

THE URGENCY OF RISK MANAGEMENT ARRANGEMENTS FOR THE PROCUREMENT OF GOODS AND SERVICES IN THE CONTEXT OF HANDLING COVID-19

A URGÊNCIA DE MEDIDAS DE GESTÃO DE RISCO PARA A AQUISIÇÃO DE BENS E SERVIÇOS NO CONTEXTO DO TRATAMENTO DA COVID-19

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Abstract

Following the issuance of Presidential Decree Number 11 of 2020 and Presidential Decree Number 12 of 2020, Indonesia was declared to be in a disaster emergency status due to the COVID-19 pandemic. This status impacts the procurement process for goods and services related to COVID-19 management, governed by LKPP Regulation Number 13 of 2018 and LKPP Circular Letter Number 3 of 2020. Procurement in emergency situations requires swift and precise action, meaning it must be conducted efficiently and in an integrated manner. However, procurement typically involves risks, which are heightened by the Circular Letter authorizing Commitment Making Officials (PPK) to appoint Providers even without a Provisional Estimated Price (HPS). This increases procurement risks, as evidenced by data from the Corruption Eradication Commission (KPK), which identifies procurement as the second-largest area for corruption, after bribery. This study aims to analyze risk management in emergency procurement of goods and services.

Keywords: Procurement of Goods and Services. Emergencies. Pandemics. COVID-19. Risk Management.

Resumo

Após a publicação do Decreto Presidencial nº 11 de 2020 e do Decreto Presidencial nº 12 de 2020, a Indonésia foi declarada em estado de emergência devido à pandemia de COVID-19. Esse estado impacta o processo de aquisição de bens e serviços relacionados ao combate à COVID-19, regido pelo Regulamento nº 13 de 2018 do Ministério de Assuntos Locais e de Planejamento (LKPP) e pela Circular nº 3 de 2020 do LKPP. A aquisição em situações de emergência exige ações rápidas e precisas, ou seja, deve ser conduzida de forma eficiente e integrada. No entanto, a aquisição normalmente envolve riscos, que são agravados pela Circular que autoriza os Funcionários de Compromisso (PPK) a nomear Fornecedores mesmo sem um Preço Estimado Provisório (HPS). Isso aumenta os riscos da aquisição, como evidenciado pelos dados da Comissão de Erradicação da Corrupção (KPK), que identifica a aquisição como a segunda maior área de corrupção, depois do suborno. Este estudo tem como objetivo analisar a gestão de riscos na aquisição emergencial de bens e serviços.

Palavras-chave: Aquisição de Bens e Serviços. Emergências. Pandemias. COVID-19. Gestão de Riscos.



1 INTRODUCTION

Procurement of goods and services based on Article 1 paragraph 1 of Presidential Regulation Number 16 of 2018 on Government Procurement of Goods and Services states that Government Procurement of Goods and Services means activities of procurement by Ministries/Institutions/Regional Apparatuses financed by the State Budget (APBN) and Local Government Budget (APBD), the process of which commences from the identification of needs to the handover of the work results. Basically, procurement is an effort carried out by procurement actors to obtain and realize the goods and services they want by using certain methods and processes to reach an agreement on price, time, and other agreements (Sutedi, 2018).

In early 2020, a new outbreak spread to various countries around the world which is referred to as Coronavirus 2019 (COVID-19) which was caused by Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2). As a result of the spread of the outbreak, the World Health Organization later determined this condition as a global pandemic that causes paralysis in various sectors of life. Indonesia was also affected by the implications of this pandemic and until not too long ago, the Indonesian Government later following the steps of the WHO by issuing Presidential Decree Number 11 of 2020 on the Determination of Public Health Emergencies for Corona Virus Disease 2019 (COVID-19) and Presidential Decree Number 12 of 2020 on Determination of Non-Natural Disaster of the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster. This policy is the legal basis for the stipulation of Indonesia in a state of disaster emergency which requires immediate actions. In Article 59 paragraph 1 of Presidential Regulation Number 16 of 2018 on Government Procurement of Goods and Services reads that the handling of emergency conditions is conducted for the safety/protection of Indonesian people or citizens residing within the country and/or abroad, the implementation of which cannot be postponed and must be carried out immediately. This policy certainly has huge implications for several sectors, such as impacts on public health, tourism, employment, economics, culture, politics, and so on (Sipayung and Wibawa, 2020). The handling of the emergency conditions caused by the COVID-19 pandemic is through the procurement of goods and services. The emergency situation results in the implementation of goods and services procurement that cannot be equated with procurement in normal circumstances. Therefore, the procurement of goods and

services in an emergency situation, especially in the context of handling COVID-19 is carried out based on the provisions of National Public Procurement Agency (LKPP) Regulation Number 13 of 2018 and Circular Letter of the National Public Procurement Agency (LKPP) Number 3 of 2020.

The procurement of goods and services in normal circumstances is prone to the emergence of risks such as the practice of corruption, collusion, and nepotism (KKN), unstable prices for goods and services, the discrepancy of goods and services requested, and so on, especially during the procurement of goods and services in an emergency situation that requires immediate actions. The possibility of these risks being one of the causes for the government's hesitation in procuring goods and services in the context of handling COVID-19. To address this the Corruption Eradication Commission (KPK) issued Circular Letter Number 8 of 2020 on the Use of the Budget for the Implementation of the Procurement of Goods and Services in the Context of Accelerating the Handling of Corona Virus Disease (COVID-19) in Relation to the Prevention of the Criminal Act of Corruption. This Circular Letter emphasizes the importance of preventing criminal acts of corruption in the procurement of goods and services for handling COVID-19. It outlines specific actions to be avoided, including: colluding with goods and services providers, accepting kickbacks from providers, engaging in bribery or gratuities, creating conflicts of interest in the procurement process, committing fraud or maladministration, exploiting the emergency situation for personal gain, and allowing criminal acts of corruption to occur. These guidelines are designed to ensure that procurement remains transparent, ethical, and in line with the law.

The government's hesitation regarding the implementation of the procurement of goods and services certainly affects the handling of emergency situations due to the COVID-19 pandemic, which until now has not been resolved optimally. Therefore, rather than for the Government hesitating to procure goods and services in the context of handling COVID-19 which should be handled immediately actions, it is better if these risks should be anticipated by carrying out risk management activities. Based on the analysis of the researchers, there are no regulations governing risk management for procurement of goods and services in emergency situations to date, either at the central or regional levels. Therefore, in this emergency, it is necessary to make arrangements for risk management so that this risk can be anticipated to realize the objectives of the procurement of goods and services related to handling COVID-19.

2 RESEARCH METHODS

This study is normative juridical research by examining mere literature materials or secondary materials. The data used in this research is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. This study uses the statute approach. The statute approach is carried out by examining all laws and regulations related to the legal issues being addressed (Marzuki, 2011). In this case, the laws and regulations being reviewed are regulations related to the procurement of goods and services in the context of handling COVID-19.

3 RESULTS AND DISCUSSION

3.1 TYPES OF GOODS AND SERVICES FOR THE PROCUREMENT OF GOODS AND SERVICES IN THE CONTEXT OF HANDLING EMERGENCY CONDITIONS

After the confirmation of a positive case of COVID-19, the population around the world including Indonesia experienced panic buying. People purchased masks, hand sanitizers, gloves, and foodstuffs in large quantities due to the fear of the COVID-19 pandemic. This condition causes scarcity and a significant price increase for medical devices, where these devices are urgently needed by health workers to carry out their duties as the front guard in handling COVID-19. To overcome this condition, policymakers, relevant authorities, and marketers identify the most appropriate steps and strategies to reduce the unwanted consequences of the panic buying phenomenon (Prentice, Chen, and Stantic, 2020). The Indonesian government itself has made efforts to overcome this phenomenon by accelerating the process of granting distribution licenses to companies wishing to produce medical devices amid the COVID-19 pandemic.

The COVID-19 pandemic emerges as a challenge for the Government to ensure how the procurement of goods and services during an emergency continues to run well. The handling of COVID-19 in Indonesia is not only limited to medical devices. Based on the National Public Procurement Agency (LKPP) Regulation Number 13 of 2018, there are other goods and services needed for handling emergency conditions related to COVID-19 such as vaccines, medicines, masks, Personal Protection Equipment (PPE),

compensation for COVID-19 victims' funeral costs, semi-permanent and permanent buildings, and assistance programs for people affected by the COVID-19 pandemic.

3.2 PROCUREMENT OF GOODS AND SERVICES IN THE CONTEXT OF HANDLING COVID-19

In an emergency, the Procurement Actors include Budget Users, Proxy of Budget Users, Commitment Making Officials (PA/KPA/PPK), and Providers. According to the Circular Letter of the National Public Procurement Agency (LKPP) Number 3 of 2020, each of these parties has specific responsibilities. Budget Users or their Proxy (PA/KPA) are responsible for identifying the need for goods and services in the context of emergency situations, such as handling COVID-19, and instructing the Commitment Making Officials (PPK) to proceed with procurement. The PPK then has several key duties, including appointing Providers, issuing an Order Letter approved by the Providers, and issuing a Letter of Appointment as a Goods and Services Provider along with a Work Order. Additionally, the PPK is tasked with requesting Providers to prepare proof of fair and reasonable pricing, signing a contract with the Provider based on the Minutes of Joint Calculation and the Minutes of Handover of Work Results, and making the payment. In line with Article 6 paragraph (1) of LKPP Regulation Number 13 of 2018, the procurement of goods and services during an emergency is carried out in three stages: procurement planning, procurement implementation, and payment settlement.

1. Procurement Planning

At this stage, Budget Users, Proxy of Budget Users, Commitment Making Officials (PA/KPA/PPK) carry out procurement planning which includes identification of the needs for goods and services, analysis of resource availability, and determining the means to procure goods and services.

Identification of the need for goods and services is carried out by assessing the situation on-site to determine the needs that must be met in handling emergencies. Subsequently is an analysis of the availability of resources by taking into account the availability of resources that are reviewed based on a quick assessment in the field. The next stage is to determine how the procurement will be carried out after having the results of the analysis of the availability of resources. Based on the results of this analysis, if the required resources are available, then the procurement of goods and services is carried

out by In-House procurement. If the resources are not available, the goods and services are procured through the Provider.

2. Implementation of Procurement

The procurement of goods and services can be carried out through providers or In-House procurement. If the required resources are not available, then the procurement is carried out through the Provider. Commitment Making Officials (PPK) selects and appoints providers who are carrying out similar goods and services procurement activities that are considered capable of meeting the qualifications to carry out the procurement of goods and services in the context of handling emergency conditions by issuing a Goods and Services Provider Appointment Letter (SPPBJ). Further, the Commitment Making Officials (PPK) issues a Commencement of Work Order (SPMK) as a pre-contract document to the Provider.

After the Commitment Making Officials (PPK) issues the Commencement of Work Order (SPMK), the Provider begins to carry out its obligations along with the Proxy of Budget Users/Commitment Making Officials (KPA/PPK) which is obliged to carry out work control either directly or indirectly. If the work is completed in part or whole, the Commitment Making Officials (PPK), the Provider, and/or other parties involved in the implementation of the work then take measurements and inspect the work that has been conducted and compare it with the activity program. The results are then recorded in the Minutes of Joint Calculation where these minutes become a reference for the handover of work results or payment.

After the joint calculation activity, the next activity is the handover of the payment results in which the Commitment Making Officials (PPK) and the Provider sign the Minutes of Handover which contains the date of the handover, the name of the Provider, the working site, the number, and specifications of the work completed.

3. Payment Settlement

This stage consists of a contract made by the Commitment Making Officials (PPK) based on the Minutes of Joint Calculation and Minutes of Handover of Work Results. The contract for Government procurement of goods and services is part of the implementation process in procurement (Solechan, Wibawa, and Sujoko, 2021). Furthermore, make a Payment to the Provider where the payment can be made through monthly payments, terms, or payment at once after the work is complete. The final step is an audit activity conducted by the internal supervisor (Finance and Development

Supervisory Agency or BPKP/Government Internal Supervisory Apparatus or APIP/Independent Auditor) to carry out an audit of the implementation of the procurement of goods and services in handling the emergency conditions. In terms of available resources and/or can be carried out by the Ministries/Institutions/Local Governments. Budget Users and Commitment Making Officials (PA/PPK) can carry out the procurement through In-House procurement.

The type of procurement of goods and services that can be carried out by In-House procurement is procurement in the form of work (making something or carrying out activities) instead of buying finished goods (Sopian, 2014). The procurement of goods and services through In-House procurement consists of procurement planning, procurement implementation, and payment settlement.

1. Procurement Planning

According to Article 18, point (5) of the National Public Procurement Agency (LKPP) Regulation Number 16 of 2018, procurement planning through In-House Procurement involves several key steps: determining the type of In-House Procurement, preparing technical specifications or Terms of Reference (TOR), and estimating costs or preparing the Budget Plan. Furthermore, Article 18, point (6) outlines four types of In-House Procurement for goods and services. Type I refers to procurement planned, implemented, and supervised by Ministries, Institutions, or Regional Apparatuses responsible for the budget. Type II involves procurement planned and supervised by the responsible Ministries or Institutions but implemented by another Ministry, Institution, or Regional Apparatus. Type III is procurement planned and supervised by the responsible Ministries or Institutions, but carried out by Civil Society Organizations (CSOs). Lastly, Type IV involves procurement planned by the responsible Ministries or Institutions and/or based on proposals from Community Groups, with implementation and supervision carried out by the Community Group itself.

The determination of the type of In-House Procurement is carried out because the procurement of goods and services is not only carried out by the Ministries/Institutions/Regional Apparatuses but can be carried out by Civil Society Organizations (CSOs) and community groups. Thus, each Institution certainly has different needs for goods and services. This Type III In-House Procurement is a new type of In-House Procurement as an effort to accommodate and synergize the needs of the Government in improving service quality and the competitive advantage of CSOs that

have proven to be able to provide good quality public services. The Type III In-House Procurement certainly provides opportunities for CSOs which have been one of the objects of development to be involved in the procurement process by providing goods and services needed by the Government as well as helping to realize national development.

2. Implementation of Procurement

According to Article 6 paragraph (5) of the National Public Procurement Agency (LKPP) Regulation Number 13 of 2018, the implementation of the procurement of goods and services through In-House Procurement is carried out as follows:

- a. Coordinating parties who will be involved in handling the emergency conditions;
- b. Joint examination and preparatory meeting;
- c. Work implementation; and
- d. Handover of work results.

There are various parties involved in the implementation of In-House Procurement which consist of Ministries/Institutions/Regional Apparatus, Non-Governmental Organizations, Civil Society Organizations (CSOs), Governments of Other Countries, or International Organizations/Institutions, Civil Society, and Business Actors.

3. Payment Settlement

Payment settlement in the procurement of goods and services according to Article 6 paragraph (6) of the National Public Procurement Agency (LKPP) Regulation Number 13 of 2018 is carried out in the following stages:

- a. Contract
- b. Payment
- c. Post Audit

3.3 RISKS OF PROCUREMENT OF GOODS AND SERVICES IN EMERGENCY SITUATIONS

Good procurement of goods and services should be able to meet community needs, healthy and efficient business competition (Sutedi, 2018). However, irresponsible procurement actors often use the procurement of goods and services as a means to get personal benefits. The appointment of the procurement committee and project leaders are mostly carried out not based on professionalism and integrity, but because of the

proximity factor between the leader of the institution and the employees concerned (Sutedi, 2018). This risk will increase because the Circular Letter of National Public Procurement Agency (LKPP) Number 3 of 2020 gives authority to the Commitment Making Officials (PPK) appoint a Provider even though the Provisional Estimated Price has not been made. Based on data from the Corruption Eradication Commission (KPK), starting from 2004 to June 2020, the procurement of goods and services was the second-largest case of criminal acts of corruption after bribery.

Table 1

Criminal Acts of Corruption Based on Types of Case

Types of Case	Total
Procurement of goods and services	224
Licensing	23
Bribery	708
Charges/Extortion	26
Budget Abuse	48
Money Laundering Crime	36
Hindering the KPK Process	10

Even in normal circumstances, anticipating the risk of corruption in procurement is a difficult challenge to overcome, especially during the implementation of procurement in the context of handling COVID-19 which must be done as soon as possible. The risk of corruption in procurement is even more of an emergency. During the disaster response, a large number of additional funds are directed to solve critical and complex problems quickly, making it very profitable and technically complex for irresponsible parties (Kohler and Wright, 2020).

If in procurement in the context of handling COVID-19 there are indications of corruption, it will not only impact the handling of the COVID-19-19 pandemic, but also the loss of public trust in the Government. Apart from the risk of corruption in the procurement of goods and services, there are several other risks, namely:(Zulmawan, 2020)

Table 2*General Guidelines in Risk Assessment of Procurement of Goods and Services in an Emergency Situation*

Example of Risk
- Inadequate Data
- Incompetent implementer
- There is intervention from superiors/other parties
- The length of the selection process
- Conspiracy/collusion
- Delay in submitting bids
- The price is expensive
- The letter of appointment is late
- Selection of the type of contract
- Late signing
- Default/Non-Fulfillment/Breach of Contract
- Tolerance on the provider
- Goods and services do not match specifications
- The use of subcontracts is not according to the contract
- Delay in achievement
- Unfinished work
- Volume doesn't match
- The budget has not been disbursed

Risks are unavoidable and they are almost always present in everyday life in both public and private sector organizations. Although there are many definitions of risk, the most common concept in all definitions is outcome uncertainty (Hardy, 2010).

There are several methods for dealing with risk, namely (Zulmawan, 2019):

- a. Risks avoidance
- b. Risks reduction
- c. Risks retention
- d. Risks sharing
- e. Risks transfer.

Before handling risk, it is necessary to make a risk management arrangement that serves as a guide when carrying out risk management for procurement of goods and services in an emergency situation, especially in the context of handling COVID-19. This regulation is extremely important because until now no regulation regulates it. Further, this regulation can be used as a legal basis for risk management for the procurement of goods and services in the context of handling COVID-19 by Procurement Actors.

These risk management arrangements can be made through the National Public Procurement Agency (LKPP), where LKPP as an institution serves to prepare and formulate strategies and determine policies and standard procedures in the field of

Government Procurement of Goods and Services. Thus, if the National Public Procurement Agency (LKPP) makes regulations governing the risk management of the procurement of goods and services in an emergency situation, then the National Public Procurement Agency (LKPP) has carried out one of its functions as an institution that is responsible for implementing the development, formulation, and stipulation of government goods and services procurement policies. The regulations made by the National Public Procurement Agency (LKPP) will later take effect nationally so that Ministries/Institutions/Regional Apparatus can use these regulations when carrying out risk management when procuring goods and services in an emergency situation. Because Ministries/Institutions/Regional Apparatus has different needs and goals. Ministries/Institutions/Regional Apparatus can make regulations that take effect to their own institutions but still based on the regulations made by National Public Procurement Agency (LKPP).

4 CONCLUSION

Implementation of procurement of goods and services in an emergency situation, especially in the context of handling COVID-19 is carried out based on the provisions of the Presidential Regulation Number 16 of 2018 on Government Procurement of Goods and Services, Government Procurement Number 13 of 2018 on Procurement of Goods and Services in Handling Emergency Conditions, and Circular Letter of the National Public Procurement Agency (LKPP) Number 3 of 2020 concerning an Explanation of the Implementation of the Procurement of Goods and Services in the Context of Handling Corona Virus Disease (COVID-19). Procurement can be carried out through Provider or In-House Procurement. The procurement actors consist of Budget Users, Proxy of Budget Users, Commitment Making Officials, and Providers. The stages of the procurement of goods and services in an emergency situation consist of 3 (three) stages, namely: Procurement Planning, Procurement Implementation, and Payment Settlement. Procurement of goods and services in an emergency situation requires immediate actions and therefore it must be carried out appropriately, quickly, and responsively while still paying attention to the principles of the procurement of goods and services.

Furthermore, based on data from the Corruption Eradication Commission (KPK) from 2004 to 2020, the procurement of goods and services was the second largest

contributor to corruption cases after bribery. Apart from the risk of corruption, there are other risks such as incompetent implementers, expensive prices for goods and services, etc. Based on the analysis of the researchers, there have been no regulations governing risk management for the procurement of goods and services in an emergency situation to date. Thus, the Procurement Actors do not have legally enforceable guidelines when carrying out risk management activities for the procurement of goods and services in an emergency situation. Therefore, regulations governing risk management for the procurement of goods and services in an emergency situation need to be made to anticipate risks that emerge during the implementation of procurement so that with the existence of regulations regarding the risk management of the procurement of goods and services in an emergency, especially in the context of handling COVID-19, it is hoped that all procurement risks can be overcome or at least their impact on the implementation of goods and services procurement can be minimized. If these risks can be overcome by the Procurement Actors based on risk management regulations, of course, the procurement of goods and services in the context of handling COVID-19 can achieve its goal of overcoming the COVID-19 pandemic in Indonesia.

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Authors' Contribution

Both authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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