

The Transparency Principles on Procurement of Government Goods and Services Through Ruislag

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ABSTRACT

Abstract: The aim of this paper are to understand and analyze the transparency principles on procurement of government goods and services by virtue Presidential Decree No. 4 2015 on Procurement of Goods and Services which is able to applied in the procurement of government goods and services through ruilslag. The research method using a normative legal approach, since the research will examine and analyze various law priciniples and regulation that are related to the transparency principle on procurement of government goods and services by way of ruilslag. The result of this research described deeply the transparency principle on procurement of goods and services according to Presidential Decree No 4 2015 on procurement of goods and services as the fourth amendment of the presidential regulation No.54 2010 that can be applied in the procurement of goods and services through ruilslag in purpose to be acknowledge by the parties/stakeholders regarding to the formulation of government policy, organization and the enterprises on the implementation of ruilslag, in order to achieve the good governance purpose.

Keywords : Transparency principles; goods and services; ruilslag

INTRODUCTION

Indonesia is a democratic republic in which the interests of its people become the priority by ensuring their welfare fairly. It also becomes a constitutional mandate from the constitution and the people that must be fulfilled directly by government as an executor. Therefore, the authority to manage and control the state assets is left to the government for the sake of people's welfare and prosperity.

It refers to Article 33 (3) of Constitution 1945 of the State of the Republic of Indonesia which explains that the state is not owned by a landowner. The purpose of this

Article is described in Article 2 (1) of UUPA (*Basic Agrarian Law*) in which it also affirms the state's sovereignty in the case of authorizing the state, regulated in Article 2 (2) UUPA, as follows:

1. Controlling and organizing the designation, use, supply and maintenance of the earth, water and space;
2. Determining and controlling the legal relationship of people with the earth, water and space;
3. Determining and controlling the legal relationships between people and legal acts concerning with earth, water and space.

In the recent development era, the meaning and function of “land” for Indonesia is no longer concerns with the meaning of a spiritual magic as believed by the old Indonesian. Now, “land” has a very important meaning. It is not only seen from the economic aspect, but also the other aspects such as social, political, legal, defense, security and so on.

Recognizing the importance of the land functions, there is no alternative for the government except for the processing improvement, control and management of land which are the source of welfare and prosperity related to the legal Government Regulation. In the explanatory memorandum of UUPA, it is stated that one of the UUPA purposes is to lay the basis which provides legal certainty regarding to the land rights for all Indonesian people.

A method which is often used by government in the procurement of goods and services is *ruilslag*, commonly called by *swap*. *Ruilslag* is the realty exchange of land or buildings including the land or building rights. The main principle of this exchange is when the government think that the location of a land or building is out of place and not suitable with the urban planning or no longer suitable in the development needs.

The government, the private sector and third parties have not yet found the right formulation of the development of the goods and services procurement arrangement through *ruilslag* in Indonesia, especially how it ensures the transparency of information as regulated in Law Number 14 Year 2008 on Public Information Disclosure as well as legal certainty for the parties who make an agreement, regarding the legal aspects as a base of *ruilslag* and the existence of government as legal subjects.

In the mandate of Constitution 1945 of the State of the Republic of Indonesia, especially in the preamble section, it is mentioned that the goals of Indonesia are to promote the people's welfare, to improve the nation's intellectual life and to participate in the maintenance of world peace based on freedom, eternal peace and social justice.

Dealing with the statement above, in order to implement the state government which creates the rights and obligations, there are tasks that must be carried out by the state and implemented by the government. One of the important tasks is to implement a financial management and accountability system based on the administrative law rules which govern the state treasury.

The Government Regulation No 27 2014 on the Management of State/Regional Goods, particularly in the substance of Article 64 (1) states that the exchanges of state /regional goods are implemented with the following considerations:

- a. To meet the operational needs of government administration;
- b. To optimize the of state/regional goods;
- c. No funds are available in the state budget and/or regional budget.

If the description above is analyzed, there has been a conflict of position or position of the state from the state control over the country has. In the State Treasury Law *jo*. The implementation of such deviations occurs Article 45 Verse (1) and Verse (2), Article 46 Verse (1) a and b, Article 49, Verse (1) and Verse (3) of Law Number 1 Year 2004 *jo*. Article 23 Verse (1) a and Verse (2), Article 28 Verse (1)b and d, Article 32 Verse (1)b and d, Article 33 Verse (1)e number 1 and number 2, Article 64 Verse (1)b and Article 67 Verse (1)a tod of Government Regulation Number 27 Year 2014 on Management of State or Local Property Article 46 Verse (1) and Verse (2), Article 57 letter b, Article 58 Verse (1) a and b, Article 58 Verse (2), Article 59, Article 70 Verse (1) to Verse (3), Article 74 paragraph (1) a and b, Article 75 letter a to letter d of the Regulation of the Minister of Home Affairs Number 17 Year 2007 regarding Technical Guidelines on the Management of Regional Property

If the issue of property is attributed to Law Number 5 Year 1960 on Basic Regulation of Agrarian Mainstreaming especially Article 2 verse (1) which stated that based on the provisions in Article 33 verse (3) of the Constitutions 1945 and the matters as intended in article 1, the earth's water and space, including the riches of nature contained, are controlled by the highest degree of the state, as the capability of all peoples. From that Article, it it stated that the owner of the earth, water and space and all the natural wealth contained in it is the Indonesian people.

The above description identifies that there has been a conflict of norms between Article 33 (3) of Constitution 1945 of the State of the Republic of Indonesia. Article 2 Verse (1), Verse (2), and Verse (4) of Law Number 5 Year 1960 and Article 45 (1),and Verse (2), Article 46 (1) a and b. Article 49 Verse (1), Verse (3) of Law Number 1 Year 2004 *jo*. Article 23 Verse (1)a, (2), Article 28 Verse (1) b and d, Article 32 Verse (1)b and d, Article 33

Verse (1) e number 1 and number 2, Article 64 Verse (1)b and Article 67 Verse (1)a to d of Government Regulation Number 27 Year 2014 on Management of State/Local Property Article 46 (1), (2), Article 57b, Article 58 (1)a and b, Article 58 (2), Article 59, Article 70 (1) to (3), Article 74 verse (1) a and b, Article 75 a to d. of the Regulation of the Minister of Home Affairs Number 17 Year 2007 regarding Technical Guidelines for Management of Regional Goods.

From the perspective of legal history, the author found the arrangement of state assets which is regulated by the Dutch colonial government (*Nededandsch Indie*) on the State Treasury Law (*Indische Comptabiliteits Wet*) which do not allow the state to exchange assets that are necessary for the administration of colonial government activities.

The validity of procurement of goods or services through *ruislag* is also essential in the procurement of goods or services law. Implementation of the contents of procurement of goods and services is named rights and obligations, which can only be prosecuted by one party to another party and vice versa if the procurement of goods and services made is legal according to law. Thus that validity is crucial in the implementation. The procurement of legal goods and services should not be altered or canceled unilaterally, because the agreements contained in the implementation of procurement of goods and services should become laws for parties services involving the government.

The Implementation of procurement of goods and services which is conducted by the Indonesian government still refers to Article 1320 *Burgerlijk Wetboek* (BW) and some various of Presidential Decree which govern the implementation of state budget revenue, expenditure and guided by regulations relating to the implementation of procurement of government goods and services. The implications of such a situation would affect the legal certainty of procurement of goods and services through *ruislag*.

Ruislag or the exchange of assets of a state or region since the colonial occupation of the Netherlands is an anomaly that does not only raises problems from the legal aspect, but also causes economic, political, social, cultural, defense and security issues. It is referred as an anomaly because in the exchange of assets of state or region in daily language called *ruislag* which means a gap between what should it be (*das soiled*) with what happens in practice or implementation (*das sein*).¹

¹Philipus M Hadjon dan Tatiek Sri Djatmiati. (2005). *Argumentasi Hukum, Cetakan Kedua*. Yogyakarta: Gadjah Mada University Press. p. 7 Hal **kesenjangan sein dan soffen** demikian itu diterangkan Bernard Arief Sldharta: "merupakan suatu konsep dimana hukum berikut kaidah-kaidahnya termasuk dalam dunia "*das soilen*" dan tidak termasuk namun bersumber dan mengarah balik pada dunia "*das seini*" Realisasi dan kepatuhan dalam kenyataan kemasyarakatan hanya mungkin terjadi, dan secara rasional hanya dapat serta layak diharapkan, jika hukum tidak bermuatan kontradiksi dan kaidah- kaidahnya tidak saling bertentangan lihat Bernard Arief Sidharta, Ilmu Hukum Indonesia, Upaya Pengembangan

Regarding to the principle of transparency in the procurement of goods and services, the government must proactively provide complete informations about the policies and services which provides to the public through rusilag. The government should prepare a clear policy on how to obtain information. This policy would clarify the form of information that could be accessed by the public or the form of confidential information, how to obtain information, the length of time to obtain information and complaint procedures if the information does not reach the public.

Nowadays, the principle of transparency has not been a spirit, a paradigm and a norm in governance management. Whereas in Law Number 14 Year 2008 on Public Information Disclosure, it contains the obligation of public agency to announce information about the regional development planning process including APBD, planning, discussion, to determination, spatial plan to the determination, implementation of development activities, the names, structures, duties, and functions of relevant public bodies, ways and procedures for obtaining public information on public bodies; schedule of activities of agency.

In the rules implementation, the Regulation on Transparency as the implementer of Law Number 14 Year 2008 is implemented as a complement and entertainer in order to reduce some annoying comments that encourage government transparency. The presence of regulation is only as a form of justification that the government seems to have intended to be good for, and has been transparent. This means that the provincial and legislative governments were accustomed to make local regulations, but they failed to implemented them. This factor is a cause of the weakness of goverment's procurement of goods and services system which would occur lack of understanding about good governance as embodied in the spirit and principles of good governance in the principle of transparency.

Based on the overall description on background of problems, the authors could put forward several issues to be discussed in this research. The discussion is aimed to find the answer of this research question: *“can the principle of transparency in the procurement of goods and services as regulated in Presidential Regulation No. 4 of 2015 on Procurement of Government Goods and Services be applied in the procurement of goods and government services through Ruilslag?”*

ANALISYS DAN DISCUSSION

The Principles of Transparency in the Procurement of Goods and Services

Before discussing about the further principle of transparency in the procurement of goods and services as regulated in Presidential Regulation Number 4 of 2015 on Procurement of Government Goods and Services which is applied in the procurement of government goods and services through *ruislag*, it is important to understand the meaning of “principle”, that is:

“A fundamental truth or doctrine, as of law; a comprehensive rule or doctrine which furnishes a basis or origin for others; a settled rule of action, procedure, or legal determination. A truth or proposition so clear that it cannot be proved or contradicted unless by a proposition which still clearer. That which constitutes the essence of a body or its constituent part.”²

Thus, principle is defined as a fundamental truth or doctrine, a rule that serves as a basis or basis or rule in action, procedure, or law. Paul Scholten described *“the principle of law as the basic thoughts, contained within and behind the legal system each formulated in the rules of legislation and judgments of judges with which the provisions and decisions individual decisions can be viewed as elaborations”*. While Karl Larenz stated *“the principle of law is the idea that guides in the rule of law (which may exist or which already exists), which is not a workable rule but it can be transformed to the other.”³*

Principles can also be defined as provisions that must exist or must be executed, and a general rule that is used as a guide (for basic behavior). Principle serves as the basis act, could be a reference process and can also be a target achievement. Principles usually contain laws of causality. For example if a person takes a legal action, there will be legal consequences caused by the action.

Moreover, it can be the most basic cause. The meaning of principle is broader than the concept of cause. “Cause” is only distinguishes the existence and dependence of things that are occurred on a cause. In other words, principle is a very important causality. Basically, there is no cause for no reason.

Based on the above definition, principles, basis and rules have the same meaning, because they are fundamental or underlying, so the legal principle (related to the title of the

² Cited in Pria. (2008). *Prinsip Hukum Investasi Pertambangan Umum*, Disertasi Program Pascasarjana Universitas Airlangga Surabaya. hlm. 8

³ Ibid

dissertation) is the fundamental or the foundation underlying the rule of law as a frame of thought..

In the Indonesian dictionary, “principle” (prin.sip) means (n) the principle (the truth that became the basic thinking); basic.⁴ (*asas (kebenaran yang menjadi pokok dasar berpikir); dasar.*⁵ In Indonesian-english dictionary, *Principle* is translated as: (1) base , foundation, (2) principle, (3) establishment.⁶

The Oxford Dictionary describes the principle as: (1) the moral rule or strong belief that influences your actions; (2) basic general truth.⁷

Law Dictionary divides the principle into two definitions: *principia prima* and *principia secundarian*. *Principia prima* means the norms which are fundamental, universal, absolute and eternal in life (applicable to all nations and times). *Principia secundarian* means the norms which are not fundamental, not universal, not absolute, but relative, depending on the human.⁸

From the statement above, the principle is defined as the understanding and norms which form the basis or starting point of thinking about something that is abstract, for example; the principles of the rule of law, the principle of legal protection, the principle of free opinion.

Meanwhile, transparency is the principle of creating mutual trust between the government and the community through providing information and ensuring the ease in obtaining Information. Both of them are needed for the community to participate in the management of governance.

Krina (2003) defined transparency as a principle that ensures the access or freedom for everyone to obtain information about governance, for instance, the information about the policy of process and its implementation as well as the results achieved.⁹

Transparency is an open policy for supervision. While the meaning of information is information about every aspect of government policy that can be reached public. Disclosure of information is expected to result in fair political competition, tolerance, and policies made to predate public preferences.

⁴Online Indonesian Dictionary. (<http://kamus.bahasa.indonesia.org/prinsip/mirip>, download, June, 25th 2011.

⁵ Online Indonesian Dictionary. (<http://kamus.bahasa.indonesia.org/prinsip/mirip>, download, June, 25th 2011.

⁶ Jhon M Echols, Hassan Shadily. (1984). Kamus Inggris Indonesia. Jakarta: P.T.Gramedia. hlm.447.

⁷ Oxford Learner's Pocket Dictionary. (2003). New Edition. Oxford University Press. hlm.340.

⁸Law Dictionary. 2008. Bandung:Citra Umbara. hlm.31 dan 401. Lihat juga Immanuel (2005). Kant tentang *First and Second Principle dalam Hari Chand, Modern Jurisprudence*. Selangor: International Law Book Service. hlm.48.

⁹<http://pengertian-pengertian-info.blogspot.co.id/2015/05/pengertian-transparansi-menurut-ahli.html>, downloaded on January 1th 2016.

According to Hari Sabarno (2007: 38) transparency is one of the fundamental aspects for the realization of good governance. Good governance realization requires transparency, involvement, and ease of access for the community to the government administration process transparency and the ease of government information influence to the realization of other indicators.

The meaning of transparency in the implementation of local government can be seen in two things, namely;

1. One of government responsibilities to the people
2. The efforts in improving the good governance and administration management and reducing the opportunity of collusion, corruption and nepotism (KKN) practices.

Agus Dwiyanto (2006: 80) defined transparency as providing information about government to the public and ensuring the ease in obtaining accurate and adequate information. From this understanding, it is explained that transparency does not just provide information about the administration of government, but it must be accompanied by convenience for the public to obtain such information.

Agus Dwiyanto revealed three indicators that can be used to measure the level of transparency of government administration. First, measuring the level of public service process transparency. The requirements, costs, times and procedures taken must be publicly publicized and readily known to the needy, and tried to explain the reasons. The second indicator refers to how easily the rules and procedures of service can be understood by other users and stakeholders. These rules and procedures are simple, straightforward and easy to apply for reducing the interpretation differences. The third indicator is the ease of obtaining information about various aspects of public service delivery. The information is freely available and readily available.

Mardias commented that transparency is a government's straightforwardness in making local financial policies in order to be recognized and supervised by Regional House of Representatives (DPRD) and the community.”¹⁰

Meanwhile, Tjokromidjoyo explained that transparency can be known by many parties involved about policy formulation (politics) from government, organization and business entity. A good governance does not allow the government management which is being closed.¹¹

¹⁰ Mardiasmo, *Op.cit.* hlm. 30.

¹¹ Bintoro Tjokromidjoyo, *op.cit.* hlm. 123

Dealing with the statement above, Afan Gaffar, as mentioned in Dede Rosyada's book, proposed that there are 8 aspects of budget management mechanism of the state which must be done transparently as follows:

1. Determination of position or status
2. The wealth of public officials
3. Awarding
4. Determination of policies related to the enlightenment of life
5. Health
6. Morality of officials and apparatus of public servants
7. Security and order
8. Policies strategies for the enlightenment of people's lives

The concept of transparency by the Organization for Economic Cooperation and Development (OECD):¹²

“As transparency is a core governance value., the regulatory activities of government constitute one of the main contexts within which transparency must be assured. There is a strong public demand for greater transparency, which is substantially related to the rapid increase in number and influence of non governmental organisations (NGOs) or „civil society groups“, as well as to increasingly well educated and diverse populations.”

According to him, the concept of transparency is the main value of government system. The main context of government activity should be believed based on transparency. There is a public power which demand a greater transparency. In truth, it has relation to the acceleration and influence on private organizations, as the increase of population continues. This means that public demand for transparency is getting stronger.

On the other hand, Smith argued that the transparency process includes:¹³

- 1) *Standard procedural requirements*, is the regulatory process that should involve participation and concern for the needs of the community.
- 2) *Consultation processes*, The existence of dialogue between government and society
- 3) *Appeal rights*, is the primary protector in the regulatory process. It is standard and not convoluted and transparent to avoid corruption.

L. Misbah Hidayat argued transparency is meant that the public should be able to obtain information freely and easily about the process and implementation of the decisions

¹² Smith, Rex Deighton, 2004. *Op.cit.* hlm.66

¹³Smith, Rex Deighton, *Ibid.* Smith, hlm. 66

taken. In general, public accountability will not occur without the transparency and clarity of the rule of law.¹⁴

Transparency is an open policy of supervision, meanwhile information is every aspect of government policy that can be reached by the public. The information disclosure is expected to result a fair political competition, tolerance and policy which made on the basis of public preference.¹⁵ It is built on the basis of free information flows. All government processes, institutions and information need to be accessible to interested parties, and the information available should be sufficient to be understood and monitored.¹⁶

From the various views of experts on the definition of Good Governance and Transparency above, it is concluded that both have a significant correlation where a good governance means that they has applied transparency principles. This is possible because the principles of Good governance include: Transparency, Integrity, Accountability, Responsibility and Participation.

By looking at the above description, the principle of government transparency can at least be measured through a number of indicators as follows:

- a. There is a clear and easily understood system of openness and standardization of all governance processes.
- b. The existence of mechanisms that facilitate public questions about processes in governance.
- c. The existence of reporting mechanism and dissemination of information deviation action of public apparatus in government administration activity.

Transparency Principles in Presidential Regulation Number 4 of 2015 on Procurement of Government Goods and Services Applied in the Procurement of Goods and Services

Regarding to Presidential Regulation No. 4 of 2015 on Procurement of Government Goods or Services which is applied in the procurement of government goods or services through Ruilslag, the Government should be proactive in providing comprehensive information on the policies and services which provides to the community, especially the procurement of goods and services through rusilag by government.

The government should prepare a clear policy on how to obtain the information. This policy will clarify the form of information that can be accessed by the public or the form of confidential information, how to obtain information, the length of time to obtain information and complaint procedures if the information does not send to the public.

¹⁴ L Misbah Hidayat, *Op.cit*, hlm. 23.

¹⁵ Meuthia Ganie Rahman, *Op.cit*, hlm. 151

¹⁶ <http://www.transparansi.or.id>. *Masyarakat Transparansi*. 2007. Diakses, 27 Februari 2015

The basic instrument of transparency is a regulation that guarantees the right to obtain information, while supporting instruments are database facilities, information, communication facilities and guidelines for dissemination of products and information present in government organizers, as well as complaint procedures. For that the existence of the Regional Law of Transparency is a legal product that provides guarantees to regulate the right to gain access and dissemination of information to the public. Moreover, transparency has indeed become a kind of international social norms that must exist to ensure the implementation of an accountable and transparent government system as a key to the realization of good governance..

Within the system, there are several prerequisites that must be met when transparency and accountability become a barometer. Among those prerequisites is the assurance that all important events of government activity (the activities of public bodies) are recorded well with clear and summarized measures through the information process whereby we can see everything that happens and is contained therein.

By the transparency of government which supported by a clear legal protection, the community's knowledge will enlarge towards the administration. The increasing of public confidence to the government will ensure the increasing number of people who participate in the development of the region and will be able to minimize the reduction of violations or irregularities in the management of government.

The emergence of Regional Law on The Provincial and District Governments Transparency assisted the public trustworthiness to governance at the provincial and district government levels. However, the problem is no political from government will effectively implement the Regional Transparency Law. Although it has been regulated, the implementation of local regulations on transparency is still ignored.

In fact, transparency has not been a spirit, paradigm and norms in governance yet. Whereas the Regional Law contains the obligation of public body to announce information actively about regional development planning process including regional budget, start planning, discussion, determination, spatial plan, implementation of development activity, name, structure, duty and function of public body related, procedures for obtaining public information on public bodies and schedule of activities of public bodies.

At the implementation process, the Regional Transparency Law is merely a complement and an entertainer in order to stop the comments that encourage government transparency. The presence of regulation is only as a form of justification, that the government seems to

have intended to be good, and has been transparent. The Provincial Government considers that transparency has been done when the debt is already in place.

The provincial and legislative governments are used to make local regulations, but failed to implement them. It means that the executive does not understand about the law. This is because the executive did not understand about how to manage a good governance as embodied in the spirit and principles of good governance. Every statements appeared indicate that as a leader, the government is the one who did not understand about it. The local governments must be clear to implement the rules that they made.

A serious response often came from the representatives of the people, it is very fierce to encourage the implementation of this regulation, but it did not have a strong idea that can encourage the provincial government to seriously implement the law. The movement did not happen massively in Parliament, in fact there may still be some who think or think that the law is not something important. As revealed by Tjokromidjoyo that transparency is known by many parties (concerned) about the formulation of policy (politics) from government, organization and business entity.

This means that the transparency of the procurement of goods and services through *ruislag* aims to be known by many parties (of interest) concerning the formulation of policies (politics) of government, organizations and business entities in the implementation of *rusilag*, so that a good governance is achieved. This is in accordance with the concept of transparency according to the Organization for Economic Cooperation and Development (OECD).¹⁷

The concept of transparency is a key value of the governance system. The main context of government activity should be believed to be based on transparency. There is a public power demanding greater transparency. In essence, it has to do with acceleration and influence on private organizations, as the increasing of population. This means that the public demand for transparency has been strengthened, since transparency breeds opened policy for the implementation of government procurement of goods and services through *ruislag*.

The principle of transparency in the procurement of goods and services as regulated in Presidential Regulation Number 4 of 2015 as the fourth amendment of Presidential Regulations No. 54 of 2010 applied can first be described that the type of goods or services required by government agencies are classified in in to 4 kinds:¹⁸

- a. Goods

¹⁷ Smith, Rex Deighton. *Op.cit*, hlm. 66

¹⁸ Menurut Abu Sopian, *Op. Cit.* Hlm. 5

It is any good that is tangible or intangible, moving or immobile, having many purposes such as being traded, used, used or exploited by the consumer.

b. Construction work

It is all work related to the implementation of building construction or the manufacture of other physical forms.

c. Consulting Services

It is a professional service that requires certain skills in various fields of science that prioritize the mindset.

d. Other services

It is a service that requires prioritize skills in a governance system other than consulting services, such as catering services, hygiene services, labor supply services, import services, tailoring services and others.

In Presidential Decree Number 54 Year 2010 Jo. Presidential Decree No. 35 of 2011 Jo. Presidential Regulation Number 72 Year 2002 Jo. Presidential Regulation No. 172 Year 2014 Jo. Presidential Regulation No. 4/1955 on the Procurement of Government Goods / Services and other regulations which are the guidance for persons involved in the procurement process of goods and services in order to be at the same perception of the meaning of procurement of goods and services of the government that is "*activities to obtain goods or services by ministries or institutions or Working Units of Regional Devices / other institutions whose processes start from the planning of needs until the completion of all activities to obtain goods and services*"

The organization of procurement of goods and services needs to be made in the procurement process. There are two organizations for procurement of goods and services, namely the organization of procurement of goods and services through self-management and procurement organizations of goods and services for procurement through providers of goods and services.¹⁹

The procurement of goods or services made by the government is intended to obtain goods and services with appropriate price criteria, appropriate quality, exact quantity (volume), partners and appropriate procurement way and other agreements in accordance with the the others made so that users can take advantage of goods and services.

To obtain goods or services conducted through rusilag, there are basic principles to be followed: efficient, effective, open and competitive, transparent fair and non-discriminatory and accountable. As stated in Government Regulation Number 6 of 2006 on State or Regional

¹⁹ Much. Nurachmad, *Op.cit.*, hlm.7

Property Management, "*Procurement of state or regional goods is carried out on the basis of efficient, effective, transparent and open, competing, fair or non-discriminatory and accountable principles*". Therefore, the basic principle becomes the legal basis for the parties (providers and users).

The procurement of goods and services through rusilag in government agencies is the main task of the existence of government agencies to not produce them for earning profit, but rather provide services to the community. Finally, the government needs goods or services in order to improve the public service on the basis of logical and systematic thinking, following the principles and ethics as well as based on the methods and processes of procurement or rusilag applicable.

Moreover, the procurement of goods or services through rusilag can be done through third party or self-management. It can be done through auction, selection, direct procurement, direct appointment, contest, contest or through slot. It can also be done by individual agencies, other government agencies or community groups.

The organization of government procurement of goods and services through rusilag which done by self-managed and providers are:²⁰

1. Procurement of government goods and services with self-management.
 - a) Budget use or power of budget users
 - b) Committing Officer
 - c) Committee or official recipient of the work
2. Procurement of government goods and services through providers
 - a) Budget users / power of budget users
 - b) Committing Officer
 - c) Procurement service unit / procurement officer
 - d) Committee / official recipient of the work.

Therefore, the procurement of any goods and services used including through rusilag is expected to be suitable and transparent to all work which start from the tender process in order to achieve the purpose of procurement of goods and services to the community.

There are some things that need to be understood about the procurement of goods and services through rusilag as follow:

1. Rusilag is a form of legal relationship or agreement involving two parties, namely government agencies whose owning land and / or building either other parties or legal entities that will provide replacement land and buildings.

²⁰ Much. Nurachmad, *ibid*, hlm. 7

2. Ruilslag always involves one party of government agencies and private parties as the other party.
3. The objects of ruilslag agreement include the transfer of land and buildings from government agencies to other parties as well as the provision of land and substitute buildings that are transferred from other parties to government agencies.

Thus, Ruilslag is not an exchange or trade agreement or procurement of goods as regulated in the rules of procurement of goods for government agencies instead of a new form of covenant whose naming is unknown in the Civil Code. As a new form, ruilslag contains elements of exchange agreements and procurement of goods or services. Therefore, both of them contain the equation and fundamental difference

Between ruilslag and exchange, there are goods (land or buildings) owned by each party which will be handed over or exchanged from one party to another. The differences are in the condition and status of the delivered goods rights. In the exchange agreement, the goods submitted by each party to the other party in the condition and status of the rights as they are in the event of an agreement and surrender. If the goods inside are in certain condition and have the right of ownership or use right, then the goods are delivered or exchanged in the same condition as property rights rights..

On the contrary, ruilslag is not land and buildings which handed over as is when the agreement is reached but the right of the land can not be submitted as it must be adjusted in advance to the status of the rights which can be owned by the private parties who are parties to the agreement.

The land owned by a government institution only has the right to use without a time limit. The right status can not be owned by private parties so that it must be released to the state and changed to building rights or other rights in accordance with its designation. Likewise, substitute land and buildings belonging to a private party which originally had the right to use the building or the right to own property, then when to be disinfect to the government institution must be released to the state or region to then changed its status into the right to use indefinitely.

Ruilslag and government procurement contains agreements on the provision of land and buildings construction and the various facilities necessary for the conduct of government activities, referred to as substitutes. The difference are in the source of financing the provision of land, building construction and ownership status.

In government goods procurement agreements, fee are entirely sourced from government agencies so that the consequences from the outset of the goods (land and

building) are the property of the government agency who ordered them. In contrast, in the ruilslag agreement, the fee of providing land and building is entirely sourced from the private parties who made the agreement. Consequently, the land and buildings are initially held as property or belonging to the private sector until the owner is processed to be handed over to the government agency.

Furthermore, ruilslag agreement must be obedient to the provisions and principles of the treaty law. Because of the government agencies involvement, the procurement of government goods and services through rusilag also contains the principles which regulated at this time : Law Number 23 of 2014 on Local Government and in Presidential Regulation No. 4 of 2015 on Procurement of Government Goods or Services as the Fourth Amendment to Presidential Regulation No. 54 of 2010 which Applied in Procurement of Goods and Government Services through Ruilslag and the others regulation.

CONCLUSION

Based on the results, the answers that can be concluded by the researcher to the problems in this research are: The principle of transparency in the procurement of goods and services as regulated in Presidential Regulation No. 4 of 2015 on Procurement of Government Goods or Services as the fourth change Presidential Regulation No. 54 of 2010 can be applied in the procurement of government goods or services through ruilslag because the transparency of it aims to be known by many parties (concerns) about the formulation of policies (politics) from government, organizations and business entities in the implementation rusilag, for good governance to be achieved.

Bibliography

Books

- A. Hamid S Attamimi. (1990) *Peranan Keputusan Presiden Dalam Penyelenggaraan Pemerintahan Negara Suatu Studi Anaiisls Mengenai Keputusan Presiden Yang Berfungsi Pengaturan Dalam Kurun Waktu Pelita I-Pelita IV*. Jakarta: Disertasi Fakultas Pascasarjana Universitas Indonesia.
- Algra, N. E. *Rechtsgeleerd Handwoordenboek*, Tweede Druk, Groningen, J.B Wolters Uitgeversmaatshaapij N.V.(1951).
- Andre Ata Ulan. (1999) *Keadilan dan Demokrasi (Telaah Filsafat Politik Jhon Rawls)*. Yogyakarta: Kanisius
- Anonim, (1996)*Ensiklopedi Hukum Islam*. Jakarta: Ichtiar Baru Van Hoeve

- AP. Parlindungan. (1994) *Komentar Atas Undang-Undang Pokok Agraria*. Bandung: Mandarmaju.
- Arief Shidarta. *Konsep Diskriminasi dalam Perspektif Filsafat Hukum*. 118-119.
- Arifin P Soeria Atmadja. (2009) *Keuangan Publik Dalam Perspektif Hukum, Teori, Kritik dan Praktik, Cetakan Pertama*. Jakarta: Rajagrafindo Persada
- Aristotle, (2004) *"The Ethics of Aristotle"*. Pennsylvania State University
- Bagir Manan. (1996) *Bentuk-Bentuk Perbuatan Keperdataan Yang Dapat Dilakukan Oleh Pemerintah Daerah*, Majalah Ilmiah Universitas Ilmiah Padjajaran, Nomor.3, Vol. 14
- Bahsan Mustafa. (1990) *Pokok-Pokok Hukum Administrasi Negara*. Bandung: Citra Aditya Bhakti
- Bernard Arief Sidharta. (2005) *Ilmu Hukum Indonesia, Upaya Pengembangan Ilmu Hukum Sistematis Yang Responsif Terhadap Perubahan Masyarakat, Cetakan Pertama*. Yogyakarta: Genta
- Bertrand Russell. (1946) *History of Western Philosophy and its Connection with Political and Social Circumstances from the Earliest Times to the Present Day*. London: George Allen and UNWIN LTD.
- Gunawan Wiradi. *Reforma Agraria Perjalanan Yang Belum Berakhir*, Cetakan Pertama, KPA. Yogyakarta: Insist Press serta Pustaka Peiajar.
- Hans kelsen. (1957) *What Justice?: Justice, Politic and law in the Mirror of Science*. University of California Press.
- Herlien Budiono. (2006) *Asas Keseimbangan bagi Hukum Perjanjian Indonesia*, Bandung: Citra Aditya Bakti
- Imam Koeswahyono. (2016) *Politik Hukum Tukar Menukar Barang Milik Negara/Daerah Dalam Konteks Pengelolaan Barang Milik Neagra/Daerah Yang Berkeadilan, Disertasi, Program Doktor Ilmu Hukum Fakultas Hukum Universitas Brawijaya, Malang*.
- Immanuel Kant. (2005) *First and Second Principle dalam Hari Chand, Modern Jurisprudence*. Selangor: International Law Book Services.
- Ismi Dwi Astuti Nurhaeni. (5 Mei 2011) *Pidato Pengukuhan Guru Besar Bidang Ilmu Administrasi Negara, Fakultas Ilmu Sosial dan Ilmu Politik Universitas Sebelas Maret*.

- J.H. Rapar. (1993) *Filsafat Politik Plato*. Jakarta: Rajawali Pers.
- J.J. Brugink, *Rechtsreflecties*. (1995) *Alih bahasa Arif Sidartha*. Bandung: Citra Aditya Bakti
- Jhon M Echols, Hassan Shadily. (1984) *Kamus Inggris Indonesia*. Jakarta: PT GRAMEDIA
- Jimly Asshiddiqie. (2010) *Konstitusi Ekonomi*. Jakarta: Kompas
- John Rawls. (1971) *Teory of Justice*. Newyork: Oxford University Press Inc
- Karl H. Peschke.(1985) *Christian Ethics, Vol I, Divine World Publications*. Filipina: *St.Cruz, Manila*
- Lalu Wira Pria. (2008) *Prinsip Hukum Investasi Pertambangan Umum*, Disertasi Program Pascasarjana Universitas Airlangga Surabaya
- Liam Murphy dan Thomas Nagel. (2002) *The Myth of Ownership, First Published*. Newyork: Oxford University Press.
- Lihat van Apeldoorn. (1993) *Pengantar Ilmu Hukum*. Jakarta: Pradnya Paramita
- Majid Khadduri. (1999) *The Islamic Conception Of Justice* terjemahan H.Mochtar Zoeni. *Teologi Keadilan Perspektif Islam*. Surabaya: Risalah Gusti
- Muchsan. (1988) *Beberapa Catatan Tentang Hukum Administrasi Negara dan Peradilan Administrasi di Indonesia*. Yogyakarta: Liberty
- O.Notohaamidjojo. (1971) *Masalah Keadilan*. Semarang: Tirta Amerta.
- Otong Rosadi dan Andi Desmon. (2012) *Studi Politik Hukum, Suatu Optik Ilmu Hukum, Cetakan Pertama*. Yogyakarta: Thafa Media.
- Oxford Learner's Pocket Dictionary New Edition. (2003) Oxford University Press
- eter Mahmud Marzuki. (2008) *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group
- Philipus M Hadjon dan Tatiek Sri Djatmiati. (2005) *Argumentasf Hukum, Cetakan Kedua, Gadjah Mada University Press*. Yogyakarta
- Plato, *Republik*. (1978) terjemahan F.M. Cornford Oxford University Press
- R. Poedjawijatna. (1978) *Pembimbing Ke Arab Alam Filsafat, Cetakan Keempat*. Jakarta: FT Pembangunan
- Raymond Wacks. (2012) *Understanding Jurisprudence An Introduction to Legal Theory, Third Edition, Online Resource Centr*. Newyork:Oxford University Press

- Roger Cotterrell.(1994) *The Politics of Jurisprudence, A Critical Introduction to Legal Philosophy, Second Print. USA:University of Pennsylvania Press, Philadelphia*
- Roscoe Pound. (2003) *Introduction to the Philosophy of Law*. Law Book Exchange Ltd.
- Samsons H.D, C.J.N. (1984) *Versteden Inleading Algemeen Besturrecht*, Tjeenk Willink, Alphen aan den rijn.
- Sigit Jatmiko dkk. (2007) *Sejarah Filsafat Barat dan Kaitannya dengan Kondisi Sosio Politik dari zaman kuno hingga sekarang*. Yogyakarta: Pustaka Pelajar
- Sjachran Basah. (1985) *Eksistensi Dan tolak Ukur Badan Peradilan Administrasi Negara*, Bandung: Alumni.
- Soerjono Soekanto dan Sri mamudji. (1985) *Penelitian Hukum Normatif Suatu Tinjauan Ringkas*. Jakarta: Rajawali Press.
- Sogar Simamora. (2012) *Hukum Kontrak (Kontrak Pengadaan Barang dan Jasa Pemerintah Di Indonesia)*. Surabaya: WIN & Partner
- Summa Theologica. (1996) dikutip dari Hilarie McCoubrey & Nigel D. White Textbook On jurisprudence, second edition. Black Stone Press Ltd. 58-5
- Theo Hujbers. (1995)*Filsafat Hukum*. Yogyakarta: Kanisius.
- Yusril Ihza Mahendra. (2002) “Mewujudkan Supremasi Hukum di Indonesia (Catatan dan Gagasan)”. Jakarta: Sekretariat Jenderal Departemen Kehakiman dan Hak Asasi Manusia RI

Regulated Law

- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 10 tahun 1961 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 tahun 1961 tentang Barang Menjadi Undang-Undang.
- Undang-undang Nomor 17 Tahun 2003 tentang Keuangan Negara.
- Undang-undang Nomor 1 Tahun 2004 tentang Perbendahaaan Negara.
- Undang-undang Nomor 14 Tahun 2008 tentang Keterbukaan Informasi Publik
- Undang-undang Republik Indonesia, Nomor 23 Tahun 2014 tentang Pemerintah Daerah, (Lembaran Negara RI Tahun 2004 Nomor 125, Tambahan Lembaran Negara RI Nomor 4437).

Undang-Undang Republik Indonesia Nomor 8 Tahun 2011 tentang Perubahan Atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 70, Tambahan Lembaran Negara Republik Indonesia Nomor 5226)

Peraturan Pemerintah Nomor 27 tahun 2014 tentang Pengelolaan Barang Milik Negara/daerah.

Keputusan Presiden Republik Indonesia Nomor 80 Tahun 2003 tentang Pedoman Pelaksanaan Pengadaan Barang/ Jasa Pemerintah.

Peraturan Presiden Nomor 4 tahun 2015 tentang Pengadaan Barang/Jasa Pemerintah

Peraturan Menteri Dalam Negeri Nomor 17 Tahun 2007 tentang Pengelolaan Barang Milik Daerah.

Keputusan Menteri Keuangan Nomor 350/MMK.03 tahun 1994 tentang Tata Cara Tukar Menukar Barang Milik/Kekayaan Negara.

Keputusan Menteri Dalam Negeri Nomor 11 tahun 2001 pedoman Pengelolaan Barang Daerah.

Keputusan Menteri Dalam Negeri Nomor 17 tahun 2007 tentang pedoman Pengelolaan Barang Daerah.

Peraturan Daerah Provinsi Nusa Tenggara Barat Nomor 8 Tahun 2007 tentang Pengelolaan Barang Milik Daerah.