

Legal Certainty in Implementing LPS-LKPP Decisions in Government Procurement of Goods/Services Disputes of Contract

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ABSTRACT

Credible and accountable procurement of goods/services can be carried out if all parties involved in the procurement of goods/services are guided by the provisions that apply based on the principles and ethics of procurement. Issuance of Decree of the Head of LKPP Number 43 of 2017 concerning Development Team for Government Procurement of Goods/Services Procurement Dispute Resolution Services which was basically issued for the purpose of developing the effectiveness of procurement dispute resolution services. Procurement Dispute Resolution Services referred to in the Decree of the Head of LKPP are services provided by LKPP. This study uses a normative juridical research method, namely research which examines theories, concepts, legal principles and legislation related to the settlement of contract disputes for the Government's procurement of goods/services. The results of the study show that the guarantee of legal certainty in the proceedings at the LPS-LKPP on goods/services procurement contract disputes is based on the Government Goods/Services Procurement Policy Agency Regulation No. 18 of 2018 concerning Dispute Resolution Services for Government Procurement of Goods/Services Contracts carried out in a systematic and gradual manner. The Parties must take the path of mediation, conciliation, and then arbitration.

Keywords: Legal Certainty, Contract Disputes, Procurement of Goods/Services.

INTRODUCTION

Fulfilling the need for goods and services is an important part that cannot be separated in government administration. For the government, the availability of goods and services in every government agency will be a determining factor for the successful implementation of the duties and functions of each work unit (Sopian, 2014). The need for goods and services intended to be enjoyed directly by the public continues to grow and is not limited in accordance with the development of the population and the existence of new types of procurement of goods and services as a result of technological advances (Sopian, 2014).

In connection with the government's goal of advancing the welfare of the people within its government, the government carries out activities that have the potential to advance people's welfare, one of which is by providing facilities and infrastructure realized by the existence of government procurement of goods and services. Procurement of Government Goods/Services, hereinafter referred to as Procurement of Goods/Services, is the activity of procuring goods/services by Ministries/Institutions/Regional Apparatuses financed by the APBN/APBD whose process starts from identification of needs, up to the handover of the work (President Regulation No. 16 of 2018 on

Government Procurement of Goods/ Services, 2018).

Procurement of goods and services as one of the agreements in developing the infrastructure of a country legally and juridically is regulated by Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/ Services which replaces Presidential Regulation Number 54 of 2010 which has long served as the rules of the agreement. Basically, agreements for the procurement of goods and services in their manufacture still follow what is already in the Civil Code/*Burgerlijk Wetboek*. Like agreements in general in goods and services procurement agreements, legitimacy is important in making the agreement. The validity in this case still follows the terms of the validity of the agreement as stated in Article 1320 of the Civil Code/*Burgerlijk Wetboek*, including: (1) Agreement of both parties; (2) Acting Skills; (3) Concerning a certain matter; (4) A lawful cause.

Referring to the provisions of Article 1320 of the Civil Code, every agreement will give birth to rights and obligations between the parties which in legal terms is called achievement. As well with goods and services procurement agreements, an achievement contained in the contents of the agreement can be fulfilled or not fulfilled either partially or completely. Failure to fulfil an achievement by one of the parties can be caused by default or force majeure. Failure to fulfil this achievement is often the basis for the aggrieved party to terminate the agreement. As a result of the termination of the agreement, it often creates disputes, and seeks to resolve the said dispute (Dimitrijevič, 2018).

Dispute resolution is an effort made by the parties to win their respective interests. Settlement of disputes in civil law in general can be through the courts or done outside the court. Dispute resolution through the court is indeed preferred by the parties to the dispute, namely by following the judicial process by submitting the final decision to the judges who are in charge of

handling disputes between the parties in court. However, the process of resolving disputes through the courts is often detrimental to the parties due to the process being rigid, complicated, and requiring a lot of money. These things are very contrary to the principle of litigation in court which is carried out simply, quickly and at low cost. Whereas dispute resolution outside the court or what is often called alternative dispute resolution is a settlement effort that is carried out without entering the scope of the court so that it can be said to be simpler than resolving disputes through the court, and aims to save costs and time (Zulfikar, 2020). The development of alternative dispute resolution methods also occurs in Government Procurement of Goods/Services. This development occurred because over time the activities of the Government Procurement of Goods/ Services became one of the factors that could advance the State. With so many government procurements of goods/services agreements, a promising dispute resolution method is also needed, especially in alternative ways due to the many disputes that arise in government procurement of goods/services activities.

Issuance of Decree of the Head of LKPP Number 43 of 2017 Concerning Government Goods/Services Procurement Dispute Resolution Service Development Team which was basically issued for the purpose of developing the effectiveness of procurement dispute resolution services. Procurement Dispute Resolution Services referred to in the Decree of the Head of LKPP are services provided by LKPP.

LKPP in this case provides Procurement Dispute Resolution Services because it has the main task in developing policies related to Government Procurement of Goods/Services. This Decree of the Head of LKPP determines a group of people who will join in one team where their main task is to develop procurement dispute resolution services, especially through alternative channels. The development of procurement dispute resolution services referred to in this

decision is in the areas of Mediation, Conciliation and Arbitration (Wibowo, 2005).

After less than a year since the issuance of the Decree of the Head of LKPP, LKPP issued Institutional Regulation Number 18 of 2018 concerning Settlement Services for Government Procurement of Goods/Services Contracts. Regulations revoking LKPP Head Regulation Number 4 of 2016. This LKPP Institution Regulation was issued to become implementing regulations for Presidential Regulation Number 16 of 2018, especially in terms of resolving disputes over Government Procurement of Goods/Services. Contract Disputes for the Procurement of Government Goods/Services, hereinafter referred to as Procurement Contract Disputes, are disputes that arise starting from the signing of the contract until the end of the contract for the procurement of government goods/services between the job owner and the executor of work who are bound by a contractual relationship in the procurement of government goods/services (Tamami, 2018).

LKPP Publishes this latest LKPP Institution Regulation with the aim of improving the Government Goods/Services Dispute Resolution Service that has been owned by LKPP through LKPP Head Regulation Number 4 of 2016. The term Procurement Dispute Resolution Service used so far has changed to Procurement Contract Dispute Resolution Service together with issuance of a new LKPP Institution Regulation. Alternative dispute resolution methods provided by LKPP which were previously only through Arbitration were changed through this Institutional Regulation, the types of dispute resolution methods in Institutional Regulation Number 18 of 2018 are contained in Article 3 (three), namely through mediation, conciliation and arbitration.

As stated in Article 4 of Presidential Decree Number 16 of 2018, the Procurement of Goods/Services aims to produce the right goods/services from every money spent,

measured in terms of quality, quantity, time, cost, location, and Provider aspects; increase the use of domestic products; increasing the participation of Micro, Small and Medium Enterprises; enhancing the role of national business actors; support the implementation of research and utilization of goods/services resulting from research; increase the participation of creative industries; encourage economic equality; and promote Sustainable Procurement (Sopian, 2014).

Dispute resolution is an effort made by the parties to win their respective interests. Settlement of disputes in civil law in general can be through the courts or done outside the court. Dispute resolution through the court is indeed preferred by the parties to the dispute, namely by following the judicial process by submitting the final decision to the judges who are in charge of handling disputes between the parties in court. However, the process of resolving disputes through the courts is often detrimental to the parties due to the process being rigid, complicated, and requiring a lot of money. These things are very contrary to litigation case in court which is carried out simply, quickly and at low cost (Wibowo, 2005).

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resolution services referred to in this decision is in the areas of Mediation, Conciliation and Arbitration.

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Contract Disputes are disputes that arise starting from the signing of the contract until the end of the contract for the procurement of government goods/services between the job owner and the executor who is bound by a contractual relationship in the procurement of government goods/services. The scope of Procurement Contract Dispute Resolution Services are; Mediation; Conciliation; and Arbitration. Each method of dispute resolution has its own implementation procedure so that it can be differentiated from one another. Then the Contract Dispute Resolution Service is a term in Government Procurement of Goods/Services. This service is provided by LKPP to increase the effectiveness and efficiency of procurement dispute resolution. Business shifts and changes in the era of globalization which are moving quickly (moving quickly) certainly require fast business dispute resolution as well. In other words, the existence of a business dispute settlement institution is highly demanded with informal procedures and its decisions are final and binding.

LITERATURE REVIEW

LKPP Regulation No. 18 of 2018 Article 3 paragraph (1) states that the scope of the Goods and Services Procurement Contract Dispute Resolution Service is:

- a. Mediation;
- b. Conciliation; And
- c. Arbitration.

These provisions are further emphasized in Article 7, that the Procurement Contract Dispute Resolution Service has the function of resolving procurement contract disputes through, Mediation, Conciliation; and/or Arbitration. LKPP Regulation No. 18 of 2018 if the settlement of contract disputes for the Government Procurement of Goods and Services is through LKPP, then LKPP has the authority to carry out:

- a. request documents; and/or
- b. calling and presenting witnesses, giving expert testimony and/or everyone who is deemed to know.

Procurement Contract Disputes that are being handled by the Procurement Contract Dispute Resolution Service which LKPP consists of:

- a. Service Personnel;
- b. Secretariat;
- c. Mediators;
- d. conciliator; and
- e. Arbitrator

The dispute resolution mechanism for the Procurement of Goods and Services Contracts according to LKPP Regulations includes:

- a. Submission of application states:
 - 1) Requests for Mediation, Conciliation and Arbitration are filed by one of the parties or by the Parties together and registered at the Procurement Contract Dispute Resolution Service Secretariat.
 - 2) The application for Mediation, Conciliation and Arbitration contains at least:
 - a. Complete identity and position of the Petitioner and the Respondent;
 - b. description or statement regarding the facts of the matter being applied for;
 - c. the points of the problem being applied for;

- d. the claims filed;
 - e. Attachments in the form of related evidence;
 - f. Mediator, Conciliator or Arbitrator proposal letter; and
 - g. proof of agreement of the parties to resolve disputes through Mediation, Conciliation, or Arbitration.
- 3) A request for Mediation, Conciliation or Arbitration will prevent the Parties from initiating a lawsuit in court or arbitration elsewhere, unless the request has been revoked by the parties.
 - 4) The applicant can withdraw the application to resolve the dispute on the Procurement Contract Dispute Resolution Service before the first meeting.
- b. Preliminary Evaluation states:
- 1) The Procurement Contract Dispute Resolution Service conducts a preliminary evaluation of the application for Mediation, Conciliation or Arbitration.
 - 2) In the preliminary evaluation, the Service Secretary checks the completeness and contents of the application file.
 - 3) If the application file is incomplete, the Service Secretary notifies the Applicant to complete the application file.
 - 4) The applicant is given the opportunity to complete the application no later than 10 (ten) working days from the notification of the incomplete Application being sent by the Service Secretary.
 - 5) If the Applicant does not submit the complete application within the period referred to in paragraph (4), the Applicant is deemed to have cancelled and not to continue submitting the application.
 - 6) The results of the preliminary evaluation may be in the form of accepting the application or rejecting the exempted application for dispute settlement as referred to in Article 4 and if the application is filed by the party subject to the sanction as referred to in Article 27 paragraph (3).
- 7) The Service Secretary notifies the cancellation of the application as referred to in paragraph (5) and the results of the preliminary evaluation as referred to in paragraph (6) to the Applicant
- c. Good Faith Carry out Mediation or Conciliation;
- a. The Parties and/or their Legal Counsel must carry out Mediation or Conciliation in good faith.
 - b. The Mediator or Conciliator may declare that one of the parties or the Parties and/or their Attorney is not acting in good faith, in the case of:
 - 1) is absent after being duly summoned for 2 (two) consecutive times at the Mediation or Conciliation meeting without a valid reason;
 - 2) attend the first Mediation or Conciliation meeting, but never attend the next meeting even though they have been duly summoned 2 (two) times in a row without a valid reason;
 - 3) repeated absences that disrupt the Mediation or Conciliation meeting schedule without a valid reason;
 - 4) attend the Mediation or Conciliation meeting, but do not submit and/or do not respond to the other party's Case Resume; and/or
 - 5) not signing the draft Peace Agreement that has been agreed upon without a valid reason.
 - c. Procurement contract dispute resolution application to the Procurement Contract Dispute Resolution Service.

For the selection of disputes set forth in the agreement, when a dispute arises between the two parties, the settlement can be directly through the forum that has been approved and written in the agreement. When one particular dispute resolution

forum has been determined, then one party cannot bring the dispute to another dispute resolution forum unless it obtains approval from the other party, because again we remember that civil law is not binding but can be changed in accordance with the agreement of the parties. involved parties. In the event that the selection of a dispute resolution forum is not included in the contract, then the dispute resolution will automatically follow what has been regulated by the laws and regulations governing matters contained in the agreement. In the Government Procurement of Goods/Services contract, if there is no agreement clause in the contract, the dispute resolution follows what has been regulated by Presidential Regulation Number 16 of 2018 and its implementing regulations.

MATERIALS & METHODS

The research method used in this study is a normative juridical approach. This approach method is carried out in order to be able to make findings of replacements or changes from various theories in legal disciplines through a scientific process. Normative juridical research is research conducted by examining library materials or primary legal materials. The research specifications used in this study are analytical descriptive methods by explaining, describing, and correlating legal regulations and theories with the problems that occur. The researcher will read and then organize each legal material collected. Furthermore, researchers will conduct an analysis related to Legal Certainty in the Implementation of LPS-LKPP Decisions on Government Goods/Services Procurement Contract Disputes which in the end draw conclusions using the deductive method, namely drawing conclusions from a problem that is general to specific so that it becomes a reference for answering the problem. in research namely regarding analysis related to Legal Certainty in the Implementation of LPS-LKPP Decisions on Government Goods/Services Procurement Contract Disputes.

RESULT

The Government Goods/Services Procurement Policy Agency is a non-ministerial government agency that is under and responsible to the President of the Republic of Indonesia. LKPP was formed through Presidential Regulation of the Republic of Indonesia Number 106 of 2007 concerning Government Goods/Services Development Policy Institutions.

Dispute resolution services at LPS PBJP consist of 3, namely mediation, conciliation and arbitration. Settlement of disputes at LPS PBJP in stages, in other words, the Parties must take the mediation route, if they do not agree to go to conciliation, then if they do not agree to take arbitration to get an arbitration decision.(Hermanto, 2018)

Based on the development of needs and adjustments to conditions in the framework of discussing changes to procurement provisions, it was found that there were problems whose resolution was not sufficient merely to improve provisions, but by improving the supporting structure of the procurement system. Based on LKPP data in 2015, there were 1,620 cases of objection (39%), complaints of 1,510 cases (36%), disputes of 777 cases (19%), and blacklisting of 251 cases (6%), of which less than 10% were handled. submitted to court. Problems that occur end up being resolved in conventional courts which spend a lot of time and money, as a result new problem arise such as slow dispute resolution, high court fees, limited to certain disputes, and limited to certain parties. Regarding the potential legal issues above, an effective and efficient legal dispute settlement approach is needed. Precisely the chosen legal dispute settlement approach is closely related to the mechanism for resolving each legal issue at each stage of the Government Goods/Services Procurement process.

Based on Article 2 of Presidential Regulation Number 106 of 2007 LKPP has the task of carrying out the development and formulation of Government goods/services procurement policies and is the only government agency that has the task of

developing and formulating Government goods/services procurement policies. In terms of the implementation of tasks regulated in the Presidential Decree, it encourages LKPP to handle disputes over the procurement of government goods/services in an effective and efficient manner. Furthermore, based on jurisprudence followed by other Supreme Court Decisions, outlining the rule of law that an auction action (procurement of goods/services) is a series of civil acts which are not the object of a State Administrative Dispute. Alternative dispute resolution is a settlement solution in civil procedural law.

Based on this, LKPP in 2016 has established a government goods/services procurement dispute resolution service by enacting Regulation Number 4 of 2016 concerning Government Goods/Services Procurement Dispute Resolution Services (LPS PBJP) on May 20, 2016. Contract Dispute Resolution Services Government Procurement of Goods/Services (LPS PBJP), hereinafter referred to as Procurement Contract Dispute Resolution Service, is a service established as an alternative to dispute settlement of government procurement of goods/services. LPS PBJP is carried out at the LKPP domicile or other place determined by the Service Secretary who is held by the Director of Legal Disputes Handling. LPS PBJP was formed with the intention of providing simple and fast procurement contract dispute resolution services in order to fulfil its objective of realizing effective and efficient procurement contract dispute resolution. LPS PBJP has the function of providing dispute resolution services through mediation, conciliation and arbitration. LPS PBJP formed by LKPP is based on:

1. Services are carried out objectively, impartially and independently;
2. Services are carried out simply and quickly;
3. The entire service process is carried out in writing;

4. The Arbitration Agreement between the parties negates the right of the parties to submit dispute resolution or differences of opinion contained in the agreement to the District Court;
5. Providing equal opportunity and hearing to the parties (*audi et alteram partem*);
6. The service is carried out in an appropriate manner, namely the parties are treated with equal rights and are given proper and equal opportunities at every stage of the process;
7. The deed of reconciliation and arbitral award contains considerations of all the things being requested/claimed;
8. The arbitral award may not contain anything that exceeds the demands or grants that are not demanded (*ultra perita*).

Seeing the high number of disputes over the implementation of goods/services procurement contracts between the government and service providers which ended in settlement through dispute resolution institutions, both through district courts and arbitration, the government through the Government Goods/Services Procurement Policy Institute (LKPP) on June 8 2018 issued Government Goods/Services Procurement Policy Agency Regulation No. 18 of 2018 concerning Dispute Resolution Services for Government Procurement of Goods/Services Contracts. Government Goods/Services Procurement Policy Institute No. 4 of 2016. This regulation is an implementing regulation of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UUAAPS) juncto Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods/Services (Perpres PBJ) which essentially regulates the establishment of an alternative dispute resolution agency related to the implementation of government goods/services procurement contracts (LPSKBJ) (Rawis, 2021).

DISCUSSION

Legal Arrangements Concerning the Settlement of Procurement of Goods/Services Disputes Through LPS-LKPP.

Procurement of goods and services is an effort to obtain the desired goods and services by doing it on the basis of logical and systematic thinking (the system of thought), following the applicable norms and ethics, based on standard procurement methods and processes (Adrian, 2014). The definition of procurement of goods and services literally according to the Big Indonesian Dictionary (KBBI) means an offer to submit prices and buy up work for the supply of goods/services. In Article 1 point 1 Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods/Services explains that Government Procurement of Goods/Services, hereinafter referred to as Procurement of Goods/Services, is the activity of procuring goods/services by Ministries/Institutions/Regional Apparatuses financed by APBN/APBD whose process starts from identification of needs, up to handover of the results of goods/services work by other ministries/institutions/work units of regional apparatus/institutions (hereinafter referred to as K/L/D/I) whose process starts from needs planning until completion of all activities to obtain goods/services (President Regulation No. 16 of 2018 on Government Procurement of Goods/Services, 2018).

The legal basis for procurement of government goods/services is as follows:

1. The 1945 Constitution;
2. Law Number 9 of 1995 concerning Small Enterprises;
3. Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition
4. Law Number 18 of 1999 concerning Construction Services as amended to Law Number 2 of 2017 concerning Construction Services
5. Law Number 25 of 1999 in conjunction

- with Law Number 33 of 2003 concerning Financial Balance between the Central and Regional Governments;
6. Law Number 28 of 1999 concerning Clean and KKN-free State Administration;
7. Government Regulation Number 29 concerning the Implementation of Construction Services;
8. Presidential Decree Number 42 of 2002 concerning Guidelines for the Implementation of the State Budget;
9. Presidential Decree Number 61 of 2004 concerning Amendments to Presidential Decree Number 80 of 2003 concerning guidelines for the Implementation of Government Procurement of Goods/Services;
10. Presidential Regulation Number 85 of 2006 concerning the Sixth Amendment to Presidential Decree Number 80 of 2003
11. Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, Fifth Amendment to Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services.

Procurement of goods/services must be carried out based on the principles of procurement namely efficiency, effectiveness, fair competition, openness, transparency, non-discrimination, and accountability in order to increase public confidence in the process of procurement of goods/services, because the results can be accounted for to the public from an administrative perspective, technical and financial (President Regulation No. 16 of 2018 on Government Procurement of Goods/Services, 2018). The Government Goods/Services Procurement Policy Agency is a non-ministerial government agency that is under and responsible to the President of the Republic of Indonesia. LKPP was formed through Presidential Regulation of the Republic of Indonesia Number 106 of 2007 concerning Government

Goods/Services Development Policy Institutions. Dispute resolution services at LPS PBJP consist of 3, namely mediation, conciliation and arbitration. Settlement of disputes at LPS PBJP in stages, in other words, the Parties must take the mediation route, if they do not agree to go to conciliation, then if they do not agree to take arbitration to get an arbitration decision.

Based on the development of needs and adjustments to conditions in the framework of discussing changes to procurement provisions, it was found that there were problems whose resolution was not sufficient merely to improve provisions, but by improving the supporting structure of the procurement system. Based on LKPP data in 2015, there were 1,620 cases of objection (39%), complaints of 1,510 cases (36%), disputes of 777 cases (19%), and blacklisting of 251 cases (6%), of which less than 10% were handled. submitted to court. Problems that occur end up being resolved in conventional courts which spend a lot of time and money, as a result new problems arise such as slow dispute resolution, high court fees, limited to certain disputes, and limited to certain parties. Regarding the potential legal issues above, an effective and efficient legal dispute settlement approach is needed. Precisely the legal dispute resolution approach chosen is closely related to the mechanism for resolving each legal issue at each stage of the government procurement of goods/services.

Based on Article 2 of Presidential Regulation Number 106 of 2007 LKPP has the task of carrying out the development and formulation of Government goods/services procurement policies and is the only government agency that has the task of developing and formulating Government goods/services procurement policies. In terms of the implementation of tasks regulated in the Presidential Decree, it encourages LKPP to handle disputes over the procurement of government goods/services in an effective and efficient manner. Furthermore, based on

jurisprudence followed by other Supreme Court Decisions, outlining the rule of law that an auction action (procurement of goods/services) is a series of civil acts which are not the object of a State Administrative Dispute. Alternative dispute resolution is a settlement solution in civil procedural law.

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LPS PBJP is carried out at the LKPP domicile or other place determined by the Service Secretary who is held by the Director of Legal Disputes Handling. LPS PBJP was formed with the intention of providing simple and fast procurement contract dispute resolution services in order to fulfill its objective of realizing effective and efficient procurement contract dispute resolution. LPS PBJP has the function of providing dispute resolution services through mediation, conciliation and arbitration. LPS PBJP formed by LKPP is based on:

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Looking at the provisions of Perka LKPP 18/2018, it can be seen that the dispute resolution services that can be reached through LPSKBJ are mediation, conciliation and arbitration (vide Article 3 paragraph (1)). This has similarities with what is regulated in UUAAPS. The purpose of establishing the LPSKBJ is to improve the service of dispute settlement for the

procurement of goods/services contracts so that it is hoped that the process will be easier, faster and more precise (letter c the weighing section), so that to resolve a dispute over the procurement of goods and services there is no need to take the court route which will take time. months or to conventional arbitration institutions which charge high case fees.

The benefits of PBJ dispute resolution are faster, more effective and efficient because BPS PBJ only handles government goods/services procurement disputes. Decisions on disputes are more accurate because the assembly consists of experts in the field of government procurement of goods/services and provides enthusiasm for goods/services Providers to participate more in the implementation of government procurement of goods/services, because the resulting decisions provide more legal certainty so that a climate for goods procurement can be realized. / Government services that are much better due to the formation of better competition as a result of the increasing number of Providers participating in the procurement of government goods / services.

Guarantee of Legal Certainty in the Implementation of LPS-LKPP Decisions on Government Goods/Services Procurement Contract Disputes. Legal certainty means that with the existence of clear and firm legal rules, everyone knows and carries out their obligations and rights so as to create order and peace in people's lives. Therefore, legal certainty is interpreted as being able to guarantee legal protection to everyone in carrying out their obligations and rights.

Legal certainty is the clarity of legal regulations regarding the rights, obligations and status of a person or legal entity. The certainty of rights, obligations and certainty of this status brings order, regularity, calm for those concerned, because with clarity as regulated by law, a person knows exactly what his status or position is, how far his rights and obligations are in that position

(Rafiqi et al., 2021). The implementation of construction contract dispute resolution is carried out in stages with reference to LKPP Institution Regulation number 18 of 2018 concerning Construction Contract Settlement Services with due observance of Presidential Regulation number 16 of 2018 concerning Government Procurement of Goods/Services, RI Law number 2 of 2017 regarding Construction Services and Law - RI Law number 30 of 1999 concerning Arbitration and Contract Settlement.

The complexity of providing construction services is getting bigger, in connection with new standards and increasingly sophisticated technology. The success of a construction organization is certainly related to cooperation between the parties involved in it, namely service users and service providers (Mayendra, 2022). In construction service activities, the working relationship between the service user and the service provider is usually always regulated in a work contract. The simple understanding of the employment contract is the entire document that regulates the legal relationship between the service user and the service provider. Based on the results of the agreement and offers from both parties, the wishes of the service user and the service provider will be set forth in a work contract, so that the service provider as the project organizer has the desire and goal to obtain the expected results, namely meeting the specifications, being safe, and being efficient and economical, both in terms of cost and time.

Work contracts must be made as accurately as possible, taking into account the details to be worked out so that in the future there are no mistakes in interpreting the contents of the contract. However, during the implementation stage of work in the field, several obstacles still often occur, such as errors in the application of the work contract which results in the project not running according to initial expectations, either due to the negligence of service users or service providers when fulfilling their obligations and responsibilities. Thus, this has an

impact on the consequences of losses that can be received by both parties, service users or service providers.

In the practice of construction services, the problem of construction contract disputes between the parties usually occurs more in the contractual dispute section. These disputes occur when the implementation work is in progress. This means that the contractual stages have been completed, agreed upon, signed, and implemented in the field. Disputes occur when what is stated in the contract does not match what is implemented in the field. In general terms, people often say that project implementation in the field is not in accordance with *bestek*, both written *bestek* (work contract) and or *bestek* drawing (contract attachments), plus orders from the project directors/supervisors (when written *bestek* and *bestek* drawings are still some are incomplete). (Kujala et al., 2015)

Basically, a construction contract service dispute consists of 3 (three) parts:

- a. Pre-contractual disputes are disputes that occur before there is a contractual agreement, and are in the bargaining process stage.
- b. Contractual disputes are disputes that occur during construction work.
- c. Post-contractual disputes are disputes that occur after the building has been in operation or utilized for 10 (ten) years.

In addition to the discrepancy between the contents of the work contract and the actual conditions in the field, it is possible that construction contract disputes may also occur due to unserved claims and external factors from the service provider, such as differences in the plan drawings with technical specifications and the Bill of Quantity, the slow decision of the work director in a material proposal or design, the existence of force majeure, and others that result in increased completion time and cost of carrying out the work. According to Hardjomuljadi (Hardjomuljadi, 2020), the occurrence of claims which then develop into disputes, generally occurs due to

violations and/or non-fulfillment of the obligations of each party listed in the contract. Violations can be committed either by contractors as service providers or by service users. Early settlement of disputes between construction service providers and users of construction services can actually be controlled to avoid claims arising between the parties.

In order to realize legal certainty, the government must apply legal rules consistently and also submit and obey them. The Government Goods/Services Procurement Policy Agency is a non-ministerial government agency that is under and responsible to the President of the Republic of Indonesia. LKPP was formed through Presidential Regulation of the Republic of Indonesia Number 106 of 2007 concerning Government Goods/Services Development Policy Institutions. Dispute resolution services at LPS PBJP consist of 3, namely mediation, conciliation and arbitration. Settlement of disputes at LPS PBJP in stages, in other words, the Parties must take the mediation route, if they do not agree to go to conciliation, then if they do not agree to take arbitration to get an arbitration decision. Based on the development of needs and adjustments to conditions in the framework of discussing changes to procurement provisions, it was found that there were problems whose resolution was not sufficient merely to improve provisions, but by improving the supporting structure of the procurement system.

Based on LKPP data in 2015, there were 1,620 cases of disclaimer (39%), complaints of 1,510 cases (36%), disputes of 777 cases (19%), and blacklisting of 251 cases (6%), of which less than 10% were handled. Problems that occur end up being resolved in conventional courts which spend a lot of time and money, as a result new problem arise such as slow dispute resolution, high court fees, limited to certain disputes, and limited to certain parties. Regarding the potential legal issues above, an effective and efficient legal

dispute settlement approach is needed. Precisely the legal dispute settlement approach chosen is closely related to the mechanism for resolving each legal issue at each stage of the Government Goods/Services Procurement process.

Based on Article 2 of Presidential Regulation Number 106 of 2007 LKPP has the task of carrying out the development and formulation of Government goods/services procurement policies and is the only government agency that has the task of developing and formulating Government goods/services procurement policies. In terms of the implementation of tasks regulated in the Presidential Decree, it encourages LKPP to handle disputes over the procurement of government goods/services in an effective and efficient manner. Furthermore, based on jurisprudence followed by other Supreme Court Decisions, outlining the rule of law that an auction action (procurement of goods/services) is a series of civil acts which are not the object of a State Administrative Dispute. Alternative dispute resolution is a settlement solution in civil procedural law.

Based on this, LKPP in 2016 has established a government goods/services procurement dispute resolution service by enacting Regulation Number 4 of 2016 concerning Government Goods/Services Procurement Dispute Resolution Services (LPS PBJP) on May 20, 2016. Contract Dispute Resolution Services Government Procurement of Goods/Services (LPS PBJP), hereinafter referred to as the Procurement Contract Dispute Resolution Service, is a service established as an alternative to dispute settlement of government procurement of goods/services. LPS PBJP is carried out at the LKPP domicile or other place determined by the Service Secretary who is held by the Director of Legal Disputes Handling. LPS PBJP was formed with the intention of providing simple and fast procurement contract dispute resolution services in order to fulfill its objective of realizing effective and efficient procurement

contract dispute resolution. LPS PBJP has the function of providing dispute resolution services through mediation, conciliation and arbitration. LPS PBJP formed by LKPP is based on:

1. Services are carried out objectively, impartially and independently;
2. Services are carried out simply and quickly;
3. The entire service process is carried out in writing;
4. The Arbitration Agreement between the parties negates the right of the parties to submit dispute resolution or differences of opinion contained in the agreement to the District Court;
5. Providing equal opportunity and hearing to the parties (*audi et alteram partem*);
6. The service is carried out in an appropriate manner, namely the parties are treated with equal rights and are given proper and equal opportunities at every stage of the process;
7. The deed of reconciliation and arbitral award contains considerations of all the things being requested/claimed;
8. The arbitral award may not contain anything that exceeds the demands or grants that are not demanded (*ultra perita*).

Seeing the high number of disputes over the implementation of goods/services procurement contracts between the government and service providers which ended in settlement through dispute resolution institutions, both through district courts and arbitration, the government through the Government Goods/Services Procurement Policy Institute (LKPP) on June 8 2018 issued Government Goods/Services Procurement Policy Agency Regulation No. 18 of 2018 concerning Dispute Resolution Services for Government Procurement of Goods/Services Contracts. Government Goods/Services Procurement Policy Institute No. 4 of 2016. This regulation is an implementing regulation of Law no. 30 of 1999 concerning Arbitration and Alternative

Dispute Resolution (UUAAPS). jo. Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods/Services (Perpres PBJ) which essentially regulates the establishment of an alternative dispute resolution agency related to the implementation of government goods/services procurement contracts (LPSKBJ).

Looking at the provisions of Perka LKPP 18/2018, it can be seen that the dispute resolution services that can be reached through LPSKBJ are mediation, conciliation and arbitration (vide Article 3 paragraph (1)). This has similarities with what is regulated in the UUAAPS. The purpose of the establishment of the LPSKBJ is to improve services for the settlement of disputes over the procurement of goods/services contracts so that it is hoped that the process will be easier, faster and more precise (letter c the weighing section), so as to resolve a goods procurement dispute. and services do not need to go through the courts which will take months or to conventional arbitration institutions which charge high case fees.

The benefits of PBJ dispute resolution are faster, more effective and efficient because BPS PBJ only handles government goods/services procurement disputes. Decisions on disputes are more accurate because the assembly consists of experts in the field of government procurement of goods/services and provides enthusiasm for goods/services Providers to participate more in the implementation of government procurement of goods/services, because the resulting decisions provide more legal certainty so that a climate for goods procurement can be realized. / government services that are much better due to the formation of better competition as a result of the increasing number of Providers participating in the procurement of government goods / services.

CONCLUSION

Guarantee of legal certainty in the process of proceedings at LPS-LKPP on

goods/services procurement contract disputes based on Government Goods/Services Procurement Policy Agency Regulation No. 18 of 2018 concerning Dispute Resolution Services for Government Procurement of Goods/Services Contracts carried out in a systematic and gradual manner. The Parties must take the path of mediation, conciliation, and then arbitration. In the litigation process at LPS-LKPP, the consultation stage should also be part of the procedural process, where at this stage the consultant gives his opinion to the client according to the needs and needs of the client. It can be said that consultation is the pre-dispute settlement stage. LKPP in 2016 has established a government goods/services procurement dispute resolution service by enacting Regulation Number 4 of 2016 concerning Government Goods/Services Procurement Dispute Resolution Services (LPS PBJP) on May 20, 2016. Government Goods/Services Procurement Contract Dispute Resolution Services (LPS PBJP), hereinafter referred to as the Procurement Contract Dispute Resolution Service, is a service established as an alternative to dispute settlement of government procurement of goods/services.

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