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Research Article

# Contractual Relationships and Processes of Business Actors in Government Procurement of Construction Goods and Services from a Civil Law Perspective

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**Abstract:** The contractual relationship between government entities (PA/KPA/PPK) and construction service providers in procurement activities is complex, as it intersects with both public and private law. Government procurement contracts for construction projects are often structured through a tender process, where service providers must compete to win the contract. Once the provider is selected, a legal agreement is formed, which regulates the roles, responsibilities, and obligations of the parties involved. This agreement is typically outlined in a contract document that serves as a formal, legally binding commitment. In civil law, such contracts are typically governed by private law principles, which include contracts, obligations, and liabilities. However, the nature of government procurement contracts adds a unique element of public law, particularly administrative and criminal law. The government's involvement in these contracts introduces a dual legal framework that governs the relationship between the parties. On one hand, the contract is influenced by the state's regulatory powers and administrative authority, ensuring compliance with legal standards and public interests. On the other hand, it is also subject to private law principles, as the government enters into agreements with construction providers just like any other business transaction. This mixed legal framework (or "mixed law") creates a distinctive legal relationship, where elements of public law, such as administrative regulations and oversight, coexist with private law principles, such as those governing contract enforcement and dispute resolution. The contract, which is a Keputusan Tindakan Administrasi Negara (KTUN), remains a civil law act, despite its public law foundation. This hybrid nature of government contracts ensures that both public and private law aspects are considered in the process, which can sometimes lead to legal complexities and challenges in the implementation and enforcement of these contracts.

**Keywords:** Civil Law, Contractual, KTUN, mixed law, Procurement of Goods/Services

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## 1. Introduction

The objective of national development efforts as stated in the 1945 Constitution of the Republic of Indonesia is to protect the entire nation and all of Indonesia's bloodshed, to promote general welfare and education, to enlighten the nation, and to participate in maintaining world order based on eternal independence and striving to support social justice. The efforts to achieve these objectives are carried out through the development of infrastructure and facilities, implemented through the provision of goods and services by the government, guided by the principles of efficiency, effectiveness, transparency, and open competition, ensuring fairness, non-discrimination, and accountability.

In an effort by the government to regulate policies regarding the procurement of goods and services, Presidential Regulation No. 54 of 2010 was issued, which addresses the procurement of goods and services by the government. further amended by Presidential Regulation No. 70 of 2012, which addresses changes to Presidential Regulation No. 54 of 2010 regarding the procurement of goods and services by the government. The Presidential Regulation continues to evolve in response to changes in the government's situation and conditions, with the latest amendment being Presidential Regulation No. 12 of 2021, which addresses changes to Presidential Regulation No. 16 of 2018 regarding procurement. These changes have been implemented as part of efforts to establish guidelines for regulating a transparent, clear, and comprehensive procurement mechanism for goods and services, in line with the principles of good governance and the values of Pancasila.

Based on the facts, although the activities of providing goods and services by the government are stipulated in regulations, it is known that these efforts still raise various controversies. There are several issues related to the procurement of government goods and services, namely as follows:

1. Issues related to responsibility for activities due to the lack of clarity regarding the nature of the authority granted to superiors and subordinates, whether it is a mandate or a delegation. As a result, the system of responsibility and liability is known to be placed more heavily on the party implementing the related activities or tasks (Arsyad & Karisma, 2018).
2. The implementation of the Presidential Regulation is still controversial because the regulation is technical in nature and related to separate regulations, disseminated in the form of technical guidelines and known as implementation guidelines (fragmentary) (Suparman, 2017).
3. It is known that activities related to the procurement of goods and services often have negative implications for legal issues that are complex in nature, triggered by excessive attitudes on the part of superiors who directly interfere in the implementation of activities related to the procurement of goods or services, as well as at the level of users of the goods or services in question, and the presence of collusion among officials involved in the procurement process with the parties acting as providers (Suparman, 2017).
4. Procurement efforts for goods and services must be based on predetermined contracts. However, many contracts end in disputes due to misunderstandings on the part of the contracting parties (Heriani, 2020).

It is known that these irregularities often lead to disputes over the procurement of both types of goods and services between users and providers. Such disputes are conflicts that arise in the implementation of a contract for the procurement of goods or services by the government between the owner of the work and the contractor, who are bound by a contractual relationship in that procurement (Regulation of the Head of LKPP, 2016, Article 1, point 3). The contractual relationship in such procurement is based on Article 27 of Regulation No. 6 of 2018, which addresses government procurement of goods or services and includes two types of contracts: first, contracts related to procurement of both types, such as construction or other services. These contracts include lump-sum umbrella contracts, a combination of lump-sum and unit-price contracts, or contracts related to completion, and

contracts related to unit prices. The second type of contract relates to the procurement of consulting services, which includes lump-sum umbrella contracts and the duration of the assignment.

On the other hand, it is necessary for parties involved in the provision of government goods and services to have a deep understanding of contractual relationships in order to avoid problems in the process. Contractual issues in the procurement of goods and services stem from three main factors: (1) the planning and preparation stages, such as unrealistic expectations regarding time or budget, discrepancies or inconsistencies in procurement or contract management, and limitations in accessing data or information required for the process, delays in the approval process and inappropriate selection of methods, mechanisms, or approaches applied, (2) procurement implementation, such as scope, criteria, and/or specifications, inconsistencies with procedures and/or stages, and inadequate management of known risks, such as efforts to complete work that is late or not in accordance with the required time frame and contract implementation efforts, such as efforts to complete work that is behind schedule, guarantees regarding banks, quality and volume of work results that are below the specified level, changes to the scope or related to technology that were not previously planned, the presence of inconsistencies with the clauses in the contract, differences in perception of the content of the contract between officials acting as commitment makers and parties acting as providers, as well as deviations in financial management and the presence of fraud.

## **2. Proposed Method**

The type of research used is normative legal research (normative jurisprudence) which obtains support for factual data in the field or empirically. The study applies normative law because the analysis of issues related to the procurement of goods and services is carried out through a mechanism that combines legal materials, which are part of secondary data, with the application of primary data, namely empirical data obtained from the field regarding efforts to procure goods and services in the government sector. This study is descriptive and analytical in nature, seeking to present a detailed, systematic, and comprehensive picture of matters related to the procurement of goods and services in relation to applicable laws and regulations, criminal theories, and other legal theories that serve as supporting materials. The data or target information required for this study was obtained from the literature review, which involved analyzing literature related to regulations and other literature related to the procurement of goods and services in the government sector, as well as other data that served as supporting information for this study, such as case data -cases of disputes regarding procurement that have been legally upheld in court. In addition, data was also obtained from field studies and interviews, which involved collecting data through question and answer sessions with parties who are competent in the issues being studied. The components to be interviewed were representatives from judicial institutions for goods and services in the government sector, third parties involved in the procurement of goods and services in the government sector, legal practitioners, and academics. The responses were selected using purposive sampling based on their competence in the study. The processing and analysis were carried out using qualitative analysis mechanisms on the legal principles relevant to the research objectives.

Qualitative analysis was conducted by describing the results of literature studies, field findings, interviews, legal principles, and relevant information in scientific terms and easy-to-understand language.

### 3. Results and Discussion

Contract law in Indonesia is still based on Dutch colonial regulations, as stipulated in Book III of the Civil Code, which adopts a transparent or open system whereby parties are free to enter into contracts with any other party, with the terms, conditions, and form of the contract being determined by the parties themselves, whether in oral or written form. Additionally, contracts may be created both within and outside the scope of the Civil Code (Sidik, 2003).

Contracts listed in the Civil Code, such as those related to sales and purchases, exchanges, in the process of leasing, in civil partnerships, related to gifts, the deposit of goods, loans for use, loan transactions, related to the granting of power of attorney, the assumption of debt, related to agreements on profits and losses, and related to settlements. Outside the Civil Code, various new contracts have emerged, such as leasing, lease-purchase, franchising, surrogate motherhood, production sharing, joint ventures, and others (Sidik, 2003). Although these contracts have been in existence and have developed within society, regulations in the form of laws are not yet in place. The only regulations that exist are in the form of ministerial regulations. These regulations are limited to those that attempt to regulate leasing, while other contracts have not yet been regulated in a specific or special manner. The absence of certainty regarding the parties involved in contractual activities has led to a situation where, in practice, one party often enters into a standard contract, while the other party accepts the contract due to their weaker position. Therefore, in the future, there is a need for a national law on contracts that can replace the old regulations. The relevant law also establishes a balanced position for the parties in fulfilling their rights and obligations.

In the context of law, in the procurement of goods or services in government agencies, there are three areas of law that indirectly and directly regulate the implementation of such procurement:

1. State Administrative Law is law relating to state administration, law that regulates the relationship between the provision of goods or services and the use of goods or services, from the preparation stage to the issuance of a decree on the provision of goods or services.
2. Civil law, which seeks to regulate the legal relationship between the provider and the user, starting from the signing of the contract until the end of the agreed contract regarding the procurement.
3. Criminal law, which seeks to regulate the legal relationship between the provider and the user from the preparatory stage of the procurement to the completion of the contract.

Thus, it can be said that from a civil law perspective, the relationship between PA/KPA/PPK and Providers in government procurement of goods/services begins with the signing of the contract and ends with the termination of the contract. The process of establishing the contract in this procurement effort is fundamentally based on the regulations

of the policy-making body for government procurement of goods or services in the Republic of Indonesia, as outlined in Regulation No. 12 of 2021, which addresses guidelines for the implementation of such procurement efforts through the presentation of proposals. The regulations of the institution serve as guidelines for procurement stakeholders and procurement of goods or services in the government sector to carry out the procurement process through presentation efforts in accordance with Presidential Regulation No. 16 of 2018, which addresses procurement of goods or services in the government sector, as amended by Presidential Regulation No. 12 of 2021, which addresses changes to the regulations of Presidential Regulation No. 16 of 2018, which addresses the procurement of goods or services in the government sector.

### **Contractual Process in the Procurement of Construction Goods/Services**

In the effort to procure goods or services related to construction from suppliers, including the procurement activities of the supplier, the preparation of recovery efforts for the supplier, the implementation of supplier selection efforts, the implementation of contracts, and the handover of work results. Efforts are made in the selection of suppliers, the implementation of contracts, and the handover of work results. Before procurement efforts are carried out, analysis and evaluation of needs, as well as procurement planning efforts, are carried out. Procurement planning efforts for goods or services related to the utilization of suppliers are understood as a continuous activity in the procurement planning efforts carried out by the PA/KPA.

The process of contracting between PA/KPA/PPK and Goods/Services Providers for construction work can be explained as follows (Regulations, 2021):

#### **1. Procurement Preparation**

The procurement process can be initiated after the RKA-K/L is approved by the DPR or the RKA Perangkat Daerah is approved by the DPRD. As an effort to procure goods or services, contracts must be initiated at the beginning of the year, with efforts to prepare for procurement related to the selection of suppliers to be carried out after the approval of the K/L Budget Ceiling or the Regional Government Budget Plan in accordance with the provisions of applicable laws and regulations. However, preparation efforts are required for procurement and the selection process, which must be preceded by approval of the K/L RKA by the DPR or the Regional Government RKA by the DPRD. Recovery efforts regarding suppliers can be carried out once approval has been obtained from the relevant authorities, and the contract does not impose binding obligations or further actions, as follows;

- a. The person authorized to sign the contract is referred to as the contract signatory, with the agreement or contract being signed with the provider after the DIPA/DPA has been approved.
- b. If the budget ceiling available in the RKA-K/L is approved by the DPR or the RKA by the regional apparatus with the approval of the DPRD is smaller than the bid from the winner, the processing of the selection can be carried out or continued by conducting technical and price-related negotiations.
- c. If the activity is not available in the DIPA/DPA, the selection of the provider must be canceled.

Preparation for the procurement of construction work/construction consulting services is carried out by the PPK and includes:

- a. Technical specifications or terms of reference (TOR);
- b. Efforts to formulate and establish HPS-related matters;
- c. Efforts to draft and finalize the contract design;
- d. Determination of detailed engineering design for the selection of Construction Work Providers; and
- e. Efforts to establish a down payment, guarantees related to the down payment, guarantees from implementation efforts, guarantees from maintenance efforts, as well as those related to warranty certificates, and/or those related to price adjustments.

In addition, PPK does the following:

- a. Identification efforts Whether the goods or services to be procured fall under the category of goods and services to be procured through direct procurement efforts, or are part of a special procurement process; and
- b. Review of documents related to planning regarding the obligation to utilize the production results of small businesses and cooperatives from domestic production efforts, with a minimum of 40% of the budget for goods or services related to the Ministry or related institutions or related to the regional government.

## 2. Selection

In the preparation of the selection of suppliers by the Working Group or the selection of officials to handle complaints, the selection is carried out after the Working Group or the relevant procurement officials receive the selection request from the suppliers present at the PPK, accompanied by documents related to the preparation of the procurement efforts through the efforts of the suppliers, which are submitted by the PPK to the head of the UKPBJ/Procurement Official. The selection preparation process conducted by the Selection Working Group through the supplier includes:

- a. Review of documents related to procurement preparation efforts;
- b. To establish mechanisms or methods for selecting Providers;
- c. Efforts to establish related qualification mechanisms;
- d. Efforts to establish requirements for Providers;
- e. Efforts to establish mechanisms for evaluating bidding activities;
- f. Efforts to establish mechanisms related to the submission of bids using the documents used to make bids;
- g. Efforts to compile and determine the time frame for the election;
- h. Efforts to compile documents that play a role in the election process; and
- i. Efforts to establish guarantees in the bidding process and guarantees presented in appeals.

Efforts to prepare for the selection through the provider carried out by the procurement officer using a work order letter, including:

- a. Reviewing documents to prepare for the effort;
- b. Efforts to establish requirements for providers;
- c. Efforts to establish a time frame for the election; and

d. Determination of Election Documents.

### 3. Conducting Elections

The implementation of the selection of Providers is carried out by the PPK and the Selection Working Group/Procurement Officer according to the selection method, with the following provisions:

#### 1) PPK carries out:

- a. E-purchasing will have a value of HPS with a minimum level above the value of Rp.200,000,000.00 (two hundred million rupiah); and
- b. “E-purchasing with a minimum HPS value of Rp.1,000,000,000.00 (one billion rupiah) as an effort to accelerate development in the welfare sector in the provinces of Papua and West Papua.”

#### 2) The Procurement Officer shall carry out:

- a. In procurement efforts through direct means and also directly related to construction work with a value of up to Rp. 200,000,000.00 (two hundred million rupiah) or Construction Consulting Services with a value of up to Rp. 100,000,000.00 (one hundred million rupiah); and
- b. “In procurement efforts through direct methods and also directly related to construction work with a value of HPS not exceeding Rp. 1,000,000,000.00 (one billion rupiah) or Construction Consulting Services with a value of up to Rp. 200,000,000.00 (two hundred million rupiah) for the acceleration of development and welfare in the Provinces of Papua and West Papua.”

#### 3) The Election Working Group shall carry out:

- a. Tender/Selection, Fast Tender, and Direct Appointment; and
- b. Limited tenders for construction work with a minimum value of Rp 2,500,000,000.00 (two billion five hundred million rupiah) in an effort to accelerate development for the welfare of the Papua region and the Province of Papua.

### 4. Contract Implementation

The Contract shall be performed by the parties in accordance with the provisions contained in the Contract and the laws and regulations.

#### 1) Handover of Work Results

After the work has been completed in accordance with the provisions set forth in the contract, the provider shall submit a written request to the official who signed the contract for the handover of the work results.

Based on the stages in the procurement of construction goods/services above, the documents produced at each stage can be analyzed to determine whether they are KTUN or not. Analysis of the documents produced is crucial to understanding whether the documents meet the qualifications and are subject to exceptions from the Absolute Competency qualification. The qualifications subject to exceptions are those related to Absolute Competency and have a connection to procurement efforts in the form of civil law actions.

#### 2) Contractual Relations for the Procurement of Government Goods/Construction Services

As mentioned above, a contract is a written agreement between PA/KPA/PPK and Goods/Services Providers (Presidential Regulation, 2018,

Article 1 point 44). The signing of a contract for the provision of goods/services is essentially the signing of an agreement. According to Subekti, an agreement is understood as a phenomenon or event when an individual makes a promise to another individual or when two individuals mutually enter into an agreement to carry out a certain action. Meanwhile, based on Article 1313 of the Civil Code, an agreement is understood as an act when one individual or more binds themselves to another individual or to more individuals. Having a differentiation from an increase that is understood as a legal relationship, an agreement is understood as a form of legal action. Legal action is understood as something that exists because of the legal relationship of the agreement, so it can be explained that an agreement is understood as a form of the source of the agreement.

A contract in the form of a written agreement between the PA/KPA/PPK and the Goods/Services Provider is a source of obligation, because with this contract, the PA/KPA/PPK and the relevant provider have the freedom to make various forms of agreements. This aligns with the principle that serves as the foundation for the creation of contracts. Article 1338 of the Civil Code explicitly states the principle of freedom in contracting (*beginsel der contractsvrijheid*), which reads: “All contracts made in accordance with the law are binding as law upon those who make them.”

Therefore, a written agreement between PA/KPA/PPK and Goods/Services Providers is a legal relationship that has been regulated with legal consequences, so that a form of limitation such as whether it is related to the contract can be declared valid. A contract is declared valid if it fulfills the provisions contained in Article 1320 of the Civil Code. The valid requirements include mutual consent, capacity, specific terms, and a lawful cause. If all four valid requirements of the contract are met, the contract entered into by the parties with the goods or services provider becomes valid and legally binding on the parties who have agreed to it.

For construction work, the form of contract between PA/KPA/PPK and Goods/Services Providers is a letter of agreement (Presidential Regulation, 2018, Article 28 paragraph (1)). The agreement letter used for such procurement is for a value of at least Rp. 200,000,000 and for the procurement of consulting services with a value of at least above Rp. 100,000,000.00 (one hundred million rupiah).

In a contract for the procurement of construction goods/services, the elements that constitute the agreement must also be fulfilled, namely:

**a. Legal Actions**

As mentioned above, a contract is a written agreement between PA/KPA/PPK and Goods/Services Providers.<sup>190</sup> According to Article 1233 of the Civil Code, each of the obligations arising from the agreement and the law is as such. An agreement is understood as one of several sources of obligations.<sup>191</sup> Article 1313 of the Civil Code states that an agreement is understood as a form of action whereby an individual or individuals bind themselves to another individual or individuals. Thus, the

relationship between the PA/KPA/PPK and the Goods/Services Provider constitutes an obligation.

The rights of contractors and construction planning consultants are to receive payment in accordance with the contract from the party that is the contractor or subcontractor. The obligation of the contractor is to complete the work in accordance with the price stated in the contract of the party that is subcontracting the work. The obligations of the consultant are to plan the implementation, prepare a description of the work plan and related requirements that have been determined, accompanied by drawings, while at the same time supervising the work process by the contractor in accordance with the clauses in the relevant agreement. The rights and obligations of the above parties can be referred to as a form of rights. In a procurement contract related to goods or construction services, the rights and obligations of the parties involved may be regulated in a specific manner in the clauses of the agreement.

The main obligation of the contractor is to receive payment in accordance with the contract stipulated by the client, as well as the right to receive an advance payment from the client in accordance with what has been agreed or promised. Regarding the obligations of the contractor, these can be classified into two categories: primary obligations, which involve completing the work assigned by the client, and additional obligations, which include complying with and implementing the general regulations in force in this country, including those related to labor relations and workplace safety. The work must be completed independently and may not be delegated or assigned in its entirety to another party or third party. Preventive measures must be taken to ensure that the work is carried out correctly and not otherwise.

#### **b. Agreement/consensus**

A contract for the procurement of construction goods/services is considered valid if it meets the provisions of Article 1320 of the Civil Code. The validity requirements include mutual consent, capacity, specific terms, and alignment with the underlying reasons for the terms. The mutual consent referred to in the principles of this article is understood as a fundamental principle of urgency, as it carries consequences: if the parties have made efforts to reach an agreement, then the contract that has been signed or agreed upon is deemed valid or fair, although in practice, contracts that utilize the term “mutual consent” often give rise to disputes or conflicts regarding the rights involved.

Article 1321 of the Civil Code provides an explanation that the provisions cannot be agreed upon in full, stating: “an agreement is invalid if it is made due to error, coercion, or fraud.”

Article 1321 of the Civil Code explains that the terms of an agreement must be freely presented in order to be binding, because

agreements presented through negligence, coercion, or fraud are not binding and are known to be legally invalid or contrary to the agreement.

**c. Subject Matter of the Agreement.**

Check agreements or related to performance can take the form of presenting something, creating something, or not doing anything. According to the Civil Code, the object of an agreement must meet several conditions, namely:

**1) A specific or determinable thing**

Article 1320 paragraph 3 of the Civil Code states that an agreement must be related to a specific matter. It is understood that what has been agreed or stipulated in an agreement process must relate to a specific matter or be related to goods that are clear in nature or of a specific nature. This requirement is necessary to establish the rights and obligations of the parties in the event of a dispute or problem (Subekti, 1991). Furthermore, Article 1333 of the Civil Code explains that the subject matter of the agreement must at least be determined in terms of its type. Pasal 1320 ayat 3 Kitab Undang-Undang Hukum Perdata menyatakan bahwa suatu perjanjian harus berkaitan dengan hal yang tertentu. Dipahami bahwa apa yang telah disepakati atau diatur dalam proses perjanjian harus berkaitan dengan hal yang tertentu atau berkaitan dengan barang yang jelas sifatnya atau bersifat tertentu. Persyaratan ini diperlukan untuk menetapkan hak dan kewajiban para pihak dalam hal terjadi sengketa atau masalah (Subekti, 1991). Selain itu, Pasal 1333 Kitab Undang-Undang Hukum Perdata menjelaskan bahwa objek perjanjian setidaknya harus ditentukan dalam hal jenisnya.

**2) The object is permissible (for lawful reasons)**

Article 1335 of the Civil Code explains that contracts without cause or with false or prohibited causes have no legal force. Based on the understanding of the nature of prohibited causes in Article 1337 of the Civil Code, it is stated that a cause is prohibited if it is prohibited by law or based on law, or if it conflicts with public morality or public order. Based on the relevant provisions, it can be understood that a cause is lawful if it does not conflict with or is consistent with the law, public morality, and public order.

The law does not provide an understanding of what is meant by cause. The understanding of cause can be explained as the content or purpose of a contract (Badrulzaman, 1995), or what the parties intend to achieve by entering into the contract (Satrio, 1996). The consequences derived from the contract are based on Article 1320 of the Civil Code, as determined in Article 1338, paragraph 1 of the Civil Code, which pertains to contracts that have been validly entered into and are enforced as a form of law against the parties involved in their creation.

### 3) His achievements may be feasible.

Yes, in the past, differentiation efforts have been made regarding objective and subjective impossibility. In the case of impossibility regarding the object or objective impossibility, something cannot be carried out by any party, so it will not result in an agreement. On the other hand, regarding subjective impossibility, the impossibility of performing is known only to the debtor party involved, so it does not prevent the formation of a contract. In further developments, both Pitlo and Asser explain that there is no relevance to questioning the impossibility of performing objectively and subjectively. The impossibility of the debtor fulfilling their obligation should be reviewed from the creditor's perspective. If the creditor understands or should have understood the impossibility, then the agreement is canceled or void. Conversely, if the creditor does not understand or is unaware, the debtor remains obligated to fulfill their obligation.

#### d. The Parties

In a construction contract, the Parties to the Contract consist of two parties, namely:

- a. The first party, namely the official, signs the contract (PA/KPA/PPK);
- b. The second party, namely the party acting as the provider, has been appointed as the representative to carry out the related work;

The identities of the parties concerned have been specified in the contract document, including their names, positions, and addresses, as well as their respective roles as the first or second party as stated in the contract.

In a form of procurement agreement, there is equality and balance between users and providers, with the parties involved making efforts to protect their rights and interests under the law. The parties involved in the procurement activity are each given the opportunity to participate in the drafting of a contract or agreement, which is then studied, agreed upon, and implemented or executed.

The equality of the parties is evident in the General Terms and Conditions of Contract (SSUK) for the procurement of construction goods/services. In preparation for the meeting on the implementation of the relevant contract, the official authorized to sign the contract will sit together with the party providing the meeting. The following will be discussed jointly at the meeting:

- a. Reviewing the contract and dividing the tasks and responsibilities of both parties;

- b. Efforts to update work plans, such as on the effective date of implementation, and related to the stages of implementation through relevant contracts;
- c. Seeking to review the planning of performance appraisals as a basic form of evaluating the progress of work;
- d. Attempt to discuss how and when to report on the work;
- e. Related to the mechanism, timing, and frequency of measurement and reporting, adjusted to the circumstances of the work;
- f. Seeking clarification on matters that are still unclear and discussing them in relation to the procedures for change management; and
- g. Clarification efforts were carried out regarding the planning of coordination with the parties during the implementation of the work.

The outcome of the meeting that was prepared for the implementation of the contract is recorded in the Minutes of the Contract Implementation Preparation Meeting, which was signed by all meeting participants. This means that the PPK and the Provider are on equal footing, whereby any objections or suggestions from either party can be accommodated in the meeting.

#### **e. Legal consequences**

A contract is understood as a legal relationship between two parties or more, involving a party that has rights and a party that has obligations to perform. Classical contract theory states that a contract is understood as a legal act involving two causes, namely an offer from one party and an acceptance from the other party based on mutual agreement. The current understanding of a contract is a legal relationship between two individuals or more who enter into an agreement that produces legal consequences.

Legal consequences are understood as a form of risk that is borne if one of the parties breaches the agreement. If one of the parties breaches the agreement, the party that suffers losses can file a claim for compensation. In the procurement of goods or construction services, there is a legal risk to the design stage of the contract if it is not prepared carefully. Some of the possible risks include losses incurred by the state, breach of contract, unlawful acts, maladministration, risks related to contracts that are legally void or subject to cancellation, suppliers who are known to lack adequate permits for conducting their business, legal disputes between suppliers and subcontractors, contract prices that exceed regulatory provisions, and other risks.

These legal risks can be avoided if the parties to the contract can carefully draft the Construction Goods/Services Procurement contract. In designing the contract, the parties involved in the PPK have a responsibility or duty to establish the contract design in accordance with

Article 11(1)(d) of Regulation No. 16 of 2018, which addresses procurement of goods or services in the government sector and requires the service provider to pay attention to several critical aspects in the design of the Construction Goods/Services Procurement Contract. Construction Services.

**f. Relationships between the Parties to the Construction Contract.**

Legal risk is understood as something that can be avoided by understanding the legal subjects of the parties because it can bring about an assessment of whether the subject of the law is within the scope of the law or otherwise. When the legal subject in a contract does not have the capacity, there is a potential for the contract to be canceled. This is stated in Article 1320 of the Civil Code, which states that: For consent to be valid, four conditions must be met:

- a) An agreement made by the relevant parties that is binding in nature;
- b) Conversations to establish a form of agreement;
- c) A specific issue;
- d) A reason that is not prohibited.

The first and second conditions are referred to as subjective conditions, meaning that if they are not fulfilled, the contract can be canceled. The third and fourth conditions are referred to as objective conditions because if they are not fulfilled, the contract can be legally canceled.

Understanding of legal subjects, namely who can have rights and the capacity to perform actions in a law, or in other words, who has the legal capacity to have rights. Individuals who act as subjects in law are classified into two categories, namely *natuurlijke persoon* or *menselijk persoon*, which refers to individuals in human form or as individuals, and *rechtspersoon*, which refers to individuals in the form of legal entities or individuals that are realized legally in a fictional manner. Legal entities are classified into two types: public legal entities and private legal entities. (Kansil, 1995).

In relation to the subject of public legal entities, Article 1 point 10 of Perpus No. 12 of 2021, which discusses amendments to Perpus No. 16 of 2018 concerning procurement efforts for goods or services, it is stated that the BPK is understood as an official authorized by the PA/KPA to make decisions and/or take actions that may result in expenditures from the state budget, regional budget, or local government budget. In conducting a review of the contract subject, the validity of the PPK in signing the contract based on the decision letter issued by the KPA regarding the appointment of the PPK requires attention. Additionally, mitigation efforts are required in the event of staff transfers or retirements, ensuring that the PPK signing the contract possesses the legal capacity to act as a representative of the relevant public legal entity.

CV, and also civil partnerships. In a partnership, the organ with the right to sign contracts is each partner of the partnership (Law, 2018, Article 17), while in a CV, the partners with the right to sign contracts are active or complementary partners (Law, 2018, Article 19). while in a civil partnership, the right to sign contracts is held by each partner who represents themselves to third parties, unless one or more of them have been authorized to act as representatives of the partnership (Ministry of Law and Human Rights Regulation, 2018).

The PPK also needs to review the deed of establishment or amendment of the firm, CV, and related civil partnerships. It is necessary to ensure that the name of the representative in the contract is included in the deed and that they have the legal authority to sign and be bound by the contract. If it is found that the party representing the contract is not listed in the deed, then that party is obliged to obtain a power of attorney from the party that is legally authorized based on the deed to sign the agreement to be agreed upon. Furthermore, the documents related to the actor must be accompanied by a registered certificate or SKT obtained from the Ministry of Law and Human Rights. If there is a change to the deed, the deed that has been changed must also be accompanied by an SKT from the relevant ministry (Permenkumham, 2018).

Meanwhile, in legal entities, including limited liability companies (PT), cooperatives, and foundations, the body authorized to sign contracts is the board of directors<sup>210</sup> in limited liability companies, the board of trustees<sup>211</sup> in foundations, and the board of directors<sup>212</sup> in cooperatives. The PPK also requires verification of whether the party acting as the representative of the relevant legal entity is listed in the deed of incorporation and is legally authorized to act as the representative of the relevant legal entity to sign the documents used for the agreement. If the party acting as the representative of the legal entity is not listed in the deed, the relevant party must obtain a power of attorney from the legal entity that is legally valid to sign the agreement.

#### 4. Conclusions

Based on the results of the analysis in this study, several conclusions can be drawn, namely:

- 1) The relationship between the government (PA/KPA/PPK) and construction service providers is a contractual relationship based on an agreement after the provider wins the procurement tender. Based on the Civil Code, this construction contract agreement is a source of obligation and the relationship between the parties is reciprocal. The relationship between the parties is balanced and equal, in accordance with the purpose of the agreement to achieve a balance of interests between the parties. In a legal context, this relationship is unique because it is a mixture of public and private law (mixed law or *gemeenschappelijkrecht*). Public law refers to law related to administration, while

private law refers to law related to contracts. The nature of mixed law is demonstrated by the procurement process through tendering. Tendering is understood as a unique process. It is conducted to facilitate a form of agreement, as the winner is the party that submits the best offer. This is followed by the issuance of the Letter of Appointment for Goods and Services Providers (SPPBJ). In the context of contract law, the SPPBJ presents the statement of acceptance and, in the context of administrative law, is stipulated in the State Administrative Decision (KTUN). Thus, from a civil law perspective, the relationship between the PA/KPA/PPK and the Supplier in government procurement of goods/services begins with the signing of the contract and ends with the termination of the contract.

- 2) Based on the analysis of documents produced at various stages of the procurement of construction goods/services, documents that fall under the KTUN qualification and KTUN that are excluded from the absolute competence of the PTUN can be sorted. Contract documents are KTUN that are exempt from such absolute competence and are known to be civil law. Documents obtained during the procurement process are subject to qualification as part of that qualification, constituting a form of civil law action, namely documents that have been published or issued as part of the procurement process. Meanwhile, documents obtained prior to the procurement contract must be interpreted as KTUN falling under the absolute jurisdiction of the PTUN.
- 3) In the practice of contract creation and implementation, users of goods/services are in a stronger position, while providers are in a weaker position, making them more likely to comply with the requirements presented by users. This inequality is known to have an impact on the scope of the contract as well as its intent and purpose, which can lead to contractual disputes.
- 4) In construction contracts, there is a legal connection between public and private law. Contracts that seek to involve the government are in fact subject to two distinct legal regimes, namely public law and private law. This is because, when executing a contract that should be subject to private law, the government cannot relinquish its position as a public legal entity subject to public law. This creates a hybrid character in the concept of government.

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