management. The application of GCG also serves as a catalyst in balancing the financial and social objectives that constitute BUMD's mandate.

In this context, goods/services procurement as one of BUMD's main activities in running business and operations holds a very fundamental position (Noho, 2020). Procurement activities not only significantly influence financial performance, expenditure efficiency, and BUMD service quality but also have broad implications for social, environmental, and overall governance aspects (Mansawan, 2021). Goods/services procurement carried out with correct principles will become a means for BUMD to achieve value for money, namely procurement that produces goods/services with accountable prices, best quality, appropriate timing, and provides maximum benefits.

The regulation of goods and/or services procurement in Regional Government-Owned Enterprises (BUMD) as regulated in Government Regulation related to BUMD has not been elaborated in detail but is delegated to Regional Heads through separate regulations. This condition provides flexibility for Regional Governments to form regulations according to local interests but also raises concerns about the potential

for abuse of authority and bias toward political interests.

BUMD in Indonesia still face various structural obstacles, particularly due to intervention by Regional Governments as majority shareholders. This intervention limits the independence of Directors in running operations and making strategic decisions (Hasani et al., 2023). Bureaucratic unprofessionalism and political interest dominance also hinder the application of good corporate governance (GCG) principles, thus creating risks of conflicts of interest, corruption, collusion, and nepotism (KKN), and corruption practices, particularly in goods/services procurement processes.

Goods/services procurement in Regional Government-Owned Enterprises (BUMD) often deviates from good corporate governance (GCG) principles and value for money concepts because BUMD are in a dilemmatic position between commercial efficiency demands and political pressure. This condition emphasizes the importance of formulating general BUMD goods/services procurement guidelines as normative instruments that provide direction and legal certainty. The urgency of these guidelines is based on two main things: first, as public entities with social functions, BUMD must comprehensively apply GCG principles, including in procurement processes; second, procurement must be oriented toward budget efficiency and effectiveness (value for money) to strengthen BUMD's contribution to regional economic development and community welfare. These guidelines are expected to become moral compasses and practical guides so that procurement proceeds professionally, transparently, and accountably.

When elaborated on the juridical foundation, based on the condition of goods and services procurement regulation in BUMD in various regional areas, in accordance with the mandate of Article 93 of Government Regulation Number 54 of 2017 on BUMD, they are subject to regulations made by Regional Heads, in this case both Governor Regulations and Regent Regulations, which, when compared to one another, do not follow the norm hierarchy where there are Regional Head Regulations referring to government goods/services procurement guidelines (Presidential Regulation No. 16 of 2018 jo. Presidential Regulation No. 12 of 2021 jo Presidential Regulation No. 46 of 2025), then there are those adopting state-owned enterprise goods/services procurement regulations (State-Owned Enterprise Ministry Regulation No. PER-08/MBU/12/2019 jo. State-Owned Enterprise Ministry Regulation No. PER-02/MBU/2023), and there are also regional head regulations that do not adopt either of these guidelines.

For example, "East Java Governor Regulation Number 82 of 2023 on Guidelines for Implementation of Goods/Services Procurement in Regional Government-Owned Enterprises" in its initial draft in the considerations section did not include reference to "Presidential Regulation Number 16 of 2018 on Government Goods/Services Procurement as amended by Presidential Regulation Number 12 of 2021 on Amendments to Presidential Regulation Number 16 of 2018 on Government Goods/Services Procurement." However, after requesting facilitation from the

Ministry of Home Affairs through a letter from the East Java Provincial Regional Secretary Number: 100.3/3024/013.1/2023 dated September 8, 2023 regarding Request for Facilitation of East Java Governor Regulation Draft, they received a response from the Minister of Home Affairs cq. Director General of Regional Autonomy based on Letter number: 100.2.1.6/7761/OTDA regarding Facilitation of East Java Governor Regulation Draft on Guidelines for Implementation of Goods/Services Procurement in East Java Provincial Regional Government-Owned Enterprises, in the attachment improvement suggestions mentioned in the considerations section was to include the presidential regulation.

The regulation of government goods and services procurement and general guidelines for state-owned enterprise goods/services procurement hierarchically do not have direct relations with goods and services procurement governance in BUMD. This creates legal uncertainty, where regional governments that have established BUMD experience confusion in referring to appropriate regulations for drafting regional head regulations related to goods and services procurement. Based on Hans Kelsen's norm hierarchy theory, every legal norm should be tiered and sourced from higher norms (Asshiddiqie & Safa'at, 2006; Muhtadi, 2014). However, the authority given by Article 93 of Government Regulation No. 54 of 2017 to regional heads without general guidelines from the central government shows a break in the hierarchical structure. As a result, regulatory disharmony occurs, causing differences in application between one BUMD and another. Whereas, as procurement entities, BUMD should be subject to principles such as efficiency, effectiveness, fair competition, transparency, accountability, and equal treatment, while considering the character and potential of each region. The absence of general guidelines is feared to hinder the consistent application of these principles throughout Indonesia. As emphasized by Gustav Radbruch, legal certainty is an essential basic value in the legal system, alongside justice and benefit.

The problem of regulatory hierarchy lack of synchronization and inconsistency in its implementation has created legal uncertainty in goods/services procurement practices in BUMD environments. This emphasizes the urgency of the need for general procurement guidelines that have strong juridical foundations to fill normative voids (Muhammad, 2010), realize legal certainty, and ensure consistent application of universal procurement principles while still accommodating regional characteristics. The central government, particularly the Ministry of Home Affairs, needs to immediately draft these guidelines in the form of ministerial regulations to have binding force.

From a sociological perspective, regulations should reflect social reality and community aspirations, not merely respond to momentary situations. Goods/services procurement practices are proven to be very vulnerable to corruption, as shown by KPK data recording 406 procurement corruption cases from 2004-2024, and 181 corruption cases involving state-owned/regional-owned enterprises. ICW also recorded that in 2023 there were 105 corruption suspects from BUMD officials and employees. This high number indicates weak governance and integrity control in the

sector. One root of the problem is the unbalanced power relation pattern, where regional heads hold dual roles as regulators and BUMD shareholders, thus opening gaps for conflicts of interest and political intervention. As a result, decision-making in procurement is often influenced by political preferences rather than business principles or legal compliance, ultimately leading BUMD into bad governance practices.

On the other hand, the absence of general guidelines that become common standards in BUMD procurement management opens too wide discretionary space for BUMD managers. Without clear boundaries, basic procurement principles such as transparency, accountability, and fair competition are very likely to be compromised to smooth certain hidden agendas. This is reinforced by the fact that internal and external supervision mechanisms for BUMD are still relatively weak and have not been effective in preventing and detecting potential fraud in procurement processes.

The phenomenon of BUMD procurement deviations turns out to be not only an issue within BUMD scope but has become a broad public interest. Various media studies and corruption monitoring organization reports frequently highlight the poor performance and integrity of procurement in many BUMD. Often, BUMD procurement projects receive strong opposition from the community because they are suspected to be full of interests and do not heed Good Corporate Governance principles (Sasi & Samhudi, 2024). This condition has inevitably eroded public trust in BUMD's professionalism and accountability in managing procurement resources.

Therefore, the presence of general BUMD goods/services procurement guidelines finds its sociological justification as an instrument to improve image and increase public trust in BUMD. These guidelines are expected to become guides for every BUMD in building transparent, accountable, and integrity-based procurement systems. The existence of uniform rules of the game also makes it easier for the public to participate in monitoring procurement processes and reporting suspected deviations.

From the perspective of political foundation, we discuss that laws and regulations are said to have political foundations if they align with political policy lines that become the basis for subsequent policies and government administration direction. In this case, they must align with legal politics (policy) comprehensively (Astawa & Na'a, 2008). In the context of this political foundation, the establishment of general guidelines for goods and services procurement in BUMD is a tool for achieving state objectives and is also utilized as a tool of social engineering in accordance with the direction of state ideals.

As previously outlined, the purpose of establishing BUMD, which is mandated by laws and regulations, is to provide benefits for regional economic development, organize public utilities in the form of providing quality goods and/or services for fulfilling community needs, and obtain profits and/or benefits. Therefore, legal politics in forming goods and services procurement regulations in BUMD must be able to realize these objectives.

If referring to the previous description showing how existing deviation conditions in BUMD goods and services procurement practices become obstacles to realizing these objectives, it is hoped that with the establishment of general goods/services procurement guidelines, these deviations can be eliminated and ultimately the envisioned objectives can be realized in line with the legal politics of forming goods and services procurement regulations in BUMD comprehensively throughout Indonesia.

The Ecological Foundation relates to ecological considerations related to safety and environmental preservation and its ecosystem (Halim & Putera, 2013). With a strong ecological foundation, efforts to realize "green legislation" or "eco-legislation" are no longer mere discourse. Why this aspect needs attention is because in reality, regional head regulations used as guidelines in BUMD goods and services procurement mostly have not considered ecological factors (Sutisna, 2024). Whereas goods and services procurement in BUMD is closely related to safety and environmental preservation and its ecosystem, especially for BUMD operating in agriculture, livestock, tourism, and other sectors related to the environment.

Undeniably, regional government awareness about this issue has not been apparent in regulations made by Regional Heads, particularly regarding goods and services procurement in BUMD, so it is hoped that with the general guidelines for goods and services procurement in BUMD initiated by the central government, it can provide the same policy direction regarding environmental safety and preservation factors and its ecosystem so that ecological values are not left behind in goods and services procurement practices.

Looking from the perspective of economic foundation, we discuss how measured economic calculations regarding economic impacts of goods and services procurement activities in BUMD. Citing data presented on the "General Procurement Plan Information System (SiRUP)" website from LKPP, it is known that throughout 2022, the budget ceiling for goods and services procurement through systems integrated with LKPP was 2.6 trillion rupiah. Then it increased in 2023 to 4.06 trillion rupiah. Then it soared further in 2024, reaching 7.16 trillion rupiah. This budget ceiling amount does not yet include all BUMD throughout Indonesia because not all BUMD conduct procurement through LKPP systems. However, at least it provides an illustration of how large the budget ceiling allocation is for procuring goods or services by BUMD, which greatly affects economic circulation not only regionally but also nationally. Additionally, the purpose of establishing BUMD, as previously outlined, is to meet community needs for goods and services and also seek profits that become a source of regional revenue, which is closely related to economic aspects both regionally and nationally. Therefore, if principles closely related to economic aspects in goods and services procurement in BUMD are not regulated uniformly throughout Indonesia, it will certainly impact economic circulation both regionally and nationally.

The cultural foundation becomes an important aspect in establishing general guidelines for goods and services procurement in BUMD because the purpose of establishing BUMD is to answer needs and explore local regional potential. However, many regional head regulations still refer to government goods and services procurement regulations or state-owned enterprises that are not designed to accommodate local wisdom values. Whereas BUMD have their own characteristics that require more adaptive policies to regional contexts. Therefore, special guidelines are needed that can ensure procurement processes run efficiently, accountably, and still respect local values. These guidelines are also important to encourage the creation of professional, transparent, and integrity-based procurement governance, in line with legal certainty principles that emphasize clarity, consistency, and predictability. Additionally, these general guidelines will help align regulations at the regional level to conform with legal norm hierarchy theory, thus creating orderly rules that support BUMD's strategic role in regional development.

4. Conclusion

Based on the analysis and discussion that has been outlined, it can be concluded that the regulation of general procurement guidelines for goods/services in Regional Government-Owned Enterprises (BUMD) is urgently needed. The need for such regulation is based on philosophical, juridical, sociological, political, ecological, economic, and cultural arguments. Therefore, guidelines from the central government are needed that can accommodate all these aspects so that the implementation of goods and services procurement in BUMD can be realized in accordance with the purpose of its establishment.

The suggestion that can be conveyed is that the central government needs to immediately draft general BUMD goods/services procurement guidelines to end regulatory disharmony at the regional level so that legal certainty can be achieved. These general guidelines must be drafted participatively by involving input from BUMD, business actors, and related stakeholders to ensure comprehensive and applicable arrangements. Additionally, regional governments also need to be encouraged to harmonize regional head regulations governing goods and services procurement in BUMD to align with the general guidelines to be established.

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