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Legal Certainty Against Termination of Government Goods/Services Procurement Contracts By Acts of Government Administration, Commitment Making Officials

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legal certainty; termination of contracts; government administration actions; procurement of government goods/services

ABSTRACT

Problems in unilateral contract termination by Commitment Making Officials in Government Procurement of Goods/Services. There are no express provisions in the laws and regulations or Presidential Regulations. The consequence that arises is that terminating the contract creates legal uncertainty. This research purpose analyzes the implementation of terminating contracts for the procurement of government goods/services by acts of government administration and analyzes and finds legal certainty for terminating contracts for the procurement of goods/services if there is a dispute between the Commitment Making Official and the provider of goods/services, the Commitment Making Official. The research method used in this research is normative juridical with research specifications namely analytical descriptive. The results research show that the implementation of terminating contracts for the procurement of government goods/services by the actions of the government administration officials who made the commitment resulted in the emergence of legal uncertainty. Based on Article 93 paragraph 1 of Presidential Regulation Number 4 of 2015 concerning the Second Amendment to Presidential Regulation Number 54 of 2010, the legal consequences of contract termination do not yet reflect the principle of proportionality, because the determination of sanctions is only unilateral, borne by the Service Provider. Meanwhile, the determination of sanctions against Service Users if the PPK commits an error/negligence is not clearly regulated either in the contract agreed upon by the parties, or regulated in the provisions of statutory regulations.

1. Introduction

The goods/services procurement sector is the sector that absorbs the largest funds in the distribution of the APBN/APBD excluding subsidies and employee spending. The government through legitimacy collaborates (partnerships) with business actors in related fields to carry out procurement projects within Ministries, Institutions, Work Units and other related institutions that

require budget allocations for goods/services procurement projects in very large quantities (Witanto, 2012) as a form of government responsibility to meet the needs of the people as well as the needs of the government in running the wheels of government (Purwosusilo & SH, 2017)

Procurement of Goods/Services is essentially an effort by the user to obtain or realize the Goods/Services he wants by using certain methods and processes in order to reach an agreement on price, time and other agreements (Sutedi, 2012).

In Presidential Regulation Number 16 of 2018, actors procuring goods/services for procurement through goods/services providers and self-management consist of Budget Users (PA)/Budget User Power (KPA), Commitment Officials (PPK), Procurement Officials (PP), Election Working Group, Procurement Agents, Work Results Inspection Officers (PjPHP)/Work Results Inspection Committee (PPHP) who have their respective duties in the process of procurement of goods/services. Commitment Making Officials or commonly abbreviated as PPK in the world of procurement of goods and services are officials who are authorized by the PA/KPA to make decisions and/or take actions that may result in expenditures on the state budget/regional budget (Triawan, 2022).

In Presidential Regulation of the Republic of Indonesia Number 16 of 2018, as amended into Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018, Article 1 point 1 affirms that the procurement of Government Goods/Services is the procurement of Goods/Services by Ministries/Institutions/Regional Devices/Institutions financed by the APBN/APBD whose process from identification to handover of work results to obtain Goods/Services. Public goods/services are goods whose use is related to the interests of many people, both in groups and in general, while private goods/services are goods that are only used individually or in certain groups. Legislative Approval (DPR/DPRD) in the form of Laws/Regional Regulations on APBN/APBD is the highest limit of expenditure that can be carried out in a fiscal year The series of State/Regional expenditure processes are Procurement, Contract Implementation, and Payment and Delivery of Goods/Works (Kuncoro, 2021).

One of the processes in the procurement of government goods/services is the existence of a contract for the procurement of goods/services hereinafter referred to as a contract, which is a written agreement between the Commitment Making Officer (PPK) at the Ministry/Institution/Regional Apparatus Work Unit/Institution with the Goods/Services Provider or Self-managed implementer. The existence of this element of public law causes legal rules and principles in private contracts not fully apply to contracts made by the government (Simamora, 2017).

According to (Hadjon, 2018), the participation of state administrative bodies or officials in various civil law acts also affects civil law relations that take place in the general public, considering that agreements entered into by state administrative agencies or officials are carried out with citizens and civil law entities. The form of difference with private contracts is the unilateral termination of the contract which deviates from the provisions of Article 1266 BW. In procurement contracts, the authority to unilaterally terminate the contract lies with the Commitment Officer.

The basis for unilateral termination of contracts in the procurement of government goods/services which is the authority of the Commitment Making Officer (PPK) in its development has undergone several changes. Furthermore, according to the provisions of Article 93 paragraph (1) of Presidential Regulation Number 54 of 2010. Furthermore, in the provisions of Article 93 paragraph (1) of Presidential Regulation Number 70 of 2012, KDP can terminate the contract unilaterally with the provisions stipulated in the regulation.

In the provisions of Article 93 paragraph (1) of Presidential Regulation Number 172 of 2014 concerning the Third Amendment to Presidential Regulation Number 54 of 2010 concerning Procurement of Government Goods/Services, paragraph (1a) is inserted which reads "Granting opportunities for Goods/Services Providers to complete work up to 50 (fifty) calendar days, since the

end of the implementation of work as referred to in paragraph (1) letter a.1 and letter a.2 can exceed the Fiscal Year". Furthermore, in Article 93 paragraph (2), unilateral termination of the contract by KDP is carried out in the form of a decree addressed to the provider of goods/services, the legal consequences of unilateral termination of the contract by KDP to the provider of goods/services are subject to sanctions, including: (a) The Implementation Guarantee is disbursed; (b) The remaining Down Payment must be paid by the Goods/Services Provider or the Down Payment Guarantee is disbursed; (c) the Goods/Services Provider pays a late fee; and (d) the Goods/Services Provider is blacklisted.

The problem of disputes that occur related to the procurement of government goods/services in the State Administrative Court is related to unilateral termination of the contract by the KDP, where the reason for the KDP in unilaterally terminating the contract does not use the basis of the provisions of Article 93 paragraph (1) of Presidential Regulation Number 54 of 2010 jo Presidential Regulation Number 70 of 2012 jo. Presidential Regulation Number 172 of 2014.

In the absence of provisions governing settlement and which institution is authorized to resolve disputes related to unilateral termination of the contract by KDP, which results in the loss of the provider of goods/services affected by the decision, and what legal remedies can be taken by the provider of goods/services as a result of the issuance of a decision related to unilateral termination of the contract by KDP.

To prevent this and at the same time as a means of external control or supervision, an institution is needed in charge of it, namely the State Administrative Court or Administrative Court, in addition to internal institutions formed by the Government itself. According to the Law, the purpose of holding the TUN Court is to provide protection to justice-seeking people who feel they are disadvantaged due to a State Administrative Decision.

The existence of the State Administrative Court cannot be separated from the concept of the welfare state. The concept of welfare state (Pajriyansyah & Firmansyah, 2017) (Ir H. Juniarso Ridwan & Sudrajat, 2020) through state intervention (Muchsan, 2022), active participation of the state in society (Utrecht, 2020), resulted in the large amount of government power in carrying out its responsibilities (Manan & SH, 2017) and functions, so that this power needs restrictions and supervision for the protection of law to the community. In order to provide legal protection to the community, in Article 1 paragraph (2) of the 1945 Constitution, sovereignty is in the hands of the people and is exercised according to the 1945 Constitution. Furthermore, according to the provisions of Article 1 paragraph (3) of the 1945 Constitution, the State of Indonesia is a State of law. Based on these principles, all forms of government decisions and/or administrative actions must be based on people's sovereignty and law which is a reflection of Pancasila as a state philosophy.

The authority of the State Administrative Court according to the provisions of Article 47 of Law Number 5 of 1986, states "The Court has the duty and authority to examine, decide, and resolve State Administrative disputes". In its development with the issuance of Law Number 30 of 2014, the authority of the State Administrative Court was expanded as specified in Article 87.

Various studies related to the termination of government goods/services procurement contracts by KDP are (Hatta, 2022), (Widyarta, Arthanaya, & Suryani, 2019), and (Riskawati, 2022). From this research, more specifically, researchers will examine the meaning of evil conspiracies and reconstruct not only Article 15, but what is expected for state administrators or law enforcement can be used as a reference in terms of proving criminal acts of corruption. Based on phenomena that have occurred so far but have not been resolved and cause legal uncertainty. Even though the existence of rules and the implementation of these rules creates legal certainty (Mahmud Marzuki, 2018) which regulates clearly and logically (Kansil, 2019). Where legal certainty can only be answered normatively, not sociology (Dominikus, 2020) because the actual law has elements of command, sanction, duty, and sovereignty (Darmodiharjo & Sidharta, 2016).

From the description above, researchers consider it important to conduct research on unilateral termination of contracts by KDP in the procurement of government goods/services as stipulated in Article 93 paragraph (1) of Presidential Regulation Number 4 of 2015 Fourth Amendment to Presidential Regulation Number 54 of 2010. This research purpose analyzes the implementation of terminating contracts for the procurement of government goods/services by acts of government administration and analyzes and finds legal certainty for terminating contracts for the procurement of goods/services if there is a dispute between the Commitment Making Official and the provider of goods/services, the Commitment Making Official.

2. Materials and Methods

This research is juridical normative or also known as literature research (Soekanto & Mamudji, 2013). The specifications used in this study are descriptive analytical (Ali, 2018) with the technique of collecting legal materials using literature studies to analyze primary, secondary and tertiary legal materials in the form of: (1) Law Number 5 of 1986 Jo. Law Number 9 of 2004 Jo. Law Number 51 of 2009 concerning State Administrative Court, (2) Law Number 14 of 1970 Jo. Law Number 35 of 1999 Jo. Law Number 48 of 2009 concerning Judicial Power. (3) Law Number 14 of 1985 Jo. Law Number 5 of 2004 Jo. Law Number 3 of 2009 concerning the Supreme Court. (4) Law Number 28 of 1999 concerning the implementation of a Clean and Free State from Corruption and Nepotism. (5) Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. (6) Law Number 30 of 2014 concerning Government Administration. (7) Civil Code. (8) Presidential Regulation of the Republic of Indonesia Number 54 of 2010 concerning Procurement of Government Goods/Services. (9) Presidential Regulation of the Republic of Indonesia Number 35 of 2011 concerning Amendments to Presidential Regulation of the Republic of Indonesia Number 54 of 2010 concerning Procurement of Government Goods/Services. (10) Presidential Regulation of the Republic of Indonesia Number 70 of 2012 concerning the Second Amendment to Presidential Regulation of the Republic of Indonesia Number 54 of 2010 concerning Procurement of Government Goods/Services. (11) Presidential Regulation of the Republic of Indonesia Number 172 of 2014 concerning the Third Amendment to Presidential Regulation of the Republic of Indonesia Number 54 of 2010 concerning Procurement of Government Goods/Services. (12) Presidential Regulation of the Republic of Indonesia Number 4 of 2015 concerning the Fourth Amendment to Presidential Regulation of the Republic of Indonesia Number 54 of 2010 concerning Procurement of Government Goods/Services. (13) Presidential Instruction of the Republic of Indonesia Number 1 of 2015 concerning the Acceleration of Government Procurement of Goods/Services. (14) Presidential Regulation of the Republic of Indonesia Number 16 of 2018 concerning Procurement of Government Goods/Services. (15) Regulation of the Head of the Government Procurement Policy Institute Number 14 of 2012 concerning Technical Guidelines of Presidential Regulation Number 70 of 2012 concerning the Second Amendment of Presidential Regulation Number 54 of 2010 concerning Procurement of Government Goods/Services, and (16) Decisions of the State Administrative Court that already have permanent legal force.

The legal material obtained is then analyzed by interpretive methods, based on legal principles then interpretive research focuses on the subjective nature of the social world and seeks to understand the frame of mind of the object being studied, namely research by describing conditions and facts about the object of study.

3. Result and Discussion

Authority of Administration Officials to Termination of Government Goods/Services Procurement Contracts

Issues of Determination of Auction Winners (Tender) and Problems of Cancellation of Determination of Auction Winners (Tender) in the past the procurement of government goods and

services was regulated based on Presidential Decree Number. 80 of 2003 and its amending rules. Currently regulated in Presidential Regulation Number 54 of 2010 concerning Procurement of Government Goods/Services. Cases related to the cancellation of the determination of the winner of the tender generally do not cause disagreements which are the authority of the PTUN to examine and try it at the first instance, because there is no administrative objection and appeal.

In the above case, there is a PTUN Judge who argues that the case regarding the determination of the winner of the auction is based on Presidential Decree Number. 80 of 2003 and Presidential Regulation Number 54 of 2010 are civil disputes because they will lead to a contract between the government and the winning partner of the auction so that it is included in those excluded from being sued at the PTUN based on Article 2 letter a of the Law on Peratun.

For this last opinion, the author disagrees because the determination of the winner of the auction in addition to fulfilling the provisions of Article 1 number 9 of the Law on Peratun, has also been accepted in the Jurisprudence of Decisions of the Supreme Court of the Republic of Indonesia, for example Decision Number. 425K/TUN/2002 dated August 11, 2003 which in its legal rules states that two companies in one business group are not allowed both to participate as tender participants in one work auction package. With the cancellation of the decision of the tender winner by the Supreme Court, the decision to determine the winner of the tender is a state administrative decision that can be an object in the State Administrative Court.

The next issue is in the event that the Plaintiff has taken an attempt to refute and refute the appeal but is still not satisfied with the decision of the rebuttal of the appeal, then it becomes the authority of who the dispute will be filed, is it PTUN or PT TUN? In such a case, with reference to the provisions of Article 48 jo Article 51 paragraph (3) of Law Number 5 of 1986 concerning the State Administrative Court, it is presumably that the High Administrative Court (PT TUN) is authorized to examine, try and resolve it at the first instance, because the appeal rebuttal is a form of administrative appeal which is quasi-judicial so that it is considered equated with the court of first instance.

The absolute competence of the State Administrative Court is to examine, adjudicate, and decide disputes arising in the field of state administration between a person or civil law entity and a state administrative agency or official due to the issuance of a state administrative decision, including personnel disputes (Article 1 paragraph (4) of Law Number 09/2004 concerning State Administrative Court) and the non-issuance of a decision requested by a person to the extent the time specified in a law and regulation, while it has been the obligation of the relevant state administrative agency or official (Article 3 of Law Number 09/2004 State Administrative Court).

Relative competence is the authority of similar courts that have the authority to examine, adjudicate, and decide the case concerned. In relation to the state administrative court, its relative competence concerns the authority of the state administrative court to examine, adjudicate, and decide the case. Whether it is PTUN Ujung Pandang, Surabaya, Semarang, Bandung, Jakarta, Palembang, Medan, and so on.

The court shall declare that it is not authorized to examine, adjudicate, and decide the case, if it is not within its absolute or relative competence. An error in filing a lawsuit will cost the Plaintiff dearly not only in terms of time, and cost, but far more importantly it can result in the lawsuit becoming expired. As is known, the grace period for filing a lawsuit based on Article 55 is only within a grace period of 90 (ninety) days from the time of receipt or announcement of the decision of the State Administrative Agency or Officer.

Thus it can be concluded that the attribution term of Sjahran Basah is equal to absolute competence and for the term delegation is equal to relative competence. The TUN judiciary as a subsystem of judicial power in Indonesia has a function to supervise state administrative acts that harm the people, which at the same time contains the function of legal protection for the people in the State of Law (rechtsstaat). The supervisory characteristics of the TUN judiciary are reactive, independent, and limited.

From a juridical point of view that there are important issues that are not accommodated in the technical regulations for the procurement of goods and services, in this case Presidential Regulation Number 54 of 2010 and its amendments. In an execution of a contract for the procurement of goods and services, such as the implementation of construction, force majeure is possible. In article 91 (1) of Presidential Regulation 54 of 2010, it is explained that force majeure is a condition that occurs against the will of the parties and cannot be foreseen, so that the obligations specified in the Contract cannot be fulfilled.

This means that in force majeure it is unlikely that the contract will be executed in full or even until it is completed. Even though conceptually, force majeure is divided into 2 (two), namely temporary force majeure and permanent force majeure. Temporary force majeure is a temporary force majeure such as a flood which results in the implementation being temporarily delayed. While permanent force majeure is a state in which achievements cannot be fulfilled at all, such as earthquakes. Even force majeure is no longer limited only to natural disasters, but also non-natural disasters or other industrial conditions as stated through a joint decree of the Minister of Finance and related technical ministers.

In a permanent force majeure event, the performance of the contract must be stopped. Because of the force majeure, the engagement no longer works (werking) even though the bond itself remains. Either party cannot demand that the engagement be fulfilled and the debtor cannot be said to be in a state of negligence. In principle, the engagement still exists, all that falls is its workings. This is especially important regarding temporary force majeure. The alliance again has a working force if the force majeure ceases.

Since the engagement cannot work, implementation is impossible. So that if forced one of the parties will lose. This means that in ideal circumstances when force majeure occurs, the provider has the right to apply for termination of the contract and is entitled to payment to the extent of the performance that has been completed. The next point that becomes a problem is that in concept the provider has the right to temporarily terminate the contract if the KDP has not paid the implementation fee as agreed. But juridically, the provisions of the regulations that are pleasing to the termination of the performance of the contract are not accommodated.

In the past, this matter was contained in the old provision, namely Presidential Decree Number 80 of 2003. However, once it has been replaced and no longer in force, the provision on termination of the contract is not included. This is a problem, because field conditions allow force majeure to occur. While there is no legal basis for termination.

Even though in Presidential Regulation Number 54 of 2010, Article 91 related to Force Majeure, in point six (6) explains the possibility of contract changes in the event of Force Majeure, the parties can make an agreement, which is stated in the contract change. However, the contract changes as stated in article 87 of Presidential Regulation 54 of 2010 do not explain the complete termination of the contract. He only mentioned the addition or reduction of the volume of work, the type of work, changing the technical specifications of the work, to changing the implementation schedule. Its essence is not the termination of the contract.

As a result of the non-inclusion of arrangements on the termination of contracts in technical regulations related to the procurement of goods and services, new problems arise. The problem is conceptual. As the author got in the field, in the shutter practically occurs the gratuitous use of the term. There is a termination of the contract whose essence is termination and there is a termination whose essence is the termination of the contract. The impact is that the aggrieved party to the decision has difficulty in enforcing its rights. When the provider sued for termination of the contract on the basis of termination, it turned out that the KDP postulated that this was not termination but termination. Because Presidential Regulation 54 of 2010 only provides legal remedies for contract termination.

Despite the difference in termination and termination of the contract, it differs only gradually, but has different legal consequences. Therefore, the author raises the issue of contract termination as the main issue. Given that the term termination of the contract is only found in Presidential Decree Number 80 of 2003, but in fact this is still needed to guarantee the rights of the parties. Therefore, it is important to understand the meaning of termination and termination of contracts, more specifically in the procurement system of goods and services.

Termination is a result. Because it was cut off, it finally stopped. But this cessation is more of a natural state. It stalled because of the fact that it showed a halted state. It is different if it is said to be stopped because it is stopped. So the difference between termination and termination is only gradual. Termination and Termination in legal perspective Nomenklatur termination and termination can be found in labor law. According to Law Number 13 of 2003 means that termination or termination of employment is the termination of employment relations due to certain things that result in the end of rights and obligations between workers and employers. Dismissal can also mean termination of employment (layoff) of employees from a corporate organization. Termination made by the company must be based on Law No. 12 of 1964 of the Criminal Code.

The contract for the procurement of goods and services in its provisions is presented to carry out state objectives, specifically to succeed in smooth procurement for the government. So the spirit of the provisions, both the Construction Services Law and the Presidential Regulation and its amendments, is intended for the interests of the government.

But please note that the procurement of government goods and services must also be carried out based on the principles of justice and truth. Must not negate the rights of the provider. The procurement contract is in a private regime, therefore it is bound by several provisions such as the Burgelijk Wetboek. Apart from that the government is a public entity but in this case it acts as a representative of the legal entity of the state that has an interest. And the interest here is to use the means of private law, namely contracts. Then the government must submit to the rules of private law.

In the event that the provider feels aggrieved in the context of contract termination, the legal remedy submitted is to request contract changes to KDP for immediate contract termination. In the event that KDP violates the terms of the contract, then the provider files a claim against KDP on the basis of default. Because a breach involving the non-granting of appropriate rights to the provider is a breach of contract.

As a public law, according to (Wijoyo, 2015), Administrative Law is based on the principles of the rule of law (rechtsstaat), democratic principles and in accordance with the basic concepts of Administrative Law as a juridical instrument (juridische instrumenten), Administrative Law also contains instrumental characters (instrumental characters).

The promulgation of Law Number 30 of 2014 concerning Government Administration on October 17, 2014 is a very enlightening step in government administration reform. This is a form of state and government responsibility to ensure the implementation of government and public services that are fast, convenient and cheap. This Government Administration Law is one of the pillars of administrative reform.

This Government Administration Law regulates the legal relationship between government administrative bodies or officials and the public in public jurisdiction. This law establishes limits and rules that contain the obligations and rights of both parties (government administrative bodies or officials with the community). Claims for violations of the provisions of this Law can be submitted to the State Administrative Court with procedural law based on Law Number 5 of 1986 concerning the State Administrative Court jo. Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court jo. Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court.

In general, state administrative courts aim to ensure equal standing of citizens in law. In particular, it aims to ensure the maintenance of harmonious, balanced and harmonious relations

between the apparatus in the field of state administration and the citizens of the community. One of the main problems in the study of the basics of Administrative Law is the study of the existence or recognition of various kinds of controls or supervision that can be carried out on the government. In carrying out government administration for general welfare and public interest services, the government as a state administrative organ can be subject to various forms of control or supervision (Lotulung, 2019).

The Government Administration Law entrusts clear arrangements for orderly government administration in running the government such as regulating the authority, types of decisions, decision testing systems and models, administrative sanctions and so on. In the context of law enforcement of government administration, the Government Administration Law is also a new foundation for the State Administrative Court in examining State Administrative disputes.

Legal certainty against termination of government goods/services procurement contracts by government administration actions of commitment making officials

These goods and services procurement activities must be in line with regulations related to the procurement of goods and services, namely Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services. The Presidential Regulation is a derivative of Law Number 1 of 2004 concerning the State Treasury so that procurement activities are part of the state treasury.

The procurement of goods and services has a complex aspect because in a procurement of goods and services in addition to public law aspects, there are also private law aspects, namely in the process of making and implementing contracts until the end of the contract (Pane, 2017), so the implementation of contracts must also be in accordance with the principles in private law, namely the law of engagement.

The government or state administration is as subject to law, as dragger van de rechten en plichten or supporter of rights and obligations. As a subject of law, the government like other legal subjects performs various actions both concrete actions (feitelijkehandelingen) and legal actions (rechtshandelingen). Real actions are actions that have no relevance to the law and therefore do not cause legal consequences, while legal actions according to Huisman are actions that by their nature can cause certain legal consequences, or "Een rechtshandeling is gericht op het scheppen van rechten of plichten" (H. R. Ridwan, Heryansyah, & Pratiwi, 2018).

In theory, Government legal acts (rechtshandelingen) are divided into 2 (two), namely acts according to private law (privaaterechtshandelingen) and acts according to public law (publiekrechtshandelingen). Based on its authority to carry out public law acts, the government has the right and privilege to use and exercise public power (public authority, openbaargezag). Public law is the law that regulates the way state bodies (staatsorganen) carry out their duties and regulates legal relations (rechtbetreking) held by the state as a Government with individuals or held between each state body.

In carrying out legal actions, state administrative bodies or officials often also enter into legal relations with other legal subjects based on private law. In this case, F.AM. Stroik argues that if a public legal entity participates in civil law relations then it does not act as a ruler, as an organization of power. But it exercises rights on an equal footing with the people. These bodies are basically subject to ordinary courts just like ordinary people (Jum, 2012).

In terms of laws and regulations in Indonesia, the definition of government actions can be seen in Law Number 30 of 2014 concerning Government Administration. Article 1 point 8 states that Government Administration Actions hereinafter referred to as Actions are actions of Government Officials or other State Administrators to do and / or not do concrete actions in the context of government administration.

Basically, every government action must be accountable. From this government action was born the concept of government responsibility. In some countries, the concept of government liability

is also called state liability, government liability etc. Toshiro Fuke argues: 'State Liability means that the State should make compensation for whatever lossand/or injury it has or is deemed to have caused directly and/or indirectly and/or mentally to its citizens' (Zhang, 2019).

From the Analysis of Government Procurement Ethics it can be concluded that changes in procurement law rules that are more focused on technical provisions and situational needs that are considered urgent and need to be immediately accommodated in the Procurement Presidential Regulation need to be reviewed. This review is necessary because the standards and functions of procurement policies or legal rules increasingly ignore the importance of procurement ethics. Although there is an obligation to sign the Integrity Pact, if the Integrity Pact itself is not based on adherence to procurement ethics, it is certain that changes to the rules of procurement law will further ignore the obligation to act based on respect for universal moral law. For Kant, this Moral Law he regarded as an unconditional commandment, applicable to all people in all situations and places. That is, the rules of procurement law should be able to further clarify Procurement Ethics so that everyone not only easily understands it but also easily complies with it.

The Procurement Law Regulation is a review and redrafting of the Presidential Regulation governing the procurement of government goods/services into a hierarchy of laws and regulations covering the procurement legal framework, procurement institutional framework, procurement implementation capacity, procedures, procurement media and methods, procurement control system, procurement anti-corruption initiative, private sector participation in procurement, procurement contract management, and complaint handling system Procurement. The hierarchy of laws and regulations in question consists of Government Regulations, Presidential Regulations, Ministerial Regulations/Heads of Institutions/Regional Heads, and Regulations of the Head of the Procurement Service Unit.

Looking at the basic rules used in the Implementation of Government Procurement of Goods/Services, it can be seen that the family of laws used is state administrative law, which in nature regulates government implementation in carrying out its duties. Regulation on Sanctions in the Procurement of Government Goods/Services is regulated in Articles 118 to Article 124 of Presidential Regulation Number 54 of 2010 and its amendments, up to the second amendment, namely Presidential Regulation Number 4 of 2015. These articles regulate the actions and sanctions that can be imposed on the parties in the implementation of procurement in accordance with their respective domains and functions of responsibility.

In the event that the violator is the KDP / ULP Working Group / Procurement Officer who in fact is a civil servant, then if it is determined that he has committed violations such as not carrying out the stages of the regulatory funding process or committing fraud in the procurement process, sanctions stipulated in the personnel rules given by the party who has the authority to issue sanctions apply, Such as reprimands, postponement of promotion, release from office, and dismissal, in accordance with the provisions of personnel regulations.

In accordance with the administrative duties of "regulating" and "managing", the form of Government Administration Acts can be in the form of arrangements (regeling, pseudo-wetgeving), or decisions/determinations (beschikking, plan). At least in contemporary administrative terminology these two terms are often discussed. In general, the term decision in classical administrative doctrine can be interpreted as besluit or beslissing (decision in the broadest sense).

This Besluit concept in administrative law terminology in Indonesia has been used for decisions including presidential decrees. In the past, all norm products, both in the form of regeling (regulation) and beschikking (determination) made by the president, were in the form of "Presidential Decree" / KEPPRES (as Besluit). However, at present the terminology of this Presidential Decree has been narrowed to the form of beschikking (Decree/Determination) only, while for the form of Regulations it is called "Presidential Regulation" (PERPRES). In addition to the form of regeling (or regering besluit) and beschikking, there are also other forms such as pseudo

wetgeving (pseudo-legislation-one of which is beleidsregel), Concrete Normgeving (Norm Description), and Plan (plan). All of them will be subject to the rules of public law because they are characteristically one-sided and one-sided (eenzijdige).

This two-sided act is an action made by the Government not unilaterally, meaning it involves other parties. A concrete example of this action is a contract between the government and the private sector (citizens). This two-sided legal action is subject to and falls into the realm of civil law regulation which is also subject to the principle of freedom of contract (contract vrijheid).

Article 85 (1) The filing of a claim for a Government Administration dispute that has been registered with a general court but has not yet been examined, with the entry into force of this Law is transferred and resolved by the Court. (2) The filing of a claim for a Government Administration dispute that has been registered with the general court and has been examined, with the enactment of this Law shall still be resolved and decided by the court in the general court. That according to these provisions, Government Administration disputes are the domain of absolute authority/competence of the TUN Judiciary. Article 1 number 18 above limits that all Government Administration disputes are tried by the PTUN.

Currently, there are still many disputes based on its fundamentum petendi with the character of administrative disputes but are tried in the General Court on the grounds that they cannot be tried at the PTUN because they are hindered by restrictions on the authority of the PTUN in the Law on Administrative Affairs (Law No. 5 of 1986 Jo. Law No. 9 of 2004 Jo. Law No. 51 of 2009). Among the administrative disputes still handled by the General Court are the Onrechtmatig Overheidsdaad (Unlawful Acts by the Government) and the Citizen Lawsuit. It is therefore expected that in the future restrictions regarding Government Actions in Administrative Law and in Civil Law from this will also be accompanied by consistency of absolute competence of the general judiciary and the TUN judiciary in adjudicating this type of dispute.

Based on these legal rules, not a few Administrative Judges position all products of state administrative bodies/officials related to the process of procurement of goods/services, as "civil law acts", so that they are not the absolute authority of the State Administrative Court. However, along with the development of thoughts and studies on Administrative Law, slowly the oplossing theory shifted and changed even though in practice not a few judges still adhered to the merging theory in their legal considerations.

This shift becomes commonplace, when it is realized that all administrative legal actions, both unilateral actions carried out by government agencies / officials, as well as legal remedies made by citizens against these unilateral (unidirectional) actions, are certainly based on the existence of lost or harmed civil rights. Thus, if in the extreme it is said that all unilateral actions (unidirectional) by Government Bodies/Positions against citizens, which clearly have civil elements, then oplossing theory is applied to them, then which one will be the authority of the Administrative Court? Especially based on legal logic that, how can the State Administration Law, which is the rule of public law, "subdue" itself by merging into the concept of Civil Law which is private law. While clear, in the provisions of Article 1320 jo. Article 1337 of the Civil Code, that one of the conditions for the validity of the agreement is the existence of a cause (causa) that is halal (not forbidden), while whether or not something is prohibited is based on legislation formed under public law. If so, it should be the rules of Private Law that "subjugate" themselves and merge into the rules of Public Law, not the other way around.

This shift in the application of the law turned out to be in line with what Geiger had expressed. In Geiger's opinion, law (as an actual norm) is part of a dynamic society. Geiger said society is not a thing. It is 'a process' (gessellschaft ist kein ding, sondern em prozess). Legal norms and the enactment of them, do not escape this process. Law must be viewed as dynamic social realities as well, including the application of conceptual rules of law and jurisprudence.

The existence of the nomenclature of Government Agencies/Positions that are actively involved in the process of Procurement of Goods/Services as contained in Article 1 numbers 5, 6, 7, 8, 10 and number 11 of Presidential Regulation Number 70 of 2012 jo. Article 1 number 9 of Presidential Regulation Number 4 of 2015, as well as the embedding of authority over each of these positions, is an early indication of the rules of the State Administration Law implemented in the process of procurement of goods/services.

The existence of the main authority and duties of these positions, logically the law parallels the existence of administrative actions or decisions in the implementation of government affairs, including the administration of the procurement of goods / services. However, because the Law on the State Administrative Court limits its authority only to State Administrative Decisions based on Article 1 number 9 of Law Number 51 of 2009, which is reduced to the provisions of Article 2 and Article 48 jo. Article 49 of Law Number 5 of 1986, the criteria for the decision of the Agency / Official that can be sued and the Agency / Position of State Administrative Officer in terms of Procurement of Goods / Services, which are made Defendants must also be limited and specific.

In the practice of the State Administrative Court, state administrative disputes with the categories of Auction and Procurement of Goods/Services, apparently have several variants of the object of dispute (Decision of Government Bodies/Officials), as well as the subject of dispute (Government Bodies/Officials) that are made Defendants. This is certainly based on several reasons, such as the lack of understanding of justice seekers on the legal order of procurement of goods/services, misinformation or lack of transparency in the process of procurement of goods/services, and lack of understanding of the procedural law of the State Administrative Court, or perhaps a combination of these things.

Legal products in the process of procurement of goods/services that are often the object of dispute in the State Administrative Court are the Determination of the Winner of the Auction. Referring to Article 17 paragraph (2) letter g, number 2) of Presidential Regulation Number 4 of 2015, determining the winner of the auction is the main task and authority of the Working Group/Procurement Service Unit. Meanwhile, based on Article 13 paragraph (1) letter c of Presidential Regulation Number 16 of 2018, this is still carried out by the Procurement Working Group, but the nomenclature of "authority" is omitted, and only becomes a "duty". Likewise, in Article 11 of Presidential Regulation Number 54 of 2010, the nomenclature "main duties and authorities" is still found, while in Article 11 paragraph (1) of Presidential Regulation Number 16 of 2018, the word "authority" of the Commitment Making Officer is omitted, and only becomes "duty".

Legal issues regarding the absolute authority of the PTUN to resolve administrative disputes over the procurement of goods/services in number 2 point b are now also increasingly vague and debatable considering the norms in Article 76 paragraph (3) jo. Article 1 number 18 of Law Number 30 of 2014, substantially contradicts the provisions of Article 48 jo. Article 51 paragraph (3) of the Law on Regulation. So it would be biased, which Court of Instance is authorized to hear administrative disputes after administrative efforts.

The complexity of dispute resolution in the field of procurement of goods/services as one of the classifications of state administrative disputes is very obvious in judicial practice. Ironically, the majority of this revolves around the issue of absolute competence/authority of the State Administrative Court to examine, decide and resolve it. Until there is an anecdote that 2 out of 3 auction / procurement of goods / services (tender) claims that become state administrative disputes, surely (the decision) is not accepted because it is considered not the absolute authority of the court, while the other 1 case is revoked by the Plaintiff himself. Although the anecdote is not entirely true, it can more or less reflect the reality of state administrative law enforcement, especially in administrative disputes with auction categories and / or procurement of goods / services.

Procurement of goods/services is a series of government administrative actions that have a vital correlation with the completion period, both the selection process and the process of

implementing the procurement of goods/services. This is logical because the procurement of government goods/services is the implementation of government programs both at the central and regional levels, which are dependent on the use of budget revenue/expenditure in one year/period.

This contradicts the process of resolving a state administrative dispute in the State Administrative Court, when the issue of procurement of government goods/services is challenged for validity. Referring to the practice and appeal of the Chief Justice41, the resolution of a state administrative dispute with ordinary proceedings is generally taken within 5 months at most, while the option of examining the dispute by speedy proceedings will clash with the absence of preparatory examination for formal rectification of the suit, as well as the complexity of the dispute and the general ability of the Administrative Judge who examines it. Beyond that, the availability of legal remedies will certainly prolong the process to be taken until it has permanent legal force.

One consideration that may be the main contributing factor, rarely administrative disputes over the procurement of goods/services are granted, is the implementation of the decision after permanent legal force. In general, even though the process of hearing an administrative dispute over the procurement of goods/services is being examined, the process of procurement of goods/services is still running because laws and regulations do require the continuation of the process, for the sake of managing the budget and government programs that have been determined.

On that basis, the next phase of the procurement process, such as the issuance of a Letter of Appointment of the Goods/Services Provider, the submission of implementation guarantees, the signing of work contracts, and the implementation of the procurement, are generally carried out with or without an order to postpone the process as long as the status of the dispute has not been legally enforceable.

4. Conclusion

Some conclusions drawn from the results of this study can be described by the author of the implementation of termination of government goods/services procurement contracts by government administration actions, commitment making officials, resulting in legal uncertainty. Based on Article 93 paragraph 1 of Presidential Regulation Number 4 of 2015 concerning the Second Amendment to Presidential Regulation Number 54 of 2010, the legal consequences of contract termination have not reflected the principle of proportionality, because the determination of sanctions is only unilateral, imposed on Service Providers. Meanwhile, the determination of sanctions against Service Users if KDP carries out an error / omission is not clearly regulated both in the contract agreed by the parties, and regulated in the provisions of laws and regulations. The limitation of the legal realm of government actions can be said to be doing acts in administrative law and can be said to be doing civil law acts (rechtshandeling naar burgerlijk recht). Many administrative disputes that are still handled by the General Court are the Onrechtmatig Overheidsdaad (Unlawful Acts by the Government) and the Citizen Lawsuit. So this relates to the actions of the Government subject to which realm of law, as well as the Absolute Competence of the Judiciary authorized to adjudicate disputes.

Legal certainty of termination of the goods/services procurement contract in the event of a dispute between the Commitment Making Officer and the provider of goods/services with administrative sanctions imposed on KDP if it neglects to do an act that is its obligation. Termination of the contract must be preceded by a written or verbal reprimand or warning to the service provider. If there is an administrative error, it can make the official correct the administrative decision or face it in the State Administrative Court (PTUN). The position of the government as the owner of activities (Service Users), must place its position not only as a private legal entity, but as a public legal entity that is obliged to provide services for the benefit of the community (public).

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