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The Government Procurement Contract (A Juridical Review between Civil Code VS Presidential Regulation)

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Abstract. *There are two types of provisions that govern agreements, namely private law and public law. PBJP is a government activity that is realized through a contract, but the contract is unique because it is hybrid, it is a private contract but is subject to the provisions of public law. This research aims to conduct a critical review of the differences or inconsistencies between the rules regarding Government Procurement of Goods/Services (PBJP) contained in Presidential Regulation Number 46 of 2025 and the fundamental principles of agreement law contained in the Civil Code (KUHPerdata). The theoretical foundation of this research rests on the theory of legal certainty and Hans Kelsen's and Nawiasky's theory of tiered legal norms (Stufenbau Theorie). Methodologically, it adopts a normative juridical approach, specifically through statutory and conceptual analyses. The results showed that the regulation of PBJP through the Perpres normatively contradicts the principle of hierarchy of legal norms because the Civil Code as lex generalis is a product of law that is higher than the Perpres. Ironically, the Perpres plays a dominant role in the practice of implementation and dispute resolution of the PBJP contract, including when there is a wrong interpretation that makes default a corruption crime. The main finding of this article is the importance of adjusting the regulation of PBJP with the principles of civil law and hierarchy of norms, as well as the need for the establishment of a separate law that comprehensively regulates PBJP. Thus, the legal regulation of PBJP must be placed in the national legal system consistently in order to create legal certainty and prevent overlapping between public and private norms.*
Keywords: *Contract; Hierarchy; Presidential; Procurement; Public.*

1. INTRODUCTION

Procurement of goods and services by the government is a routine administrative activity that is one of the strategic instruments to ensure the efficient implementation of state functions and to support various development programs, both at the central and regional levels. Since the funds used are sourced from state finances, the procurement process must be carried out in an orderly, transparent and accountable manner. In practice, procurement activities are carried out through contracts, which are official agreements that bind two parties, namely the government as the party that needs goods or services (budget users), and the provider as the party who will deliver the goods or carry out the work. This contract is written and becomes the legal basis for the working relationship between the two parties. More specifically, the contract is known as the Goods/Services Procurement Contract, which is a legal document signed by the Commitment Making Officer (PPK), an official appointed to represent the government in procurement and the

Goods/Services Provider, which is a business entity or individual carrying out procurement, or a self-managed implementer in the event that the activity is carried out without using a third party (Yulius Efendi & Teguh Wicaksono, 2025). The implementation of any government goods and services procurement process must be formalized through a contract. This agreement is established between the PPK, acting on behalf of the government, and the business actors who supply the goods and services.

Any legal relationship involving an agreement between two or more parties, especially those relating to the exchange of goods, services, or value, falls within the realm of civil law. This is also true in public procurement. Although there are public aspects that regulate it administratively, the essence of the relationship between the government as the budget user and the provider as the executor remains a contractual relationship subject to the principles of civil law. The Civil Code (KUHPerdata) defines a contract as a legal agreement that binds the parties and creates legal consequences in the form of rights and obligations (Sita Nora Najmifaza et al., 2025). However, legal practice in Indonesia shows that this legal relationship is actually regulated in more detail and technically in a regulation under the law, namely the "Presidential Regulation (Perpres), as most recently stated in Presidential Regulation Number 46 of 2025 concerning Government Procurement of Goods/Services".

Various regulations are issued to govern state activities, including the procurement of goods and services. One of them is through a Presidential Regulation (Perpres), which specifically regulates the procedures, forms of contracts, and responsibilities of the parties in the procurement process. However, from the perspective of constitutional law and civil law, the existence of this Perpres cannot stand alone without considering the higher legal hierarchy. According to Article 7 paragraph (1) of Law No. 12/2011, the Perpres is in a lower order than the Law. Meanwhile, the Civil Code, despite being a colonial heritage legal product, is still valid today and is the main reference (lex generalis) in civil legal relations, including agreements or contracts. Problems arise when there are provisions in the Perpres that appear to contradict or are not in line with the basic principles in the Civil Code, such as regarding freedom of contract, equality of parties, or forms of default. In such a situation, the principle of lex superior derogat legi inferiori applies, which means that the higher regulation (in this case the law) will override the lower regulation in the event of a conflict. Therefore, if the content of the Perpres on procurement contracts is not in line with the Civil Code, then the provisions in the Civil Code should be the main reference.

A more substantial problem arises when dispute resolution in public procurement contracts, which in private law should be subject to the principles of civil law, is often processed through criminal law mechanisms, even leading to corruption. It is not uncommon for differences in interpretation or failures in contract implementation that should constitute default or tort in the perspective of civil law to be interpreted as acts that fulfill the elements of corruption. This blurs the line between administrative or civil errors and criminal offenses, and in turn creates legal uncertainty and a sense of injustice, especially for business actors who contract with the government.

The current legal conditions show a mismatch between the ideal rules that should apply according to legal principles and the hierarchical structure of laws and regulations, and their implementation in daily practice. Theoretically, every form of contract, including contracts entered into by the government, should still be subject to and comply with the principles of civil law that form the basis of engagement. Some of the important

principles include "The principle of freedom of contract", which provides flexibility for the parties to arrange the content, form, and provisions of the contract in accordance with their wishes, as long as it does not conflict with applicable laws, norms of decency, and public order. "The principle of consensualism", which states that a contract is valid and binding simply by agreement between the parties, without requiring a particular form, unless the law expressly requires it. "The principle of good faith", which requires the parties to be honest, respectful, and not to harm each other both at the time of contract formation and in the implementation of the contents of the agreement. However, in practice, dispute resolution in public procurement does not fully prioritize private mechanisms as desired by the Civil Code but is reduced by administrative and even repressive (criminal) approaches stemming from the provisions of the Presidential Regulation.

From a legal theory perspective, the discrepancy between the Presidential Regulation and the Civil Code can be analyzed using the theory of tiered legal norms developed by Hans Kelsen. This theory posits that every legal norm's legitimacy is derived from the norm that ranks higher in the hierarchy. Therefore, the Presidential Regulation as a legal norm must be in accordance and must not contradict the legal norms in the law, in this case the Civil Code. The inconsistency also negatively affects legal certainty, as it prevents business actors and government officials from reliably foreseeing the legal outcomes of their actions within the procurement contract framework.

Based on these considerations, the author chose to raise the topic with the title "Government Goods/Services Procurement Contract (Juridical Review between the Civil Code and Presidential Regulation)". The approach used is normative juridical, which is a legal research method that relies on the study of written norms in laws and regulations. In addition, a conceptual approach is also used to explore in-depth understanding through legal theories and doctrines from relevant experts. In order to explain and assess the legal position of public procurement, the author relies on two legal theories, namely the theory of legal certainty and the theory of tiered legal norms as a basis for further reviewing the errors in understanding the position of public procurement in the structure of national legal regulation. Therefore, the problem formulation that becomes the starting point of the discussion in this article is: How does the law view the rules of dispute resolution in the implementation of public procurement contracts? This formulation will help illustrate the extent to which current regulations are able to guarantee justice, equality, and legal certainty for the parties involved in public procurement contracts.

The relevance of this discussion lies in the urgent need to fix the legal framework for public procurement so as not to cause legal ambiguity that is counterproductive to the investment climate, bureaucratic efficiency, and accountability in the administration of state administration. It is hoped that this article can be a scientific contribution that encourages the formulation of a comprehensive public procurement law that is in line with applicable legal principles, not merely based on temporary and political technocratic needs. To ensure the originality of the writing, the author has conducted research on previous studies and the author found several previous studies that are close, but the titles and contents of these studies are far different from what the author examines in this study. The studies are:

1) Yulius Efendi, Teguh Wicaksono. 2025. Konsekuensi Hukum Persekongkolan Tender Terhadap Kontrak Pengadaan Barang dan Jasa Pemerintah. *Perspektif Perspektif Administrasi Publik Dan Hukum*, Volume 2 Nomor 1;

2) Ngadimin, Sidarta, D. D., & Lestari, S. E. (2024). Wanprestasi Dalam Kontrak Pelaksanaan Pengadaan Barang Dan Jasa Pemerintah. *Court Review: Jurnal Penelitian Hukum* Volume 5 Nomor 03;

3) Ashari Abd. Asis Betham, Nasrun Hipan, Firmansyah Fality. 2019. Analisis Yuridis Prosedur Pengadaan Barang/Jasa Pemerintah Serta Perlindungan Hukum Terhadap Pelaku Pengadaan Barang/Jasa. *Jurnal Yustisiabel*. Volume 3 Nomor 2.

The difference between previous studies and the research conducted by the author lies in the focus of the study. This research is present to fill the void with the main focus on normative analysis of the suitability between the provisions in the Presidential Regulation and the principles of contract law in the Civil Code, especially when there is a dispute in the implementation of the contract. By using the perspective of the hierarchy of laws and regulations, the author wants to know whether the problem-solving mechanism regulated in the Presidential Regulation is in accordance with the principles and higher legal position, or actually ignores the fundamental principles that apply in civil law. In addition, this research is not only theoretical, but also considers the application or practice in the field, so as to provide a comprehensive picture of the disharmony of norms that have the potential to cause legal uncertainty for the parties in the PBJP contract.

This article aims to provide input by criticizing the juridical basis of the government procurement arrangements currently regulated in the Presidential Regulation, as well as emphasizing the urgency to restore these arrangements in the legal corridor in accordance with the principles and hierarchy of norms. Thus, this article is not just a normative criticism, but also a form of academic responsibility to voice the importance of consistency and harmony in the national legal system. The author realizes that public procurement is a very strategic field, so its regulation cannot be done carelessly, especially by ignoring the principle of hierarchy of legal norms which is the foundation of the Indonesian state of law (*rechtsstaat*).

2. RESEARCH METHODS

This research is classified as legal research using the normative juridical method. This method focuses on the study of applicable legal norms and rules, not on empirical data collection in the field. The approach used in this research consists of two types, namely conceptual approach and statutory approach. The conceptual approach is carried out by examining relevant doctrines, theories, and legal concepts to strengthen the foundation of thought and analysis. Meanwhile, the statutory approach is carried out by analyzing the laws and regulations that are the main legal sources in regulating the procurement of government goods/services. In analyzing legal issues, the author uses two main theories, namely the theory of legal certainty and the theory of tiered legal norms. Legal certainty theory emphasizes the importance of clear, certain, and predictable legal rules for all parties in order to create justice and order in legal relations. Meanwhile, the theory of tiered legal norms regulates the order of laws and regulations, which states that higher-level regulations must be prioritized and override lower regulations in the event of a norm conflict.

The data used in this research is secondary, obtained through a literature study. The author collected and analyzed various existing literature, documents, and legal materials, including laws, regulations, reference books, scientific articles, and other legal sources. The sources of legal materials used are divided into three categories: primary legal materials which include laws and regulations; secondary legal materials in the form of supporting literature and expert comments; and tertiary legal materials that assist the search and understanding of other legal materials, such as dictionaries and legal encyclopedias. The author uses a systematic legal material collection technique. The first step is to identify all positive legal rules relating to the research topic. In addition, the author also explored various supporting literature materials, such as reference books, scientific journal articles, and relevant previous research reports.

These materials were then classified and screened to ensure only relevant and quality materials were used. Legal materials were analyzed using two main techniques, namely grammatical and systematic interpretation. Grammatical interpretation means understanding the content of the regulation based on the textual meaning of the words and sentences written. Meanwhile, systematic interpretation examines the rules in the context of the entire legal system, seeing how the rules interact and interrelate with other legal norms around them. Furthermore, this research uses a legal construction method with an analogy approach. This method is useful for interpreting laws and regulations that may not explicitly regulate a matter, by looking for similarities and analogies to existing legal principles. Thus, the interpretation given is not only based on the formal text, but also considers universally applicable legal principles, so that the results of the analysis become more comprehensive and in accordance with the values of legal justice.

3. RESULTS AND DISCUSSION

3.1 Legal Certainty Theory

Legal Certainty Theory developed by Gustav Radbruch (Satjipto Rahardjo, 2012), legal certainty is considered a fundamental element in the legal system that serves to provide clarity and certainty for all parties involved. Radbruch emphasized that the applicable law must be positive law, which is a rule officially established by an authorized institution, so that it can be formally accounted for. Furthermore, laws are not made arbitrarily, but must be based on existing social facts or realities. This means that the regulations issued must be relevant to the actual conditions of society so that they can be applied effectively and realistically. It is also important that legal rules must be formulated with clear and firm sentences so as not to cause confusion in meaning or interpretation. Vagueness will lead to different interpretations that can disrupt the implementation of the law and create uncertainty. Finally, legal stability is an important aspect to ensure that rules do not change easily. If the law changes too often, legal certainty will be lost, and people will find it difficult to plan their actions or safeguard their rights for fear that the rules they follow could change at any time without adequate notice.

Legal certainty is an important foundation of a legal system because it provides clarity and certainty to everyone about what is allowed and what is prohibited. When laws are certain, people can plan their actions with confidence and not fear the uncertainty of ambiguous or changing rules. In everyday life, legal certainty helps individuals clearly understand the rights they have and the obligations they must fulfill (Dino Rizka Afdhali & Taufiqurrohman Syahuri, 2023). Legal certainty talks about how a legal norm, legal process and legal sanctions that will be applied have clear certainty.

3.2 Tiered Theory of Legal Norms

Understanding legal norms in a country, we will be introduced to a legal hierarchy. Legal norms will always be based on and sourced from the legal norms above. Thus, legal norms have a relative validity period, depending on the validity of the norms above them. If the one above it is abolished, the legal norms below it will also be abolished (Ni'matul Huda, 2011).

Hans Kelsen, a renowned jurist and legal philosopher, introduced the concept of hierarchy of legal norms in his theory known as the Tiered Theory of Law. According to Kelsen, laws do not stand singly or separately, but are arranged in a tiered arrangement where legal norms at lower levels must be in accordance with and based on norms at higher levels. Each legal norm, such as regional regulations, government regulations, or laws, derives its validity and legal force from a higher norm. For example, government regulations must be based on the law, and the law itself must be in accordance with the constitution. At the top of this hierarchy, there is the most fundamental and unprovable norm, called the Grundnorm or basic norm. This basic norm is hypothetical, as it cannot be proven empirically, but is theoretically considered an abstract foundation that allows for the existence and validity of all other legal norms. The Grundnorm is a legal principle that provides formal legitimacy to the legal system as a whole, so all norms under it are considered valid as long as they do not contradict this basic norm (Rilo Pambudi, 2019). If illustrated as a pyramid, it is located at the top of the pyramid. Kelsen considers it a meta juristic, namely a norm that is outside the legal system or algemene *verbindende voorschrifften* (not part of the legislation), it is the source of the source of the regulatory order that is below it.

The above theory was further developed by Hans Nawiasky who also became a student of Kelsen. The theory introduced was *Die Stufenordnung der Rechtsnormen*. In Nawiasky's idea, a country's legal norms are not only tiered, but also grouped. The classification is divided into four parts as follows (Hans Nawiasky, 1948): *Staatsfundamentalnorm, Staatsgrundgesetz, Formel Gesetz; and Verordnung & Autonome Satzung*. In the theory of legal norm hierarchy, the highest peak of the norm system is not always easy to determine. Nawiasky proposed the concept of Staatsfundamentalnorm as the norm that occupies the topmost position in the legal pyramid of a country. This norm is different from other norms because it is not derived from a higher norm, but rather stands as the main basis underlying the entire legal system in the country. Hamid S. Attamimi later translated this term into Basic State Norms, which can be understood as fundamental legal principles that form the basis for the existence and legitimacy of all other legal norms in the state. This norm is absolute and fundamental, and without it, the country's legal system would not have a strong foundation (Hans Nawiasky, 1948).

Nawiasky views Staatsfundamentalnorm as a basic norm that has a very important position in a country's legal system. This norm is not just an ordinary rule, but a norm that has been agreed upon or determined by the people as the main foundation of all legal rules below it. In other words, this norm becomes the main footing that becomes the reference and source of legitimacy for all existing legal norms in the state legal system. Furthermore, the Staatsfundamentalnorm also serves as the basis for the formation of a state constitution. The constitution, which is the highest law in a country, can only be considered valid if it is based on this norm. This is because the Staatsfundamentalnorm already exists and applies before the constitution is drafted and formalized (Maria Farida Indrati S., 2017).

Based on the theory of tiered legal norms, the principle of Lex Superior Derogat Legi Inferiori is known, which means that laws and regulations that have a lower level in the hierarchy must not conflict with regulations that are at a higher level (Garry Fischer Silitonga, 2022). In Indonesian legislation, this principle is reinforced by Law Number 12/2011. Article 7 of the law explains the hierarchical order of regulations starting from the highest to the lowest. At the top is the "1945 Constitution of the Republic of Indonesia", which is the state constitution. After that there are successively "MPR Decrees, Laws or Perpu, Government Regulations, Presidential Regulations, Provincial Regional Regulations, and finally Regency/City Regional Regulations".

This arrangement of regulations forms a pyramid or multilevel structure known as the stufentbautheorie theory. This pyramid not only creates order in the preparation and implementation of law, but also serves to ensure legal certainty. With a clear hierarchy, the public and legal actors can know which rules are the main reference and which rules must be adjusted. In addition, this regulatory hierarchy also emphasizes the rule of law, where higher rules must be respected and obeyed by lower rules as well as all elements of the state and society.

3.3 Contract/Agreement under the Civil Code

Agreement or contract is one of the main concepts in Indonesian civil law that regulates legal interactions between mutually agreed individuals or entities. In this context, the agreement becomes a formal instrument that is legally binding and provides the basis for the rights and obligations of each party involved. According to Article 1313 of the Civil Code, an agreement can be understood as a legal act in which one or more people consciously and voluntarily declare their willingness to be bound to another party or more (Kitab Undang-Undang Hukum Perdata, n.d.). This definition emphasizes the existence of legal ties that arise voluntarily between the parties, with the aim of creating obligations and rights that must be fulfilled. Theoretically, an agreement is a form of expression of will that gives birth to legal consequences due to an agreement. In a legal perspective, an agreement contains important elements which are the conditions for the validity of an agreement, namely: consensus, capacity of the parties, specific object, and lawful cause as specified in Article 1320 of the Civil Code.

Contracts or agreements do not always have to be written, because even oral agreements are recognized as valid as long as they meet the specified legal requirements. This reflects the flexibility in the civil law system that is open to various forms of agreements, as long as the contents and forms do not conflict with the rule of law, public order, and prevailing moral values. The principle of freedom of contract becomes the main basis in the agreement relationship, providing space for the parties to determine the contents and terms of the agreement themselves according to their needs and interests. In other words, the parties have the right to innovate and make agreements tailored to the situation without being limited by certain types of agreements, as long as they do not violate the applicable law.

In addition, the principle of pacta sunt servanda confirms that a legally made agreement must be obeyed and respected by the parties as if it were a law for them. This emphasizes the importance of seriousness and commitment in the agreement, where each party is obliged to carry out what has been agreed upon (I Ketut Oka Setiawan, 2016).

While the Indonesian civil law system, based on the Civil Code (KUHPerdata), champions freedom of contract as a core aspect of agreements, this freedom is not unfettered. Legal restrictions are in place to uphold crucial considerations such as public interest, social harmony, and the pursuit of justice. This is important so that contracts are not used as a means of abusing rights or harming other parties disproportionately. To determine if an agreement is valid, one must first look to Article 1320 of the Civil Code, as it is the foundational provision. The Civil Code (KUHPer) not only provides a general basis for the validity of an agreement but also regulates various types of agreements based on their form, content, and legal purpose. Broadly speaking, the types of contracts or agreements in the Civil Code can be classified based on several categories, namely according to their form, nature, and according to their name or arrangement in the law.

Under the Civil Code, agreements are distinguished by arrangement into named (nominaat) and unnamed (innominaat) types. Their form can be either written or oral. Furthermore, based on their nature, agreements are classified as unilateral, where only one party incurs an obligation (such as in a grant), or reciprocal, where both parties have obligations. Meanwhile, a reciprocal agreement is an agreement that creates obligations and rights for both parties. According to the way of implementation: Instantaneous and Gradual, Instantaneous agreements are carried out at once at a certain time, such as cash payments, Gradual **(**continuous**)** agreements are carried out on an ongoing basis, such as long-term employment contracts or annual leases (Renatha Christa Auli, 2024).

When agreements are put into practice, the principle of good faith becomes an essential moral and legal requirement. This is explicitly mandated by Article 1338, paragraph (3) of the Civil Code, which stipulates that agreements must be performed in good faith (Henry Halim, 2020). Under this principle, parties are bound to execute their rights and obligations honestly, avoid detriment to the other party, and prevent unjustified delays. This mandates that the agreement's performance be punctual, faithful to its provisions, and consistent with the original understanding (J. Satrio, 2018).

The term "default" in civil law describes a party's failure, negligence, or mistake in meeting their contractual obligations. In Indonesia, this is considered a breach of contract and comes with legal ramifications for the party at fault. Article 1243 of the Civil Code governs default, explaining that compensation for expenses, damages, and interest can be sought if a debtor continues to neglect their duty after being informed, or if they deliver or perform something much later than the agreed time (Pasal Kitab Undang-Undang Hukum Perdata, n.d.).

Civil law doctrine identifies four forms of default: entirely failing to perform the agreed-upon obligation, performing it incorrectly, performing it late, or undertaking an action expressly forbidden by the agreement. Under the Civil Code, the legal ramifications of such default can involve requiring compensation for damages (Article 1243), annulling the agreement (Articles 1266 and 1267), shifting the risk to the defaulting party (Article 1237), or compelling performance through a court ruling. Grasping the concept of default is vital for contract drafting and implementation, as it helps safeguard the rights of all parties equitably (Indra Setiawan, 2024).

Violation of the contents of the agreement can lead to legal consequences in the form of sanctions and/or settlement mechanisms aimed at restoring the rights of the injured party and upholding contractual justice. The main sanction regulated in the Civil Code

because of default is the payment of compensation as specified in Article 1243 of the Civil Code. This compensation may include Costs (all real expenses incurred by the injured party), Losses (real losses and loss of profits that can be calculated), and Interest (immaterial losses due to delay or breach of performance) (Erick Makmur, 2021).

In addition to compensation, the injured party can also demand forced fulfillment of the agreement (specific performance) if this is still possible. Another alternative is to request the cancellation of the agreement (*ontbinding*) through the court if the violation that occurred is considered severe enough to make it impossible to continue the legal relationship between the parties. Based on the Civil Code, dispute resolution due to default can be done through litigation, namely settlement through a public judicial institution (Court). This path is used if one of the parties files a lawsuit to the district court to claim its rights under the contract.

3.4 Contract / Agreement based on Presidential Regulation Number 46 of 2025 concerning the Second Amendment to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services

In implementing the procurement of goods and services, the government enters into a formal legal relationship with the provider through a legally binding contract. This contract regulates the rights and obligations of both parties in order to fulfill the government's need for certain goods or services (Shanti Riskawati, 2022). The definition of government procurement of goods and services according to Presidential Regulation No. 46 of 2025 covers the entire process starting from the initial stage, namely recognizing and determining the needs that must be met, to the final stage, namely the handover of goods or services that have been completed. This process involves various government entities, ranging from central ministries, state institutions, local governments, other institutions, to village governments. This procurement uses public funds sourced from the State Budget (APBN), Regional Budget (APBD), and village budgets. Because it involves state funds, the procurement process must be carried out transparently, accountably, and in accordance with the provisions of applicable laws and regulations to ensure the efficient and targeted use of public funds. With a procurement contract, the legal relationship between the government and the provider becomes clear and legally protected, and minimizes the risk of disputes in the future.

Procurement of goods and services is an important part of government budget management that serves to support the implementation of various state programs and activities. In addition to expenditure on employee salaries and investment in the form of capital expenditure, procurement of goods and services is one of the main items in government budget expenditure (Niru Anita Sinaga, 2019). Presidential Regulation No. 46 of 2025 describes the scope of goods and services procurement, which is very broad and covers various levels of government, from central ministries to village governments. This procurement is carried out with funds sourced from various types of official budgets, such as the State Budget (APBN), Regional Budget (APBD), and village budgets. In addition, the procurement of goods and services can also be financed by loans or grants obtained from domestic and foreign sources. This means that the funds used in procurement do not only come from the government's routine budget, but also from external sources of funds that support development programs and public services.

Presidential Regulation Number 46 of 2025 regulates in detail the various types of contracts that can be used in the process of procuring government goods and services. Each type of contract is tailored to the characteristics and needs of the type of procurement concerned, thus providing flexibility in the implementation of effective and efficient procurement. For the procurement of other goods or services, contracts can take the form of lump sum (fixed price), unit price, a combination of both, as well as more complex contract forms such as umbrella contracts and cost plus reward, which provide additional incentives to suppliers. Performance-based contracts are also used to emphasize the results and quality of work achieved.

In construction procurement, contract types are more diverse to accommodate the complexity of the physical works, including turn key types that allow suppliers to work on the entire project until it is ready for use, as well as variations of fee-based and performance-based contracts. For consultancy services, contracts are tailored to the more professional and time-specific nature of the service, such as lump sum, time of assignment, as well as contracts that adjust payment based on performance. As for integrated work, which involves combining various types of work, the contracts used are also lump sum, turn key, and other performance-oriented variations (Jelita Angela Rawis et al., 2021).

Procurement in government goods and services starts from the preparation stage, where needs are identified and planned, then proceeds with the establishment and implementation of a tender process, which is a competitive mechanism to select the right provider of goods or services. In addition, procurement also includes contracting activities and the provision of other services needed to support the implementation of government tasks. Meanwhile, contract execution is the next stage after the provider selection process is completed. Article 52 paragraph (1) of Presidential Regulation Number 46 of 2025 outlines the various activities included in contract implementation. This stage begins with the official appointment of a goods or service provider through an appointment letter, followed by the signing of a contract as evidence of an agreement that binds both parties.

Furthermore, contract implementation includes the provision of advances to support the smooth running of the work, progressive payments in accordance with the achievement of work results, as well as managing contract changes or adjustments if needed during implementation. The final stage includes termination or expiration of the contract in accordance with the agreement, termination of the contract if there is a violation or certain circumstances, and handover of work results to the government as the recipient party. In addition, contract implementation also anticipates force majeure, which is an extraordinary situation that causes disruption to contract implementation and requires special handling.

However, during the implementation of government procurement contracts, sometimes providers experience obstacles so that they are unable to complete the work according to the time specified in the contract. In this situation, Presidential Regulation No. 16/2018 provides a solution that is flexible but still prioritizes legal certainty and protection of government interests. If the Commitment Making Officer (PPK) - who acts as the government's representative in procurement - assesses that the provider still has the ability to complete the delayed work, then the PPK can provide additional opportunities to the provider. This opportunity is not unlimited, but must be formally set

out in a contract addendum, which is an official change document from the original agreement.

The addendum clearly regulates the extension of time given to the provider to complete the work, thus providing legality for schedule changes. In addition, there are provisions on the imposition of sanctions in the form of fines for delays, which serve as a form of responsibility and supervision of the provider to work according to the agreement. The extension of the implementation guarantee is also carried out to ensure that the provider continues to provide security guarantees for the implementation of the work during the additional period.

Apart from late fees, the provisions in Presidential Regulation of the Republic of Indonesia Number 46 of 2025 concerning the Second Amendment to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services also regulate sanctions. The sanctions in the implementation of the Government Goods / Services Procurement agreement are in the form of administrative sanctions in the form of sanctions forfeited in the selection, sanctions for disbursement of guarantees, Blacklist Sanctions, sanctions for termination in the E-purchasing transaction system, sanctions for reducing the inclusion of candidates for Swakelola implementers, and sanctions for cancellation as Swakelola Organizers.

3.5 Settlement of Problems in the Implementation of Contracts / Agreements for Government Procurement of Goods / Services (Civil Code vs Perpres PBJP)

Public Procurement (PBJP) is an integral part of the implementation of national development. In Indonesia, the implementation of PBJP is specifically regulated in a Presidential Regulation, while the general contractual legal basis still refers to the provisions of the Civil Code (KUHPerdata). The PBJP contract has its own characteristics, namely (Purwosusilo, 2014): The legal relationship formed between the government and the goods/services provider in addition to the contractual relationship with a private law dimension also has a public law dimension in it, freedom in determining legal relationships and contractual provisions is limited because it is based on procurement procedures that have been normatively determined by the government. In addition, in the Presidential Regulation for the Implementation of PBJP there is a monitoring system both internally and externally. With these characteristics, the PBJP contract cannot be treated fully as an ordinary civil agreement because its validity is not only based on the principle of consensuality, but also subject to the Principles of Good Governance.

In the perspective of the Civil Code, other parties who feel aggrieved are obliged to warn about their negligence, this is known as a summons. Somasi is a statement of negligence which is a translation of *ingebrekestelling* (Salim H.S, 2009). The provisions regarding subpoenas are regulated in Article 1238 of the Civil Code and Article 1243 of the Civil Code. Which based on these two provisions, in a contractual relationship a new party can be said to be negligent if he has been warned or reminded by a warrant or similar deed to fulfill his obligations, but he still neglects with the passage of time specified in the letter. In the Dictionary of Popular Legal Terms, a summons is a warning to the prospective defendant (Jonaedi Efendi, 2016).

Default has a very close relationship with the subpoena, in the restatement of the law of the contracts, default or breach of contract is divided into two, namely total breaches which means that the implementation of the agreement is impossible and partial breaches

which means that the implementation of the agreement is still possible to be implemented (J. Satrio, 2014). Then for these problems, the party who feels aggrieved or the debtor can file a default lawsuit at the District Court for reimbursement of costs, losses and interest.

Relevant to general civil law, dispute resolution arising from contracts is usually private, meaning that it only involves the parties who signed the contract. This resolution process tends to be done internally through negotiation, mediation, arbitration, or through the courts between the two parties without the involvement of wider third parties. However, in public procurement, the resolution of disputes or problems does not only depend on the private legal relationship between the government and the goods/services provider. Because it involves public interests and state funds, the dispute resolution mechanism is specifically and more strictly regulated in Presidential Regulation No. 46 of 2025. This regulation aims to ensure that the dispute resolution process is transparent, accountable, and in accordance with applicable legal provisions, and involves certain institutions or procedures that may differ from ordinary dispute resolution in civil law. This shows that government procurement is not just a private matter, but also has a public dimension that must be maintained so that the management of funds and the implementation of work remain in accordance with the principles of good governance (Peraturan Presiden Republik Indonesia Nomor 46 Tahun 2025 Tentang Perubahan Kedua Atas Peraturan Presiden Nomor 16 Tahun 2018 Tentang Pengadaan Barang/Jasa Pemerintah, 2025).

In public procurement of goods and services, disputes that arise between the Commitment Making Official (PPK) and the provider of goods or services must be resolved with clear procedures and various options provided by the regulation. Article 85 paragraph (1) of Presidential Regulation Number 16 of 2018, which has been updated with Presidential Regulation Number 12 of 2021, provides several alternative dispute resolution mechanisms. First, dispute resolution can be done through a contract dispute resolution service, which uses a professional third party who is expert in handling procurement contract issues. Second, arbitration is a private and final dispute resolution method, where the parties agree to submit the decision to an arbitrator without going through the public courts. Third, disputes in construction contracts can be resolved through the Construction Dispute Resolution Body, which is a specialized institution that handles disputes in the construction field, providing solutions that are more technical and in accordance with the characteristics of construction work. Fourth, if unsuccessful through these alternative mechanisms, the parties still have the right to bring disputes to the general court as a last resort in resolving disputes formally and legally.

Based on the provisions of Article 85 paragraph (2) of Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Goods/Services Procurement, "Contract Dispute Resolution Services are organized by the Government Goods/Services Procurement Policy Agency (LKPP)" and arrangements related to Contract Dispute Resolution Services are regulated in the Government Goods/Services Procurement Policy Agency Regulation Number 18 of 2018 concerning Government Goods/Services Procurement Contract Dispute Resolution Services.

In Article 1 point 3 of LKPP Regulation Number 18/2018, (Peraturan Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah Nomor 18 Tahun 2018 Tentang Layanan Penyelesaian Sengketa Kontrak Pengadaan Barang/Jasa Pemerintah, 2018) it is explained that what is meant by Government Procurement Contract Disputes, hereinafter

referred to as Procurement Contract Disputes, are disputes arising from the signing of the contract until the end of the government goods/services procurement contract between the work owner and the work executor who are bound by contractual relations in the procurement of government goods/services. The scope of the Procurement Contract Dispute Resolution Service consists of Mediation, Conciliation, and Arbitration. While in the implementation of Construction Services (Peraturan Menteri Pekerjaan Umum Dan Perumahan Rakyat Nomor 11 Tahun 2021 Tentang Tata Cara Dan Petunjuk Teknis Dewan Sengketa Konstruksi, 2021), dispute resolution can be through the Construction Dispute Board. The Dispute Board has the task of preventing disputes between the parties, in this case the Service User and the Service Provider, resolving disputes through the provision of professional considerations in certain aspects as needed or resolving disputes through the formulation of formal conclusions outlined in the Dispute Board's decision. The Dispute Board is formed through the Dispute Board Work Agreement.

So that based on the description above, there are differences in problem solving in the implementation of the Contract / Agreement. In the perspective of the Civil Code, dispute resolution in the implementation of Contracts/Agreements in general can only be done through the authorized Court, while dispute resolution in the implementation of Government Procurement Contracts/Agreements based on the Government Procurement Regulation there are two options for dispute resolution, namely through litigation or non-litigation. Where the Litigation Path is a settlement through the court, while non-litigation is a settlement outside the court, namely through Arbitration, Dispute Resolution Services at LKPP in this case through Mediation, Conciliation or Arbitration, or for the Implementation of Construction Services can be through the Construction Dispute Board.

In addition to the dispute resolution regulated in article 85 paragraph (1) above, there are also arrangements regarding reporting related to alleged criminal acts on the implementation of public procurement agreements. This is regulated in Article 81 of Presidential Regulation of the Republic of Indonesia Number 46 of 2025 concerning the Second Amendment to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services related to violations in the event that the election participants submit false or incorrect documents or information to meet the requirements specified in the Election Document, the election participants are indicated to have conspired with other participants to set the bid price, and/or the election participants are indicated to have committed corruption, collusion, and / or nepotism in the selection of Providers.

3.6 The reason why the implementation of the Government Goods/Services Procurement Contract leads to Corruption Crime

Government procurement of goods/services is based on a contract document, called a goods and services procurement contract. The parties that play a role in this contract are the Government and the provider of goods and services. However, sometimes the implementation of the contract can cause problems, namely the occurrence of irregularities, both during the bidding and implementation stages, which then these irregularities are always associated with criminal acts of corruption (Tipikor) (Satria Ramadhan, 2024). Corruption in the procurement of goods and services is included in the transactional type of corruption, because there is an agreement between the budget user and the third party with a hidden agreement (kick back) (Satria Ramadhan, 2024).

This cannot be separated because of the "abuse of authority" which is one of the important elements in the Corruption related to the position and is even the *bestanddeel delict* (Sobirin, 2020). Abuse of authority as one of the elements in the formation of the offense, is a *species delict* of the element against the law as a *genus delict* (Agustina et al., 2016). The term "abuse of authority" as well as "abuse of authority" is actually a term that was born in the family of State Administrative Law, even this term is one of the principles in the General Principles of Good Government (AAUPB), namely the principle of not abusing authority.

The element of "abuse of authority" itself is regulated in Article 3 of Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of Corruption, which states (Article 3, Undang-Undang Republik Indonesia Nomor 20 Tahun 2001 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi, 2001): "Any person who with the aim of benefiting himself or herself or another person or corporation, abuses the authority, opportunity or means available to him or her because of his or her position or position that may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least IDR 50,000,000.00 (fifty million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah)".

The prohibition for Government Administration Officials to "not abuse authority" in determining and/or carrying out decisions and/or actions is also contained in Article 8 paragraph (3) of Law Number 30 of 2014 concerning Government Administration (Undang-Undang Republik Indonesia Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan, 2014). Adami Chazawi defines, "abuse of authority" as an act committed by a person who is entitled to do so, but is done wrongly or directed at the wrong thing and contrary to law or custom. The act of "abusing authority" is only possible if two conditions are met, namely: a) the maker who abuses the authority based on a certain position or position does have the intended authority; b) the position or position that has the authority is still (being) held or owned (Adami Chazawi, 2005). So that if you pay attention to the provisions of the crime of corruption in connection with the implementation of government procurement agreements, the problem that occurs is not in the agreement, but in the behavior or actions of the parties who take advantage in an improper or unlawful manner that causes state losses. From the elements of these actions criminal law provisions which are public law provisions enter the realm of agreements which are private law.

When referring to the theory of legal certainty and the theory of tiered legal norms, there is a legal mismatch that is quite wrong, where the regulation of agreements in principle is generally regulated based on the Law in this case the Civil Code (KUHPerdata), while in the implementation of government procurement of goods / services the regulation is regulated through Presidential Regulations. The essence of the agreement should be in the realm of civil law so that it must follow the provisions of the Civil Code, which resolves disputes through the District Court with sanctions for compensation including reimbursement of costs, damages and interest, not through criminal sanctions.

In terms of regulation based on the principle of Lex Specialis Derogate Legi Generali, it is appropriate to make special arrangements regarding the procurement of government goods / services, but based on the principle of Lex Superior Derogate Legi Inferiori, special arrangements regarding the procurement of government goods / services are

not appropriate at the level of Presidential Regulation, this is because the Presidential Regulation which is the provision for the implementation of government procurement of goods / services based on an agreement / contract which becomes Lex Specialis from the general provisions of an agreement / contract, its implementation is contrary to the provisions of the Civil Code which in this case is at the level of the Law which is above the Presidential Regulation. At least the Lex Specialis regulations are at the same level as the Lex Generali regulations, so that this does not crash or conflict with the tiered legal norms in the hierarchy of laws and regulations. The regulation of public procurement of goods/services should be regulated in a Law, not regulations under the Law, so that there is no conflict in the application of specific legal norms to a general legal norm in the hierarchical arrangement of regulations. This is a form of law enforcement effort to provide legal certainty for the community.

4. CONCLUSION

This article finds that there are fundamental problems in the regulation of government procurement contracts regulated in Presidential Regulations, which normatively contradict the principle of hierarchy of legal norms that have been established in the Indonesian legal system. This discrepancy results in ambiguity and inconsistency in the application of the law, especially in terms of dispute resolution and punishment in the implementation of public procurement contracts. In theory, procurement contracts should be subject to the principles of engagement in the private Civil Code. However, the reality shows that the resolution of PBJP contracts is often done through administrative and even repressive approaches, without providing sufficient space for private law mechanisms. The novelty of this article lies in the conceptual criticism of the dominance of Perpres in regulating private legal relations that should be regulated by law, as well as the affirmation that Perpres as legal norms under the law cannot contradict or override the provisions of the Civil Code. In addition, it needs to be emphasized that the urgency of establishing a special law on public procurement is not only technocratic but concerns legal order and the sustainability of the national legal system. Therefore, it is recommended that the regulation on PBJP be changed from the Perpres level to a law that has the same legal force as the Civil Code in order to create a harmonious, consistent legal system, and provide true legal certainty for the parties involved in the procurement contract.

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