



Mahadi : Indonesia Journal of Law
Journal homepage: <https://talenta.usu.ac.id/Mahadi>



Legal Risk Mitigation Issues in the Procurement of Goods and Services from a Corporate Law Perspective (A Case Study at PT Perkebunan Nusantara IV Regional I)

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ARTICLE INFO

Article history:

Received 01 August 2025

Revised 15 August 2025

Accepted 28 August 2025

Available online

<https://talenta.usu.ac.id/Mahadi>

E-ISSN: 2964-7185

P-ISSN: 3025-3365

How to cite:

Hady, F., Siregar, M., & Mulyadi, M. (2025). Legal Risk Mitigation Issues in the Procurement of Goods and Services from a Corporate Law Perspective (A Case Study at PT Perkebunan Nusantara IV Regional I) *Mahadi: Indonesia Journal of Law*, 04(02), 113-126.

ABSTRACT

The procurement of goods and services in the public sector is regulated by Presidential Regulation (Perpres) No. 12 of 2021, while procurement in state-owned enterprises (SOEs) is governed by the Ministry of SOEs Regulation No. PER-2/MBU/03/2023. PT Perkebunan Nusantara IV (PTPN IV), a palm oil plantation SOE subsidiary, utilizes the Integrated Procurement System (IPS) for its procurement processes. However, the clarification stage is still conducted through in-person meetings to verify original documents, posing risks of abuse of authority and regulatory violations. This practice does not fully reflect the implementation of Good Corporate Governance (GCG) within PTPN IV Regional I. This study is a normative juridical and descriptive-analytical research, using a statutory approach, library research, and field research through in-depth interviews. The findings indicate that risk mitigation in procurement is crucial to ensure smooth operations and prevent disruptions to quality, cost, and timing. Although PTPN IV complies with current regulations, the use of a Presidential Regulation is considered to lack sufficient legal authority, particularly in the context of decentralization. Thus, the establishment of a Goods and Services Law is necessary to provide a stronger legal foundation for public procurement. Furthermore, regular training for procurement staff on legal frameworks, contract management, legal risk mitigation, and dispute resolution is essential to minimize legal risks and ensure that procurement is conducted transparently, efficiently, and accountably in accordance with good governance principles.

Keyword: Legal Risk Mitigation, Procurement of Goods and Services, PTPN IV Regional

ABSTRAK

Pengadaan barang/jasa pemerintah diatur dalam Perpres No. 12 Tahun 2021, sementara pengadaan di BUMN mengacu pada Permen BUMN No. PER-2/MBU/03/2023. PT Perkebunan Nusantara IV (PTPN IV), anak usaha BUMN di sektor kelapa sawit, menggunakan sistem Integrated Procurement System (IPS) untuk pengadaan. Namun, proses klarifikasi masih dilakukan secara tatap muka guna memverifikasi dokumen asli, yang berpotensi membuka celah penyalahgunaan wewenang dan pelanggaran aturan. Praktik ini belum sepenuhnya mencerminkan prinsip Good Corporate Governance (GCG) di PTPN IV Regional I. Penelitian ini bersifat yuridis normatif dan deskriptif analitis, menggunakan pendekatan perundang-undangan, studi kepustakaan, serta studi lapangan melalui wawancara mendalam. Hasil penelitian menunjukkan bahwa mitigasi risiko dalam proses pengadaan sangat krusial untuk menjaga kelancaran operasional serta menghindari gangguan terhadap kualitas, biaya, dan waktu pelaksanaan. Meski PTPN IV telah mengikuti regulasi yang berlaku, regulasi berupa Perpres belum memiliki kekuatan hukum setara undang-undang, terutama dalam konteks otonomi daerah. Oleh karena itu, diperlukan pembentukan Undang-Undang Barang dan Jasa sebagai dasar hukum yang lebih kuat. Selain itu, pelatihan berkala staf pengadaan terkait aspek hukum, manajemen risiko, kontrak, dan penyelesaian



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<http://doi.org/10.26594/register.v6i1.idarticle>

sengketa sangat diperlukan guna meminimalkan risiko hukum dan memastikan pelaksanaan pengadaan yang transparan, efisien, dan akuntabel sesuai prinsip good governance.

Kata Kunci: Mitigasi Risiko Hukum, Pengadaan Barang Dan Jasa, PTPN IV Regional.

1. Introduction

Procurement of government goods and services is a very important part of the development implementation process. In the preamble of the 1945 Constitution, it is explicitly stated that the purpose of the formation of the Indonesian state, among others, is to advance the general welfare and educate the nation's life. This goal implies that the government as the representation of the state is required to always strive to advance the general welfare with social justice for all Indonesian people through a gradual and sustainable development process. In carrying out development and public services, the government is obliged to provide the needs of the people, including in the form of goods and services.

The need for goods and services by the government requires spending activities called public procurement. Procurement is basically the way the government spends, both for its household needs, the provision of public facilities, and services to the community. Currently, government procurement activities are regulated in Presidential Regulation Number 12 of 2021 as an amendment to Presidential Regulation Number 16 of 2018. Article 1 point 1 of the Presidential Regulation explains that the procurement of goods / services is a procurement activity by Ministries, Institutions, or Regional Apparatus financed by the APBN / APBD from the process of identifying needs to the handover of work results.

Apart from the government, the procurement of goods and services also has an important position in other organizations including State-Owned Enterprises (BUMN). This procurement is a means of using the budget to obtain goods, services and work in the BUMN's operations. Despite their role in public policy, SOEs have the characteristics of private business entities that aim to make a profit. In the implementation of the national economy, SOEs play a role in producing high-quality goods and services for the community, as emphasized in Law Number 19 of 2003 concerning SOEs.

The development of the public procurement system is an important part of the transformation process agenda to realize justice in order to build an increasingly clean and authoritative government order (good governance and clean government). The transformation process is an effort to bring Indonesia from a country with poor governance, due to rampant corruption, collusion and nepotism (KKN), to a country with better governance, cleaner and more authoritative, and free from various personal, group and group interests.¹

Tender is one of the processes/stages to bid or submit prices to contract a job, to procure goods or to provide services. The definition of tender includes an offer to submit a price to contract or carry out a work, procure goods and or services, purchase goods and or services, and sell goods and or services. The philosophy of tendering is to create fair and honest business competition. In tender activities, there is a moral and ethical element that the tender winner cannot be arranged so that the lowest price is obtained through the best offer of the tender winner. Ironically, tenders, which were originally used as a method to find the best of each existing offer, were distorted by the existence of a tender conspiracy.²

Unfair business competition in tender rigging is caused by an imbalance between market opportunities and the number of business actors. Conspiracy in tender activities is an act committed by tenderers to favor one of the tenderers through arrangements. Bid rigging is an act that prioritizes the behavioral aspect in the form of an agreement to conspire that is done secretly. In a tender conspiracy, the bidder determines a particular company that should get the job through the expected contract price.

Digitalization has shifted the paradigm of goods/services procurement, including in SOEs. PT Perkebunan Nusantara IV (PTPN IV) as a subsidiary of a state-owned enterprise incorporated as a limited liability company is engaged in palm oil agro-industry. Procurement of Goods / Services at PTPN IV Regional I currently uses an information technology-based system called Integrated Procurement System (IPS), in accordance with the provisions of the Regulation of the Minister of SOEs Number PER-2 / MBU / 03/2023.

The implementation of procurement through IPS refers to the Board of Directors Regulation Number

¹ Apri Listiyanto, Pembaharuan Regulasi Pengadaan Barang Dan Jasa Pemerintah, *Jurnal Rechtsvinding media Pembinaan Hukum Nasional*, Vol. 1, No. 1 (April 2012), hlm. 115

² Sadono Sukirno, *Hukum Anti Monopoli: Menyongsong Era Persaingan Sehat*, (Bandung: PT. Citra Aditya Bakti, 2003), hal. 83.

DIR/PER/08/2020 and Number DIR/PER/27/2023. Although digital-based, the implementation of procurement still has potential risks, especially because it still involves humans in the process. One example is the potential for setting tender requirements that benefit certain parties and determining the Estimated Price (HPS) which tends to benefit certain groups.

The Planning Process carried out by the Procurement Committee has the potential to prepare and determine tender requirements that tend to benefit one or a group of partners who will participate in the tender. Tender requirements can be in the form of Technical Specifications, Work Plan and Technical Requirements (RKST), Terms of Reference (KAK), in accordance with the Type of Work offered. This has the potential to create barriers to entry or obstacles for other partners who will participate in the tender so as not to create a fair / equal opportunity for all partners who will compete in the tender. Furthermore, the process of preparing and determining the HPS by the HPS function has the potential to create prices that tend to benefit one or a group of partners who will take part in the tender and tend to benefit partners who will take direct appointment. If the HPS is set at a high price, on the one hand it has the potential to benefit the partner appointed as the executor of the work, while on the other hand PTPN IV Regional I will incur high costs to pay the partner's performance.³

The clarification stage, which is still carried out face-to-face, opens up opportunities for abuse of authority. Original documents that must be shown directly have the potential to become a means of unauthorized agreements that can harm the procurement process. This condition does not reflect the implementation of Good Corporate Governance (GCG) within PTPN IV Regional I, and often triggers rebuttals and lawsuits from partners.

One example is the case of alleged corruption in the sale and purchase of sugarcane cultivation land in Pasuruan, which involved 2016 PTPN XI Director Mochamad Cholidi (MC) and 2016 PTPN XI General, Legal and Asset Division Head Mochamad Khoiri (MK). Another private suspect is the President Commissioner of PT Kejayan Mas Muhchin Karli (MHK).⁴ As well as corruption cases related to the development and modernization project of the Djatiroto Sugar Factory (PG) of PT Perkebunan Nusantara (PTPN) XI which is integrated with Engineering, Procurement, Construction, and Commissioning (EPCC). PT Perkebunan Nusantara misused the budget and the procurement process was not transparent. Procurement aims to increase production and efficiency. However, the process was colored by corrupt practices that harmed the state. There was price inflation and selection of suppliers that did not comply with procedures that were not in accordance with the principles of Good Corporate Governance (GCG). Some individuals allegedly accepted bribes to win the tender. Law enforcement conducted an investigation after reports of alleged corruption. This case is an important example of the importance of integrity in the procurement of goods and services in the public sector.

Based on the description above, the position of PTPN IV Regional I as a business entity with a public dimension requires an in-depth study to be reviewed in the perspective of corporate law, so that the procurement process of goods and services within the state company has a paradigm that prioritizes readiness to mitigate legal risks.

2. Research Methods

This research uses normative juridical research methods supported by empirical juridical. Empirical legal research is a legal research method that functions to see the law in real terms and examine how the law works in society. Because this research examines people in living relationships in society, the empirical legal research method can be said to be sociological legal research. It can be said that legal research is taken from the facts that exist in a society, legal entity or government institution.⁵

This research is descriptive analytical, descriptive legal research is research that is used to provide a description or formulate problems in accordance with existing facts or facts. The form of this research is a form of perspective that aims to revise about a matter at a certain place and time by saying and interpreting words or problem solving.

The data source used in this research is to use secondary data, namely library materials obtained through document studies. Secondary data, consisting of: primary, secondary, and tertiary legal materials. Primary legal materials consist of legislation, official records, minutes in making legislation. Secondary Legal

³ Wawancara dengan Christian Orchard Tharanon, Kepala Bagian Sekretariat dan Hukum PTPN IV Regional 1, pada hari Senin, tgl 25 Maret 2024

⁴ Dany Saputra, "PTPN I Regional 4 Buka Suara Usai Eks Petinggi PTPN XI Terjerat Kasus Korupsi", diakses dari : [PTPN I Regional 4 Buka Suara Usai Eks Petinggi PTPN XI Terjerat Kasus Korupsi \(bisnis.com\)](https://bisnis.com), pada tanggal 27 September 2024

⁵ Muhaimin, *Metodologi Penelitian Hukum*, (Mataram: Mataram University Press, 2020), hlm. 115

Materials, namely materials that provide explanations of primary legal materials, such as law books, results of seminars or other scientific meetings, legal journals, personal documents or opinions from legal experts as long as they are relevant to the object of research. Tertiary Legal Materials, namely legal materials that support primary legal materials and secondary legal materials, such as: legal dictionaries, legal magazines as long as they are relevant to the object of research. Penelitian ini menggunakan data lapangan sebagai data primer (utama) dan data sekunder sebagai data pelengkap. Spesifikasi penelitian yang digunakan bersifat deskriptif analitis, yaitu penelitian yang dimaksudkan untuk manusia, keadaan/gejala-gejala lainnya. Penelitian ini juga menggunakan pemberlakuan hukum atau implementasi hukum normatif yaitu penelitian yang menggunakan pendekatan perundang-undangan (*statute approach*) dan pendekatan kasus (*case approach*).

Data collection techniques are carried out using data collection tools, namely: literature study, or documentary study to collect secondary data related to the problems raised, by studying books, legal journals, research results and legislative documents. Secondary legal materials consist of books, legal journals, legal theories, opinions of experts and the results of legal research. While tertiary legal materials, General Indonesian Dictionary, legal dictionary and legal encyclopedia and Indonesian Legal Encyclopedia.

Primary data was collected through direct interviews with respondents and informants. While secondary data is collected by reviewing and analyzing literature and legal documents related to the object of research, then formulated in statements.

Data analysis is carried out by qualitative analysis. In empirical legal research, data processing is essentially an activity to analyze legal materials that have been collected into classes of legal symptoms or events. Then further systematization of data is carried out from the general to then look for specific ones related to research problems by interpreting the contents of legal materials, then systematizing written legal materials. Systematization means classifying the written materials to facilitate analysis and construction work. Conclusions are drawn by using deductive logic, so that it is expected to answer the problems formulated.⁶

3. Discussion

3.1 Arrangements for Procurement of Goods/Services within PTPN IV Regional I

3.1.1 Importance of Goods and Services Procurement

Procurement is the business process of selecting sources, ordering, and acquiring goods/services. The goods/services can be obtained internally if the goods are produced by another entity within the company. Purchasing is a synonym for procurement, so from this definition, procurement is a process used by companies in obtaining the need for goods / services from outside the company.⁷

Procurement of goods / services has an important meaning as an intermediary for the realization of excellent public services. There are several procurement objectives, one of which is to produce the right goods/services for every money spent, measured in terms of quality, quantity, time, cost, location, and provider. Timely and quality procurement of goods and services will support the smooth operation of the organization. In the context of government, for example, the procurement of goods and services allows the achievement of various priority development projects to improve infrastructure, education, health, and others.

Furthermore, the procurement of goods and services can increase the use of domestic products, a good/service is referred to as a domestic product if it meets the following indicators:

- Produced or done by companies that invest and produce in Indonesia;
- Using all or part of the labor of Indonesian citizens;
- The process uses raw materials or components that are wholly or partly of domestic origin.⁸

Procurement of goods/services also plays a role in increasing Micro, Small and Cooperative Enterprises. The presence of MSMEs in a country's business process and economy has a positive value in terms of building social networks to find markets and having collaborative strategies to gain a large market in the middle class. MSMEs have a number of advantages, namely that they can create a sustainable competitive advantage with the business environment in their sector, namely by having low transaction costs, creating social income for the community, and can create an impetus in their economic environment to seek a wider market, especially foreign markets.⁹

⁶ Sri Mamudji, dkk., *Metode Penelitian dan Penulisan Hukum*, (Jakarta: Badan Penerbit FH- UI, 2005), hlm. 67.

⁷ Muchammad Rizki Agung Putra, dkk, Analisis Sistem Pengadaan Barang/Jasa Dalam Meningkatkan Pengendalian Intern (Studi Pada PT. Pembangunan Jawa-Bali (PJB) Unit Pembangkit Paiton)", *Jurnal Administrasi Bisnis (JAB)* Vol. 2, No. 2, (Februari 2015), hlm. 2

⁸ Muhammad Firdaus dan Tri Susanto, *Pengantar Pengadaan Barang/Jasa Pemerintah Versi 3.1*, (Jakarta: Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah, 2023), hlm 9

⁹ F. Anoldi, D. Cerrato, and D. Depperu, *Export Consortia in Developing Countries: Successful Management of*

Goods / Services Procurement must be able to have an impact in the form of strengthening the role of national businesses by making as many procurement packages as possible that can be carried out by national businesses. If the procurement package can only be done by foreign businesses, they must partner with national businesses in the form of partnerships/subcontracts/after-sales services. Examples of PBJ that increase the role of national businesses: Construction of Mass Rapid Transport (MRT) by involving national businesses.¹⁰

Procurement can also play a role in supporting environmental sustainability and corporate social responsibility (CSR). Organizations can choose to work with suppliers that adhere to sustainability and ethical standards, contributing to efforts to reduce environmental impacts and improve social welfare.

3.1.2 Legal Principles in the Procurement of Goods and Services

Procurement of goods and services is a form of necessity in the form of activities carried out in the private sphere through private business entities and also in the public sphere through the government. Basically, the procurement process is based on the need for goods and services that must be fulfilled in private and government circles to support the implementation of the activities carried out. These needs are met by providers or other parties outside the parties (external suppliers or providers) who want their needs to be met. The regulation of procurement focuses on the goal of achieving output in the form of fulfilling the need for quality goods and services at the best price.¹¹

Legal principles are generally accepted standard concepts for understanding, interpreting and applying the law in various cases. Legal principles are elements that strengthen legal principles, because they contain truth.

Based on Presidential Regulation (Perpres) Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services, government procurement of goods and services (PBJ) is carried out based on basic principles. There are 7 (seven) principles in government procurement of goods and services. These principles are as follows:

- a. Effective Principle: The principle in which every work carried out by the government must achieve the target achieved. In the context of procurement, the principle of effectiveness is understood that procurement must be based on predetermined needs and goals to be achieved, and can provide high benefits in accordance with these needs and goals.¹²
- b. Principle of Efficiency: Efficiency is a process of completing a job properly and to the fullest of one's ability and does not result in waste or meaningless expenditure and contains elements of proper method assessment, needs assessment, appropriate market price survey, good assessment evaluation, implementing basic principles in the procurement of goods and services.¹³ In the context of public procurement of goods and services, what is meant by efficient means that using optimal resources can obtain goods/services in quantity, quality, time as planned. Efficient means that the procurement of public goods and services must be endeavored by using limited funds and resources to achieve the set goals in the shortest possible time and be accountable.¹⁴
- c. Principle of Transparency: Transparency means that all provisions and information regarding the procurement of goods and services are clear and can be widely known by interested providers of goods and services and by the public in general. Transparency is the openness of all actions and policies taken by the government.¹⁵ In the context of procurement, the principle of transparency means that Public Goods and Services Providers must be able to easily access and obtain information about Procurement, including related to requirements, procedures, types of Goods and Services needed, and the determination of Public Goods and Services Providers.¹⁶

Cooperation Among SMEs, (Berlin: Springer Science & Business Media, 2012), hlm. 50

¹⁰ Muhammad Firdaus dan Tri Susanto, *Op, Cit*, hlm 9

¹¹ Widodo Ekatjahjana dan Sarah Sadiqa, *Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Pengadaan Barang Dan Jasa Publik*, (Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia, 2023), hlm 35.

¹² Widodo Ekatjahjana dan Sarah Sadiqa, *Op, Cit*, hlm 105.

¹³ Teten, Penerapan Prinsip-Prinsip E-Procurement Di Bagian Pengadaan Barang/Jasa Sekretariat Daerah Kota Samarinda, *Jurnal Administrative Reform*, Vol 8, No 1, (Juni 2020), hlm. 4

¹⁴ Yusri, *Op, Cit*, hlm. 4.

¹⁵ Sandi Pratama Hardiyan, Perspektif Hukum Dalam Keterbukaan, Transparansi, Proporsional, Dan Penegakan Hukum Pada Kontrak Pengadaan Barang Dan Jasa Pemerintah, *Jurnal: Perspektif Hukum*, Volume 23, Issue 2, (2023), hlm. 8.

¹⁶ Widodo Ekatjahjana dan Sarah Sadiqa, *Op, Cit*, hlm 107

- d. Principle of Openness: The open principle is to provide an opportunity for all competent goods/services providers to participate in the procurement. The fourth principle is open, which makes the procurement of goods / services can be followed by all providers of goods / services with criteria that have been met and support it by providing access to the information needed.¹⁷
- e. Principle of Competition: Competing means that the procurement of goods and services must be carried out through fair competition among as many providers of goods and services that are equal and meet the requirements, so that competitively offered goods and services can be obtained and there is no intervention that interferes with the creation of market mechanisms in the procurement of goods and services. In the context of goods/services procurement, the principle of competition in the implementation of public procurement of goods and services, namely the procurement of public goods and services is carried out through fair competition among providers of public goods and services that are equal and meet certain requirements/criteria based on clear and transparent provisions and procedures.¹⁸ Based on this principle, opportunities are given to all providers of goods and services that are equal and meet the requirements in accordance with the provisions to offer goods and services based on applicable procurement norms and without fraud and KKN (Corruption, Collusion and Nepotism) practices.¹⁹
- f. The Principle of Fairness: The principle of fairness means that the public procurement process provides equal treatment for all prospective providers of goods and services, but also does not rule out special treatment needed to encourage business development from parties with weak bargaining positions..²⁰ The principle of fairness in the context of procurement is that the implementation of Procurement must provide equal treatment for all Providers of Goods and Services by taking into account national interests, including favoritism to micro, small and cooperative businesses and domestic industries.
- g. Principle of Accountability: Accountability is a measure that shows whether the activities of the public bureaucracy or services carried out by the government are in accordance with the norms and values adopted by the community and whether the public services are able to accommodate the real needs of the community.²¹ Accountable means that it must be in accordance with the rules and regulations related to the procurement of goods and services so that it can be accounted for. The principle of accountability in the context of procurement is that the process and results of Procurement can be accounted for to the public.

3.1.3 Legal Regulations for Procurement of Goods / Services within PTPN IV Regional I

As we know that in the operational framework of meeting the needs of the Company's goods and or services, the Company often holds tenders for the goods and or services needed, which are reflected in the Company's Work Plan and Budget (RKAP).

Currently, the guidelines for the procurement of goods and or services that have been published are as follows:

- a. Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services;
- b. Board of Directors Regulation Number 3.00/PER/41/2016 dated August 30, 2016 concerning General Guidelines for Procurement of Goods and Services of PT Perkebunan Nusantara III (Persero) and PT Perkebunan Nusantara I, II, IV to XIV;
- c. Board of Directors Regulation No. 3.00/PER/56/2016 dated November 15, 2016 concerning Amendments to the Board of Directors Regulation of PT Perkebunan Nusantara III (Persero) No. 3.00/PER/41/2016 concerning Guidelines for Procurement of Goods and Services of PT Perkebunan Nusantara III (Persero) and PT Perkebunan Nusantara I, II, IV to XIV;
- d. Board of Directors Regulation No. 3.00/PER/42/2016 dated August 31, 2016 concerning Guidelines for Electronic Procurement of Goods and Services (E-procurement) at PT Perkebunan Nusantara III (Persero) and PT Perkebunan Nusantara I, II, IV to XIV; Peraturan Direksi Nomor 3.00/PER/57/2016

¹⁷ Maslon Hutabalian, Tinjauan Hukum Tentang Pengadaan Barang Dan Jasa Oleh Pemerintah, *Jurnal Hukum Das Sollen*, Vol. 8 No. 2, (2022), hlm. 9

¹⁸ Apri Listiyanto, Pembaharuan Regulasi Pengadaan Barang dan Jasa Pemerintah, *Jurnal Rechfinding*, Vol. 1, No. 1, (2021), hlm. 16

¹⁹ *Ibid*, hlm 18

²⁰ Abdusyahid Naufal Fathullah, dkk, Analisis Yuridis Penyimpangan Prosedur Pengadaan Barang dan Jasa di PT Garuda Indonesia, *Jurnal Jolsic*, Vol. 13, No. 1, (April 2025), hlm. 13

²¹ *Ibid*, hlm 14

- 16 November 2016 tentang Perubahan Atas Peraturan Direksi PT Perkebunan Nusantara III (Persero) No.3.00/42/2016 Tentang Pedoman Pengadaan Barang dan Jasa Secara Elektronik (E-procurement) Pada PT Perkebunan Nusantara III (Persero) dan PT Perkebunan Nusantara I, II, IV sd XIV;
- e. Board of Directors Regulation No. 3.00/PER/35/2017 dated March 31, 2017 concerning the Second Amendment to the Board of Directors Regulation of PT Perkebunan Nusantara III (Persero) No. 3.00/PER/42/2016 concerning Guidelines for Electronic Procurement of Goods and Services at PT Perkebunan Nusantara III (Persero) and PT Perkebunan Nusantara I, II, IV to XIV;
 - f. Board of Directors Regulation Number DIR/PER/08/2020 dated July 21, 2020 concerning Guidelines for the Implementation of Procurement of Goods / Services through Providers within the Perkebunan Nusantara Group;
 - g. Board of Directors Regulation Number DIR/PER/27/2023 dated November 30, 2023 concerning Amendments to the Regulation of the Board of Directors of PTPN III (Persero) Number DIR/PER/08/2020 dated July 21, 2020 concerning Guidelines for the Implementation of Procurement of Goods / Services through Providers within the Perkebunan Nusantara Group.²²

The publication of Law No. 5/1999 on the Prohibition of Monopolistic Practices is motivated by the fact that so long, the business opportunities created have not enabled the entire community to be able and participate in development in the economic sector. The mandate of Article 33 of the 1945 Constitution has not been maximally implemented in the administration of the economy. There are some business actors who get excessive facilities that have an impact on social inequality, so that there are other business actors who are unable to compete.²³

The enforcement of Law Number 5 of 1999 is carried out by the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha or KPPU), an independent institution directly under the authority of the President. The Commission's scope of duties includes conducting research, investigations, inquiries, and rendering decisions on matters related to business competition. Decisions rendered by the Commission must be implemented by business actors no later than thirty (30) days from the date the decision is received. In the event that a business actor objects to the decision, they may file an objection with the District Court within a maximum of fourteen (14) days from the date of receipt. If no objection is filed, the decision is deemed accepted by the business actor. Should the business actor fail to comply with the Commission's decision, the Commission shall refer the case to the Investigator to conduct further investigation in accordance with the applicable legal provisions. In such cases, the Commission's decision serves as sufficient preliminary evidence for the Investigator.²⁴

The prohibition of conspiracy in tenders is contained in Article 22 of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition: "*Business Actors are prohibited from conspiring with other parties to arrange and or determine the winner of a tender so as to result in unfair business competition*".

The elucidation of Article 22 states that a tender is an offer to propose prices to contract a work, to procure goods, or to provide services. Conspiracy is a cooperation conducted by business actors with other parties on anyone's initiative and in any way in an effort to win a tender participant.²⁵

Conspiracy is also possible in tenders. According to the legal dictionary, conspiracy is a cooperation between two or more parties who jointly commit an unlawful act. There are several possibilities of conspiracy in the tender, namely:

- a. Horizontal conspiracy: A conspiracy between business actors/providers of goods and services (can be said to create false competition).
- b. Vertical conspiracy: A conspiracy between one or several business actors/providers of goods and services and the tender committee or the user of goods and services or the owner or provider of the work.
- c. Horizontal and vertical conspiracy: A conspiracy between the tender committee or the user of goods and services or the owner or provider of the work and the business actors/providers of goods and

²² Priyo S, *Penyelenggaraan Pengadaan Barang Dan/Atau Jasa*, (Semarang: Majalah Info 9 PTPN Edisi 37, 2018), Hlm. 6

²³ Tarmizi, Analisis Hukum Persaingan Usaha Di Indonesia Dalam Undang-Undang Nomor 5 Tahun 2019, *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah*, Vol. 8, No. 1, (Januari-Juni 2022), hlm. 3

²⁴ Brigitte Dewinta Naftalia Sanger, dkk, Tinjauan Yuridis Problematika Penegakan Hukum Persaingan Usaha Dalam Menciptakan Kepastian Hukum, *Jurnal Lex Administratum*, Vol. 11, No. 3, (2021), hlm. 2

²⁵ Abdul Hafiz Rangkuti, Taufik Siregar, dan Zaini Munawir, Analisis Yuridis Persekongkolan Tender Rehabilitasi Jalan Dalam Perspektif Hukum Persaingan Usaha (Studi Kasus Putusan Nomor 14/KPPU.1/2018), *Jurnal Juncto*, Vol. 4, No. 2, (2022), hlm. 6

services, one of which is a fictitious tender.²⁶

The impact of bid rigging from the perspective of the user of goods and services/employer, this can be detrimental in the form of, among others:

- a. The employer pays a price that is more expensive than it actually is;
- b. The goods and or services obtained are often inferior to those that would have been obtained had the tender been conducted honestly;
- c. There are market barriers for potential participants who are denied the opportunity to participate and win the tender;
- d. The value of the project becomes higher.

Based on Article 47 of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, emphasizing administrative sanctions for business actors who violate Article 22, namely:

1. Must stop activities that are proven to cause monopolistic practices and or cause unfair business competition and or harm the public, and/or
2. Stipulation of payment of compensation, and/or a minimum fine of Rp.1,000,000,000.00 (one billion rupiah) and a maximum of Rp.25,000,000,000.00 (twenty-five billion rupiah). Violation of Article 22 of Law Number 5 Year 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition, may also be subject to basic punishment:
 - a. A minimum fine of Rp.5,000,000,000.00 (five billion rupiah) and a maximum of Rp.25,000,000,000.00 (twenty-five billion rupiah), or imprisonment in lieu of fine for a maximum of 5 (five) months.
 - b. A minimum fine of Rp.1,000,000,000.00 (one billion rupiah) and a maximum of Rp.5,000,000,000.00 (five billion rupiah) or imprisonment in lieu of fine for a maximum of 3 (three) months if the business actor is not cooperative in the investigation/examination process.

The main punishment can be added with additional punishment in the form of revocation of business license, or prohibition of business actors to hold the position of directors or commissioners for min 2 (two) years and max 5 (five) years. Termination of certain activities or actions that cause losses to other parties. Therefore, in a difficult situation at Digital Transformation Specialist (DTS), the Committee must remain fair, so that the objectives of the procurement of goods and or services are maintained and remain committed to fulfilling the obligations as stated above, which are contained in the Committee Integrity Pact.

3.2 Implementation of Risk Mitigation in the Procurement Process of Goods / Services in Ptpn IV Regional I Environment

3.2.1 Definition of Legal Risk

Risk is something that cannot be separated from human life. this is due to the many uncertainties that arise naturally. Statisticians state that risk is the spread of actual results from expected results. Risk can be interpreted as the probability of an outcome that is different from the expected outcome. The definition of risk is an uncertain situation and there are elements of danger, consequences or consequences that can occur due to ongoing processes or future events.

All individual and organizational activities must contain risk in them because they contain an element of uncertainty. This risk can occur due to the absence or lack of information about things that will happen in the future, be it beneficial or detrimental. In the Big Indonesian Dictionary (KBBI) Risk is an unpleasant (harmful, dangerous) result of an action or action.²⁷ According to Prof. Dr. Ir. Soemarno, M.S., the definition of risk is a condition that arises due to uncertainty with all the unfavorable consequences that may occur. According to Arthur Williams and Richard, M.H, the definition of risk is a variation of the results that can occur during a certain period. According to A. Abas Salim, the definition of risk is uncertainty that may result in a loss event. According to Subekti, the definition of risk is the obligation to bear losses caused by an event outside the fault of one of the parties.²⁸

Risk is the possibility of loss that will be experienced due to hazards that may occur, but it is not known in advance whether it will occur and when it will occur. In managing a company, of course we will never be able to escape legal risk. This risk has an important role in making these decisions.²⁹ Legal risk is the

²⁶ Priyo S, *Op, Cit*, hlm. 6

²⁷ Cava Billa Al Husaini, Pemahaman Resiko Dan Manajemen Resiko, *Jurnal Nuansa: Publikasi Ilmu Manajemen dan Ekonomi Syariah*, Vol. 1, No. 3, (September 2023), hlm. 2

²⁸ *Ibid*, hlm. 3

²⁹ Tentiyo Suharto, Konsep Penerapan Manajemen Risiko Hukum (*Legal Risk*) Pada Lembaga Keuangan Dan Perbankan Syariah Di Indonesia, *Jurnal Hospitality*, Vol. 11, No.1, (Juni 2022), hlm. 2

risk arising from lawsuits and/or weaknesses in juridical aspects. This risk arises, among others, due to the absence of supporting laws and regulations or weaknesses in the engagement, such as non-fulfillment of the legal requirements of the contract or imperfect collateral binding. Risk characteristics include:

- a. Risks that may occur resulting in losses that can be measured in money;
- b. The risk that may occur has similarities with a large number of risks that are the same as the insured risk, so that insurance companies can use available loss statistics;
- c. The risks that may occur are pure risks so that attempts to profit from losses can be prevented;
- d. The risk that may occur can result in sudden losses that cannot be predicted by the insured party.³⁰

One way to overcome this risk is by transferring risk to other parties outside of humans. This is in line with the view that explains that the existence of reason possessed by humans to overcome insecurity into a sense of security, in addition to trying to change from an uncertain condition to a condition full of certainty. Human efforts to avoid and transfer risks to other parties are the forerunners of insurance which is managed as an economic activity.³¹

3.2.2 Implementation of Risk Mitigation in the Procurement Process of Goods / Services within PTPN IV Regional I

Risk mitigation is also known as risk handling. At this stage the risk is handled to an acceptable limit. This aims to reduce the consequences of the identified risks. Risk handling actions are carried out by interviewing experts in the field, brainstorming, and distributing questionnaires. So that the handling of the dominant risk with the category of unacceptable (unacceptable) and undesirable (undesirable) is obtained.³²

Mitigation means eliminating or reducing the frequency, magnitude or exposure of a risk or minimizing the potential impact of a threat. Risk mitigation is an action that aims to reduce and protect the magnitude or level of the main risk up to the expected residual risk. Expected residual risk is a very small amount of risk that can be achieved from reducing the amount of the main risk.³³

Mitigation is a planned and sustainable action in order to reduce the impact of an event, while risk is an unpleasant (harmful, dangerous) result of an action or action. Risk mitigation is a planned and sustainable action taken by the risk owner in order to reduce the impact of an event that has the potential to harm or endanger the owner. Risk mitigation can also be referred to as risk management efforts by identifying risks, measuring to reduce risks, and managing risks.³⁴

Risk criteria describe the tolerance level for the severity of the risk and its components, used to evaluate the level of hazard of a risk. Within these risk tolerance limits, each authorized party can decide on an appropriate risk treatment strategy. Risk criteria are developed at the beginning of the implementation of the risk management process (context setting stage) and are used as the basis for prioritizing risks. Risk criteria consist of:

1. Basic criteria regarding the authority to handle risks carried out by all parties proportionally in accordance with their respective positions;
2. Rating of the likelihood of risk occurrence, which is an adverse event that has a level of probability of occurrence that differs from one to another.³⁵

The Company has the responsibility to implement risk mitigation in accordance with the provisions in the Regulation of the Minister of SOEs No. PER-2/MBU/03/2023. The Company realizes that the Company's operations are inseparable from various risks, both under and beyond its control. Therefore, all risks, both those that have not yet occurred and those that have the potential to occur, must be mapped and managed optimally.

The risk mitigation system implemented in the Company initially refers to the COSO Enterprise Risk Management Integrated Framework. However, along with the design of PTPN IV Integrated Management System, there are changes that occur. The Company's risk management system has changed by connecting or

³⁰ Herie Saksono, *Pengantar Hukum Bisnis*, (Batam: Yayasan Cendikia Mulia Mandiri, 2024), hlm 94

³¹ Cava Billa Al Husaini, *Op, Cit*, hlm. 2

³² Donny A. D. Mamesah, Cindy J. Supit, Dan Steeva G. Rondonuwu, Analisis Risiko Dan Mitigasi Terhadap Penyelenggaraan Jasa Konstruksi Ditinjau Dari Sisi Pengadaan Pada Pengguna Jasa Di Kabupaten Minahasa Selatan, *Jurnal Ilmiah Media Engineering*, Vol. 12, No.1, (2022), hlm. 6

³³ Prastyo Rinie Budi Utami, Mitigasi Risiko Pembiayaan pada Perbankan Syariah, *Jurnal At-Tujjar*, Vol. 10, No. 01, (2022), hlm. 17.

³⁴ Soeismo Djojosoedarso, *Prinsip-Prinsip Manajemen Risiko dan Asuransi*, Edisi Revisi, (Jakarta: Salemba Empat, 2003), hlm. 23

³⁵ PT. Perkebunan Nusantara VII, *Laporan Keberlanjutan*, (Jakarta: PT. Perkebunan Nusantara VII, 2022), hlm.

building bridges from the COSO Enterprise Risk Management Integrated Framework to the ISO 31000 (2009) standard.³⁶ Based on the Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number PER-2/MBU/03/2023 concerning Guidelines for Governance and Significant Corporate Activities of State-Owned Enterprises, Chapter III Implementation of Risk Management of State-Owned Enterprises article 46, the Company implements the following:

1. The implementation of Risk Management in the Company aims to protect and create value for SOEs;
2. Risk management in the Company as referred to in point 1 includes:
 - a. Risk Management Policy;
 - b. Planning, implementation, monitoring and evaluation of risk management; and
 - c. Risk Management Reporting.

In managing risk management, the Board of Directors at PTPN IV has a hierarchical structure that includes the Head of Budget Treasury Division and Risk Management. The main task of the Board of Directors is to act as the Primary Responsible Person in the implementation of risk management in the Company. Meanwhile, the Board of Commissioners has a role as the Supreme Supervisor responsible for the implementation of supervision, including monitoring and review of the implementation of risk management in the Company. The Director of Finance and Risk Management is required to compile and present a Risk Management report every quarter and annually (in accordance with the Regulation of the Minister of State-Owned Enterprises Number PER-3/MBU/03/2023 Article 73 paragraph 7), and the adopted risk management function is structurally independent from other business lines. Risk management implementation strategies, as follows:

1. Establish a risk management organization unit;
2. Integrating risk management into the Company's business processes;
3. Integrating risk transfer strategy;
4. Integrating risk management into the culture and values of the organization.

In an effort to improve the quality of risk management within the Company and develop the competence of personnel responsible for this field, the Company conducts training programs. These programs include public training organized by professional institutions, as well as in-house training involving collaboration with resource persons who are experts in their fields.

These measures aim to ensure that personnel involved in risk management have the necessary knowledge and skills to perform their duties properly. PTPN IV, as one of the subsidiaries of PTPN Group, has implemented SIMAKO since 2019. SIMAKO is an application system that uses a centralized database to integrate risk management processes across PTPN Group, from managing operational risk data, risk data monitoring processes, to reporting risk data and mitigation efforts. This system can be accessed using various information technology equipment. The integration of the system into SIMAKO provides various added values, namely speed and convenience, efficient storage space, accuracy, maintenance of data alignment (consistent), data can be shared, security, and standardization can be applied.

Evaluation of Effectiveness and Statement of Adequacy of Risk Management System In facing economic challenges and increasing risk exposure, PTPN IV strives for an effective and integrated risk management system. This system is expected to support the achievement of sustainable performance and improve the competitiveness of the company. Risk management in PTPN IV is integrated with the company's business strategy.

This approach is proactive and forward-looking, with the main objectives of maximizing added value for shareholders, managing capital comprehensively, and ensuring profitability and sustainable business growth. PTPN IV always emphasizes efforts to reduce risk by conducting active supervision of the Board of Commissioners on the implementation of risk management. This supervisory function is carried out through the Board of Directors and Board of Commissioners meeting forum, as well as in the Risk Management and GCG Monitoring Committee and Audit Committee meetings. The mechanisms used in the supervision include:

- a. Approve the risk management policy of PTPN IV including the strategy and risk management framework established in accordance with the level of risk to be taken (risk appetite) and risk tolerance (risk tolerance);
- b. Evaluate risk management policies and strategies;
- c. Evaluate the accountability of the Board of Directors and provide direction for improvement on the implementation of risk management policies of PTPN IV.
- d. Ensure risk management policies and processes are implemented effectively and integrated in the

³⁶ PT Perkebunan Nusantara IV, *Laporan Keberlanjutan 2023 Sustainability Report*, (Jakarta: PT Perkebunan Nusantara IV, 2023), hlm. 60

overall risk management process of PTPN IV.

Implementation of risk mitigation in the procurement process of goods / services within PTPN IV Regional I is very important to achieve the goal of efficient, transparent, and accountable procurement. By identifying various existing risks, as well as implementing appropriate mitigation strategies, PTPN IV can minimize the impact of these risks on the smooth operation and sustainability of the company. Strict supervision, clear contracts, and education and training for procurement human resources are important elements in creating a better and safer procurement process.

3.3 Legal Framework in Realizing Procurement of Goods/Services Based on Legal Risk Mitigation

The government is undergoing a paradigm transformation from an all-state to a market orientation (market or public interest), from a strong, large and authoritarian government to a small and less government, egalitarian and democratic orientation, as well as a transformation of the government system from centralized to decentralized. Good governance is the foundation for the formulation and implementation of democratic state policies in the era of globalization.³⁷

The phenomenon of democracy is characterized by the strengthening of public control over the administration of Government, while the phenomenon of globalization is characterized by interdependence between nations, especially in the management of economic resources and business activities. Both democratization and globalization require a redefinition of the role of government actors.³⁸ The government, which previously held strong control of the Government, sooner or later experienced a shift in role from a position of all-regulating and dictating to a position as a facilitator. The business world and capital owners, who previously tried to reduce the authority of the state which was considered to tend to hamper business activities, must begin to realize the importance of regulations that protect public interests. Conversely, people who were previously placed as beneficiaries, began to realize their position as owners of interests who also function as actors.³⁹

The economic crisis in Indonesia was caused, among other things, by poorly managed and regulated governance. As a result, problems such as corruption, collusion and nepotism (KKN) were difficult to eradicate, law enforcement problems were difficult to run, monopolies in economic activities, and the quality of services to the community deteriorated.⁴⁰

Procurement of goods / services for the benefit of the government is one of the tools to drive the economy, in order to improve the national economy for the welfare of the lives of the Indonesian people, because the procurement of goods and services, especially in the public sector, is closely related to the use of the State budget. What is an important point of that is the urgency of implementing procurement that is effective and efficient and economical to get the maximum benefit from the use of the budget. This is because the procurement of goods and services is largely financed by State finances, both through the APBN and non-APBN.

The development of the public procurement system is an important part of the transformation process agenda to realize justice in order to build a government order that is increasingly clean and authoritative (good governance and clean government). The transformation process is an effort to bring Indonesia from a country with poor governance, due to rampant corruption, collusion and nepotism (KKN), to a country with better governance, cleaner and more authoritative, and free from various personal, group and group interests.⁴¹

As one of the key indicators of change to create healthy business competition, efficiency of state spending, as well as public service delivery, is by realizing a credible procurement instrument. These changes are part of the management and utilization of the state budget in supporting the running of government functions. Procurement of goods and services must be carried out effectively and efficiently and be accountable, because the potential for state losses is very large in the procurement process.

Indonesian economic scholar, Professor Soemitro Djojohadikusumo, has signaled that 30-50 percent of the leakage of the State Budget is due to corruption, collusion, and nepotism related to government procurement activities.⁴² Meanwhile, the results of a study by the World Bank and the Asian Development

³⁷ Bappenas, *Menumbuhkan Kesadaran Tata Pemerintahan yang Baik*, (Jakarta: Sekretariat Pengembangan Kebijakan Nasional Tata Pemerintahan yang Baik Bappenas, 2004), hlm. 1.

³⁸ *Ibid*, hlm. 2

³⁹ Lalolo Krina, *Indikator dan Tolok Ukur Akuntabilitas, Transparansi dan Partisipasi*, (Jakarta Sekretariat Pengembangan Kebijakan Nasional Tata Pemerintahan yang Baik Bappenas, 2003), hlm. 1.

⁴⁰ Rahmawati Tomalili, dkk, *Kedudukan Hukum Pengadaan Barang dan Jasa Dalam Pelayanan Publik*, *Jurnal Halu Oleo Legal Research*, Vol. 1 No. 1, (2019), hlm. 5

⁴¹ *Ibid*, hlm. 6

⁴² www.kpk.go.id/modules/news/ makepdf. php? Storyid.

Bank contained in the Country Procurement Assessment Report (CPAR) in 2001 stated that leakage in public procurement of goods and services amounted to 10-50 percent. This leakage can be caused by poor socio-economic conditions, poor public service conditions, arbitrary power of public officials.⁴³ Multiple laws and regulations with weak enforcement, lack of oversight institutions, patron-client relationships, and lack of political commitment and will. Lack of transparency and accountability is allegedly the biggest problem causing corruption, so corruption is not only committed at the individual and business level, but also at the political level.

The irregularity of the procurement system also opens up opportunities for corruption, leading to many protests and suspicions about the integrity of the procurement process. The legal and regulatory framework on public procurement has progressed considerably with the issuance of Presidential Regulation No. 12 of 2021 on Amendments to Presidential Regulation No. 16 of 2018 on Public Procurement. This Presidential Regulation encourages the application of basic principles in the procurement process of goods and services that are transparent, open, fair, competitive, economical, and efficient.

Regulation of public procurement through presidential decrees is not at a high enough level of law. The main problem is that in a decentralized environment, public procurement regulation through presidential decrees does not establish the basic principles and policies governing public procurement at a high enough level of law. This is why there is a need for a procurement law that takes into account both international conventions and Indonesia's specific interests.⁴⁴

The management of goods and services procurement is important, because it will affect the effectiveness and efficiency of development implementation, and will ultimately affect the development performance of the Indonesian nation in achieving various development goals and objectives. Development is translated into various policies, programs, and projects. A project is the smallest investment unit consisting of a number of parts or activities that are operational in nature, including the procurement of goods and services, therefore the system and processing will directly and significantly affect the level of success or failure of development. The consistent application of good governance principles in the management of development policies, programs, and projects, including in the management of goods and services procurement, is intended to avoid development failure.

The establishment of a Law on the procurement of goods and services is something that must be done as a first step to get a strong business paradigm, this has legitimacy that harmonizes government policies to restructure the procurement of goods and services so that it becomes an important achievement for increasing the value and performance of state companies.

In the context of global competition, the role of the public sector is to establish an environment that enables all actors both business and nonprofit entities to develop into competitive players not only at the domestic level but also globally. Such an enabling environment can only be created through public policy. John Stuart Mill emphasized the importance of examining the most effective forms of government, as well as political and economic institutions. These institutions are largely shaped by human will and intention. When such institutions no longer serve their purpose or fail to meet the needs of society, they may be reformed, further developed, or replaced with alternative structures—provided there is collective societal will to do so. This necessitates a continuous effort to conceptualize and design institutions that are, ideally, the most suitable. The ideal institutional form, which is also the most practical for a given time and context, is one that produces the most beneficial, direct, and sustainable outcomes.⁴⁵

Public policy is not something to be taken lightly, arbitrarily implemented, or left unevaluated and unregulated. Today and in the future, one of the most essential responsibilities of government is the formulation of public policy. Experts around the world agree that the role of government is to create an enabling environment, not merely to execute policies.⁴⁶

⁴³ Korupsi sangat parah terjadi di hampir setiap relasi dengan penguasa. Sebuah studi Bank Dunia pada 1999 menyebutkan, sekitar 85,7 persen perusahaan yang disurvei mengatakan selalu atau sering kali berhadapan dengan korupsi saat berinteraksi dengan pejabat publik. Patologi pengadaan barang dan jasa pemerintah ini meliputi *mark-up* harga, pemerasan, penyalahgunaan wewenang, bisnis dengan orang dalam, nepotisme dan pemalsuan.

⁴⁴ UNDP, *Kajian Pengeluaran Publik Indonesia 2007*, (Jakarta: Kemitraan, 2008), hlm. 112.

⁴⁵ Jhon Stuart Mill, *Perihal Kebebasan Terjemahan: Alex Lanur*, (Jakarta: Yayasan Obor 149 Indonesia., 1996), hlm. 26

⁴⁶ Merujuk 677 | bid hlm. 152. Lihat juga Riant Nugroho Dwidjowiyoto, "Reinventing Pembangunan", (Jakarta: Elex Media Komputindo, 2001) Kehancuran Indonesia di tahun 1997 bukan dikarenakan pelaku usaha jahat" sehingga muncul 100-an konglomerat raksasa yang menguasai 50% aset produktif nasional (40% sisanya dikuasai BUMN dan asing). Pengusaha lebih asyik mengurus penguasa dari pada memanaajemeni usahanya secara modern dan professional-

The enactment of a Law on the Procurement of Goods and Services is imperative to serve as the primary legal framework in managing procurement activities. Such a law is essential for establishing a well-legitimized business paradigm that can significantly contribute to national economic growth. A critical evaluation of this necessity is warranted by policymakers. As a fundamental pillar of economic development, government policy must be initiated through the formulation of comprehensive legislation on the Procurement of Goods and Services.⁴⁷

When linked to the objectives of law, these serve as the foundational orientation for the formation and application of legal norms, aiming to establish justice, utility, legal certainty, and the protection of rights. In the context of public procurement, these legal objectives can be articulated across several interrelated dimensions, particularly in relation to efforts to mitigate legal risks.

The strategy for government procurement of goods and services refers to a planned and systematic approach to acquiring the goods and services required by public institutions. This strategy encompasses various steps, including needs and demand analysis, the selection of appropriate procurement methods, the development of a comprehensive procurement plan, and its effective implementation.

An effective procurement strategy is essential for the government, as it can generate significant benefits, such as improving the efficiency of public financial management, fostering healthy competition, enhancing the quality of public services, and reducing the risk of abuse of power. By adopting an appropriate strategy, the government can achieve national development goals in a more efficient and effective manner.

The objectives to be achieved through the formulation of a legal framework on the Procurement of Goods and Services include the realization of national development aimed at improving public service delivery and promoting both national and regional economic growth. The procurement system shall be oriented toward empowering domestic industries, encouraging the protection and strengthening of micro, small, and cooperative enterprises as key economic actors and service providers, and promoting the broader use of domestically produced goods.

The regulatory direction of this draft legislation is intended to establish a legal foundation that ensures the attainment of justice, utility, and legal certainty in the implementation of public procurement. It seeks to foster economic equity and broaden opportunities for entrepreneurship, thereby contributing to inclusive and sustainable economic development.

4. Conclusion

The procurement of goods and services within PTPN IV Regional I is carried out in accordance with government regulations, notably Presidential Regulation No. 12 of 2021 as an amendment to Presidential Regulation No. 16 of 2018, as well as the company's internal policies. These frameworks govern key stages of procurement, including planning, provider selection, bid evaluation, and contract signing, to ensure transparency, efficiency, and accountability. PTPN IV has also promoted the adoption of e-procurement systems, environmentally friendly procurement practices, and support for the local economy. Nevertheless, challenges persist, such as ensuring effective oversight, timely contract execution, and preventing potential misuse or abuse of process. Accordingly, the implementation of risk mitigation measures is essential to maintaining operational continuity, minimizing disruptions in terms of quality, cost, and procurement timelines, and fostering a transparent and accountable process. In this context, a clear and robust legal framework is crucial for realizing a procurement system grounded in legal risk mitigation. The procurement practices undertaken by PTPN IV Regional I adhere to the prevailing statutory regulations, including Presidential Regulation No. 12 of 2021 amending Presidential Regulation No. 16 of 2018, as well as binding internal company policies. However, it should be noted that such Presidential Regulations, while authoritative, do not constitute high-level legal norms within the national legal hierarchy.

The implementation of risk mitigation in the procurement processes at PTPN IV Regional I constitutes a crucial measure to ensure operational continuity and procurement success. Through systematic identification and mitigation of risks, PTPN IV can minimize potential disruptions that may affect the quality, cost, or timeliness of procurement activities. An effective risk mitigation process contributes to the creation of a procurement environment that is more transparent, efficient, and accountable.

A clear and robust legal framework is essential in realizing a procurement system that is grounded in legal risk mitigation. The procurement of goods and services conducted by PTPN IV Regional I adheres to the prevailing legal instruments, including Presidential Regulation No. 12 of 2021 concerning Amendments to Presidential Regulation No. 16 of 2018, as well as binding internal corporate policies. However, government

Tanri Abeng menyebut pengusaha kita memilih manajemen lobi daripada manajemen profesional. Narnun, kesalahan sebenarnya adalah karena pemerintah tidak membuat kebijakan publik yang baik dan benar.

⁴⁷ Widodo Ekatjahjana dan Sarah Sadiqa, *Op, Cit*, hlm 384.

procurement regulations issued through presidential decrees are not positioned within a sufficiently high level of legal hierarchy. The core issue lies in the decentralized governance context, wherein procurement regulations formulated through presidential decrees fail to establish fundamental principles and policies at a legislative level commensurate with their significance. Procurement of goods and services must be oriented towards the empowerment of domestic industries, the promotion and strengthening of micro, small, and cooperative enterprises as economic actors and providers, and the expansion of the use of domestic products. The regulatory direction of the proposed procurement law aims to provide a solid legal foundation that ensures the attainment of justice, utility, and legal certainty in the implementation of public procurement, thereby facilitating economic equity and broadening entrepreneurial opportunities.

5. Suggestion

There is a need for standardized risk mitigation implementation in the procurement processes at PTPN IV Regional I, adopting best practices to ensure consistency and compliance. The application of more advanced technologies is essential for monitoring and managing procurement processes in order to enhance efficiency and transparency.

Furthermore, the government must prioritize the establishment of a Law on Goods and Services Procurement, aiming to regulate public procurement at a higher legislative level. Such a law would provide a strong legal foundation to persuade the House of Representatives (DPR) to support the issuance of a comprehensive legal framework governing the procurement of goods and services by the government. This initiative is crucial in ensuring legal certainty and promoting a conducive business environment.

It is also necessary to provide regular training for procurement staff regarding the applicable legal framework and procedures. This includes understanding contracts, legal risk management, and dispute resolution mechanisms. By doing so, legal risks that may arise during procurement activities can be minimized, ensuring that procurement processes remain aligned with the principles of good governance and preventing potential legal consequences for the company.

Bibliography

- Abdul Hafiz Rangkuti, Taufik Siregar, dan Zaini Munawir, Analisis Yuridis Persekongkolan Tender Rehabilitasi Jalan, *Jurnal Juncto*, Vol. 4, No. 2 (2022).
- Abdusyahid Naufal Fathullah, dkk, Analisis Yuridis Penyimpangan Prosedur Pengadaan Barang dan Jasa di PT Garuda Indonesia, *Jurnal Jolsic*, Vol. 13, No. 1 (2025).
- Apri Listiyanto, Pembaharuan Regulasi Pengadaan Barang Dan Jasa Pemerintah, *Jurnal Rechtsvinding*, Vol. 1, No. 1 (2012).
- Bambang Sunggono, *Metodologi Penelitian Hukum*, Cet. ke-8, (Jakarta: Raja Grafindo Persada, 2006).
- Bappenas, *Menumbuhkan Kesadaran Tata Kepemerintahan yang Baik*, (Jakarta: Sekretariat Pengembangan Kebijakan Nasional Tata Kepemerintahan yang Baik Bappenas, 2004).
- Brigitte Dewinta Naftalia Sanger, dkk, Tinjauan Yuridis Problematika Penegakan Hukum Persaingan Usaha, *Jurnal Lex Administratum*, Vol. 11, No. 3 (2021).
- Cava Billa Al Husaini, Pemahaman Resiko dan Manajemen Resiko, *Jurnal Nuansa*, Vol. 1, No. 3 (2023).
- Dany Saputra, "PTPN I Regional 4 Buka Suara Usai Eks Petinggi PTPN XI Terjerat Kasus Korupsi", diakses dari : PTPN I Regional 4 Buka Suara Usai Eks Petinggi PTPN XI Terjerat Kasus Korupsi (bisnis.com), pada tanggal 27 September 2024
- Donny A. D. Mamesah, dkk, Analisis Risiko Dan Mitigasi Terhadap Penyelenggaraan Jasa Konstruksi, *Jurnal Media Engineering*, Vol. 12, No. 1 (2022).
- F. Anoldi, D. Cerrato, and D. Depperu, *Export Consortia in Developing Countries: Successful Management of Cooperation Among SMEs*, (Berlin: Springer Science & Business Media, 2012).
- Herie Saksono, *Pengantar Hukum Bisnis*, (Batam: Yayasan Cendikia Mulia Mandiri, 2024).
- Interview with Christian Orchard Tharanon, Head of the Secretariat and Legal Division of PTPN IV Regional 1, on Monday, March 25, 2024.
- Jhon Stuart Mill, *Perihal Kebebasan*, Terj. Alex Lanur, (Jakarta: Yayasan Obor Indonesia, 1996).
- Komisi Pemberantasan Korupsi, "www.kpk.go.id/modules/news/makepdf.php?Storyid", diakses pada 2024.
- Lalolo Krina, *Indikator dan Tolok Ukur Akuntabilitas, Transparansi dan Partisipasi*, (Jakarta: Sekretariat Pengembangan Kebijakan Nasional Bappenas, 2003).
- Maslon Hutabalian, Tinjauan Hukum Tentang Pengadaan Barang Dan Jasa Oleh Pemerintah, *Jurnal Hukum Das Sollen*, Vol. 8, No. 2 (2022).
- Muchammad Rizki Agung Putra, dkk, Analisis Sistem Pengadaan Barang/Jasa Dalam Meningkatkan Pengendalian Intern, *Jurnal Administrasi Bisnis (JAB)*, Vol. 2, No. 2 (2015).

- Muhaimin, *Metodologi Penelitian Hukum*, (Mataram: Mataram University Press, 2020).
- Muhammad Firdaus dan Tri Susanto, *Pengantar Pengadaan Barang/Jasa Pemerintah Versi 3.1*, (Jakarta: LKPP, 2023).
- Peraturan Direksi Nomor DIR/PER/08/2020 tanggal 21 Juli 2020 tentang Pedoman Pelaksanaan Pengadaan Barang/Jasa Melalui Penyedia di Lingkungan Perkebunan Nusantara Group.
- Peraturan Direksi Nomor DIR/PER/27/2023 tanggal 30 November 2023 tentang Perubahan atas Peraturan Direksi PTPN III (Persero) Nomor DIR/PER/08/2020 tanggal 21 Juli 2020 tentang Pedoman Pelaksanaan Pengadaan Barang/Jasa Melalui Penyedia di Lingkungan Perkebunan Nusantara Group.
- Peraturan Menteri Badan Usaha Milik Negara Nomor PER-2/MBU/03/2023 Tahun 2023 tanggal 24 Maret 2023 tentang Pedoman Tata Kelola dan Kegiatan Korporasi Signifikan Badan Usaha Milik Negara.
- Peraturan Presiden Nomor 12 Tahun 2021 tentang Perubahan atas Peraturan Presiden Nomor 16 Tahun 2018 tentang Pengadaan Barang/Jasa Pemerintah.
- Prastyo Rinie Budi Utami, Mitigasi Risiko Pembiayaan pada Perbankan Syariah, *Jurnal At-Tujjar*, Vol. 10, No. 1 (2022).
- Priyo S, *Penyelenggaraan Pengadaan Barang Dan/Atau Jasa*, (Semarang: Majalah Info 9 PTPN Edisi 37, 2018).
- PT Perkebunan Nusantara IV, *Laporan Keberlanjutan 2023 Sustainability Report*, (Jakarta: PTPN IV, 2023).
- PT. Perkebunan Nusantara VII, *Laporan Keberlanjutan*, (Jakarta: PTPN VII, 2022).
- Rahel Narda Chaterine dan Bagus Santosa Tim Redaksi, “Bareskrim Polri Usut Kasus Korupsi Pengadaan Pabrik Gula PT Perkebunan Nusantara XI”, diakses dari Bareskrim Polri Usut Kasus Korupsi Pengadaan Pabrik Gula PT Perkebunan Nusantara XI (kompas.com), pada tanggal 27 September 2024.
- Rahmawati Tomalili, dkk, Kedudukan Hukum Pengadaan Barang dan Jasa dalam Pelayanan Publik, *Jurnal Halu Oleo Legal Research*, Vol. 1, No. 1 (2019).
- Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Cet. ke-4, (Jakarta: Ghalia Indonesia, 1990).
- Sadono Sukirno, *Hukum Anti Monopoli: Menyongsong Era Persaingan Sehat*, (Bandung: PT. Citra Aditya Bakti, 2003).
- Sandi Pratama Hardiyanto, Perspektif Hukum Dalam Keterbukaan, Transparansi, Proporsional, Dan Penegakan Hukum Pada Kontrak Pengadaan Barang Dan Jasa Pemerintah, *Jurnal Perspektif Hukum*, Vol. 23, No. 2 (2023).
- Setiono, *Pemahaman Terhadap Metodologi Penelitian Hukum*, (Surakarta: Program Studi Ilmu Hukum Pasca Sarjana UNS, 2005).
- Soeismo Djojosoedarso, *Prinsip-Prinsip Manajemen Risiko dan Asuransi*, Edisi Revisi, (Jakarta: Salemba Empat, 2003).
- Sri Mamudji, dkk., *Metode Penelitian dan Penulisan Hukum*, (Jakarta: Badan Penerbit FH-UI, 2005).
- Tarmizi, Analisis Hukum Persaingan Usaha di Indonesia Dalam UU Nomor 5 Tahun 2019, *Jurnal Shar-E*, Vol. 8, No. 1 (2022).
- Tentiyo Suharto, Konsep Penerapan Manajemen Risiko Hukum Pada Lembaga Keuangan Dan Perbankan Syariah, *Jurnal Hospitality*, Vol. 11, No. 1 (2022).
- Teten, Penerapan Prinsip-Prinsip E-Procurement, *Jurnal Administrative Reform*, Vol. 8, No. 1 (2020).
- Undang-Undang Dasar Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 17 Tahun 2003 tentang Keuangan Negara.
- Undang-Undang Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara.
- Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.
- Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang
- UNDP, *Kajian Pengeluaran Publik Indonesia 2007*, (Jakarta: Kemitraan, 2008).
- Widodo Ekatjahjana dan Sarah Sadiqa, *Hasil Penyelarasan Naskah Akademik RUU Tentang Pengadaan Barang Dan Jasa Publik*, (Jakarta: BPHN Kemenkumham RI, 2023).