

# Ideal Concepts of Authority of Power using Budget in Government

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## Abstract

The Government of the Indonesian State protects the entire Indonesian nation and all of Indonesia's bloodshed, which is manifested through development carried out in all fields, both in the economic, social, cultural, defense and security fields. Procurement of government goods and services is a very important requirement. This study aims to analyze and find the ideal concept of the authority to implement contracts for the procurement of goods/services. The research method used is sociological juridical. The results of the study found that the regulations on the authority to implement contracts for the procurement of goods/services by budget user powers have not been based on the value of justice, namely Article 9 Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Regulations President Number 16 of 2018 concerning Government Procurement of Goods/Services does not explicitly state the nature of the delegation of authority. Goods/services Procurement Policy Institute The government should apply cognitive technology in the procurement of government goods/services so that there is integration of planning, implementation, monitoring, and evaluation information systems for procurement with other systems in the procurement ecosystem. budget, namely making changes to the provisions of Article 9 Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services.

**Keywords:** Procurement of goods; Services; Government.

## INTRODUCTION

Procurement of goods/services is an activity that starts from the identification of needs to the handover of the work. Guidelines for implementing the procurement of goods/services through Providers.<sup>1</sup> After the work is completed in accordance with the provisions contained in the Contract, the Provider submits a written request to the Contract Signing Officer for the delivery of the

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work. After signing the Minutes of Handover, the Contract Signing Officer to sign the Contract hands over the goods/results of the work to the PA/KPA. The mechanism for handing over the results of goods/services from the Contract Signing Officer to the PA/KPA is carried out based on statutory regulations.

Various deviations often occur in the process of procurement of government goods and services. Based on various available data, losses to state finances caused by deviations from the provisions for the implementation of government procurement of goods and services turn out to be enormous in value. According to the World Bank (World Bank), annual state losses are more than 10 billion US dollars or around 85 trillion rupiah from the central government budget. Meanwhile, especially in Indonesia, the BPKP stated that when viewed from the expenditure on government goods and services, there has been an average leakage of 30% or around 25 trillion rupiah. This figure is calculated only based on the central government budget and has not been calculated with the regional government budget.<sup>2</sup>

These irregularities in the procurement of government goods/services are very detrimental to state finances, especially if service users and partners work together to benefit themselves by ignoring the public interest. However, losses can also be experienced by service providers or contractors as related to the issue of contract price adjustments or escalations.

One of the other provisions related to the contract price that must be regulated is price escalation. This escalation clause becomes important for providers of goods/services to deal with unexpected costs due to fluctuations in the prices of materials, fuel and labor during project implementation. In principle, an escalation clause is a clause in a contract that guarantees that changes in the contract price can be made when a factor beyond the control of the contracting parties occurs. This price change was mainly due to fluctuations in world material prices and government policies. This clause is actually useful for both parties to ensure the distribution of construction risks, although in practice many contracts for the procurement of goods or construction services do not include this clause.

On contracts with a short duration of execution, changes in the price of the contractor's materials and labor can be considered small and are still a contractor's risk. But for periods of high inflation

or for contracts with a long duration of execution, the risk of changes in material and resource prices is very high.

On the other hand, these escalation clauses can also be useful for project owners. Changes in prices are not only in the form of price increases (rise of prices), but also decreases in prices (fall of prices). Thus, this escalation clause can be utilized by both parties when price fluctuations occur, be it inflation or deflation. Price fluctuations generally occur in the resources most commonly used by the world community. In the construction industry, changes in world prices also affect the viability of construction projects in any country. Three types of price changes affect the construction industry, namely fuel (especially for heavy equipment operations), iron, and workers' wages.

Changes in world fuel (oil) prices are an important factor in construction price fluctuations. In general, changes in fuel prices will have a direct or indirect impact on construction costs. The direct impact will be felt when the operational costs of heavy construction equipment are spent, almost all of which use fuel as their power source. Likewise with changes in iron prices. Iron is an important material in the construction process, especially for construction projects with reinforced concrete structures and steel structures. In addition, changes in the nominal wages of workers are also closely related to local government policies in determining the minimum wage for workers. Construction projects are laden as labor-intensive industries. The number of workers on construction projects can reach hundreds or even thousands of people.

The increase in the price of goods and services has an impact on project development. Of course, this must be considered considering that sometimes price increases occur during the execution of work, so service providers submit escalation proposals to service users or the government. Not only is the bureaucracy lengthy, but the length of time it also makes it difficult for service providers to obtain escalation, and the proposed escalation or price adjustment of the contract value for the contract they propose does not necessarily get approval from the government.

As stipulated in Article 1 number 4, Article 28 and Article 52 of Presidential Regulation Number 16 of 2018 as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018, procurement of goods by the government must

be stated in the form of a written contract between PA/KPA/PPK with providers of goods/services or implementers of self-management.

Regarding the procurement of goods and services, financing is carried out by state administrators using state finances. The manifestation of state financial management is the State Revenue and Expenditure Budget (APBN) as stipulated in the 1945 Constitution Article 23 paragraph 1 which states that the State Revenue and Expenditure Budget as a manifestation of state financial management is determined annually by law and implemented openly and responsibly for the prosperity of the people.

Based on the provisions in Article 9 paragraph 2 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 it is stated that for the management of APBN PA can delegate authority to KPA in accordance with statutory regulations. This indicates that in accordance with Article 58 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018, KPA is formally and materially responsible to PA for the implementation of activities under his control. Formal responsibility is the responsibility for carrying out the duties and authorities of the KPA. As for material responsibility, it is the responsibility for the use of the budget and the resulting output at the expense of the state budget.

## RESEARCH METHOD

The research method used is sociological juridical.<sup>3</sup> This type of research is descriptive analytical. This study used primary data and secondary data, primary data obtained from interviews and secondary data obtained from library materials and this data was also obtained from agencies/institutions related to the purpose of this study. The primary legal materials used are laws and regulations and secondary legal materials are books, journals, papers, expert opinions and documents.<sup>4</sup> For tertiary law materials are draft laws, legal dictionaries and encyclopedias. The data collected was then analyzed through descriptive analysis.<sup>5</sup>

## RESEARCH RESULTS

### *Government Procurement of goods/services in Indonesia*

In developing countries, especially Indonesia, government procurement of goods/services will always face many challenges in its development. Every country has a tough economic, social, cultural and political environment. Government procurement of goods/services has an important function for various reasons, including:<sup>6</sup>

1. The large amount of funds absorbed results in a large impact on the economy and needs to be managed properly. Indeed, in all countries in the world, in the 2000s it was estimated that the amount of government funds absorbed in procurement reached 10% to 30% of the state budget. For this reason, then the efficiency and effectiveness of the government's goods/services procurement budget is of particular concern in policy formulation.
2. Procurement of goods/services has been utilized as the main means of achieving economic, social and other targets. The size of the government spending budget has resulted in the procurement of goods/services being the driving force for the issuance of various economic policies. The issuance of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 is a form of policy related to the procurement of goods/services in an effort to reduce the high cost economy, encourage the occurrence of healthy business competition, increasing the use of domestic products and favoring small entrepreneurs. Where in the end all have a broad impact on the Indonesian economy as a whole.
3. With various reasons the procurement of goods/services has the potential to be misused or in today's language contains the potential for corruption, collusion and nepotism which are the frightening specter of development. This was clearly revealed in the Corruption Eradication Commission (KPK) report which stated that 43% of the cases handled by the KPK were related to the procurement of goods/services.



4. Globalization and the free market are challenges that cannot be taken lightly for the public procurement sector. Public procurement entities must be able to adjust policies and development targets for the Government's procurement of goods/services with the demands of globalization. The main issues include free trade and environmental preservation (green procurement).
5. In developing countries, the inconsistency between the economic, social and political environment related to the procurement of government goods/services occurs in two important matters, namely, management and policy. The scope of management is related to cost components, namely quality, time and cost (more than just a matter of price), minimizing business, financial and technical risks, increasing competition and improving integrity. Meanwhile, on the procurement policy side, including economic, environmental, social and international trade targets, it is very difficult for policy makers and procurement entities to choose optimal priorities. There is always something to be sacrificed to achieve one of the objectives.
6. In line with the above challenges, including the rapid development of technology, public procurement activities are no longer a secondary activity in regional development. Procurement practitioners must also be involved in public procurement planning because of their large role in determining the success of development.

If you look closely, the procurement of government goods and services is an activity that is very prone to irregularities. The phenomenon of self-enrichment, starting from state officials themselves to executors in the field through acts of corruption, is a challenge that is not easy for the government itself. What's more, law enforcement is counter-productive, because energy is focused more on prosecution and not prevention ("healing problems") in the system.<sup>7</sup>

Acts of corruption can be classified as behavior or actions that can cause losses to the state or the country's economy. The Center of International Crime Prevention (CICP) from the UN Office for Drug Control and Crime Prevention (UN-ODCCP), has published 10 different forms of corruption (The 10 Corruption Acts) which can be practically applied to the procurement of public sector goods/services as follows:<sup>8</sup>

1. **Giving bribes (bribery):** Namely gifts in the

form of money, goods, facilities, and promises to do or not to do an act that results in benefiting oneself or other parties related to the position held at that time.

2. **Embezzlement:** Namely the act of taking without rights by someone who has been authorized by public or private officials to supervise and be fully responsible for state property.
3. **Forgery (fraud):** That is an action or behavior to trick other people or organizations with the intention of benefiting oneself or others.
4. **Extortion:** Namely forcing someone to pay or give a certain amount of money or goods or other form in exchange for a public official to do or not do something. These actions can be followed by physical threats or violence.
5. **Abuse of position or authority (abuse of discretion):** Namely using the authority they have to act sideways or favoritism to groups or individuals, on the other hand, act discriminatory against them.
6. **Conflict of interest/owning own business (internal trading):** Namely conducting public transactions using private or family owned companies by using the opportunity and position they have to win contracts for the procurement of government goods/services.
7. **Choose love (favoritism):** Namely providing different services based on reasons of family relations, political party affiliation, ethnicity, religion and class by setting aside objective reasons such as ability, quality, low price and work professionalism.
8. **Receive a commission (commission):** Namely public officials receive something of value in the form of money, shares, facilities, goods and others, as a condition for obtaining a job or business relationship with the government.
9. **Nepotism (nepotism):** That is giving priority to relatives, close friends, members of political parties who agree in the appointment or appointment of tender committee staff or the selection of tender winners.
10. **Contributions or illegal donations (illegal contribution):** That is, the political party or government that was in power at that time received an amount of funds as a contribution from the proceeds charged to the government goods/services procurement contracts.

In addition, based on the results of an

assessment of the policies and implementation of the procurement of goods and services for several periods, problems were found in the procurement of goods and services as follows:<sup>9</sup>

#### ***a. Inefficiency;***

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In general, the process of procuring goods and services so far has not been able to produce competitive prices. Prices of goods and services obtained through the procurement process of goods and services tend to be higher than direct purchases/market prices. This is an indicator that the procurement process tends to create a high cost economy and creates costs that add to the bid price. Uncompetitive prices will ultimately harm the finances/economy of the state and society, due to reduced benefits from state spending.

Inefficiencies become even greater when the bidding process is also dishonest. This behavior creates an inflated job value of goods and services, which is then usually followed by the implementation of dishonest procurement and there is an element of KKN.

#### ***b. Weak National Competitiveness;***

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Public sector spending in APBN and APBD as well as spending on state-owned enterprises is principally intended to be able to stimulate the economy, in addition to providing public services and administering government. However, the implementation of inefficient procurement and an unhealthy business climate (the existence of elements of KKN) creates a high-cost economy so that prices are not competitive, which in turn causes public spending to not be sufficient to encourage the growth of domestic industries to provide the goods and services needed. Limited opportunities for the national business world to take advantage of public spending business opportunities in the long term have contributed to creating an uncompetitive business world.

#### ***c. A Protective Approach;***

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The approach in procuring government goods and services tends to be protective and prioritizes aspects of equal distribution of business opportunities. This approach is shown by the many restrictions on the participation of the business world in procurement such as the classification of goods and services providers (large, medium and small), restrictions on areas of operation based on business groups, rigid divisions, and so on. This

approach has proven unable to make a significant contribution to increasing national competitiveness and the growth of businesses in competitive regions. This approach also creates opportunities for KKN in the procurement of goods and services.

Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 only regulates the procurement of goods/services using the state budget, in this case the APBN and APBD. In Article 2 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 the scope of implementation of Government Procurement of Goods/Services (PBJP) is regulated using the state budget in this case the APBN/APBD, the arrangements in that article set the scope of the procurement of goods/services including the following:

- A. PBJ within the State Ministries/Institutions/Regional Apparatuses that use the APBN/APBD budget;
- B. PBJs that use budgets from APBN/APBD, including PBJs whose funds are partly or entirely sourced from domestic loans and/or domestic grants received by the Government/Regional Governments;
- C. PBJs that use budgets from APBN/APBD, including those that are partly or wholly financed from foreign loans or foreign grants.

The State Revenue and Expenditure Budget in general consists of the State revenue budget and the State expenditure budget. State revenue is state income that is used as a source of funding for state activities and needs in the framework of state development. What is meant by state revenue or state revenue or government revenue includes taxes, levies, state enterprise profits, fines, community donations, etc.<sup>10</sup> In this case, state revenue comes from taxes and non-taxes. Taxes are people's contributions to the state treasury based on laws that can be enforced without receiving direct reciprocal services and are used to pay public expenses.<sup>11</sup>

Taxes received by the government will be used to finance various government activities. In highly developed countries taxes are the main source of government spending, part of government spending is to finance government administration

and the other part is to finance development activities. It pays the salaries of government employees, finances the education and health systems of the people, finances expenditures for the armed forces, and finances various types of critical infrastructure which the government will finance. These expenditures will increase aggregate spending and raise the level of economic activity of the State.<sup>12</sup>

The revenue budget is a planning tool to indicate targets to be achieved by the government, while the expenditure budget is a control tool to indicate the allocation of public funding sources approved by the legislature to be spent. The process of preparing the Regional Revenue and Expenditure Budget (APBD) involves the participation of many parties, and requires mature accounting technical considerations. Among other things, in preparing the APBD, government accounting is needed primarily to estimate the costs of programs and activities, as well as to predict the economic conditions of local governments and the changes that will occur.<sup>13</sup>

In substance, the weaknesses in Article 9 of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/ Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 are based on abuse of authority which does not only cause consequences, namely losses. The losses incurred not only affect the official (individual) concerned, but can also affect other people. According to Nasution, if someone is harmed because of the actions of another person, while there is no agreement between them (legal relationship agreement), then based on the law a legal relationship arises or occurs between the person who caused the loss.

Authority is equated with<sup>3</sup> "authority" in English and "bevoegdheid" in Dutch. Authority in the Black S Law Dictionary is defined as Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders legally issued within the scope of their public duties.<sup>14</sup>

Authority or authority is legal power, the right to rule or act; rights or powers of public officials to comply with the rule of law within the scope of carrying out public obligations). "Bevoegdheid" in terms of Dutch law, Phillipus M. Hadjon provides a note relating to the use of the term "bevoegdheid" used in the concept of private law and public law, while "authority" is always used in the concept of law.<sup>15</sup>

Authority as a public law concept consists of at least 3 (three) components, namely influence, legal basis, and legal conformity. The influence component is that the use of authority is intended to control the behavior of legal subjects. The legal basis component is that the authority must always have a legal basis. The conformity component implies the existence of authority standards, namely general standards (all types of authority) and special standards (for certain types of authority).<sup>16</sup>

The principle of legality is a universal element of the rule of law concept regardless of the type of rule of law adopted by a country. In criminal law the principle of legality in its form " nullum delictum sine lege" is currently still being debated about the principle of its validity. In administrative law the principle of legality in its form " wetmatigheid van bestuur" has long been felt to be inadequate.<sup>17</sup>

The inadequacy of the principle of "wetmatigheid van bestuur" is basically rooted in the nature of government power. Government power in Indonesia is very popularly known as the executive, in practice it is not purely an executive power (implementing laws). In this regard, Philip M. Hadjon stated that "in the Dutch literature it is rare to use the term " uitvoerende macht", instead using the popular term "bestuur" which is associated with "sturen" and "sturing"."bestuur" is defined as the sphere of state power outside the sphere of legislative and judicial powers.<sup>18</sup>

The concept of "bestuur" implies that government power is not merely bound power, but also a free power (vrijbestuur, Freies Ermessen, discretionary power). According to Ten Berge, as quoted by Philipus M. Hadjon, this free power includes freedom of policy and freedom of judgment.

Philipus M. Hadjon stated that to make it easier to provide an understanding of free power or discretionary power by looking at its scope. Free power or discretionary power includes; the authority to decide for themselves, and the authority to interpret obscure norms (vagenormen).

Administrative law or governance law ("administratief recht" or "bestuurs recht") contains governmental law norms. These government norms become the parameters used in the use of authority by government agencies. The parameters used in the use of this authority are legal compliance or non-compliance ("improper legal" or "improperillegal", the authorized government agency must be held accountable. Administrative law is essentially related to public authority and methods of examining its authority, as well as laws



regarding control over this authority.

Juridical accountability for the use of authority that violates the law (abuse of authority) must be seen from the perspective of the source or birth of authority. This is in accordance with the legal concept "geen bevoegdheid zonder verantwoordelijkheid or there is no authority without responsibility". In every grant of authority to certain government officials implied accountability of the officials concerned.<sup>19</sup>

The management of state finances, especially in terms of procurement of goods and services, the authority possessed by the Budget User Authority is a delegated authority, which means that responsibility and accountability are assigned to him. The Authority of the Budget User can be said to be an extension of the hand that carries out several tasks that were previously in the hands of the Budget User. The Proxy of Budget Users should not be the only party responsible for implementing state financial management in relation to the procurement of goods and services.

### ***The Ideal Concept of the Authority of Budget Users in Contracts for the Procurement of Government Goods/Services***

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Laws are valid norms. The basic norms of a legal order are the postulated supreme rules that prescribe the creation and elimination of norms from a legal order. The basic norms of a positive legal order are none other than the fundamental regulations regarding the making of various norms of that positive legal order. Basic norms according to Kelsen are sources of law, meaning they determine the validity and effectiveness of law, such as laws. Kelsen also said that every legal norm is a source of other legal norms whose formation is governed by these legal norms in determining the procedure and content of the norms to be formed. Every "higher" legal norm is a "source" of a lower legal norm. The consequence of all this is that lower regulations must be based on higher regulations, up to basic (fundamental) norms.<sup>20</sup>

The formation of legal norms is usually the application of higher legal norms, which govern their formation, and the application of higher legal norms is usually the formation of lower legal norms determined by these higher legal norms.<sup>21</sup>

Law is the protection of human or community interests. Society is always developing, so human interests also develop at the macro and micro levels. As a protection of human interests, the law follows the development of human interests. Law

is dynamic (historischbestimmt), always following developments. In its development, law seeks its ideal, namely the realization of three basic ideas in law, namely legal certainty (rechtssicherheit), expediency (zweckmassigkeit), and justice (gerechtigkeid). Gustav Radbruch said these three elements are the pillars of the ideals of law (idee des rechts). The ideals of this law will guide humans in their lawful life. These three basic values must exist in a balanced way, but often these three basic values are not always in a harmonious relationship with each other, but instead face, conflict, tension (spannungsverhältnis) with each other. In the event of such a conflict, what should be put forward is justice.<sup>22</sup>

In essence, law contains ideas or concepts that can be classified as something abstract, including ideas about justice, benefit, and legal certainty. According to Leon Petrazyski as quoted by Siti Malikhatun Badriyah that justice is a concrete phenomenon that can be captured through our intuitive research. He said that:<sup>23</sup>

The doctrine herein developed concerning law in general and intuitive law in particular comprises all the premises needed to solve the problem of the nature of justice: actually, justice is nothing but intuitive law in our sense. As a real phenomenon justice is a physical phenomenon, knowledge of which can be acquired through self-observation and the joint method.

Gunawan Setiardjo defines justice as follows: "Justice is (taken in a subjective sense) a habit, both the soul that encourages humans with a constant and continuous will to give everyone what is their right".<sup>24</sup>

Maria Farida Indarti Soeprapto stated that the formation of laws and regulations that are harmonious and easy to apply in society is one of the main pillars for the administration of a country. If we talk about the science of legislation, we will also discuss the process of forming state regulations, and at the same time all state regulations which are the result of the formation of state regulations, both at the central and regional levels.<sup>25</sup>

Presidential Regulation as a legal product, must be able to provide legal certainty for the community, must be useful in its implementation, and most importantly the substance must not be discriminatory, so that justice can be achieved. Jean Jacques Rousseau (1712-178) in *Du Contract Social*, stated that law is a general will (volonte generale) which will create a general goal, namely the public interest. If in a certain society a law is made that

does not reflect the public interest, because it does not apply equally to everyone, then the law must be considered unfair.<sup>26</sup>

The formation of statutory regulations must be in accordance with the hierarchy of statutory regulations, besides that the formation of statutory regulations must be in accordance with the principles of forming statutory law. Attamimi put forward 3 (three) types of principles, as follows:<sup>27</sup>

1. The basic ideals of Indonesian law, namely Pancasila besides being a *rechts-idee* is also a fundamental state norm;
2. The principle of being a state is based on law and the principle of government is based on the constitutional system. Based on this principle, the law as a unique regulatory tool is placed in the primacy of law, and also as the basis and limits for administering government;
3. Other principles, which include formal principles and material principles

Harmonization of laws that are carried out carefully and professionally will produce laws that meet the requirements as good laws. There are 8 (eight) good legal criteria according to Lon Fuller as follows:<sup>28</sup>

1. The law must be obeyed by everyone, including state authorities
2. Laws must be published
3. The law must apply forward, not retroactively
4. Legal principles must be written clearly, so that they can be known and applied correctly
5. The law must avoid contradictions
6. The law does not require something that is impossible to fulfill
7. The law must be constant so that there is legal certainty, but the law must also be changed if the political and social situation has changed
8. The actions of government officials and law enforcers must be consistent with applicable law

Good laws and regulations are the foundation of a rule of law that will guarantee the rights of citizens, limit the powers of the authorities, guarantee legal certainty and justice to realize social welfare for all the people.

The presence of law in society includes integrating and coordinating interests by limiting and protecting these interests, so that it is not excessive if the main function of the law is for justice. In line

with this, Van Apeldoorn stated that the purpose of law is to regulate peaceful association of life. Law can maintain peace if it succeeds in maintaining a balance between human interests which are always in conflict with one another.<sup>29</sup>

As Pancasila is the basis of the state in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia which states that:

"Then instead of that to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice, the Indonesian national independence was drafted. that is in a Constitution of the State of Indonesia, which is formed in an arrangement of the Republic of Indonesia which is sovereign by the people based on Belief in One God, Just, Civilized Humanity, Indonesian Unity, Democracy Led by Wisdom in Deliberation/Representation, as well as by Realizing Social Justice for All Indonesian People.

From the fourth paragraph of the preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia, we can see that the objectives of the Indonesian state are:

- A. Protecting the whole nation and all of Indonesia's bloodshed
- B. Promote general Welfare
- C. Enrich the life of a nation
- D. Participate in carrying out world order, based on independence
- E. Lasting peace and social justice

According to Padmo Wahyono, the Pancasila legal state is a legal state that is rooted in the principle of kinship, in which social interests come first but still respect and recognize and protect individual human rights. In line with Wahyono's view, Muhammad Tahir Azhary added the principle of harmony to his thoughts regarding the Pancasila legal state which is rooted in the principle of kinship. So that the life of the nation and state will continue to uphold the values of togetherness and kinship, which will make the life of the nation and state become one inseparable entity, so that in carrying out the life of the nation and state, efforts will be realized in maintaining national unity and territorial integrity of the Unitary State of the Republic of Indonesia.<sup>30</sup>



*According to Philipus M. Hadjon, the elements of a Pancasila legal state consist of:*<sup>31</sup>

- A. Harmonious relations between the people and the state based on harmony
- B. Proportional functional relationship between state powers
- C. The principle of dispute settlement by deliberation and justice is the last resort
- D. Balance between rights and obligations

So it is clear that the rule of law in Indonesia is a state based on Pancasila law which apart from being based on law is also based on the highest norm, namely Pancasila. This includes the national land law which should be based on Pancasila which aims to realize nothing but the things stated in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia.

As a legal objective, the values of Pancasila as the basis of the philosophy of the Indonesian state are essentially a source of all sources of law in the Indonesian state. As a source of all sources of law objectively is a view of life, awareness, legal ideals, and sublime moral ideals which include the psychological atmosphere, and the character of the Indonesian nation.

*In line with the above view, Sri Endah stated that:*<sup>32</sup>

If what the national law aspires to is the Pancasila legal system, then it is appropriate to study and develop laws that contain Pancasila values, meaning laws that are oriented to the values of Belief in the One and Only God, laws that are oriented to the values of a Just and Civilized Humanity, laws that are based on on the value of Unity, and law which is imbued with the values of Democracy Led by Wisdom of Wisdom in Deliberation/Representation and the value of Social Justice for All Indonesian People.

*In Line with the Opinion above, Barda Nawawi Arief stated that:*<sup>33</sup>

Legal development is an effort to revive the values that live in society, to then be studied in depth as material for the preparation of national law, is clearly an obligation of the academic world. It is indeed a very ironic thing if most graduates of law faculties understand more and master the legal values that live among their own people. Even more so when he feels alienated and even unconsciously becomes hostile and even kills him.

Based on the description of the values and objectives of Indonesian law, it is only fitting

that the values contained in the regulation of the government's goods/services procurement authority must contain Pancasila values, especially as stated in the Second and Fifth Precepts.

The ideal concept of the authority to implement government procurement of goods/services by the Budget User Authority based on Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 is based on the value of justice, that it is necessary to conduct a review in relation to the authority granted by the Budget User to the Proxy of the Budget User as stated in Article 9 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendment to Presidential Regulation Number 16 Year 2018. The Budget User Proxy is an organ that is given the authority to perform all actions on behalf of the budget User, in other words the Budget User Authority is an "extension" of the Budget User in implementing state financial management. Therefore, according to the author, the source of authority attached to the Budget User Authority should be a mandate not a delegation, as written in Algemene Wet Bestuursrecht, a mandate means "het doodreen bestuursorgaan aaneen ander verlenen van de bevoegdheid in zijnaambesluitenenemen" namely the granting of authority by an organ of government to another organ to make decisions on its behalf. Especially because the relationship that occurs between the Budget User and the Budget User Authority is the relationship between superiors and subordinates.

Article 9 Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services consists of 3 (three) paragraphs. Provisions in Article 9 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018. The Government consists of 3 (three) paragraphs which do not explicitly state what authority is delegated by the Budget User to the Proxy of the Budget User. This creates multiple interpretations so that the authority given can be indicated as the authority of the delegation. Article 9 Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation

Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 consisting of 3 (three) paragraphs added 1 (one) paragraph containing: (4) The authority referred to in paragraphs (1) (2) and (3) is a mandated authority.

## CONCLUSION

Regulation of the authority to implement contracts for the procurement of goods/services by the power of attorney based on the value of justice by amending Article 9 Contents of Article 9 Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/ Services as amended by Presidential Regulation Number 12 of 2021 concerning Amendments to Regulations President Number 16 of 2018 so that initially it consisted of 3 (three) paragraphs to become 4 (four) paragraphs with the addition of 1 (one) paragraph, namely in paragraph: (4) Authority as referred to in paragraphs (1) (2) and (3) is a mandated authority.

## REFERENCES

1. Presidential Regulation of the Republic of Indonesia Number 16 of 2018 on Government Procurement
2. Amiruddin, *Korupsi Dalam Pengadaan Barangdan Jasa*, Genta Publishing, Yogyakarta, 2010, p. 47.
3. Mukti Fajar. Dualism of Normative and Empirical Legal Research. Yogyakarta: Student Library. 2010. Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept of Appraisal Institutions in Assessing The Valuation of Intangible Assets on Small Medium Enterprises Intellectual Property As Object of Credit Guarantee to Improve Community's Creative Economy, JPH: Jurnal Pembaharuan Hukum, Volume 8, Number 3, December 2021. See too Ardianita Wirianistiati, Sadjijono, Legal Consequences of Name-changing Person in Official State Documents: A Civil Law Review, YURIS (Journal of Court and Justice) Vol 1 Issue 2, 2022. See too Anis Mashdurohatun, Gunarto & Adhi Budi Susilo, The Transfer of Intellectual Property Rights As Object of Fiduciary Guarantee, Jurnal Akta. Volume 9 No. 3, September 2022.
4. Agus Salim, *Teoridan Paradigma Penelitian Sosial*, Dari Denzin Gubadan Penerapannya, (Yogyakarta: Tiarawacana Yogya, 2001), p. 33-34. See too Erlyn Indarti, Orasi Ilmiah: Menjadi Manusia Merdeka: Menggagas Paradigma Baru Pendidikan Hukum untuk Membangun Masyarakat Madani, Sumber Gubadan Lincoln, p. 24.
5. Maniah; Bin Bon, Abdul Talib; Hariadi, Andi Kahar; Gunarto; Mashdurohatun, Anis; *et al.* Mapping the Competencies and Training Needs of Human Resources to Improve Employee Performance in Indonesia After the Covid-19 Pandemic, *Quality - Access to Success*, 2023, 24(195), pp. 219-225.
6. Nasucha, Chaizi. 2004. *Reformasi Administrasi Publik*. Jakarta: Grasindo
7. Richo Andi Wibowo, *Mencegah Korupsi Pengadaan Barang Jasa (Apa yang Sudah dan yang Masih Harus Dilakukan?)*, Jurnal Integritas, Volume 1 Nomor 1 - November 2015
8. Saaefullah, Djadja. 2007. *Pemikiran Kontemporer Administrasi Publik*. Bandung: LP3N FISIP UNPAD
9. Adrian Sutedi, *Aspek Hukum Pengadaan Barangdan Jasadn Berbagai Permasalahannya*, Sinar Grafika, Jakarta, 2008, p.6-8
10. Ibnu Syamsi, *Dasar-Dasar Kebijakan Keuangan Negara*, Rineka Cipta, Jakarta, 1994, p.85
11. Mardiasmo, *Perpajakan*, Edisi Revisi, Penerbit Andi, Yogyakarta, 2011, p. 1
12. Sadono Sukirno, *Makroekonomi Teori Pengantar*, Edisi Ketiga, Rajawali Pers, Jakarta, 2012, p. 168
13. Chabib Solehdan Heru Rochmansjah, *Pengelolaan Keuangandan Aset Daerah*, Fokus Media, Jakarta, 2010, p. 1 25.
14. Black, Henry Campbell. 1990. *Black'S Law Dictionary*. West Publishing, p. 133
15. Philipus Mandiri Hadjon, Discretionary Power dan Asas-Asas Umum Pemerintahan Yang Baik (AAUPB), Paper, disampaikan pada Seminar nasional "Aspek Pertanggungjawaban Pidana Dalam Kebijakan Publik Dari Tindak Pidana Konsep", Semarang 6-7 Mei 2004.
16. Ibid
17. Hans Kelsen. 2013. *Teori Umum Tentang Hukum Dan Negara*. Bandung: Nusa Media
18. Nur Basuki Minarnno. 2009. *Penyalahgunaan Wewenang Dan Tindak Pidana Korupsi Dalam Pengelolaan Keuangan Daerah*. Palangkaray: Laksbang Mediatama.
19. Tatiek Sri Djatmiati, *Prinsip Izin Usaha Industri di Indonesia*, Disertasi, Program Pascasarjana Universitas Airlangga, Surabaya, 2004
20. Helmi, *Hukum Perizinan Lingkungan Hidup*, Edisi Pertama, Cetakan Kedua, Sinar Grafika, Jakarta, 2013, p. 286.
21. Ibid., p 287.
22. Siti Malikhatun Badriyah, *Penemuan Hukum Dalam Konteks Pencarian Keadilan*, Cetakan Kesatu, Badan Penerbit Universitas Diponegoro,

- Semarang, 2010, p. 1.
23. Ibid., p. 3.
  24. Ibid.
  25. Jazim Hamidi, *Optik Hukum, Peraturan Daerah Bermasalah, Menggagas Peraturan Daerah yang Responsif dan Berkesinambungan*, Cetakan Pertama, Prestasi Pustaka Publisher, Jakarta, 2011, p. 139
  26. Ibid, p. 79.
  27. Ibid., p. 73-74.
  28. Munir Fuady, *Teori Negara Hukum Modern (Rechstaat)*, Refika Aditama, Bandung, 2009, p. 9..
  29. Munir Fuady. 2013, *Teori-teori Besar (Grand Theory) dalam Hukum*, Prenada Media Group, Jakarta, p. 41
  30. Sarja, 2016, *Negara Hukum Teori Dan Praktek*, Thafamedia, Yogyakarta, p. 67-68.
  31. Ibid, p. 68-69.
  32. Sri Endah Wahyuningsih, 2013, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Islam Dan Pembaharuan Hukum Indonesia*, UNDIP, Semarang, p. 68.
  33. Barda Nawari Arief, 1984, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum*, Universitas Diponegoro, Semarang, p. 125.

