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Quo Vadis Economic Law Policy in the Procurement of Goods and Services by the Government (Comparative Study of Indonesia and the Philippines)

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Abstract

This paper discusses the legal development policy in the Government's Procurement of Goods and Services and to reveal the legal development sector in the regulation as well as a comparison of the Government's Procurement of Goods and Services policy between Indonesia and the Philippines. The method used in this paper is normative juridical with a statutory study approach (statue apporouch). The results of this study indicate that the direction of the government's procurement of goods and services policy is the achievement of the output and outcome of government agencies, economic improvement for both business actors and the community through economic equity and sustainable development, as well as comparisons related to government procurement of goods and services in Indonesia during the New Order erawith integrity. The State Budget, however, is entering the decentralized Reform period and there are new regulations in the Government's Procurement of Goods and Services with the formation

of an auction committee at each Office/Work Unit/Project Leader/Project Section. In the Philippines, it is formed in the Government Procurement Reform Act which is the basis for the regulation of Government Procurement of Goods and Services in the Philippines.

Keywords : Procurement of Goods and Services, Government, Public Policy

Abstrak

Tulisan ini membahas kebijakan pembangunan hukum dalam Pengadaan Barang dan Jasa Pemerintah dan untuk mengungkap sektor pembangunan hukum dalam peraturan tersebut serta perbandingan kebijakan Pengadaan Barang dan Jasa Pemerintah antara Indonesia dan Filipina. Metode yang digunakan dalam tulisan ini adalah yuridis normatif dengan pendekatan kajian hukum (statue apporouch). Hasil penelitian ini menunjukkan bahwa arah kebijakan pengadaan barang dan jasa pemerintah adalah pencapaian output dan outcome instansi pemerintah, perbaikan ekonomi baik bagi pelaku usaha maupun masyarakat melalui pemerataan ekonomi dan pembangunan berkelanjutan, serta perbandingan terkait pengadaan barang dan jasa pemerintah di Indonesia pada masa Orde Baru dengan integritas. apbn, bagaimanapun, memasuki periode Reformasi desentralisasi dan ada peraturan baru dalam Pengadaan Barang dan Jasa Pemerintah dengan pembentukan komite lelang di setiap Kantor/ Unit Kerja / Pemimpin Proyek / Bagian Proyek. Di Filipina, dibentuk dalam Undang-Undang Reformasi Pengadaan Pemerintah yang merupakan dasar untuk peraturan Pengadaan Barang dan Jasa Pemerintah di Filipina.

Kata kunci : Pengadaan Barang dan Jasa, Pemerintah, Kebijakan Publik

A. Introduction

Procurement of government goods and services is a strategic and important issue in the perspective of international trade, national law, and its impact on Indonesian law. The government's procurement of goods and services is intended to carry out its obligations to fulfill public facilities and also to assist the function of public services that run as well as possible, and the use of state finances can be controlled and accounted for according to the applicable mechanism.

The impact of government procurement of goods and services can have various impacts, especially legal politics and positive national laws, including: First, the World Trade Organization has a new agenda regarding transparency and non-discriminatory treatment in the procurement of government goods and services in accordance with competition and trade liberalization; second, developing countries, on the other hand, take a defensive stance and make protective and preferential efforts in the implementation of government procurement of goods and services; third, liberalization in the procurement of goods and services is a long and controversial debate between developed and developing countries; fourth, there is a polarization that needs to be examined regarding the decentralization of provisions for the procurement of government goods and services from international legal norms into regional and bilateral legal norms that have been formulated in various provisions of international organizations; Fifth, agreements in international forums have significant normative and economic implications for regulatory policies for the procurement of goods and services by the government of a country.

Seeing the explanation above, in national development, goods and services procurement activities have important and strategic meanings, including; for protection and

preference for domestic business actors, efforts for economic growth and the implementation of efficient and effective governance principles for public spending while at the same time conditioning the behavior of the three pillars of governance, namely: the government, the private sector and the community. The current national development carried out by the Indonesian people is a continuous development in stages to achieve an increase in people's welfare. In this era of globalization, development is an absolute thing that is carried out in an integrated and planned manner in all sectors.

B. Method

In this writing the author uses a normative juridical approach or also called doctrinal legal research because this research is based on laws or norms in the form of concrete legal regulations with normative legal objects in the form of legal principles and legal systems. 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) and Law Number 1 of 2004 concerning the State Treasury, and Law Number 14 of 2014 concerning Government Administration, and Presidential Regulation Number 12 of 2021 which aims to review legal instruments and provisions positive in Indonesia.

C. Results and Discussion

1. Legal Aspects in the Procurement of Government Goods and Services in the Procurement Process of Goods and Services

The national legislation specifically regulating the implementation of the procurement of goods and services that is currently in effect is Presidential Regulation No. 54 of 2010. In the context of legal development, government procurement activities in terms of positive national law have important meanings with the following arguments: first, government procurement of goods and services has a strategic meaning in protection and preference for domestic business actors. Second, the procurement of government goods and services is a significant sector for economic growth. Third, a government goods and service procurement system that is able to apply the principles of good governance will encourage the efficiency and effectiveness of public spending as well as condition the behavior of the three pillars, namely the government, the private sector and the community in implementing good governance. Fourth, that the scope of government procurement of goods and services covers various sectors in various aspects of nation building.

The direction of the legal development policy in Presidential Regulation Number 16 of 2018 concerning the Procurement of Goods and Services can be analyzed from the article that reveals the objectives and policies of the government's procurement of goods and services. Article 4, states that 'Procurement of goods/services aims to:

- a. produce the right goods/services from every money spent, measured from the aspect of quality, quantity, time, cost, location, and provider;
- b. increase the use of domestic products;
- c. increase 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 goods/services;
- f. increase the participation of creative industries;
- g. to encourage economic equity; and

h. encourage Sustainable Procurement.

While article 5 states that: 'The policy on the procurement of goods/services includes:

- a. improve the quality of planning for the procurement of goods/services;
- b. carry out the procurement of goods/services that are more transparent, open, and competitive;
- c. strengthen institutional capacity and human resources for the procurement of goods/services;
- d. developing an E-marketplace for the Procurement of Goods/Services;
- e. using information and communication technology, as well as electronic transactions;
- f. encourage the use of domestic goods/services and Indonesian National Standards (SNI);
- g. provide opportunities for Micro, Small and Medium Enterprises;
- h. encourage the implementation of research and creative industries; and
- i. carry out Sustainable Procurement.

From the article on the objectives and policies of the Government's Procurement of Goods and Services, the policy direction of the Government's Procurement of Goods and Services itself consists of 8 objectives that must be achieved and 9 policies of the Government's Procurement of Goods and Services that must be carried out to achieve the objectives of the Government's Procurement of Goods and Services. The relationship between the policy of the Government's Procurement of Goods and Services with the aim of the Government's Procurement of Goods and Services can be described as follows:

1. To achieve the 8 procurement objectives, the policies that must be carried out are in the form of policies to improve the quality of planning, implementation policies that are transparent, open and competitive, policies for institutional capacity and human resources, policies for developing E-marketplaces for the Procurement of Government Goods and Services, and policies for the use of information technology. and communications, as well as electronic transactions.
2. For specific procurement purposes, the following policies must be implemented:

Government Procurement Policy	Purpose of Procurement of Government Goods and Services
Encouraging domestic government procurement of goods and services and Indonesian national standards	Increase the use of domestic products
	Increasing the role of national business actors
Provide opportunities to Medium and Small Micro Enterprises	Increasing the role of SMEs themselves
Encouraging the implementation of research and creative industries	Support the application of research and utilization of research results of goods and services

		Increase creative industry participation
Implementing Procurement	Sustainable	Encouraging economic equity
		Encouraging sustainable procurement

The Government's Goods and Services Procurement Policy does not only get the outputs or results of government agencies, but also encourages economic improvement for both business actors and the community through economic equity and sustainable development. In Presidential Decree No. 16 of 2018 in Article 68 paragraphs (1) and (2) mandates that the Government Procurement of Goods and Services is carried out by taking into account sustainable aspects, with details:

- a. economic aspects include the cost of producing goods/services throughout the life of the goods/services;
- b. social aspects include empowerment of small businesses, guarantee of fair working conditions, empowerment of local communities/businesses, equality, and diversity; and
- c. environmental aspects include reducing negative impacts on health, air quality, soil quality, water quality, and using natural resources in accordance with statutory provisions.

2. Policy on Government Procurement of Goods and Services in Indonesia and the Philippines

In Indonesia, the government's procurement of goods and services during the new order was regulated with integrity in the state budget. The last regulation used during the new order was through Presidential Decree No. 16 of 1994 concerning the Implementation of the State Revenue and Expenditure Budget where the Procurement of Goods and Services was regulated in Article 21 to Article 30. In this provision carried out by the Head of Office/Work Unit/Project Leader/ Project Section and no work units or committees are formed to carry out the Procurement of Goods and Services. The committee is only formed at the provincial level, chaired by the Governor who is in charge of pre-qualifying partners who will be included in the *List of Able Partners* (DRM). Prequalification of partners by the committee is carried out periodically. The auction conducted by the Head of the Office / Work Unit / Project Leader / Project Section may only be participated by partners who have entered the DRM according to the field of work owned by each partner.

At the beginning of the reform period, the government's procurement of goods/services was regulated separately from the implementation of the state budget. To regulate the implementation of the Government's procurement of goods/services, Presidential Decree No. 18/2000 on the Government's procurement of goods/services has been stipulated. In this Presidential Decree, it has been regulated the formation of an auction committee at each Office/Work Unit/Project Leader/Project Section in charge of carrying out the auction. In addition, DRM is no longer made which is obtained from collective pre-qualification, but pre-qualification is carried out for each time the auction is held. The working period of the auction committee is determined by the user of the goods/services in accordance with the decision of his appointment. Although this

Presidential Decree does not stipulate a time limit for the work of the auction committee, generally the committee is formed for one fiscal year.

To improve the regulation of the Government's Goods/Services Procurement towards an efficient, transparent and accountable system of Goods/Services Procurement, the government improved the Government's Goods/Services Procurement system by issuing Presidential Decree Number 80 of 2003. Through this Presidential Decree several policy substances related to the process Government procurement of goods/services is improved. One that is regulated is the existence of a clear division of tasks between users of goods/services, officials making commitments and the committee for the procurement of goods/services. Although there is a clear division of tasks, the implementation of the Government's procurement of goods/services is still carried out by the adhoc procurement committee of goods/services. After eight amendments, finally Presidential Decree No. 80 of 2003 was revoked and replaced with Presidential Regulation No. 54 of 2010. In addition to improving the entire government procurement system, Presidential Regulation No. 54 of 2010 which has been amended by Presidential Regulation No. 70 of 2012 has made radical changes to the party responsible for the implementation of the Procurement of Goods/Services, namely changing the organizational form of implementing the Procurement of Goods/Services from an ad hoc committee to a permanent and independent work unit named ULP which will be enforced no later than 2014, including strengthening ULP by giving the authority to carry out the entire procurement process until the appointment of the winner. Previously, the appointment of the winner was the authority of the PPK, except for the determination of the winner for activities with a value of IDR 100,000,000,000 and above. Presidential Regulation Number 54 of 2010 already uses a hybrid model where there is a procurement process that is carried out centrally by the ULP and there is also a procurement process that is handed over to each work unit, which is carried out by procurement officials. Meanwhile, in Presidential Decree No. 80 of 2003 which was amended several times and Presidential Decree No. 18 of 2000 used a decentralized model, in which the procurement process was handed over to the ad hoc committee in each organizational unit, both at the center and in the regions.

Different things in the Philippines, one of the policies in the Philippines in the context of the anti-corruption movement and part of the agenda towards good governance, the Philippine government has issued a regulation in the field of procurement called the Government Procurement Reform Act (Republic Act 9184) in January 2003. In the previous era, the Philippines had more than 100 legal products related to government procurement. These highly fragmented legal products were then consolidated in the Government Procurement Reform Act which became the basis for modernization, standardization, and regulation of government procurement activities. The law is designed to integrate the procurement system in the Philippines, reduce opportunities for bribery and corruption, align procurement systems with international standards and practices, and promote transparency, competition, efficiency, accountability and public oversight.

The composition of the procurement organization in the Philippines consists of:

1. Procurement Agency and Procurement Unit/Office
 - 1.1 Procurement EntityA Procurement Entity is a central office or agency authorized to carry out independent procurement, regional office or decentralized, local or lower level agency/Bureau/Office of NGA, GOCC, GFI, SUC or LGU.

2.1 Procurement Unit/Office and Secretariat of BAC The Head of the Procurement Entity shall make the Secretariat of BAC permanent and for this purpose, he has the discretion to create a new office or to simply appoint an existing organic office to be the Secretariat of BAC. The term 'Procurement Unit' refers to the organic office of the procurement entity that carries out the procurement function. In a large Department as a Procurement Entity, this unit may be in the form of Services or a Division, while in a small organization it may be in the form of a Branch consisting of several personnel. The size of the Procurement Unit and the number of personnel is determined by the volume of transactions carried out and the level of expertise required by the Procurement Officer.

The Head of the Procurement Entity establishes a Procurement Unit based on the following guidelines:

- i. Procurement Entities with procurement budgets exceeding three billion pesos (P3B), both centralized and decentralized procurement, must have a 'Procurement and Supply Chain Management Directorate' headed by a Director.
- ii. Procurement Entities with procurement budgets exceeding one billion pesos (P1B) but not more than three billion pesos (P3B) must have a 'Procurement and Supply Chain Management Division'.
- iii. Procurement Entities with procurement budgets below one billion pesos (P1B) must have a 'Procurement and Supply Chain Management Section'.

2. Bids and Awards Committee (BAC)

The Head of the Procurement Agency must make a single BAC at the Office of the Head of the Procurement Entity. However, a separate BAC may be created under one of the following conditions:

- a. The goods to be purchased are complex or special, or
- b. If the single BAC is unable to manage the procurement transaction until the specified time limit.

3. BAC members

- a. At the Head Office of Government Agencies, BUMN, Financial Institutions and State Universities, BAC must consist of at least 5 (five) members and not exceed 7 (seven). Of the 5 (five) members, 3 (three) are regular members and 2 (two) are temporary members.
- b. In Bureaus/Regional Offices/Decentralized Units of Government Agencies, SOEs, Financial Institutions, the BAC must consist of at least 5 (five) members and not exceed 7 (seven). From 5 (five) members; 3 (three) ordinary members and 2 (two) temporary members.
- c. In Province, Regency/City:
 - The BAC consists of at least 5 (five) members and does not exceed 7 (seven).
 - The Regional Head must appoint the members of the BAC, who must occupy the position of the support unit of the relevant Regional Government.
 - All members appointed by the Regional Head are ordinary members except for end-user members who are considered temporary members.

- d. In Barangay:
 - i. The Head of Barangay will appoint at least 5 (five) but not more than 7 (seven) members of the BAC, who are members of Barangay Sangguniang. The BAC appointed as a member shall determine a Chair and a Deputy Chair between them.
 - ii. The members of BAC are appointed for a period of 1 (one) year, calculated from the date of appointment.
4. Technical Working Group (TWG)

BAC may establish a TWG consisting of technical, financial and/or legal experts to assist in the procurement process.
5. Observer

BAC invites observers to attend to observe all stages of procurement. The objective of the observation is to increase the transparency of the procurement process at all stages.'

D. Conclusion

The purpose of this study is to analyze the direction of legal development policy in the PBJP regulations and to reveal the legal development sector in the PBJP regulations. The results of the study indicate that the direction of the PBJP policy is not only to obtain the outputs and outcomes of government agencies. However, PBJP must be able to improve the economy of both business actors and the community through economic equity and sustainable development. While the PBJP legal development sector leads to 3 sectors, namely; the Equity sector, the Natural Resources and Environment (SDA-LH) sector, and the Socio-Cultural sector (Sosbud). This is evidenced by several articles in Presidential Regulation 16/2018 regarding the objectives, policies and descriptions of PBJP policies.

Comparison of the Government's Goods and Services Procurement Policy between Indonesia and the Philippines, Indonesia before the reform period in terms of the Government's procurement of goods and services is regulated with integrity in the APBN regulation through Presidential Decree No. Article 30 the provision is carried out by the Head of Office/Work Unit/Project Leader/Project Section and no work unit or committee is formed to carry out the Procurement of Goods and Services. The committee is only formed at the provincial level, chaired by the Governor who is in charge of pre-qualifying partners who will be included in the different Capable Partner List (DRM) after the reform period of government procurement of goods/services regulation is regulated separately from the implementation of the APBN, Presidential Regulation Number 54 of 2010 has using a hybrid model where there is a procurement process that is carried out centrally by the ULP and there is also a procurement process that is handed over to each work unit, which is carried out by procurement officials. Meanwhile, in Presidential Decree No. 80 of 2003 which was amended several times and Presidential Decree No. 18 of 2000 used a decentralized model, in which the procurement process was handed over to the ad hoc committee in each organizational unit, both at the center and at the regions.

In contrast to the case in the Philippines, the Philippines issued a regulation on the Procurement Reform Act (Republic Act 9184) in January 2003, . The law is designed to integrate the procurement system in the Philippines, reduce opportunities for bribery

and corruption, align the procurement system with international standards and practices, and promote transparency, competition, efficiency, accountability and public scrutiny.

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