

December 9th 2016



The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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UNISSULA PRESS

ISBN. 978-602-1145-41-8

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NOTARY ROLE IN THE IMPLEMENTATION OF EXECUTION PROCUREMENT OF GOODS AND SERVICES ARE FREE OF CORRUPTION BASED ON THE PRINCIPLE OF GOOD GOVERNANCE

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ABSTRACT

Indonesian is one country in the world that are struggling and crave the creation of good governance. However, the current situation shows that it is still very far from expectations. Political interests, corruption, unfair judicial, work outside the authority, and the lack of integrity and transparency are some of the issues that make a good government still can't be reached. To achieve good governance in governance in Indonesia, the principles of good governance should be enforced in a variety of key government institutions.

Rules and regulations covering government procurement of goods and services are relatively very dynamic and responsive to the growing variety of circumstances. One form of action that may result in unfair competition is a conspiracy in the tender, which is one of the activities prohibited by Law No. 5 Year 1999. The tender conspiracy (or collusive tendering) occurs when businesses, which should compete closed, conspired to raise prices or lower the quality of the goods or services for buyers who wish to acquire products or services through a procurement process. Notary deed as the participants in the tender can also be used as a subject in the tender conspiracy. With implement the principles of good governance, the three pillars, namely governments, corporations, and civil society should look after each other, support each other and actively participate in governance is being done

Keywords: Notary, Non Corruption, Good Governance.

A. Preliminary

All operational activities in order to carry out the functions and duties of each agency or institution in particular within the government required the availability of infrastructure. The infrastructure needs for each fiscal year are generally planned in the work plan and activities of each institution in the preparation carried out before the new budget year. The need for the availability of infrastructure as a support element for the passage of a process of activities in the implementation of activities or programs that have been outlined in general budgeted post / load budget spending for goods and services.

To realize the plan of spending on goods / services are implemented through a process or several phases of activities collectively referred to as procurement of government goods / services. Rules and regulations regarding the procurement of

government goods and services are relatively very dynamic and developing responsive to a variety of circumstances, such as the need for emergency handling of natural disasters, the purpose of government secrets to the fulfillment of the main tool weapon system. Indonesian National Army (hereinafter referred to as TNI) and of course an attempt to reduce the chances of their waste or even corruption collusion and nepotism (hereinafter referred to as KKN) that apparently until now seemed reluctant to part of this activity.

Settings offer (bid suppression) is a method which involves setting deals agreement between competitors where one or more companies agree to pull out of procurement or previously entered deals that offer the winner will be determined will be accepted. Significantly, the setting offers mean that a company does not want to submit offers to consider.

Rotation methods offer (bid rotation) is a company that deals conspired to make an offer, but they agreed to take a turn as the winning bidder (the lowest qualifier). Ways rotation agreement that deals used can vary, which is where the agreement covered by notarial deed. For example, the conspirators might choose to allocate almost the same money value of a specific contract to any company, or to allocate amounts relating to the size of each company.

Notary in their profession to provide public services should behave according to the rules. This is important because Notaries carry out their office is not solely for personal interests, but also for the public interest, as well as an obligation to ensure the correctness of the deed he had done, because it is a Notary demanded more sensitive, honest, fair and transparent in making a deed in order to ensure all parties directly involved in the making of an authentic deed. In carrying out the duties of office a Notary must hold fast to the Notary office code of ethics, because without it, the dignity of professionalism will be lost and no longer has the confidence of the public.

Notaries are also required to have high moral value, due to their high moral then the notary will not abuse the powers available to it, so that the notary will be able to maintain his dignity as a public official who provide services in accordance with the applicable rules and do not damage the image of the notary itself. As expectations Komar Andasmita, so that every Notary have sufficient knowledge broad and deep as well as skills that are a mainstay of the community to design, formulate and make a variety of authentic deeds, so that the structure of language, technical juridical neat, good and true, as well as the expertise needed anyway honesty or the sincerity and nature of the objective view.

Basically, the code of conduct notary it aims to preserve the dignity of the profession on the one hand is concerned, and on the other hand to protect clients (citizens) of misuse of expertise and / or professional authority. Notary should live and behave well in his run on the basis of values, morals and ethics notary. basing on values, morals and ethics notary public, notary office profession nature is Service to the community (clients) independently and impartially.

Based on the above description, the author wants to further investigate the role of the notary how in the procurement of goods and services that are free of corruption based on the principles of good governance?

B. Framework Theory

1. Good Governance

Good governance has long been a nightmare many people in Indonesia. Despite their understanding of good governance vary, but at least most of them imagined that the good governance they will be able to have a better quality of governance. Many of them imagined that by having good governance practices are better, the quality of public services are getting better, the numbers become increasingly lower corruption, and governments are becoming increasingly concerned with the public interest.

Today the problems experienced by the Indonesian nation increasingly complex and increasingly loaded. Elements governmental organizations should be role models that many people stumble legal problems. The existence of good governance is often called Good governance which has been hailed the fact that today is still a dream and was limited to a mere jargon. Indonesia should immediately awakened from a long hibernation. Revolution in every field should be done for every product produced only accommodate the interests of political parties, factions and groups of people. When it should be good governance should be a serious concern. Transparency can indeed be one solution, but is it enough just to attain good governance.

In running the government officials of countries use the law as instruments tend to realize the objectives of the country. Law enforcement is an important part of good governance. Every weakness of the legal system will influence the overall performance of the government, because good governance will not be able to run properly with a weak legal. Strengthening the legal system or legal reform is an absolute necessity for the realization of good governance. The current law is regarded

as a commodity rather than justice enforcement agencies and other capitalist circles. This fact makes distrust and disobedience to the law by the public.

2. Agreements for Procurement of Goods / Services

Based on the properties or types of the above agreement, the agreement Procurement of Government Goods / Services is included in the Reciprocal Agreement for each of the parties have rights and obligations. Also including the Top Load Agreement because each party has an obligation to give something achievements. If by way of the formation can be classified as an agreement Konsensuil since the onset of the agreement based on the agreement of the parties Committing Officer with the Provider of Goods. In agreement Goods / Services Procurement even this very precisely classified at the Formal Agreement for the implementation process requires going through several stages / formalities have been determined.

The provider of the goods / services of government are prohibited to perform arrangements of any form and shape to determine the winning bidder. These arrangements can only be done by the provider of the goods / services as bidders procurement of government goods / services with the organizers / officials of the procurement of goods / services of the government or by providers of goods / services as bidders with the committee / procurement officials government goods / services, malalui or even with other parties that are not related to the procurement of government goods / services to win the tender for the procurement of goods / services of the government.

Performing his respective duties, a notary is not only authorized to make authentic deeds in the sense compose, read and signed and in the form required by the Act as intended by Article 1868 of the Civil Code, which states that: "An authentic deed is a deed in form prescribed by the Act, made by or in the presence of public officials in power to it at the place where the deed made, "but the authority Notaries in making authentic act can also be based on the provisions contained in Article 15 (1) of the Law No. 2 of 2014 on the Amendment to Law Number 30 Year 2004 Notary obligation of the notary is to make a deed, unless there are reasons that have no basis for rejecting the deed.

Notaries in performing his respective duties also are required to provide legal advice and an explanation of the provisions of the Act to the parties concerned. The close relationship between the provisions of the deed and the necessity of officials

who have a duty to carry it out, cause there is an obligation for the government to appoint and Notary.

C. Discussion

Conspiracy in the tender can be done openly or secretly through adjustment measures, the offer before it is inserted, or create competition deceptive or approve or facilitate, or granting exclusive opportunity, or refused to take action despite knowing that it was committed to set up in order to win a particular bidder.

Conspiracy also may occur between one or more businesses with a tender or auction committee committee procurement plans that are geared to specific businesses to determine the qualification requirements and technical specifications that lead to a brand that is hindering other businesses to participate in the tender. As a result, competition for the most favorable price deals are not happening. Bundling procurement should be implemented taking into account aspects of efficiency and effectiveness, but in practice many are engineered for the benefit.

Procurement committee working behind closed doors and not give equal treatment among the bidders. Tender is done only to meet the formal requirements in accordance with the provisions of the procurement of goods and services. This happens because of the potential winner is usually designated in advance at the time of the tender took place, which were the elements of bribes to officials or officials who have influence.

Conspiracy in the tender can occur in various forms, which completely undermines the efforts of the buyer (generally tender to the central and local governments) to obtain goods and services at a cheap price. Often, competitors agree in advance to determine who is to submit offers that will win over a contract awarded through a competitive procurement process. A common form of bid rigging is to increase the magnitude of the value of procurement will win and can therefore enjoy the benefits of these values.

Bid rigging conspiracy is divided into horizontal and vertical conspiracy. Horizontal conspiracy is a conspiracy going on between business operators or providers of goods and services with other businesses or providers of goods and services of competitors; vertical conspiracy is a conspiracy going on between one or more businesses or providers of goods and services by a tender committee or the tender committee or users of goods and services or the owner or employer, while the combined conspiracy horizontal and vertical is a conspiracy between the tender committee or the

tender committee or users of goods and services or the owner or employer with fellow entrepreneurs or providers of goods and services.

Bid rigging schemes often include mechanisms to allocate and distribute the profits obtained as a result of higher contract prices between the business actors who conspire. For example, a competitor who did not agree to negotiate or enter bids must lose (losing bid) will receive sub-contracts or supply contracts of the winning bidder in order to share the profits from the unauthorized offer price higher. However, bid rigging agreements that last a long time will require a better method to determine the winner of the contract, monitor and split the profits during the period of bid rigging monthly or yearly. Bid rigging might include the payment of money by setting the offer that will win (bidding winner) to one or more parties are conspiring. This is commonly referred to sometimes associated compensation payments and this will hamper the achievement of the objectives of good governance.

Embodies the concept of good governance can be done by achieving a state of good and synergy between government, private sector and civil society in the management of natural resources, social, environmental and economic. Minimum prerequisite for achieving good governance is transparency, accountability, participation, empowerment of law, effectiveness and efficiency, and fairness. Public policy issued by the government must be transparent, effective and efficient, and able to answer the basic conditions for justice. As a form of good governance, the need of community involvement at every level of the decision-making process. The concept of good governance can be interpreted to be a reference to the processes and structures of political and socio-economic relations were good. Human interest is the strongest factor that currently affects both the poor and whether or not a state is achieved as well as good governance. It has become a part of life that can not be separated that every human being has an interest. Neither the interests of individuals, groups, and / or the interest of national and even international community. In order to realize each of these interests were always conflicts. So also in the realization of what is called "good governance" conflict of interest is always a major opponent. Interests gave birth spacing and the bulkhead between individuals and groups that make difficult the achievement of the word "agreement".

Good governance is essentially a concept that refers to the process of decision making and implementation, which can be accounted for together. As a consensus reached by the government, citizens and the private sector for the implementation of

governance in a country. State role in giving service to the welfare of the people with a good judicial system and the system of government that can accountability to the public. Refer to three (3) pillars of sustainable development. In economic development, the environment, and human development. Good governance touching the 3 (three) parties, ie the government (state officials), the corporate or business world (economic driver), and civil society (find compatibility). The three parties played a role and influence in good governance. Synchronization and harmonization between the parties has become a great answer. But with the current situation of Indonesia is still difficult to happen.

Notary deed formalizing the involvement of the borrowing company bidders. There financiers who entered the company, these financiers who later became a sort of director who could determine the company's decision. If the company wins, the owner of the company will get a percentage, but the project is not the company. A Notary can not be punished if they have done their job properly. The position of a Notary in deed it is an astronomer ministra, people were told to, not an astronomer doenpleger or domina.

Notary practices are found true, if there is a deed of Notary disputed by the parties or any other party, then often Notary withdrawn as a party to participate in performing or helping commit a criminal act that make or give false information to the notarial deed. It is also leading to confusion, whether it is possible Notary intentionally (culpa) or blunder (alpha) along the penghadap / parties to a deed that is intended from the beginning to having committed a crime.

Notary does not mean sterile (net) of the law or can not be punished or immune to the law. Notaries may be convicted criminal, if it can be proved in court, that intentionally or unintentionally notary together with the parties / penghadap to a deed with the intent and purpose to benefit the parties or penghadap certain or harm penghadap else, if it proven, the Notary shall be punished. These normative provisions that regulate Notary Notaries in their profession is always controlled by the formalities that have been outlined. This means that the Notary profession demands refers to the shape of the resulting deed not the substance (matter) of the deed. Material certificates and responsibility for its contents rests with the parties to the agreement. But sometimes in a deed contains certain legal constructions that actually forbidden to do in the field of contract law. On this, a notary is obliged to remind or notify the parties that the actions contrary to the applicable law.

Notary profession as already described can be seen in perspective integrally. Through this integrated perspective, the notary profession is a profession that deals with

individuals, professional organizations, society in general and the state. Notary actions will relate to these elements thus an erroneous actions of the notary in carrying out his work will not only be detrimental to the notary itself but can also harm the professional organizations, communities and countries.

Being an integral part in each state administration. Law enforcement is an important factor in good governance. The weakness of the legal system will greatly affect the overall performance of the government. Good governance not going to go well above the weak legal system. Therefore, strengthening the legal system or legal reform is an absolute necessity for the realization of good governance.

Looking for an honest man of high integrity and pick the same as looking for a needle in a haystack. Choosing apparatus or government actors who excel will affect both the state administration. Corruption still exist to this day is one of the main factors that complicate the achievement of good governance. Corruption Collusion and Nepotism (KKN) to the agenda shall never tired to do. This is one thing that should not be missed to achieve good governance.

Prevent (preventive) and tackle (repressive) are two efforts made. Prevention is by giving legal guarantees for the realization of open government (open government). Guarantees to public rights such as the right to observe the behavior of officials, the right to obtain access to information, the right to participate in decision-making and the right to file a complaint if the three above rights are not met adequately. Guarantees given if it really can be socialized properly to the public.

Notary profession relationship with the community and the state has set in following UUJN other legislation. While the notary profession relationships with professional organizations governed by a code of ethics notary notary. The existence of a code of conduct is a logical consequence of a notary for a job is called as a profession. There is even a suggestion that the notary as a public official entrusted must hold not only on legislation alone, but also on the code of ethics profession, because without the code of ethics, value and dignity of the profession will be lost.

There is a relationship between a code of conduct with UUJN. The first relationship contained in Article 4 of the oath of office. Notary through sworn promise to maintain the attitude, behavior and will carry out its obligations in accordance with the code of ethics, honor, dignity and responsibilities as a notary. Notary professional code of ethics be established and enforced by the notary organization.

The relationship between the code of ethics of the notary UUJN give meaning to the notary profession itself. UUJN and code of ethics requires that a notary public notary in his duties as a public official, but must be subject to UUJN also must abide by the code of professional conduct and should be held accountable to the people it serves, professional organizations (the Indonesian Notary Association or the INI) and the country. Given this relationship then the notary who ignore the grandeur of the dignity of his position other than to sanction moral, reprimanded or dismissed from membership profession can also be fired from his post as a notary.

If the notary and PPAT as a public official is considered a continuation of Kemenkumham in making authentic act and representative of the BPN in making the deed of sale / transfer of rights and be part of the process of land registration PP 10 of 1961 on Land Registration. Therefore if there is a notary / PPAT who deviations / violations, then it can be considered as abuse of authority. As a public official, a notary / PPAT granted exclusive authority by the state in making authentic act within the framework of the rule of law a legal act.

In Article 8 of Law No. 20 of 2001 which is an amendment to the Act No. 31 of 1999 on Corruption Eradication, stated: Definitions in addition to civil servants which became the subject of corruption is a person other than government employees assigned to run an office common continuously or temporarily. Although there are limitations on the crime of embezzling money or securities are saved because of his position.

D. Conclusions

Based on the above circumstances, then when the Notary has done his duty well according dengan legislative provisions and codes of conduct that has been established, the Notary can not be blamed. Even if there is bid rigging, usually done purely by business operators. Notary is the only party that legalized legal entity that will be the subject of the tender.

Basically, the code of conduct Notary it aims to preserve the dignity of the profession on the one hand is concerned, and on the other hand to protect clients (citizens) of misuse of expertise and / or professional authority. Notary should live and behave well in his run on the basis of values, morals and ethics notary. basing on values, morals and ethics Notary, then the nature of the profession of office bearers Notary Service to the community is a (client) independently and impartially.

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