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Settlement Of Goods/Services Procurement Contract Disputes

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Abstrak

Penelitian ini bertujuan untuk mendeskripsikan proses penyelesaian sengketa pada kontrak pengadaan barang/jasa pemerintah di Kota Tangerang. Metode penelitian adalah yuridis empiris. Hasil penelitian menunjukkan bahwa terdapat sengketa pada pelaksanaan kontrak pengadaan barang/jasa di Kota Tangerang antara Dinas Pekerjaan Umum dan Penataan Ruang Kota Tangerang dengan penyedia barang/jasa selama tahun anggaran 2021 yaitu berupa ketidaksesuaian antara sisa kemampuan paket yang disampaikan oleh penyedia dengan kenyataan yang ada di lapangan. Penyelesaian atas permasalahan yang terjadi antara Dinas Pekerjaan Umum Kota Tangerang dengan Penyedia yang bersengketa adalah melalui jalur non-litigasi dengan melakukan penetapan sanksi daftar hitam penyedia oleh pengguna anggaran Dinas Pekerjaan Umum dan Penataan Ruang sesuai dengan peraturan yang berlaku.

Kata Kunci: Pengadaan; Barang/Jasa; Sengketa

Abstract

This research aims to describe the dispute resolution process in public procurement contracts in Tangerang City. The research method is empirical juridical. The results show that there is a dispute in the implementation of the goods/services procurement contract in Tangerang City between the Tangerang City Public Works and Spatial Planning Agency and the goods/services provider during the 2021 fiscal year, namely in the form of a discrepancy between the remaining package capabilities submitted by the provider and the reality in the field. The settlement of the problem that occurred between the Tangerang City Public Works Office and the provider in dispute was through non-litigation channels by imposing a sanction of blacklisting the provider by the budget user of the Public Works and Spatial Planning Office in accordance with applicable regulations.

Keywords: Procurement; Goods/Services; Dispute

INTRODUCTION

The global pandemic caused by the widespread transmission of the Covid-19 virus has significantly impacted various countries, including Indonesia. This crisis, which commenced in early 2020 and was officially recognized as a public health emergency through Presidential Decree Number 11 of 2020, has adversely affected not only the healthcare sector but also the economy of Indonesia. The circumstance above has led numerous prominent corporations and micro, small, and medium enterprises (MSMEs), formerly regarded as the foundational elements of the Indonesian economy, to undertake substantial efficiency measures. The fall in economic growth in Indonesia from 4.96% at the end of 2019 to -2.19% by the end of 2020 proves this assertion.¹

This phenomenon is inherently linked to the repercussions of the Covid-19 pandemic on the micro, small, and medium enterprises (MSMEs) sector, which experienced a substantial decline in its GDP contribution. Specifically, the MSME sector's contribution diminished to a mere 37.3% in 2020, compared to its previous standing of 60% in 2019.² Significant divestment occurred within

this region, resulting in a deceleration of economic activity.

Furthermore, the advent of the pandemic led to a surge in unemployment, necessitating enterprises to enhance operational effectiveness. MSMEs are facing a growing impact due to a transition in consumer behavior, namely a shift from offline to online purchasing. Unfortunately, MSMEs are ill-prepared to adapt to this changing landscape. The Covid-19 pandemic has the potential to generate a comprehensive crisis impact across multiple domains, encompassing the suspension of public consumption activities, diminished consumer confidence arising from income uncertainty, stock market depreciation, and various other factors that contribute to an economically uncertain situation.³

The prevailing economic instability also influences the economy's supply and demand dynamics. This circumstance presents a matter of concern that necessitates the government's attention and prompt implementation of measures, such as developing employment-generating initiatives and revitalizing economic endeavors, to restore disrupted economic equilibrium. The

¹ "Badan Pusat Statistik," diakses 5 November 2023, <https://www.bps.go.id/pressrelease/2022/02/07/1911/ekonomi-indonesia-triwulan-iv-2021-tumbuh-5-02-persen--y-on-y-.html>.

² "Pertumbuhan Ekonomi Nasional Triwulan III-2022 Sebesar 5,72%, Menkeu: Cerminan Menguatnya Pemulihan Ekonomi Nasional di Tengah Ketidakpastian Ekonomi Global," Kementerian Keuangan Republik Indonesia, 9 November 2022, <https://www.kemenkeu.go.id/informasi-publik/publikasi/berita-utama/Per-ekonomian-Indonesia-Triwulan-III-2022-5,7>.

³ "Pertumbuhan Ekonomi Nasional Triwulan III-2022 Sebesar 5,72%, Menkeu."

government implements development programs funded by the National Income and Expenditure Budget (APBN) and the Regional Income and Expenditure Budget (APBD). These programs play a crucial role in stimulating economic growth, encompassing physical development and procuring goods for governmental purposes. The user has requested a service.⁴

Providing goods and services to fulfill the government's requirements can be seen as an embodiment of the fifth principle of Pancasila. This principle emphasizes the pursuit of social justice through public welfare administration, which includes efforts towards growth. The subject under consideration might be construed as infrastructure development, a crucial factor in promoting development and expediting the process of national economic recovery.

To actualize diverse architectural structures and tangible infrastructure, procuring goods and services can be divided into two primary groups: consumers or users and suppliers or providers. Both individuals

may have distinct desires or interests that can generate conflicts.⁵ It is not uncommon for abnormalities to arise during the procurement process for goods and services.⁶

For instance, from a consumer's perspective of goods and services, such as a government agency, a preference exists to acquire goods and services at the lowest possible cost while ensuring optimal quality is upheld. Milanie's study also highlighted an additional point, wherein the products/services supplier failed to fulfill their commitment to buy goods, resulting in losses for the consumers of those goods/services⁷. In contrast to the studies above, the present research offers a unique contribution by addressing various issues about procurement contracts for goods and services, as outlined in Presidential Decree No. 12/2021.

In the event of carelessness or delays occurring during the implementation process, which diverges from the terms outlined in the mutually agreed contract, it is imperative to ascertain the mechanisms by which the parties concerned will be held accountable by the

⁴ Radesza Rizky Sakinah, "Pelaksanaan Perjanjian Pengadaan Barang Dan Jasa Pemerintah Pekerjaan Konstruksi Rehab Pagar Pasar Raya Kota Solok," *Zaaken: Journal of Civil and Business Law* 2, no. 3 (31 Desember 2021): 497, <https://doi.org/10.22437/zaaken.v2i3.15422>.

⁵ Niru Anita Sinaga, "Perjanjian Pengadaan Barang/Jasa Pemerintah Kaitannya Dengan Asas Keseimbangan Dalam Hukum Perjanjian," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 2 (9 Oktober 2019): 1, <https://doi.org/10.35968/jh.v9i2.352>.

⁶ Haswangga Riskian, "Perjanjian Kontrak Pengadaan Barang Atau Jasa Berdasar Perpres Nomor 70 Tahun 2012 Tentang Pengadaan Barang Atau Jasa Yang Dilakukan Pemerintah Daerah Dengan Swasta (Studi Kasus Pembayaran Ganti Rugi Oleh Badan Pemberdayaan Perempuan Dan Keluarga Berencana Daerah Kabupaten Nganjuk," *Brawijaya Law Student Journal*, 11 September 2014, 4, <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/686>.

⁷ Feby Milanie, "Analisa Hukum Pelanggaran Kontrak Pengadaan Barang/Jasa (Studi Di PDAM Tirtanadi Propinsi Sumatera Utara)," *Kumpulan Karya Ilmiah Mahasiswa Fakultas Sosial Sains* 1, no. 01 (5 Mei 2021): 5, <https://jurnal.pancabudi.ac.id/index.php/jurnalfasosa/article/view/1312>.

agreement above. Furthermore, in the procurement process for goods and services, it is not immune to corrupt practices (corruption, collusion, and nepotism).

According to Cornelis, Astutik, and Handayati, there are various forms of corruption that can be categorized into seven main categories, namely: First, actions that harm state finances; second, bribery and rewards; third, embezzlement in office; fourth, extortion; fifth, ethical violations and dishonesty; sixth, conflicts of interest in procurement; and finally, gratification or receiving gifts. Procurement of goods/services can be a potential breeding ground for such corrupt practices, thus efforts are needed to improve the quality of procurement implementation, such as improving procurement-related regulations, enhancing professionalism in procurement, strengthening oversight, and enforcing the law.⁸

However, during the implementation or utilization of goods/services, unexpected events often occur. For example, in construction work, various factors, both external and internal, can hinder the construction process, requiring the provider to alter specifications or necessitating additional time to complete the work.

Similarly, in procurement of goods, undesirable events can occur, such as receiving goods that do not meet the requested specifications, the premature damage of goods still under warranty, or discrepancies in the quantity and delivery time of goods. These events can lead to changes or even cancellations of procurement contracts. Additionally, inadvertent negligence⁹ or delays by either party can result in problematic fieldwork processes and deviations from project targets.

Given these factors, there is a need for rules that can serve as the foundation for contracts. The government has issued several regulations related to government procurement of goods/services. However, the dynamics of government procurement are closely tied to technological advancements and the rapid growth of the goods/services market. This rapid development in procurement necessitates the continuous review and adjustment of regulations related to government procurement of goods/services by the government.

As a result of a review process spanning over two years, on March 15, 2018, the President endorsed Presidential Regulation Number 16 of 2018, which regulates

⁸ Vieta Imelda Cornelis, Asri Astutik, dan Nur Handayati, "Strategi Pengembangan Nilai-Nilai Anti Korupsi Melalui Agen Perubahan Anti Tindakan Koruptif Dalam Dunia Pendidikan," *Maksigama: Jurnal Ilmiah Hukum Universitas Wisnuwardhana Malang* 13, no. 1 (2019): 73, <https://maksigama.wisnuwardhana.ac.id/index.php/maksigama/article/view/54>.

⁹ Shanti Riskawati, "Pemutusan Perjanjian Sepihak Kontrak Pengadaan Barang/Jasa Pemerintah Pasca Yurisprudensi Nomor 4/Yur/Pdt/2018," *Arena Hukum* 15, no. 3 (27 Desember 2022): 526, <https://doi.org/10.21776/ub.arenahukum.2022.01503.4>.

government procurement of goods/services. This regulation replaces Presidential Regulation Number 54 of 2010, which had been revised five times. Nonetheless, these changes did not conclude the matter. On February 2, 2021, the government issued Presidential Regulation Number 12 of 2021, amending Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services.

The government's efforts to address difficulties in purchasing goods and services persist beyond the measures above. This phase is implemented by the Government Goods/Services Procurement Policy Agency (LKPP)¹⁰, which has enacted a range of policies. An illustration can be seen in implementing the electronic procurement system (SPSE), which mandates the utilization of online platforms for all aspects of goods/services procurement, encompassing planning and provider selection.

All ministries, institutions, and local governments in Indonesia adhered to this step. Tangerang City is the sole K/L/PD deemed commendable among 623 other K/L/PD

entities, as indicated by the 2022 K/L/PD Procurement Management Index (ITKP).¹¹

The methodology employed in compiling this legal treatise is a sociological empirical approach. The empirical legal research approach is derived from field observations (from real actions that occur in the context of society). These actions are accepted and recognized by society because they do not contradict legal regulations, maintain public order, and adhere to prevailing social norms.¹² The dataset utilized encompasses primary and secondary data, which were acquired through collecting information via field studies and library research.¹³ A comprehensive examination of many documents and literature sources was undertaken to compile the data to supplement the library research. Additionally, direct interviews were conducted with respondents as a field study component.¹⁴

The researcher's interest involves investigating the resolution process of goods and service contract disputes in Tangerang City. This interest stems from the observation that unexpected occurrences often arise while implementing or utilizing goods and services.

¹⁰ Widi Mulyadi dan Nur Fitri Rahmawati, "Peran Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah (LKPP) Dalam Monitoring Dan Evaluasi Pengadaan Barang/Jasa Pemerintah," *Jurnal Reformasi Administrasi : Jurnal Ilmiah Untuk Mewujudkan Masyarakat Madani* 9, no. 2 (30 September 2022): 140, <https://doi.org/10.31334/reformasi.v9i2.2747>.

¹¹ Lembaga Kebijakan Pengadaan Barang/ Jasa Pemerintah Republik Indonesia, *Penayangan Hasil Sementara Penilaian Indeks Tata Kelola Pengadaan K/L/PD Tahun 2022 pada Aplikasi SIMKU*, (Jakarta: LKPP, 2022), https://siukpbj.lkpp.go.id/uploads/posts/2022_11_07_Hasil%20Sementara%20ITKP.pdf

¹² Arikunto Suharsimi, *Prosedur Penelitian: Suatu Pendekatan Praktik (Edisi Revisi)*, VI (Jakarta: Rineka Cipta, 2010), 15.

¹³ Rahmadi Rahmadi, *Pengantar Metodologi Penelitian*, 13 ed. (Banjarmasin: Antasari Press, 2011), 60.

¹⁴ Ronny H Soemitro, *Metodologi Penelitian Hukum* (Jakarta: Ghalia Indonesia, 1983), 35.

For instance, in the context of construction work, various factors can impede the commencement of the construction process. Different external and internal circumstances may necessitate the provider to modify specifications or request additional time for project completion. In the realm of procurement, instances of undesirable occurrences are relatively uncommon.

These may manifest in several forms, such as the receipt of goods that do not align with the specified requirements, the utilization of damaged items despite being within the maintenance period, or discrepancies observed in the quantity of goods received and the stipulated delivery schedule. Various factors can impact a procurement contract, potentially leading to modifications or even termination. In addition to the failure to address the neglect or delay of one of the parties, which can inadvertently lead to complications in the operational procedures and hinder the completion of tasks, it also fails to achieve the desired objectives.¹⁵

RESULTS AND DISCUSSION

The term "dispute" refers to the translation of the word "sengketa" in English. The Big Indonesian Dictionary (KBBI)

defines "sengketa" with the following meanings: 1) a situation that creates differences in opinions, conflicts, or debates. 2) differences of opinion that lead to conflict or disagreement. 3) issues brought before the realm of justice. Amriani describes a dispute as a clash between parties involved in an agreement due to the failure of one party to fulfill obligations within that agreement.¹⁶ Rahmadi states that a dispute is defined as a condition in which there is a dispute encompassing factual or perceptual aspects among individuals.¹⁷

Richard L. Abel uses the term "dispute" to depict a situation where there is a discrepancy or difference of opinion among involved parties regarding something of value. "Something of value" is defined as something that holds worth or value.¹⁸ According to Daen G. Pruitt and Jeffrey Z. Rubin, the term "conflict" is used to describe differences in interests or the failure of involved parties to reach an agreement.¹⁹

Differences in interests are understood as variations in the needs or goals of each party. Abdurasyid explains that in a dispute, one party may have a valid argument, but there is a possibility that each party has a valid

¹⁵ Sunjak Bakir, "Exploring the Critical Determinants of Environmentally Oriented Public Procurement Using the Dematel Method" *Journal of Environmental Management* Volume 225, (1 November 2018) 323-35, <https://www.sciencedirect.com/science/article/abs/pii/S0301479718308442>

¹⁶ Amriani Nurmaningsih, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan* (Jakarta: PT. Raja Grafindo Persada, 2012), 13.

¹⁷ Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat* (Jakarta: Raja Grafindo Persada, 2017), 1.

¹⁸ Salim Salim, *Hukum Penyelesaian Sengketa Lahan di Indonesia* (Mataram: Pustaka Reka Cipta, 2012), 219.

¹⁹ Salim, 219.

legal basis in different aspects.²⁰ One party may have a valid argument in one issue, while the other party has a valid argument in a different issue, or both claims essentially benefit both parties, or one party may be legally correct, but the other party has a valid moral basis. Therefore, a dispute fundamentally involves differences in perception or concepts, making both valid when viewed from different perspectives.

A conflict arises when one party perceives offense from another party and subsequently communicates dissatisfaction to the offending party.²¹ When there is a divergence of viewpoints, conflicts occur. In a broad sense, a dispute can be defined as a state characterized by discord, divergent views, or contention among the individuals or entities participating in a particular circumstance or exchange.²²

Controversial situations can manifest in diverse spheres, encompassing business, contract law, property, and other relevant fields. Disputes, particularly in the realm of law, specifically contract law, pertain to conflicts arising from the breach of contractual obligations by the involved parties, whether in part or in their entirety.²³

It implies that one or more parties have engaged in default, as they have failed to execute fully or have surpassed the expected commitments, leading to losses for the other party involved. To ensure the effective resolution of disputes among several parties and uphold principles of justice and legal consistency, it is imperative to identify the optimal solution. In general, conflict resolution can be accomplished through two primary methodologies, specifically the litigation process or a non-litigation technique.²⁴

Within contemporary legislation and regulations, specifically about the procurement of goods and services by governmental bodies, disputes encompass instances of discord or contention that arise during the procurement process or contractual agreements between government entities or agencies and the parties responsible for supplying goods or services.²⁵

Dispute resolution arrangements in government procurement of goods and services typically encompass a comprehensive settlement mechanism, as relevant regulations outline. These mechanisms may involve various procedures, such as deliberation, mediation, arbitration, or

²⁰ Priyana Abdul Rasyid, *Arbitrase dan Alternatif Penyelesaian Sengketa* (Jakarta: Fikahati Aneska, 2022), 23.

²¹ Hartana Hartana dan Putu Darmika, "Upaya Penyelesaian Sengketa Tanah Melalui Mediasi Sebagai Jalur Alternatif," *Jurnal Pendidikan Kewarganegaraan Undiksha* 10, no. 3 (1 September 2022): 329.

²² Salim, *Hukum Penyelesaian Sengketa Lahan di Indonesia*, 23.

²³ Nurmaningsih, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan*, 23.

²⁴ Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat*, 34.

²⁵ Wirjono Prodjodikoro, *Asas Asas Hukum Perjanjian* (Bandung: Sumur Bandung, 2004), 28.

other procedures mandated by the applicable rules. The specific details of these settlement mechanisms are elaborated upon following the relevant regulations.²⁶

Tangerang City is among the several cities in Indonesia. Numerous conflicts and controversies frequently accompany the procurement of products and services. An example of such a situation can be observed at the Department of Public Works and Spatial Planning of Tangerang City involving CV. Tunas Harapan Mandiri. During the procurement process for construction services at the department of public works and spatial planning of Tangerang City, the selection working group and procurement officers have identified several prerequisites that must be fulfilled by all bidders/non-tenders.

These prerequisites are established by presidential regulations and regulations set forth by the government goods/services procurement agency. CV Tunas Harapan Mandiri emerged as the successful bidder in various construction work packages at the Department of Public Works and Spatial Planning of Tangerang City, employing both tender and non-tender approaches between 2018 and 2021. This achievement can be

attributed to the intricate specifications and multi-step provider selection process.

Despite the inherent complexity of regulations and requirements surrounding government procurement, the Government Inspectorate of Tangerang City has conducted a preliminary investigation into allegations of illicit activities at the Department of Public Works and Spatial Planning of Tangerang City on behalf of CV. Tunas Harapan Mandiri, as reported in Letter Number 700-355-IRBAN1/2022 after 2022.

The Department of Public Works and Spatial Planning is addressing this matter as the employer agency. The writer's interest was piqued by examining the methods taken by the Department of Public Works and Spatial Planning of Tangerang City in resolving issues with CV. Tunas Harapan Mandiri.

Dispute Resolution in Government Procurement of Goods/Services

Dispute resolution is a process aimed at addressing differences or conflicts among the parties involved in a specific situation or transaction.²⁷ There are two main approaches in dispute resolution: through litigation and non-litigation.²⁸ These two approaches differ in the methods and approaches used to resolve

²⁶ Salim, *Hukum Penyelesaian Sengketa Lahan di Indonesia*, 45.

²⁷ Silviasari Silviasari, "Penyelesaian Sengketa Konsumen Dan Pelaku Usaha Dalam Transaksi E-Commerce Melalui Sistem Cash on Delivery," *Media of Law and Sharia* 1, no. 3 (28 Agustus 2020): 155, <https://doi.org/10.18196/mls.v1i3.9192>.

²⁸ Andri Fransiskus Gultom dan Marsianus Reresi, "Kritik Warga Pada RUU Omnibus Law Dalam Paradigma Critical Legal Studies," *Jurnal Pendidikan Kewarganegaraan* 10, no. 1 (31 Mei 2020): 45, <https://doi.org/10.20527/kewarganegaraan.v10i1.8497>.

disputes.²⁹ Here is a detailed explanation of both:

1. Litigation

Litigation refers to the dispute resolution process carried out through the court or judicial system. This approach is the most common and well-known. In litigation, parties involved in the conflict bring their case to court and request a judge or jury to make decisions regarding the dispute.³⁰ Some key aspects of litigation include:³¹

- a) Filing and response: One party initiates the process by filing a lawsuit or legal claim against another party. The party being sued then responds to the lawsuit.
- b) Trial process: If there is no settlement outside of court, the trial process begins. The judge or jury listens to arguments from both sides, reviews available evidence, and makes decisions based on applicable law.

c) Court decision: The judge or jury issues a final and binding decision. This decision determines the winning party and specifies the actions to be taken by the losing party.

2. Non-Litigation

Non-litigation refers to dispute resolution methods outside the scope of the courtroom, using more flexible and less formal approaches than litigation.³² Non-litigation approaches are often faster, cost-effective, and can yield innovative solutions. Some examples of non-litigation methods include:³³

- a) Mediation: A neutral mediator assists disputing parties in reaching an agreement.³⁴ While the mediator does not make decisions, they facilitate negotiations between parties to find mutually beneficial solutions.³⁵
- b) Arbitration:³⁶ Independent and neutral arbitrators examine arguments and

²⁹ Riris Nisantika dan Ni Luh Putu Egi Santika Maharani, "Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen (BPSK)," *Jurnal Locus Delicti* 2, no. 1 (1 Juli 2021): 54, <https://doi.org/10.23887/jld.v2i1.458>.

³⁰ Azharuddin Lathif dan Diana Mutia Habibaty, "Disparitas Penyelesaian Sengketa Jalur Litigasi Pada Polis Asuransi Syariah dan Putusan Pengadilan," *Jurnal Legislasi Indonesia* 16, no. 1 (22 April 2019): 80, <https://doi.org/10.54629/jli.v16i1.460>.

³¹ Meirina Nurlani, "Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia," *Jurnal Kepastian Hukum Dan Keadilan* 3, no. 1 (10 Mei 2022): 30, <https://doi.org/10.32502/khdk.v3i1.4519>.

³² Ni Made Trisna Dewi, "Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata," *Jurnal Analisis Hukum* 5, no. 1 (25 April 2022): 83, <https://doi.org/10.38043/jah.v5i1.3223>.

³³ Dewi Tuti Muryati dan B. Rini Heryanti, "Pengaturan dan Mekanisme Penyelesaian Sengketa Nonlitigasi di Bidang Perdagangan," *Jurnal Dinamika Sosial Budaya* 3, no. 1 (2011): 56.

³⁴ M. Amin Elwalad Meuraksa, "Analisis Mediasi Dalam Penyelesaian Sengketa Wanprestasi Perjanjian Sewa Menyewa Di Pengadilan Negeri Tangerang Dihubungkan Dengan Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa (Analisis Putusan No. 129/Pdt.G/2016/Pn.Tng)," *Jurnal Surya Kencana Dua : Dinamika Masalah Hukum Dan Keadilan* 4, no. 1 (11 Desember 2017): 70, <https://doi.org/10.32493/SKD.v4i1.y2017.793>.

³⁵ Gatot Soemartono, *Arbitrase dan Mediasi di Indonesia* (Jakarta: Gramedia Pustaka Utama, 2006), 21.

³⁶ Nurlani, "Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia," 27–28.

evidence from both parties, then make binding decisions. This procedure is similar to a court trial but is more flexible and can proceed more quickly.

c) Conciliation: Conciliators assist disputing parties in reaching an agreement by providing suggestions and guidance. Conciliators have a more active role than mediators but still do not make final decisions.³⁷

Overall, litigation involves dispute resolution through the court with decisions issued by judges or juries. On the other hand, non-litigation approaches encompass various alternative methods outside of court, such as mediation, arbitration, conciliation, and negotiation, aiming to achieve agreements acceptable to all involved parties.³⁸ The choice between litigation and non-litigation depends on the nature of the dispute, the preferences of the involved parties, and the goals of the dispute resolution process.³⁹

The process of selecting a dispute resolution method has its unique characteristics, and the choice made will greatly depend on each organization's policies.⁴⁰ In the context of government procurement dispute resolution, several

options are available. Firstly, through litigation, one party brings the procurement dispute to the general court for legal resolution.

Another alternative is arbitration, where dispute resolution is governed by private institutions outside of the court, such as the National Arbitration Board of Indonesia (BANI) or international arbitration institutions in various countries. To avoid further losses due to lengthy processes and high costs, mediation, negotiation, and conciliation steps should be taken before seeking resolution through arbitration or litigation.

Based on the regulations outlined in the Implementation Guidelines for Government Procurement of Goods/Services established by Presidential Regulation No. 12 of 2021, dispute resolution in supplier contracts for government procurement of goods/services includes several options, such as contract dispute resolution services, arbitration, construction dispute boards, or resolution through the court.

According to these guidelines, the entity currently authorized to handle government procurement disputes is the Government

³⁷ Rai Mantili, "Konsep Penyelesaian Perselisihan Hubungan Industrial Antara Serikat Pekerja Dengan Perusahaan Melalui Combined Process (Med-Arbitrase)," *Jurnal Bina Mulia Hukum* 6, no. 1 (30 September 2021): 53, <https://doi.org/10.23920/jbmh.v6i1.252>.

³⁸ Jimmy Jose Sembiring, *Cara Menyelesaikan Sengketa di Luar Pengadilan (Negosiasi, Mediasi, Konsultasi & Arbitrase)* (Jakarta: Visi Media, 2011), 34.

³⁹ Mohamad Jusuf Husain Isa, Nur Zakiah, dan Fitri Fuji Astuti Ruslan, "Upaya Non Litigasi Dalam Penyelesaian Sengketa Penyerobotan Tanah," *Jurnal Multidisiplin Madani* 2, no. 3 (23 April 2022): 1465.

⁴⁰ Rumelda Silalahi, "Kajian Hukum Atas Penyelesaian Perselisihan Hubungan Industrial Secara Konsultasi," *Jurnal Darma Agung* 27, no. 2 (31 Juli 2019): 1003, <https://doi.org/10.46930/ojsuda.v27i2.276>.

Procurement Policy Agency (LKPP), which acts as a dispute resolution service provider (LPS LKPP), along with other options such as arbitration and litigation. LKPP also organizes alternative dispute resolution services, including Procurement Goods/Services Dispute Resolution Services, as regulated by LKPP Regulation No. 18 of 2018.

Forum for Settlement of Contract Disputes in the Procurement of Goods/Services for the Tangerang City Government

Advancements in alternative conflict resolution methods are also evident in government procurement of goods/services. The emergence of this progress can be attributed to the increasing significance of the government's purchase of goods and services operations for the nation over time.

Conflict resolution mechanisms are crucial in government procurement of goods and services, given the intricate nature of the issues that may occur. It is particularly significant in light of the numerous agreements involved in the procurement process, necessitating the availability of multiple forms of dispute settlement.⁴¹

The implementation of LKPP Regulation Number 18 of 2018, which pertains to the provision of dispute resolution

services for government goods/services procurement contracts, has resulted in a notable enhancement in the efficiency of procurement dispute settlement.⁴² The term "Procurement dispute resolution services" mentioned in this regulation pertains to the services rendered by LKPP.

LKPP offers the acquisition dispute resolution service within its primary responsibility of formulating policies related to the government's acquisition of goods and services. The rule in question encompasses the areas of mediation, conciliation, and arbitration, which are the core components of procurement dispute resolution services.

1. Mediation in the Contractual Dispute Resolution Forum

Mediation is a form of dispute resolution outside the judicial system, commonly called an alternate approach.⁴³ The regulations about mediation are often documented in Law Number 30 of 1999, which addresses matters involving arbitration and alternative dispute resolution. However, within the mediation framework, as governed by Institutional Regulations Number 18 of 2018, there seems to be a subtle variation in the content of each regulation.

⁴¹ Willem Siahaya, *Manajemen Pengadaan* (Bandung: Alfabeta, 2012), 32.

⁴² Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah Republik Indonesia, "Penayangan Hasil Sementara Penilaian Indeks Tata Kelola Pengadaan K/L/PD Tahun 2022 Pada Aplikasi SIMKU" (LKPP, 7 November 2022), https://siukpbj.lkpp.go.id/uploads/posts/2022_11_07_Hasil%20Sementara%20ITKP.pdf.

⁴³ Samsul Ramli, *Bacaan Wajib Mengatasi Aneka Masalah Teknis Pengadaan Barang/ Jasa Pemerintah* (Jakarta: Visinema Pustaka, 2014), 24.

The regulations about mediation can be located in Article 6, subsections (3), (4), and (5) of Law Number 30 of 1999. Based on the analysis of the three articles, it can be inferred that mediation represents a phase in resolving disputes that occur after unsuccessful negotiations. Mediation proceedings must commence within a maximum of seven days after the mediator's appointment by either the arbitration institution or the alternative dispute resolution institution.

An alternative interpretation of mediation pertains to resolving conflicts wherein a neutral third party, known as the mediator, facilitates communication and guides the disputing parties toward reaching a mutually agreeable agreement.⁴⁴ Furthermore, it is essential to note that the mediator assumes a neutral role and does not possess the authority to provide judgments or make binding determinations.⁴⁵

The duration of mediation in the contract settlement service is set at 30 days, with the possibility of extending it by a maximum of 10 days, provided that the conditions outlined in Article 23 of the Institutional Regulations are satisfied. As per the provisions outlined in Article 24 of the institutional regulations, the contract

dispute settlement mediation service is deemed closed unless the parties mutually consent to conduct the process openly. Tangerang City employs a neutral third-party mediator to facilitate resolving disputes that arise while procuring goods and services.

Similarly, the mediation process necessitates the presence of conflicting parties. It may be reduced by a legal representative possessing a Special Power of Attorney, as outlined in Articles 25 and 26 of the institutional regulations. If a resolution is achieved via mediation, the involved parties must draft an agreement as an amicable document, which all parties and the mediator must sign.

Subsequently, the mediator shall communicate the findings to the Service Secretary, as stipulated in Article 30 of the regulation above. If mediation proves unsuccessful, parties may proceed to the subsequent stage of dispute resolution, namely conciliation, as specified in article 3, paragraph (2) of the institutional regulations.

2. Conciliation in the Contract Dispute Resolution Forum

Conciliation is an additional approach to the resolution of conflicts. The conciliation process aligns with the

⁴⁴ Dian Maris Rahmah, "Optimalisasi Penyelesaian Sengketa Melalui Mediasi Di Pengadilan," *Jurnal Bina Mulia Hukum* 4, no. 1 (13 September 2019): 8, <https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/57>.

⁴⁵ Nurmaningsih, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan*, 4.

stipulations outlined in Law Number 30 of 1999. While the legal framework does not comprehensively describe conciliation, it is implicitly recognized as an alternative mechanism for resolving disputes, as evident in Article 1, paragraph (10) of the law.

Conciliation, as a method of resolving disputes, typically involves a conciliator with the necessary power to intervene and actively engage in devising and implementing settlement solutions.⁴⁶ If the parties involved in the argument fail to reach a consensus, the conciliator can propose potential courses of action to navigate a resolution to the impasse. In contract dispute resolution, conciliation is a subsequent course of action pursued when the disputing parties have not achieved a satisfactory solution through mediation.⁴⁷

The notion of conciliation within Contractual Dispute Resolution Services is delineated in paragraph 5 of Article 1 of Institutional Regulation 18 of 18. This provision stipulates that conciliation is an extrajudicial method of resolving contractual disputes wherein both parties engage in discussions facilitated by a conciliator. The Tangerang City Administration Office has designated the

goods/services procurement work unit (UKPBJ) as the authorized entity responsible for overseeing the conciliation process and resolving any possible disputes.

This section of the institutional regulation provides a comprehensive overview of the guidelines about conciliation methods, spanning from Article 14 to Article 32. Following the completion of the resolution process via conciliation, if a mutually acceptable agreement is not attained, the parties can forward the dispute to the subsequent stage, arbitration.⁴⁸

3. Arbitration Forum in Contract Dispute Resolution

The elucidation of arbitration in contract dispute resolution services is expounded upon in Article 1, paragraph 6 of the Institutional Regulations Number 18 of 2018. In the present context, arbitration pertains to a mechanism employed for resolving contractual disputes through legal proceedings conducted outside the jurisdiction of a court.

The Arbitrator or Referee Council performs the process of arbitration. Selecting arbitrators to resolve contractual disputes differs from the provisions outlined in Law Number 30 of 1999. The

⁴⁶ Rasyid, *Arbitrase dan Alternatif Penyelesaian Sengketa*, 24.

⁴⁷ Rocky Marbun, *Kamus Hukum Lengkap* (Jakarta: Visi Media, 2012), 14.

⁴⁸ Rasyid, *Arbitrase dan Alternatif Penyelesaian Sengketa*, 24.

selection of arbitrators for dispute settlement services is provided by LKPP by the secretary responsible for overseeing the dispute settlement services. The Dispute Resolution Institution (LPS) of the LKPP is governed by the provisions outlined in Institution Regulation Number 18 of 2018, which delineates its respective functions. The progression of evolution within the Arbitration process is encompassed by Articles 14 through 42.

The regulation of arbitration is stipulated in Articles 33 to 42 of Institution Regulation Number 18 of 2018. When implemented, the arbitration process is subject to a prescribed time constraint of 90 (ninety) days after receipt of the formal request. Suppose the application remains unresolved within the specified time frame. In that case, it is imperative for the procurement contract disagreement settlement service to promptly address the disagreement within a maximum of 30 working days following the conclusion of the period stated in Article 33, paragraph (1).

The utilization of arbitration in dispute resolution services administered by LKPP guarantees openness and actively engages the contractual parties.⁴⁹ The parties above are permitted to retain the

services of a legal counsel or appoint an extraordinary power of attorney, provided that they fulfill the prerequisite of presenting a valid extraordinary power of attorney document. Upon the successful completion of the various stages of the arbitration procedure, which encompass the submission of the petition, the respondent's response, summons, examination, and evidence, the last phase is referred to as the conclusion stage.

According to Article 41 of Institutional Regulation Number 18 of 2018, the arbitrator grants the disputing parties a specific period to present their conclusions during the conclusion stage. This timeframe should not exceed 7 (seven) calendar days from when the arbitrator declares the conclusion of the review phase. Following the Conclusion stage, the subsequent phase is the refereeing stage, the ultimate step wherein the judge renders the final determination.

The authority to provide decisions in procurement contract dispute resolution services lies with arbitrators, as outlined in Article 42 of Institution Regulation No. 18 of 2018. Once the arbitrator renders a decision will be promptly communicated to the disputed parties within seven days. The

⁴⁹ Denny Sanjaya, Ramli Siregar, dan Windha Windha, "Analisis Yuridis Pengadaan Barang/jasa yang Dilakukan Dinas Pendidikan Kota Tanjungbalai Ditinjau dari Peraturan Presiden Nomor 54 Tahun 2010 Tentang Pengadaan Barang/jasa Pemerintah," *Transparency Journal of Economic Law* 1, no. 2 (2013): 4.

decision, duly signed by the arbitrator, will be transmitted to the involved parties.

According to Article 42, paragraph (13), if one party exhibits a reluctance to comply with a decision voluntarily, the opposing party possesses the alternative of initiating a fresh legal action before the presiding authority of the district court within the relevant jurisdiction or consenting to the inclusion of the decision's contents within a peace agreement. Concerning the execution of this decision, the disputing parties can petition the court to enforce the judgment per the established procedures outlined by the court.⁵⁰

Despite the comprehensive guidelines outlined in Institution Regulation No. 18 of 2018 pertaining to the execution of the Arbitration procedure, certain elements continue to elicit inquiries from individuals or entities contemplating utilizing this platform to resolve conflicts. The current rule lacks clarity regarding the requirement of including an Arbitration clause in the contract for participation in a forum administered by LKPP.

Moreover, a notable distinction can be observed between Article 34 of the regulation above, which stipulates that the arbitration forum conducted by LKPP

(Indonesia's Public Procurement Policy Agency) is characterized by openness, and Article 27 of Law Number 30 of 1999, which asserts that arbitration is a confidential procedure. A notable distinction may be observed in Article 42, specifically in paragraph (13) of the rule above, which elucidates the possibility of initiating a fresh legal action in response to an arbitration ruling. As mentioned earlier, the statement diverges from the provisions outlined in Article 60 of Law Number 30 of 1999, which explicitly declares arbitration as a conclusive and obligatory process.

CONCLUSION

The primary directive governing the government's acquisition of goods and services now is Presidential Regulation Number 12 of 2021. Within the framework of this regulation, the pursuit of conflict resolution can be facilitated by a range of mechanisms, encompassing contract dispute resolution services, arbitration, construction dispute boards, and recourse to the judicial system.

The Government Goods/Services Procurement Policy Agency fulfills the job of a contract dispute resolution service provider in government procurement of goods/

⁵⁰ Ni Made Puspasutari Ujianti dan Anak Agung Sagung Laksmi Dewi, "Tinjauan Yuridis Asas Keseimbangan Dalam Kontrak Pengadaan Barang/Jasa Pemerintah," *Kertha Wicaksana* 12, no. 2 (14 Agustus 2018): 134, <https://doi.org/10.22225/kw.12.2.2018.133-139>.

services, as outlined in the most recent regulation. Furthermore, it is worth noting that arbitral institutions and the court system play a significant part in resolving conflicts.

The Tangerang City has implemented measures to address conflicts in compliance with Presidential Regulation Number 12 of 2021 and Regulation of the Government Goods/Services Procurement Policy Agency Number 18 of 2018, encompassing mediation, conciliation, and arbitration as dispute resolution mechanisms. The case study under consideration pertains to CV. Tunas Harapan Mandiri's involvement in the default of work packages issued by the Department of Public Works and Spatial Planning of Tangerang City from 2018 to 2021.

CV Tunas Harapan Mandiri, acting as the service provider, had violated the regulations by documenting the remaining capability package (SKP) inaccurately, deviating from the legal provisions. Therefore, the Tangerang City Government took steps to resolve the conflict by conducting mediation, conciliation, and arbitration. As a result, an agreement was reached that the provider would be sanctioned by being blacklisted by the budget user of the Tangerang City Public Works and Spatial Planning Agency. The service provider agreed to this step by signing a statement of consent.

RECOMMENDATION

The involvement of parties in procurement contracts for goods/services,

both from the government as the service user and the goods/services provider side, in the preparation and approval of procurement contracts, is crucial. Therefore, the Tangerang City Government needs to pay more attention so that all parties can collaborate effectively and accommodate the interests of all contracting parties.

It is expected that with collaboration from all parties, disputes will not occur in the process of implementing procurement contracts for goods/services in Tangerang. Furthermore, to minimize the risk of contract violations or discrepancies in procurement contracts, providers should adhere to the contract itself. Therefore, the Tangerang City Government should establish clear and strict regulations regarding the procurement of goods/services to avoid issues arising from differences in interpretation.

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