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Procurement of Government Goods and Services in Surabaya City: A Juridical Analysis of Business Contracts

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ABSTRACT

Effective procurement of goods and services in the Surabaya City Government area is essential to ensure that public funds are spent accountably and transparently. As such, there is an urgent need to examine the legal aspects of business contracts for the procurement of government goods and services in the city of Surabaya. The purpose of this study is to determine the factors that influence the occurrence of default by the Goods and Services Provider, as well as the responsibility of the regional head in the abuse of authority in the procurement of goods and services of local government. The research method uses normative juridical methods with a statutory approach and concept approach. The results of the findings in this study are that there are internal and external factors that make the occurrence of default where the agreement in an agreement is not implemented. Law Number 32 of 2004 concerning Regional Government for the implementation of legal liability of regional heads can be used as a guideline for the mechanism of legal liability of regional heads. The implementation of personal legal responsibility can be subject to article 3 of Law Number 31 of 1999 concerning Eradication of Corruption, as well as the return of state losses according to article 59 paragraph (2) of Law Number 1 of 2004 concerning State Treasury and article 18 letter b of Law Number 31 of 1999 concerning Eradication of Corruption. By shedding light on the legal framework that underpins procurement contracts in Surabaya, this study provides valuable insights for policymakers, public officials, and other stakeholders seeking to ensure the effective use of public funds in Surabaya City Government procurement.

ABSTRAK

Pengadaan barang dan jasa yang efektif di lingkungan Pemerintah Kota Surabaya sangat penting untuk memastikan bahwa dana publik dibelanjakan secara akuntabel dan transparan. Oleh karena itu, ada kebutuhan mendesak untuk mengkaji aspek hukum kontrak bisnis pengadaan barang dan jasa pemerintah di Kota Surabaya. Tujuan dari penelitian ini adalah untuk mengetahui faktor-faktor yang mempengaruhi terjadinya wanprestasi oleh Penyedia Barang dan Jasa, serta tanggung jawab kepala daerah dalam penyalahgunaan wewenang dalam pengadaan barang dan jasa pemerintah daerah. Metode penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan pendekatan konsep. Hasil temuan dalam penelitian ini adalah adanya faktor internal dan eksternal yang membuat terjadinya wanprestasi dimana kesepakatan dalam suatu perjanjian tidak dilaksanakan. Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah untuk pelaksanaan pertanggungjawaban hukum kepala daerah dapat dijadikan pedoman mekanisme pertanggungjawaban hukum kepala daerah. Pelaksanaan pertanggungjawaban hukum secara pribadi dapat dikenakan pasal 3 Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi, serta pengembalian kerugian negara menurut pasal 59 ayat (2) Undang-Undang Nomor 1 Tahun 2004 tentang Perbendaharaan Negara dan pasal 18 huruf b Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi. Dengan menyoroti kerangka hukum yang mendasari kontrak pengadaan barang dan jasa di Surabaya, studi ini memberikan wawasan yang berharga bagi para pembuat kebijakan, pejabat publik, dan pemangku kepentingan lainnya yang ingin memastikan penggunaan dana publik secara efektif dalam pengadaan barang dan jasa Pemerintah Kota Surabaya.

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I. INTRODUCTION

The issue of local or regional government has been accommodated in Article 18 of the 1945 Constitution of the Republic of Indonesia and its explanation. The implementation of decentralization is a form of regional autonomy in Indonesia's reform era which is a form of state ideals for the realization of a democratic state. The state government, which was previously centralized, distributed its authority to the regions in order to avoid an authoritarian government system. Therefore, in the implementation of government, the power of the central government is divided into regions so that the opportunity for abuse is minimized and does not centralize government power.

Local governments are given the authority to regulate and manage their own government affairs according to the principles of decentralization and assistance in accordance with Law Number 32 of 2004 concerning local government as a substitute for Law Number 22 of 1999 concerning local government and Law Number 33 of 2004 concerning financial balance between the central and local governments as a substitute for Law Number 25 of 1999. These two laws are the legal basis for the implementation of Regional Autonomy in Indonesia.

In the implementation of regional autonomy, local governments are also obliged to provide the needs of the people in various forms of goods, services and infrastructure development (Farida et al., 2020). In addition, the government in the administration of government also needs goods and services, so that the need for procurement of goods and services is held. In terms of procurement of goods and / or services, efforts to fulfill the rights and needs of decent and adequate public services require a strong legal basis in the process. Procurement laws and regulations exist in many countries to ensure that the process is equitable, transparent, and free of corruption or favoritism (Salmon & Satoglu, 2022).

In practice, the implementation of the Goods and/or Services Procurement contract is carried out through the selection of service providers by public or limited auction based on the principle of fair competition. However, this does not reduce the possibility of delays, negligence from one of the parties (default), either intentionally or due to force majeure. This causes it to be not uncommon for the Commitment Making Official (PPK) to be dissatisfied with the implementation of the goods and/or services procurement contract. This dissatisfaction often leads to unilateral termination of the contract by the Commitment Making Official and even leads to the inclusion of goods and/or service providers in the blacklist.

Quoting from Kpk.go.id, the Corruption Eradication Commission (KPK) has handled at least 1,261 corruption cases from 2004 to January 3, 2022. Of these cases, the number is dominated by corruption cases committed by the central government with a total of 409 cases. Next, West Java occupies the second position of the region with the largest distribution of corruption. The number of corruption cases that occurred in West Java reached 118 cases. East Java occupies the 3rd position with a total of 109 corruption cases that occurred from 2004 to January 3, 2022. The 4th and 5th positions were achieved by North Sumatra and Riau and Riau Islands with a total of 84 and 68 cases respectively. Java Island dominates the area where corruption cases occur with a

total of 362 cases, followed by Sumatra with 270 corruption cases. One of the cities in East Java that is prone to corruption cases in the procurement of goods and services is Surabaya City. For example, in the corruption case of medical equipment procurement committed by the former Head of the Human Resources Development and Empowerment Agency (BPPSDM) of the Ministry of Health (Kemenkes) Bambang Giatno Rahardjo. Bambang was proven to have committed corruption in the procurement of medical equipment (alkes) and laboratories for the Hospital for Tropical Infection Diseases (RSPTI) Airlangga University (Unair). Furthermore, a former member of the Surabaya City DPRD who had violated the authority of his position in the 2015 Jasmas case so that the state lost Rp 4.9 billion.

Looking at the various studies and facts above, the problem of irregularities in the procurement of goods and services has a close relationship with the abuse of authority of officials, especially regional heads. The regional head exercises an authority that exceeds his authority as stipulated in the laws and regulations (Jaelani & Hayat, 2022). In addition, officials who are delegated or mandated by the regional head to make mistakes in the procurement of goods and services are the responsibility of the regional head.

In the Surabaya City Government environment, the procurement of goods and services is a common thing, considering that the Surabaya City Government also needs goods and or services in order to support its duties and obligations. However, there is a potential for disputes in the procurement of goods and services to occur between the Surabaya City Government and the providers of goods and services. Starting from the inaccuracy of time in completing the work to the quality of goods that are not in accordance with the initial agreement. Even so, these disputes can be resolved by both parties. This often happens in the procurement of goods and services by the government, both central and regional. In the local government environment, it can be said that the possibility of default disputes in the procurement of goods and services is very large and can occur in any local government including the Surabaya City Regional Government.

In connection with the implementation of the contract in the context of the procurement of goods / services of the Government, if there is a dispute or dispute then the settlement is as stipulated in Article 94 of Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods / Services, namely 1) In the event of a dispute between the parties in the Procurement of Government Goods/Services, the parties shall first resolve the dispute through deliberation to reach a consensus.; and 2) In the event that the settlement of the dispute as referred to in paragraph (1) is not reached, the settlement of the dispute may be carried out through arbitration, alternative dispute resolution or court in accordance with the provisions of laws and regulations.

Article 94 paragraph (2) of Presidential Regulation No. 54/2010 on Government Procurement of Goods/Services mentions various types and ways of dispute resolution where dispute resolution can be enabled by settlement in court or by alternative dispute resolution (out-of-court dispute resolution) As stated above, that often the goods/services providers are faced with various situations and conditions that are less supportive and cause obstacles in fulfilling the obligations that have been stipulated in the contract, so that they have the opportunity to cause default disputes.

Pratisthita & Wairocana (2019) in their research stated that in the procurement of goods / services, State Administrative Law regulates the legal relationship between providers and users in the preparation process up to the process of issuing a letter of determination of goods / services providers and solutions in preventing abuse in the procurement of goods / services, one of which includes the implementation of good governance and electronic procurement activities, namely through the e-marketplace as regulated in the provisions of Article 70 of Presidential Regulation No. 16/2018 concerning Government Goods / Services. In addition, Salman et al. (2018) states that the rules for abuse of authority are mentioned in one of the elements in Article 3 of Law No. 31 of 1999

in conjunction with Law No. 20 of 2001 concerning Eradication of Corruption, and in terms of fulfilling the elements of abuse of authority, it is required that the perpetrator must be a civil servant or state administrator, so that the element of "abusing the authority, opportunity or means available to him because of position or position" is fulfilled. This is in line with the results of research by Suwarni (2019) Abuse of authority by Budget Users in the procurement of goods is a category of abuse of authority / exceeding authority (Detournement de Pouvoir) with the characteristics of exceeding the term of office or the time limit for the validity of the Authority, exceeding the territorial limits of the validity of the Authority; and / or contrary to the provisions of laws and regulations. Herman Adi AW's actions as a Budget User are contrary to the provisions of laws and regulations which are specifically regulated in Article 5 of Presidential Regulation Number 54 of 2010 and its Amendments, especially the principles of transparency, competition and accountability.

Based on the background and previous research, it is necessary to look for factors that influence the occurrence of Defaults by Goods and Services Providers when participating in Tenders and the responsibility of regional heads for actions taken by regional heads and officials who are delegated or mandated to carry out the procurement of goods and services if errors occur in the implementation of the procurement of goods and services.

II. RESEARCH METHOD

This research is a type of normative research. Normative legal research is research conducted by examining legal materials, where this normative research includes library research or document studies (Suhaimi, 2018). The approach taken in this research is a normative juridical approach, namely through a statutory approach and a concept approach. Primary, secondary, and tertiary legal materials obtained by the author will be analyzed using descriptive analysis, namely a method of analyzing legal materials using Qualitative legal material analysis method, namely a method of analyzing legal materials. Descriptive analysis that refers to a particular problem and is associated with the opinions of legal experts and based on applicable laws and regulations.

To analyze the legal materials collected, this research uses a qualitative data analysis method, namely normative juridical which is presented descriptively, namely by describing and analyzing the legal consequences for parties who default in the implementation of government agency procurement contracts, as well as the responsibility of regional heads in the abuse of the authority of local government procurement of goods and services in the perspective of state administrative law with the following stages: (a) Research legal materials are classified in accordance with research problems. (b) The results of the classification of legal materials are then systematized. (c) Legal materials that have been systematized are then analyzed to serve as the basis for drawing conclusions.

III. RESULTS AND DISCUSSION

1. Legal consequences for parties who default on the implementation of government agency procurement contracts

According to Adi Astiti (2018), in the context of government procurement contracts, it can be challenging to determine whether an event can be classified as force majeure. The parties involved in the contract need to review the force majeure clause in the contract to understand its scope and limitations. Additionally, they should also review the forum options and dispute resolution procedures stated in the contract (Islamy et al., 2020). If the force majeure parameters are defined in the contract, subsequent force majeure situations will only refer to the clauses mentioned in the contract. However, if the contract does not explicitly mention force majeure and its consequences, the more general provisions of Presidential Decree 12 of 2021 jo. Presidential Decree 16/2018 will apply. According to Article 1 number 52 of Presidential Decree 12 of 2021, force majeure is defined

as an unforeseeable situation that arises against the will of the contracting parties and makes it impossible to fulfill contractual obligations.

In the event of absolute or relative force majeure, however, the parties must determine whether the incident constitutes absolute or relative force majeure. The Deputy for Strategy and Policy Development of the Government Goods/Services Procurement Policy Agency issued Decree Number 3 of 2018 concerning Standard Document Selection through Tenders, Selection, and Fast Auctions for the Procurement of Other Goods/Services/Consulting Services (Deputy I Perpres No. 3 of 2018), which contains additional information regarding force majeure in the context of government goods/services procurement. In part A concerning Standards for Selection of Tenders for Post-Qualification of Procurement, Chapter XI General Conditions of Contract, point 34, it was explained that "force majeure" in this contract refers to an event that is beyond the parties' control and cannot be predicted, preventing the fulfillment of contractual obligations. This clause conforms to the definition of force majeure in Presidential Decree 12/2021.

It has been determined that force majeure is not limited to natural disasters, non-natural disasters, social disasters, strikes, fire, extreme weather conditions, and other industrial disturbances specified by a joint decision of the minister of finance and related technical ministers. However, force majeure does not cover circumstances caused by the parties' actions or omissions. If force majeure occurs, the Provider must inform the Contract Signing Officer within fourteen (14) calendar days and provide supporting documentation. Procurement delays due to force majeure are exempt from sanctions. The so-called Compensation Program is also regulated by the Decree of Deputy I No. 3 of 2018, but the compensation program and term compensation are not explicitly defined. Compensation is generally defined as settling debts by providing goods at the debt price or providing money or non-monetary compensation to employees. Providers may receive compensation programs in certain situations, as outlined in point 27 of Chapter XI of Deputy I Decree No. 3 of 2018 concerning General Contract Provisions. In the following instances, providers may receive compensation programs: (a) The Contract Signing Officer changes the schedule which may affect the execution of the work; (b) late payments to providers; (c) The Contract Signing Officer instructs the provider to carry out additional tests after the tests are carried out, and it turns out that no damage/failure/irregularities are found; (d) Contract signing officials do not provide drawings, specifications, and/or instructions according to the required schedule; (e) The provider has not been able to enter the location according to the schedule in the contract; (f) The Contract Signing Officer orders a delay in the execution of the work; or g. other provisions stipulated in the Specific Terms of Contract.

In the event of a compensation event that causes the completion of work beyond the completion date, the provider has the right to request an extension of the completion date based on supporting data (Irwansyah et al., 2022). The Contract Signing Officer may seek input from the work supervisor (if any) before extending the deadline for completion of tasks. Providers are expected to notify the government in advance of any compensation events to anticipate and mitigate the impact of compensation. If the work is not completed on the completion date, not due to force majeure or not due to compensation events, or due to the fault or negligence of the provider, then the provider is subject to a late fee".

If one pays attention, the compensation process can be compared to force majeure where the government is unable to fulfill its obligations or takes actions not regulated in the contract, resulting in the provider being unable to fulfill their commitments (Sinaga, 2021). In such cases, the provider should not be penalized despite being harmed. However, the compensation program has limitations, and the provider has the right to receive compensation from the government. Unlike force majeure, which covers both natural and unnatural disasters, the natural forces covered in compensation programs are limited. Moreover, force majeure is not considered a risk for the debtor, and creditors cannot demand achievements except in cases of relative force majeure.

In Article 1234 of the Civil Code, it is stated that any agreement or contract must be carried out and its terms fulfilled. This rule applies to government procurement contracts, which must be executed and their contents fulfilled as agreed upon by both parties. The parties involved can carry out the fulfillment of the contract themselves or with the assistance of others. Additionally, third parties can fulfill the contract on behalf of the government goods provider (Judiarto, 2021). It is the duty of the government goods provider to fulfill their obligations in good faith and with ethical behavior. This means that they must act appropriately and in accordance with the provisions that have been mutually agreed upon.

In Article 118 of Government Regulation Number 54 of 2010 stipulates that the actions or actions of the supplier of goods that can be subject to sanctions are: unable to complete the work in accordance with the contract in a responsible manner (Heriyanti & Roestamy, 2018). On the other hand, if Government Internal Oversight Apparatus (APIP), after carrying out an inspection of the fulfillment of the use of domestic production in the procurement of goods for the needs of their respective agencies, states that there is a discrepancy in the use of domestically produced goods, then the supplier of goods is subject to sanctions in accordance with this Presidential Regulation. Prior to the imposition of sanctions, APIP immediately took steps and actions that were curative/remedial in nature, in the event of a discrepancy in the use of domestic production, including a technical audit based on the procurement documents and the procurement contract of the goods concerned. In the event that the results of the inspection state that there is a discrepancy in the use of domestically produced goods, the supplier of the goods is subject to sanctions in accordance with this Presidential Regulation. Commitment Making Officer (PPK) that deviates from this provision is subject to sanctions in accordance with the provisions of the legislation as regulated in Article 99 of Government Regulation Number 54 of 2010 (Asnawi, 2019).

The enforcement of Presidential Regulation 12/2020 has significant consequences for the termination of government procurement contracts, which can prove to be highly detrimental to contractors. In some cases, despite fulfilling their contractual obligations, contractors may not receive payment from the government. The government may argue that it is exempt from its obligations due to force majeure. Furthermore, contract termination is inconsistent with the fundamental principle of the contract, which specifies that contracts cannot be withdrawn except by mutual consent or for legally recognized reasons (Pangestu, 2019).

Government goods providers who fail to fulfill their obligations under government procurement contracts may face legal consequences. Article 1238 of the Civil Code outlines that a debtor may be deemed negligent if they have been declared negligent through a warrant or similar document, or if their engagement explicitly states that they will be considered negligent after a specified period of time has lapsed. If the government goods provider has been warned or reminded of their obligations and still fails to fulfill them, they may be considered negligent and subject to penalties such as compensation, cancellation of the agreement, interest, and risk transfer (Ahmaddien, 2021). Under Article 1243 of the Civil Code, reimbursement for costs, losses, and interest due to non-fulfillment of the agreement is only required if the government goods provider continues to neglect their obligations after being declared negligent or if they fail to provide or complete something within the specified timeframe.

The actions of government goods providers as described above, may be subject to sanctions in the form of: a. administrative sanction; b. black list sanction; c. civil suit; and/or d. criminal reporting to the authorities. PPK/ULP/Procurement Officials in accordance with the provisions are carried out in accordance with statutory regulations. If fraud/falsification is found on the information submitted by the Goods/Services Provider, they will be subject to cancellation sanctions as potential winners and included in the blacklist. Article 124 (1) K/L/D/I can make a blacklist as referred to in Article 118 paragraph (2) letter b, which contains the identity of the Goods/Services Provider who is subject to sanctions by the K/L/D/I. (2) The black list as referred

to in paragraph (1) contains a list of goods/services providers who are prohibited from participating in the procurement of goods/services at the relevant K/L/D/I. (3) K/L/D/I submits the black list to LKPP for inclusion in the National Black List. (4) The National Black List as referred to in paragraph (3) is updated at any time and posted in the National Procurement Portal. If there is a violation and/or fraud in the goods/services procurement process, the ULP is subject to administrative sanctions; a. demanded compensation; and/or b. criminally reported.

Broadly speaking, the settlement of defaults aims to alleviate losses arising from mistakes that have been made previously and to maintain the credibility of the Goods and Services Providers. The pattern is as follows:

Negotiation, This is a form of deliberation between the Goods and Services Providers and the Government in order to obtain a solution for losses due to default. The Goods and Services Providers will try to compensate for the losses incurred so that they are not included in the state blacklist in order to maintain the credibility of the company.

Administrative Court, Aiming at suing the Goods and Services Provider on the basis of Default. Generally this method is taken when the negotiations produce results. After the lawsuit is brought to court, the lawsuit file is complete, the trial takes place, and the decision is out, the Goods and Services Provider must also compensate for the losses incurred to country.

National Blacklist, The table of contents contains the names of companies participating in the tender and internal parties related to the default. In addition, those who signed the bid or signed the contract and also issued the guarantee can be included in this blacklist. Parties who have been included in this blacklist are not recommended to take on projects anymore. governance and can be developed on a national scale throughout Indonesia. The black list was made in the hope that governments outside the region would be alert and prevent the same losses from happening again.

Article 1340 BW imposes restrictions on the legal relationships between PPK as consumers of goods/services, suppliers of goods, and subcontractors. The Article 1340 BW provisions are also known as the privity of contract principle. A simple definition of the principle of privity of contract is that a contract is only enforceable and has legal consequences for the parties who make it. The principle of privity of contract stated in Article 1340 BW states that only the parties to the contract are bound by it. With the principle of privity of contract, it clarifies the legal relationship resulting from the government goods/services procurement contract with subcontracts, wherein the principal contract binds only PPK and goods/services providers, whereas subcontracts bind only goods/services providers and subcontractors.

The subcontract agreement basically also provides benefits for the subcontractor because the PPK cannot impose sanctions on him if he makes a mistake. Responsibility for the implementation of goods/services procurement for PPK remains with the goods/services provider even though there is a subcontract. If there is negligence committed by the subcontractor during the execution of the work, it is the responsibility of the goods/services provider. Based on this consideration, in subcontracting, the contractor applies back to back provisions as much as possible so that the subcontractor is in a negligent state if he violates the terms and conditions contained in the main contract (Tjoanda, 2022).

Accountability in the main contracts and sub-contracts for the procurement of government goods/services is a matter of concern. The privity of contract principle as seen in Article 1340 BW carries the implication that the subcontractor cannot directly demand the user of the goods/services even if the subcontract is made with the consent of the user of the goods/services, and vice versa (Muskibah & Hidayah, 2020). The goods/services provider is fully responsible to the PPK for the implementation of the work, including work carried out by subcontractors. Liability refers to the duty to pay damages because of a wrongdoing or failure to meet a commitment. The

general rule is that whoever causes damage to others through negligence or illegal behavior should pay for the costs incurred by those who are harmed. Liability is defined as the position of a person or legal entity that is obligated to make restitution, damages, or other forms of compensation following a legal event or action. For instance, one party may have broken the law in some way that directly affected the other party.

According to the law, the goods or services provider is responsible and accountable for any mistakes made by their subcontractors. They cannot claim that the mistake was made by the subcontractor. It is appropriate for the goods or services provider to bear the responsibility and risk of mistakes made by the subcontractor because they are the ones who appoint the subcontractor to procure goods or services on their behalf, not for the subcontractor's own benefit. However, there is a need for a new legal breakthrough by including subcontractors who do not carry out government procurement of goods or services in a special list. This list is different from the black list, as parties included in the special list can still participate in the government's procurement process as goods or services providers. This will help prevent unfair treatment of subcontractors who have not been involved in government procurement and provide a fairer system for all parties involved in the procurement process.

Agreements that are no longer enforceable will result in a condition for terminating the contract or the contract will automatically be terminated. The existence of legal obligations arising from the termination of the contract is the responsibility of the parties. If the subcontractor has continued to carry out the work and the mistake which was the reason for the termination of the contract was made by the goods/services provider or other subcontractor, the injured subcontractor has the right to file a lawsuit and the goods/services provider has the obligation to provide compensation to the subcontractor who was harmed by the termination of the contract due to his fault or the fault of other subcontractors which are the responsibility of the goods/services provider.

The termination of a government goods/services procurement contract may also be initiated if there is evidence of corruption, collusion, or fraud committed by the Goods/Services Provider during the procurement process, as determined by the appropriate authority. Any indication of illegal activity or conspiracy in the procurement of government goods/services represents a breach of good faith on the part of the Goods/Services Provider, which warrants termination of the procurement contract. The primary objective of contract termination on the basis of alleged criminal acts or conspiracy is to safeguard the interests of the State and uphold legal certainty in the execution of goods/services procurement. Contract termination may also be justified if the Goods/Services Provider fails to fulfill its obligations or is found to have committed negligence during the course of the work. It is important to recognize the legal implications of contract termination, as it may have detrimental effects on multiple parties involved.

2. Regional Head Liability for Abuse of Authority in Procurement of Goods and Services

The regional head's accountability for goods and services procurement activities is included in the LPPD, LKPJ, and information to the public (Manbait et al., 2022). In addition, reports on goods and services procurement activities are also reported in the form of financial reports together with the draft regional regulations on accountability for the implementation of the APBD for one fiscal year. This is a form of supervision of goods and services procurement activities through the accountability of the regional head. That way the implementation of goods and services procurement activities can run transparently and openly and in accordance with the laws and regulations.

But in reality, goods and services procurement activities in the regions are still prone to irregularities through abuse of authority by regional heads. What is meant by abuse of authority is the use of authority that has been given not in accordance with and / or contrary to written and unwritten law because the authority has been used for purposes other than the purpose for which

the authority is given in the laws and regulations (Syamsuddin, 2020).

The substance of the legal responsibility of the regional head is related to what is the basis for the legal responsibility of the regional head, namely because of the violation of the law committed by the regional head (Ihsan, 2020). The legal accountability of the regional head is also a means of 'punishment' or sanctions against the behavior of violations of the law committed by the government (Sibarani, 2017).

Considering that Presidential Regulation Number 54 of 2010 concerning the procurement of government goods / services and Presidential Regulation Number 70 of 2012 concerning the second amendment to Presidential Regulation Number 54 of 2010 concerning the procurement of government goods / services does not regulate how the responsibility of regional heads as budget users, especially in terms of abuse of authority in the procurement of goods and services. Therefore, the laws and regulations that can be used as guidelines for the mechanism of legal liability of regional heads are Law Number 32 of 2004 concerning regional government for the implementation of the legal liability of regional heads. Meanwhile, for the implementation of personal legal responsibility or criminal responsibility, it can be with Law Number 31 of 1999 concerning the eradication of criminal acts of corruption and Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of criminal acts of corruption and laws and regulations related to criminal acts committed.

Legal Liability of Regional Heads according to Law Number 32 of 2004, In the abuse of authority in the procurement of goods and services by the regional head, two mechanisms can be applied to dismiss the regional head, namely for violating the prohibition for regional heads according to Article 28 of Law Number 32 of 2004 and committing extraordinary crimes, namely acts of corruption in accordance with Article 31 of Law Number 32 of 2004.

The mechanism of legal responsibility of the regional head for violating the prohibition for regional heads can be interpreted as a form of violation of the oath or promise of office (Pattipawae et al., 2022). The formulation of violating oaths and promises of office can include actions that are prohibited for regional heads. In addition, Law Number 32 of 2004 concerning regional government does not clearly regulate the mechanism for dismissing regional heads if they violate the prohibition for regional heads. Therefore, the mechanism for the legal responsibility of the regional head uses Article 29 paragraph (4) of Law Number 32 of 2004 concerning regional government, namely the dismissal of the regional head and / or deputy regional head as referred to in paragraph (2) letters d and e.

Aside from the mechanism of dismissal of the regional head for violating the prohibition for regional heads, the legal responsibility of the regional head can also use the mechanism of dismissal of the regional head for committing a criminal act of corruption as contained in Article 31 paragraph (1) of Law Number 32 of 2004 concerning Regional Government, namely:

“Regional heads and/or deputy regional heads are temporarily dismissed by the President without a proposal from the Regional House of Representatives (DPRD) because they are charged with corruption, terrorism, treason, and/or crimes against state security.”

If examined further, Article 126 of Government Regulation No. 6/2005 regulates the temporary dismissal of regional heads. Meanwhile, Article 127 of Government Regulation Number 6 of 2005 regulates the permanent dismissal of regional heads. Temporary dismissal of a regional head occurs if the regional head is charged with a criminal act of corruption, criminal act of terrorism, treason, and/or criminal act against state security. Permanent dismissal of a regional head occurs if the regional head is proven to have committed a criminal act of corruption, criminal act of terrorism, treason, and/or criminal act against state security as evidenced by a court decision that has permanent legal force.

Of the two mechanisms of legal liability of regional heads according to Law Number 32 of 2004 concerning Regional Government, namely the mechanism of legal liability of regional heads for violating the substance of prohibitions for regional heads and the mechanism of legal liability of regional heads for committing criminal acts of corruption has a difference, namely in terms of the role of the DPRD in the process of dismissing regional heads.

In the mechanism of legal liability of the regional head for violating the prohibition for the regional head, the DPRD provides a proposal or opinion to the president to dismiss the regional head because the regional head is declared to have violated the oath / pledge of office and / or not carrying out the obligations of the regional head. The opinion of the DPRD is decided through a plenary session of the DPRD attended by at least 3/4 (three quarters) of the total number of DPRD members and the decision is taken with the approval of at least 2/3 (two thirds) of the total number of DPRD members present.

The Supreme Court is obliged to examine, hear, and decide on the opinion of the DPRD and its decision is final. If the Supreme Court issues a decision that the regional head is proven to have violated the oath / pledge of office and / or not carrying out the obligations of the regional head, then the DPRD holds a Plenary Meeting of the DPRD which is attended by at least 3/4 (three quarters) of the total number of DPRD members and a decision is taken, with the approval of at least 2/3 (two thirds) of the total number of DPRD members present to decide on the proposal to dismiss the regional head to the President.

This process is often referred to as the impeachment of the regional head. In the process of dismissing the regional head, the political element is very dominant. The process of dismissing the regional head is almost the same as political accountability in Law Number 22 of 1999 concerning Regional Government. However, the process of dismissing the regional head in Law Number 32 of 2004 concerning Regional Government with political accountability in Law Number 22 of 1999 concerning Regional Government has differences. if the process of dismissing the regional head in Law Number 32 of 2004 concerning Regional Government is the responsibility of the regional head to the government, in this case the president or the Minister of Home Affairs, then the political accountability in Law Number 22 of 1999 concerning Regional Government is the responsibility of the regional head to the DPRD.

If the mechanism of legal liability of the regional head for violating the prohibition for the regional head, the DPRD provides a proposal or opinion to dismiss the regional head, then the mechanism of legal liability of the regional head for committing corruption does not require a proposal from the DPRD. The President dismisses the regional head based on the case register and / or court decisions that have permanent legal force.

Personal Legal Responsibility of the Regional Head, Legal liability of the regional head personally or criminal liability for the person of the regional head (Wisnaeni, 2020). The regional head must be responsible on behalf of himself for violations of the law committed.

If formulated with the crime of corruption, the abuse of authority of the regional head in the procurement of goods and services fulfills the elements and can be punished for violating Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption, namely:

“Every person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of his or her position or position which may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).”

In the formulation of the article, the elements that fulfill and can ensnare the regional head

against abuse of authority are the purpose of benefiting oneself by abusing authority, abusing the opportunities and facilities available to him because of his position or position, and harming state finances. This is because the abuse of authority in the procurement of goods and services in practice is detrimental to state finances.

In addition, the regional head's abuse of authority in the procurement of goods and services can be charged with Article 5 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption.

If in exercising his authority the regional head is indicated to have abused his authority in the procurement of goods and services. This abuse of authority can also lead to a criminal act of corruption committed by the regional head. If the results of the criminal act of corruption by the regional head are used to purchase several items as his assets, then the regional head is not only subject to the article of the Law on the criminal act of corruption, the regional head may be subject to article 3 of Law Number 8 of 2010 concerning Prevention and Eradication of the Criminal Act of Money Laundering, namely

Every person who places, transfers, diverts, spends, pays, grants, entrusts, brings abroad, changes the form, exchanges with currency or securities or other actions on assets that he knows or reasonably suspects are the proceeds of a criminal offense as referred to in Article 2 paragraph (1) with the aim of hiding or disguising the origin of the assets shall be punished for the crime of Money Laundering with a maximum penalty of 20 (twenty) years and a maximum fine of Rp 10,000,000,000 (Ten billion rupiah). So in addition to being subject to the article on criminal acts of corruption, regional heads can be subject to the article on criminal acts of money laundering. The regional head is also subject to Article 52 of the Criminal Code (KUHP) because in committing a criminal offense, the regional head holds a public position and takes actions that are not in accordance with his position as regional head.

Corruption in the procurement of goods and services can cause state financial losses. If the actions of the regional head cause losses to state / regional finances, the regional head is obliged to compensate for these financial losses. This has been formulated in Article 59 paragraph (2) of Law Number 1 of 2004 concerning State Treasury, namely:

“Treasurers, non-treasurer civil servants, or other officials whose actions violate the law or neglect the obligations imposed on them directly harm the state finances, are obliged to compensate for these losses. State compensation is also regulated in Article 18 letter b of Law Number 31 of 1999 concerning Eradication of Corruption, the amount of which is as much as the property obtained from corruption.”

Regional Head's Liability for Abuse of Authority of Related Officials in Goods and Services Procurement Activities, When viewed from the way to obtain authority, there are three ways to obtain authority, namely attributive, delegation, and mandate. Attributive is the authority of a person or public body obtained from laws and regulations (Nahak, 2019). If an official in goods and services procurement activities obtains authority from laws and regulations related to the procurement of goods and services, then if he takes public legal actions that indicate an abuse of authority, the regional head does not need to take responsibility for the abuse of authority committed by the official. The official himself must be accountable for his actions to the maker of the laws and regulations, in this case the president through the regional head. In addition, he must be accountable administratively and legally.

If the official gets a delegation of authority or delegation from the regional head in the procurement of goods and services, then the responsibility shifts to the recipient of the delegated authority or delegator in this case is the official who receives the delegation from the regional head. This happens because the delegation is accompanied by a transfer of authority, so if there is an abuse

of authority by the official, the official himself is responsible.

In contrast to attributive and delegation, the accountability in the mandate concept stems from the issue of authority, because the authority remains with the mandans or the authorizer in this case is the regional head while the mandatary or recipient of authority, namely the official assigned the task in the procurement of goods and services, is only delegated the authority to act for and on behalf of the regional head. so that the juridically responsible remains if in carrying out the duties of the official the abuse of authority is the regional head who is responsible.

Even so, the regional head as the holder of regional financial management power must be responsible for the overall financial management of goods and services procurement activities through LPPD, LKPJ, and information to the public because it is part of the responsibility for implementing the APBD.

The freedom to regulate their own regions in the era of regional autonomy is used as an opportunity to benefit regional officials (Bustani et al., 2022; Kodiyat et al., 2020). Since regional autonomy with the existence of Law Number 22 of 1999 and replaced by Law Number 32 of 2004, it has provided an opportunity for each regional government to issue legislative and executive products in the form of regional regulations, decisions of regional officials, and other decisions. Such products seem to provide legal legislation for the maker, even though the policy contains elements against the law or abuse of authority such as corruption in goods and services activities.

The legal actions of government officials in order to serve or regulate citizens constitute the existence of a legal relationship between government officials and citizens.16 However, the actions of government officials can be an opportunity for the emergence of actions that are contrary to the law that violate the rights of citizens.

Corruption in the procurement of goods and services is an example of government officials acting contrary to the law (Jaelani & Hayat, 2022). Therefore, as a law that regulates the relationship between the government and society, State Administrative Law (HAN) has a very important role in efforts to prevent corruption that occurs in the government sector, especially abuse of authority by officials in goods and services procurement activities.

Efforts to prevent abuse of authority that has an impact on corruption in the procurement of goods and services in the perspective of state administrative law include several areas of change, namely: (a) Implementation of good governance; (b) Government public programs in the procurement of goods and services.

One form of public program in the procurement of goods and services is the implementation of electronic procurement of goods and services (e-procurement). With the existence of E-procurement, the auction process can take place effectively, efficiently, openly, competitively, transparently, fairly or non-discriminately and accountably, so that it is expected to reflect openness / transparency. In addition, with the existence of E-procurement the public can oversee the implementation of the procurement of goods and services.

Improvement of Government Organization, In addition to making improvements or changes to government organizations, good law enforcement must also be carried out, so that if there is a violation of the law by public officials, they can immediately be given strict action according to the law, both administrative sanctions and criminal sanctions.

IV. CONCLUSION

Some of the factors that influence the default of goods and service providers include changes in government policies and natural conditions, additional costs, and negligence by service providers. Settlement patterns for default problems are flexible and generally involve negotiations, court

channels, and blacklists. These forms of responsibility are expected to alleviate losses for all parties involved. National blacklists can be developed to increase awareness and prevent possible losses in the future. The regional head's accountability for goods and service procurement activities is included in the LPPD, LKPJ, and public information reports. Additionally, reports on goods and service procurement activities are reported in financial reports, together with the draft regional regulations on accountability for the implementation of the APBD for one fiscal year. If there is an abuse of authority by the regional head in the procurement of goods and services, the guidelines for the mechanism of legal accountability of the regional head are outlined in Law Number 32 of 2004 concerning Regional Government. Two mechanisms can be applied to dismiss the regional head, which are violating the prohibition for regional heads according to Article 28 of Law Number 32 of 2004 and committing serious crimes, such as acts of corruption, in accordance with Article 31 of Law Number 32 of 2004. Meanwhile, Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption, Article 5 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption, Article 52 of the Criminal Code, Article 3 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, as well as restitution of state losses according to Article 59 paragraph (2) of Law Number 1 of 2004 concerning State Treasury and Article 18 letter b of Law Number 31 of 1999 concerning Eradication of Corruption are laws used for implementing personal legal responsibility or criminal responsibility.

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