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A Multidimensional Study of the Law of Goods and Services Procurement Contracts

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Abstract. *Government procurement of goods/services always changes in the context of presidential regulations (Perpres), by making these regulations complete and in more detail; In this case, it is certainly a positive development to provide legal protection for contracting parties in the form of goods/services procurement agreements. This research analyzes the principles of freedom of contract and balance, which remain foundational despite frequent violations that are still legally accepted. The legal foundation lies in civil law, but its application often overlaps with criminal law and is also examined through the lens of Islamic law. In Islamic law, breach of contract is considered a betrayal of divine trust, while corruption contradicts the principle of maslahah (benefit). This study aims to examine the legal dimensions of procurement contracts through civil, criminal, and Islamic law perspectives. The research method used is normative legal research with statutory, conceptual, and case approaches. The novelty in this research is its multidimensional legal analysis that integrates Islamic jurisprudence with the conventional legal framework in procurement contracts. Based on the research, it is concluded that although procurement contracts are primarily governed by civil law, their implementation often triggers legal consequences in administrative and criminal domains, especially when corruption is involved.*

Keywords: *Contracts; Goods; Government; Procurement; Services.*

1. Introduction

The background of this contract law occurred in Rome where promises in a contract were not only considered as promises to humans but also to God. The implication of this understanding is that if there is a denial of the agreement or contract made then the denial is also a denial of religion (Isradjuningtias, 2015:186-187). The group of people who become enemies of Allah in the Hereafter by R. A is told that a (Muslim) who always breaks promises is included in the group that betrays Allah SWT and Rasulullah SAW. The act of breaking promises harms others, but actually also harms oneself.

One should not easily "make promises"; Allah SWT says in Al-Qur'an Surah An Nahl verse 91 (Setya, 2022). Contract law developed rapidly in the later 19th century with the classical theory of contract law. This theory was formed as a reaction to the *substantive justice* tradition that emerged in Europe in medieval times. Contract law scholars at the time viewed individual choice as a contract in itself, not just an element of a contract. As a result, individuals tended to view the ability to choose as a freedom and in the end it seemed that individual freedom was made the highest orientation of existence (Isradjuningtias, 2015:137).

In Indonesia, contract law (*BW*) refers to Dutch law since 1848, which is as old as the Criminal Code (*WvS*). This is quite reasonable considering the long period of Dutch occupation in Indonesia. However, with the development of Indonesia after independence until now, laws can be made with the needs and interests of adjusting the values of the Indonesian people themselves. Indonesia has also developed its own agreement law and contract law.

A new contract or agreement will work well if the parties involved carry out its contents in accordance with the agreement. This indicates that the implementation of the agreement can be interpreted as doing something or not doing something not only for one's own interests but also the other party in the same agreement.

Procurement of goods and services is generally carried out on the basis of an agreement. This is because the process needs to involve two parties, namely the provider of goods and services and the user of goods and services. Both have different desires and interests. A service provider certainly wants to benefit from the business he is doing, so he sets the highest possible price for the goods and services he provides according to quality. On the other hand, service users tend to expect the cheapest possible price for the goods and services they get from the provider. Without an agreement to reach an agreement, the two will be very difficult to meet (Pane, 2017a).

The procurement sector in our country is prone to corruption, collusion, and nepotism as a sociopolitical reality, which includes three main diseases namely: corruption, terrorism and drugs that come to the soul of the nation and state (Hafid et., al, 2020:74).

Based on the background description, the problem formulation in this study is how the juridical review of the law of goods and services procurement contracts, in relation to the perspectives of civil, criminal and Islamic law. In this case, a conceptual approach is used to clearly understand the principles, through the views of legal scholars / legal doctrine (Tektona, 2019:14).

2. Research Methods

This research employed a normative legal approach, aimed at providing a comprehensive and systematic explanation by examining various legal norms and analyzing the relationship between legal rules through the study of primary and secondary legal materials (Shoimah et.al., 2020:3). Three methodological approaches were used: the statutory approach to analyze the existing regulatory instruments related to procurement contracts; the conceptual approach to explore the fundamental legal doctrines, such as the principles of freedom of contract and contractual balance; and the case approach to study selected legal cases that exemplify the overlap between civil, criminal, and Islamic law in the procurement of goods and services (Amiati et.al., 2024:233).

3. Results and Discussion

3.1. The Contract Law

Contracts from the Arabic point of view are called contracts, which are interpreted as ties / conclusions, both visible ties (*hissyy*); contracts according to terms are agreements or mutual commitments, whether oral, signaling, or writing between two or more parties that have binding legal consequences to carry them out (Ardi, 2016:267). The understanding of contract law in positive law is an ongoing relationship between individuals with a set of norms that govern the basis of the relationship. The norms agreed between individuals can give the power to oblige, order, or even prohibit one of the parties or both of them to behave in a certain way.

Implementation on the ground, however, often depends on certain conditions that make it possible to order, require, or prohibit. With the existence of a contract, behavior in accordance with the agreed contract can bring incentives or rewards, otherwise behavior that is not in accordance with the agreement can lead to sanctions to the perpetrator. The existence of a contract gives juridical rights to each party to comply with and implement restrictions in accordance with the previous agreement. This is because the existing contract forms a private entity between each party.

In law, a law based on a contract is not always implemented in accordance with the purpose and intent of its existence. This is because there may be default by each party to the contract, force, fraud, mistake, or what in Indonesian law is called *overmacht/noodweer,* but in international law is known as *force majure* (Isradjuningtias, 2015:139). Agreements that are considered valid must fulfill the conditions described in Article 1320 of the Civil Code, including:

1) There is an agreement between the parties

2) There is capacity in each party to take action according to the law

3) There is an object that is the core of an agreement

4) There is a halal cause underlying the agreement

3.2 Procurement of Goods and Services

The meanings of goods and services are definitely different. However, referring to common sense, both can be united as a commodity, where goods are understood to be the physical existence of something with a form, type, and shape, while services are defined as the result side such as payment systems, transportation, and communication. In legal discussions, understanding the definition of goods and services can be done from various perspectives ranging from understanding both based on the most accurate dictionary, civil law perspective, State Finance Law perspective, State Treasury Law perspective, economic perspective, and accounting system perspective. Procurement itself is defined by the function of bringing something into the system including supplies, raw materials, and other things such as buildings, equipment, and machinery. When referring to Presidential Decree Number 16 of 2018, procurement is defined as "the activities of ministries, institutions, work units, other institutions, whose process is from planning, until the completion of all good and services activities; procurement of goods and services that use costs from APBN/APBD" (Betham et.al., 2019:201).

Procurement of goods and services by a state agency must certainly have clear goals and objectives, so that there is no misappropriation of the funds provided; then in the process of procuring goods and services it is necessary to examine Article 1 of Presidential Regulation 16/2018 which states that: Procurement of goods and services is an activity to obtain goods and services by Ministries/Institutions/Regional Work Units/other Institutions whose process starts from planning needs until the completion of all activities to obtain goods/services; furthermore, the essence of this section is the same as Presidential Regulation No. 12/2021.

The good and services procurement activities are financed by the APBN/APBD, both those carried out in self-management and by good and services providers (Seputra & Ardana, 2023:57). In essence, the procurement of goods and services is an effort to obtain the goods and services desired by the user with methods and processes that are in accordance with its capabilities. This is done through an agreement with the provider both in terms of procurement time, procurement costs, and other agreements in the agreement.

The series of studies on the procurement of goods and services that resulted in philosophical thinking about ethics, namely the ethics of procuring goods and services by following the methods, processes, and principles of procurement of goods and services. This philosophy is useful as a guideline for both users of goods and services and providers so that the procurement of goods and services can be carried out as well as possible. The ethics that must be obeyed by each party in the procurement of goods and services are as follows (Setda, 2020):

Table 1: 8 Ethical Principle
1. Carry out tasks in accordance with the agreement in an orderly manner and fulfill responsibility so that the goals and objectives of the smooth procurement of goods and services are achieved.
2. Perform work independently and professionally based on honesty and the principle of maintaining the confidentiality of documents that must be kept confidential in the process of procuring goods and services to minimize irregularities.
3. Avoid exerting adverse influence either directly or indirectly, so that unfair competition can be avoided.
4. Be responsible and accept the decisions that have been agreed upon in the agreement by the parties.
5. Prevent and avoid conflicts of interest of parties directly or indirectly involved, during the procurement process.
6. Preventing and avoiding the risk of leaks that cause waste of state finances
7. Preventing and avoiding abuse of authority or collusive practices with the aim of taking personal advantage of other parties or groups in the contract either directly or indirectly.
8. Refuse, do not give offers / promises to accept / give rewards, to anyone who is clearly proven to have a connection with the procurement of goods and services

Presidential Regulation No. 16/2018 specifically regulates the legal juridical procurement of government goods and services. This is intended so that there is a legal umbrella that oversees the problems related to the procurement of goods and services. Previously, the procurement of goods and services was regulated in Presidential Regulation No. 54 of 2010, but with the developments that occurred, new arrangements were needed to adjust the application in the field and the times.

This new Presidential Regulation regulates in detail the procurement of goods and services. Article 28 paragraph (1), for example, regulates the elements that must exist in the procurement of goods and services, including(Pane, 2017:151) : Proof of purchase/payment, receipt, work order (SPK), agreement letter (contract), order letter.

In Presidential Regulation No. 12/2021 in Articles 29 and 29a, there is a separation of goods and products; Products are goods made or services produced by Business Actors; while what is meant by goods is tangible, or intangible, movable or immovable objects, which can be traded, used, used, or utilized by users of goods.

The purpose of procurement of goods and services is relatively fixed, limited to changes in Article 4g to encourage economic equality, in Perpres No. 16/2018 to be expanded in 4g Perpres No. 12/2021, namely realizing economic equality and expanding business opportunities. The Self Estimate Price (HPS) is also expanded to become an estimate of the price of goods and services determined by the PPK including indirect costs, profit and Value Added Tax (VAT).

Perpres No. 54/2010 The definition of good and services procurement starts from planning until the good and services are obtained; in Perpres 16/2018 expands the phases/stages of goods and services procurement, namely from identification of needs to the handover of work results. Perpres No. 54/2010 regulates PPK only as an executor, while in Perpres No. 16/2018 and Perpres No. 12/2021, the Commitment Making Officer (PPK) is given wider authority and responsibility, namely as an official authorized by the PA / KPA to make decisions and/or take actions that can result in the expenditure of the state budget/regional budget.

Procurement of goods and services by the government can be carried out in various ways including goods, labor services, consultant services, and other services and goods. However, the goods and services procurement agreement must basically always follow the Civil Code (*backbone*). This is because the Civil Code is the main reference in the agreement implementation process. Generally, the validity of the agreement is very important to make an agreement, including the agreement for the procurement of goods and services.

The conditions governing the validity of the agreement are regulated in Article 1320 of the Civil Code as described in the theoretical study. Then referring to the same article, every agreement will definitely give rise to rights for each party and binding obligations. In legal terms this is referred to as an achievement. Goods and services procurement agreements have similar provisions, where the performance according to the agreement in the agreement can be fully fulfilled, not fully fulfilled, or only partially fulfilled. Cancellation of agreements often leads to disputes after the agreement is canceled and efforts to resolve these disputes emerge (Rawis et.al., 2021:66).

The agreement when implemented may have the potential for parties to violate the provisions / procedures of the goods and services procurement agreement, then it can be subject to (Pane, 2017:149):

Table 2: Types of Sanctions in Procurement Contract Violations

No.	Type of Sanction	Description	Examples / Sub-types
1	Administrative Sanctions	Sanctions imposed by authorized administrative bodies due to violations of procurement procedures or regulations. The type and severity depend on the applicable legal framework in each country or jurisdiction.	a. Administrative Fines – Monetary penalties as stipulated in procurement regulations. b. Disqualification – Ban from participating in future procurement processes. c. Contract Termination – Ending a contract due to serious violations.

			d. Reprimand or Warning – Written warning to violating party. e. Sanction of Collateral Disbursement. f. Sanction of Being Blacklisted.
2	Civil Lawsuit	Sanctions arising from civil litigation due to a party breaching a procurement contract. Courts may be involved to resolve the dispute and restore the injured party's rights.	Filing a lawsuit for breach of contract in civil court.
3	Claim for Compensation	Financial compensation sought by an aggrieved party due to breach of contract. The purpose is to restore the injured party's position had the breach not occurred.	Damages or indemnification claims in civil court.
4	Criminal Sanctions	Sanctions applied through criminal justice due to fraudulent acts, corruption, or other crimes in the procurement process. These sanctions require strict application standards given their serious nature.	a. Law No. 31/1999 (amended by Law No. 20/2001): Covers prosecution and eradication of corruption. b. Law No. 8/2010: Regulates prevention and reporting of money laundering and suspicious financial transactions.

Fiqh critically examines the issue of corruption with various interpretations, for example: "*Ghulul (embezzlement), Risywah (bribery), Ghasab (forcibly seizing other people's rights), Sariqah (theft), Hirobah (robbery).*" However, the study of corruption and its countermeasures in the perspective of Islamic law is still rare (Roja & Zafi, 2020:249).

These possibilities are the dynamics in the procurement of goods and services organized by the government in accordance with the provisions of the applicable laws and regulations, so that they will directly have an impact on the process of procurement of goods and services. The author expands the legal field contained in the procurement process, which is *sui generis*, namely:

1. State Administrative Law or State Administrative Law. This law regulates the law between users (government/ASN/non-ASN employees) and providers (private parties) during the preparation and issuance of the agreement letter.

2. Civil Law. This law regulates the law on providers and users from the time the contract is signed until the contract ends.

3. Criminal Law. This law regulates the law on users and suppliers from the beginning of the needs identification stage, preparation until the procurement agreement is completed.

Prakoso, argues that in the procurement of government goods and services, the legal aspect that comes to the fore is state administrative law. This is because this law regulates the procedures of the government while using its authority to carry out the duties mandated to it. Meanwhile, in the procurement of goods and services carried out by agencies or individuals, the legal aspect that is put forward is civil law, because the problem is at the individual level (the parties) or an independent organization (Prakoso & Setyaningati, 2018:5).

In this case the author argues that currently the aspects that are put forward are civil and criminal aspects, and in this criminal context it is quite worrying because it clashes with the principle of ultimum remedium.

3.3 Application of the Principle of Freedom of Contract

Freedom of contract is regulated in Article 1388 Paragraph 1 of the Civil Code. In its arrangement, every person who wants to make an agreement with the other party has the same rights as the lawmaker in the agreement. Therefore, the agreement can be used as a direct source of law for the parties involved in the agreement before referring to the Law. The principle of freedom given to each party gives it the following authority (Gultom, 2021:16):

1) Determining whether or not to enter into an agreement

2) Enter into agreements with whomever you wish.

3) Determine the content of the agreement, including its terms and implementation

4) Determine the form of agreements made both orally and in writing

The principle of freedom of contract can basically be interpreted into two things, namely positive freedom of contract which is oriented towards permissibility while negative freedom of contract which is oriented towards the absence of prohibitions. In the sense that positive freedom of contract represents the free will of the parties concerned which is oriented towards the freedom to make binding agreements. Meanwhile, negative freedom of contract means that the parties to an agreement are free from obligations as long as they are not stated in the agreement.

The existence of the principle of freedom is based on the doctrine of ex nibilo, where the contract is interpreted as a manifestation of the freedom of will of each party making an agreement or contract. This has led to the emergence of the doctrine of the buyer beware or ceveat emptor, which in this doctrine every buyer must be careful and try to protect themselves because once the contract has been made no party can intervene (Muskibah & Hidayah, 2020:191).

Subsequent developments show a different direction, where freedom of contract, which initially provided absolute freedom, shifted towards the principle of propriety based on Article 1338 paragraph (3) of the Civil Code, namely objective good faith, namely the existence of propriety in carrying out obligations and responsibilities and providing compensation in the event of failure (Muskibah & Hidayah, 2020). Even if there is no written agreement to do or not do something as long as it is appropriate, there will be no problem, and vice versa.

However, the principle of freedom of contract is in fact still one of the principles that must exist in agreements not only in *civil law*, but also in *common law*. It's just that this principle of freedom of contract no longer appears without restrictions. After the existence of the principle of propriety, the state and government have contributed by regulating restrictions on freedom of contract legally and juridically through court decisions and laws and regulations.

Procurement of goods/services is also bound by the principle of propriety in its freedom of contract, but in this case there is often a lack of care in the preparation of contracts,

and subsequently has the potential to cause disputes. J. Gunawan then explained the principle of freedom of contract historically includes five main freedoms, including (Sinaga, 2019:39):

1) The parties are free to decide to close or continue the contract

2) The parties are free to contract with whomever they agree.

3) The parties are free to decide how the contract is formed

4) The parties are free to determine how the content of the contract

5) The parties are free to determine how the contract will be concluded

Article 1320 paragraph (1) of the Civil Code contains restrictions on the principle of freedom of contract such as determining the validity of an agreement where an agreement cannot be considered valid if the parties who make it do not have consensus or agreement; in the sense of limitation of the freedom of contract of the parties to the agreement.

Governments that want to procure goods and services need to make contracts that are in accordance with the definition of standard contracts. This means that the government as a user of goods and services must provide general conditions, special conditions, and make an agreement letter given to the provider of goods and services. In its implementation, the contract is divided into three stages, the first is pre-contractual before signing the contract, the second is the contractual stage after signing the contract, and post-contractual after the contract is completed (Tjoanda, 2022:15).

Table 3: Stages of Contractual Process

Stage	Description
Pre-contractual	At this stage, each party has the freedom to contract with anyone and determine the contents, terms, and form of the contract. The standard contract in government procurement may seem contradictory but is still valid under Article 1338 of the Civil Code.
Contractual	At this stage, each party has the freedom to sign the contract if the contents, terms, and form are in line with their wishes or refuse to sign if they do not agree. The principle of freedom here is limited to the terms outlined in the contract and law.
Post-contractual	After the contract is completed, each party has the freedom to determine the next steps based on the results of the agreement, whether deemed successful or failed. In the case of failure, an expert appraiser should be appointed to explain how the agreement was not implemented according to the original terms. (Fajariini, 2019:67)

A contractual post that has the potential to become a dispute is a warranty, because it raises the question of whether when the warranty has not been completed, each party is considered to be still under contract or the contract has been completed; considering that when the contract is considered complete, other fields of law can be used to test a contract, for example criminal law (corruption), as in case verdict No.4/Pid.Sus-TPK/2021/PN.Yyk on pp. 15, 37, 71, 76.

In the context of criminal law (corruption) in the view of Islam, this behavior is part of the problem of the Indonesian nation today, because it destroys various kinds of existing orders. Damage (corrupt) in any form, arising from one's actions is a violation of religion, or not maintaining religion; corruption is a crime that will never bring benefit, and will always produce harm (Rasyid, 2010:122).

3.4 The Principle of Balance in Contract Law

The position of each party is something that must exist in an agreement or contract. Agreements are generally made with equal positions of the parties. However, in some cases there are agreements where the position between the parties is not equal so that the stronger party will have an impact on the fulfillment of achievements compared to the other party. This of course can lead to imbalances in the implementation of the agreement. In essence, the principle of balance is a derivative of the principle of equality, where the main purpose of this principle is to regulate the parties to the agreement to carry out and fulfill the obligations stated in the agreement, while the balance between the parties serves to provide justice and protection to the parties.

There is no gathering of the principle of balance in the Civil Code, but the principle of balance is in harmony with the soul and spirit of the Indonesian people so that it is intended to exist even though it is not regulated legally and juridically. Representation of the existence of the principle of balance is based on Article 1338 of the Civil Code, where the freedom given to the parties in the agreement is not absolute, but must be balanced with the rules governing balance, not contrary to the principles of custom, decency, and decency, not contrary to the Law and public order during the making of the contract and its implementation (Sinaga, 2019:46-47).

Unbalanced agreements can arise as a result of the behavior of the parties or as a consequence of the content of the agreed agreement. This has to do with the intent and purpose of procuring agreements from parties who wish to increase expectations so that entrusted achievements can be achieved. Based on the premise of the parties, it can be understood whether future expectations are objective in accordance with the wishes of the agreement or actually bring down the other party so that in the future there will be an imbalance between the parties to the agreement. Achieving a balanced state between the parties to the agreement is basically the end result of objective future expectations so that the agreement does not cause harm to one of the parties (Nugraheni et.al., 2020:49).

Balance in the procurement of goods and services contract must already exist since the pre-contractual period before signing. This is represented by negotiations in terms of quality, quantity, price, and others related to the agreement for goods and services providers. As for service users related to the rights, responsibilities, and obligations in the use of these goods and services. Basically, the rights, responsibilities and obligations are owned by each party but for goods and service providers will be more specific to their fields. Then at the contractual stage, namely during the signing of the contract and its implementation. The implementation of the contract must be in accordance with the provisions stated in the contract.

The last is post-contractual where the parties can freely determine what to do with the results of the contract implementation along with reporting information from one party to the other. In the procurement of goods and services, the user of goods and services must pay for the achievements that have been made by the provider in accordance with the agreement. If there is a denial, sanctions can be given to the denying party in accordance with the agreed (Kuncoro, 2020:14).

The principle of balance in the Criminal Procedure Code means that law enforcement officials must place themselves in a reference for the implementation of law enforcement based on a balance between law enforcement and the protection of public order

(society), which is in line with human rights (HAM), in this case related to the procurement of goods and services, then criminal law and criminal justice must see the parties in a balanced condition.

This balanced condition is difficult to fulfill, considering that one party is the government, and the other party is the private sector; as is the case in several cases, generally if there are allegations of criminal acts, an investigation will be carried out with allegations of corruption, generally the weak position is the private sector; for example in case verdict No.4/Pid.Sus-TPK/2021/PN.Yyk on page 247 that the defendant was declared "joint corruption" but from the time he became a suspect to the time he became a defendant, he was the sole suspect / defendant; then in this decision it seems that there is no criminal balance, where in the crime of corruption there is only one perpetrator.

The application of the principle of balance in relation to corruption in the procurement of goods and services can certainly be oriented towards the fulfillment of sanctions in the form of fines. The application of criminal sanctions as a form of last resort requires caution in the trial, especially criminal sanctions that cause pain must contain *divine* value because the law is sourced from God Almighty.(Syatar, 2018:124)

4. Conclusion

Contract law, an age-old and foundational aspect of legal systems, governs numerous facets of life, including the procurement of goods and services by individuals, organizations, and especially the government. The legal framework for such contracts in Indonesia is clearly outlined in Presidential Regulations, starting with Regulation 54 of 2010, followed by Regulation 16 of 2018, and the most recent, Presidential Regulation No. 12/2021. The application of contract law is anchored in essential principles—freedom of contract and balance—that together ensure the legitimacy of agreements across pre-contractual, contractual, and post-contractual stages. However, a breach of contract can trigger a complex intersection of administrative, civil, and criminal legal actions. Islamic law further qualifies default as betrayal of Allah SWT in civil matters, while criminal breaches align with corruption, contradicting the theory of benefit. In the specific case, the application of legal principles appears distorted. There seems to be an overt tendency to bypass state administrative law and civil law, placing them in a subordinate role. Instead, criminal law is applied directly and disproportionately to the issue at hand, which raises concerns about the legal balance and hierarchy. This trend undermines the integrity of the legal process, placing criminal law in an undue position of primacy and disregarding the essential roles of administrative and civil law in resolving such matters.

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