



Implementation of Procurement Contracts Electronic Based at the Constitutional Court

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Abstract-Procurement has a very important role in implementing government programs and activities. Procurement of Goods and Services is an inseparable part of every activity starting from planning, procurement, and program implementation to accountability. Goods and services procurement activities have an important role in ensuring that government institutions have implemented good government governance, especially in carrying out government governance efficiently, effectively, transparently, and accountably. Procurement is still a very frightening threat for government procurement actors because most of the criminal acts of corruption originate from the process of procuring. Many processes in the procurement still have potency for corruption. To reduce gates in the occurrence of criminal acts of corruption and provide legal certainty for the government and providers of goods and services, the process of procuring goods and services is carried out digitally or electronically starting from the planning process, selection process, contract signing and implementation of activities up to the handover of work and accountability. In this research, the formulation of the problem that can be studied was the urgency of using electronic contracts for the procurement, especially in the Constitutional Court, and how the implementation of electronic contracts for the procurement has currently been carried out at the Constitutional Court. This research aimed to determine the urgency of using electronic contracts and how electronic contracts are implemented in the Constitutional Court. This research uses a descriptive qualitative method based on a literature study. A qualitative approach was used to gain an in-depth understanding of the phenomena that occur and are being researched and described descriptively. The conclusion from this research is that the use of electronic procurement contracts was very much needed in the digital era so that it provides a greater sense of justice and legal certainty for both parties. The use of electronic procurement contracts had not yet been implemented in the Constitutional Court. However, the use of digital signatures as a precursor to electronic contracts had been implemented massively in the Constitutional Court. Nationally, there was still a legal vacuum in regulating contracts for the electronic procurement and its must be amendments, there are no regulations regarding electronic contracts.

Keywords: electronic contracts, procurement of goods and services, digitalization, efficiency

I. INTRODUCTION

Procurement process is very important in government activities. It has a very important role in implementing government programs and activities. Procurement is an inseparable part of every activity starting from planning, procurement, and program implementation to accountability. Goods and services procurement activities have an important role in ensuring that government institutions have implemented good government governance, especially in carrying out government governance efficiently, effectively, transparently, and accountably.

Until now, procurement is still a very frightening threat to government institutions. The reason is that there are many cases in the procurement which result in legal cases and often even criminal cases. According to sources from Kompas, from 2004 to 2022 the Corruption Eradication Commission handled 1,351 corruption cases. Of these cases, 277 or around 20 percent were corruption cases related to the procurement in the government or institution. These cases range from administrative errors to other serious cases (Corruption Eradication Commission, 2023).

Procurement is the process of meeting organizational needs starting from the planning process, selecting providers and, carrying out work. This means that the procurement process has started from the announcement of the procurement plan until the completion of the work with the signing of the work handover minutes. The process of procuring includes planning, selection process, implementation of procurement, until payment.

Primarily, the procurement was carried out conventionally and then developed through the electronic application system. As technology develops and considering that the procurement sector is a sector that is prone to corruption, the government through the Procurement Policy Institute is carrying out digital transformation in the procurement digital transformation. The government issued regulation concerning the procurement which requires the procurement to be carried out electronically. Through electronic procurement, it is hoped that it can reduce the potential for corruption because it is hoped that transparent, efficient, and accountable procurement can be implemented at every stage of procurement.[1]

The electronic procurement process will have positive influence on reducing transaction costs, improving the quality of government governance, and increasing supervision. This right will minimize the occurrence of corruption, which will ultimately increase economic growth.[2]

Digitalization is a process of changing from analog form to digital form. Some experts view process automation through information technology as a digitalization process. Digitalization requires new ways and use of technology and digital data (digital and native digital) to create revenue, and improve/replace/change business processes (not just digitalize them). [3]

Digital transformation in the procurements sector can be defined as the integration of digital technology into all aspects and operations of an organization, which ultimately leads to infrastructure changes in the way the organization operates and provides value to customers.

The digital transformation of procurement is currently being developed by the government, in this case, the Procurement Policy Institute through the government marketplace which has become an e-purchasing platform. This digital transformation is carried out to minimize the occurrence of errors, both intentional and unintentional, so that in the end it is hoped that it will reduce criminal acts of corruption in the procurement sector.

The digital transformation of procurement is expected to give a positive influence on government governance. By electronic procurement, it is hoped that it will be more transparent and efficient. This is in line with the procurement principles explained in Regulation of Procurement, where explains 7 principles that must be adhered to in implementing the procurement including efficient, effective, transparent, open, competitive, fair and accountable.

The procurement process includes planning, selection, implementation, and handover of work. If we look at the stages of the procurement process, the digital transformation process has started to be used from the planning stage and partly at the selection stage. The planning stages are digital application. At the selection stage, some have used digital transformation through the use of e-purchasing marketplaces. However, the order process and contractual engagements are still conventional, using manual signatures/wet signatures. This is often a problem and gap in the procurements.

Based on the existing background, the author wants to explore the urgency of using electronic contracts for the procurements, especially in the Constitutional Court, as well as how the implementation of electronic contracts for the procurement has been running at the Constitutional Court.

II. LITERATURE REVIEW

Government spending cannot be separated from the process of procurement. Based on regulation of procurement, the procurement is an activity to obtain goods/services by organization whose process starts from needs planning until completion of all activities to obtain goods/services.[4]

The purpose of procurement is to get some government goods or services. To obtain their needs, they make agreement between buyer and seller. That agreement arrange the deal about specifications, price, time, and other agreements so that objective procurement can be achieved.[5]

In contract law, an agreement is "an act in which one or more people bind themselves to one or more other people". An agreement is different from an agreement, where an agreement is a legal relationship. It is the legal act (engagement) that gives rise to the legal relationship of engagement. So it can be concluded that the agreement is a source of engagement.

Apart from agreements, we often hear the term contract. The contract comes from English, contract. The definition of contract is a legal act to mutually bind the parties into a legal relationship of engagement.

A contract is not just a piece of paper, but a fundamental foundation for building cooperation between parties. The contract regulates the rights and obligations that must be carried out by each party. In a collaboration, whether public or private, it is almost always regulated in a contract. Contracts are so important in a cooperative relationship that it is necessary to regulate contracts so that they comply with the rules of contract law.[6]

There are various definitions of contract law, where contract law is a translation from English, namely contract of law, while in Dutch it is called *overeenscom-strecht*. Legal instruments only regulate certain aspects of the market and regulate certain types of agreements. Contract law is the totality of legal rules that regulate legal relations between buyer and seller based on an agreement. We hope that contract law will give rise to legal consequences both sides.

Contracts are often known as agreements made in writing. As technology develops, the media used continues to grow. Initially, contracts were written and signed on paper and began to develop using electronic media. Where the agreement is written electronically and signed electronically.

An electronic contract according to regulation concerning Electronic Information and Transactions, is an agreement between the parties made through an electronic system. Contracts or agreements are made by the parties through an electronic system where the parties can meet or not meet in person.

Electronic contracts have the same validity and legal force as contracts made conventionally. However, in the scope of communication and communication system technology, transactions/engagements/legal relationships between parties carried out by exchanging information to carry out trade must follow basic rules in the communication aspect, namely they must be confidential, integrity, authority, authenticity, and non-repudiation. So as long as it cannot be guaranteed that the communication relationship is secure, the engagement carried out is not respected as a valid engagement because it has the potential and indications of interference by third parties who may have bad intentions. So the emphasis is on the information conveyed between the parties which is used as the basis for a transaction to occur which can only be said to be binding if its validity is guaranteed through a secure communication channel or system.[7]

The Goods and Services Procurement Policy Institute (LKPP) is innovating and transforming from conventional procurement to modern procurement or what is often called procurement digitalization. Digital transformation of procurement continues to be developed by LKPP through the government marketplace, including by developing the Electronic Catalog and Online Shop into e-purchasing platform, activating marketplace features such as payments, upgrading the system for managing products and contracts.

The procurement digital transformation is expected to increase efficiency, transparency, and effectiveness in the entire procurement process. Digital transformation can simplify, speed up, and modernize the entire procurement cycle starting from the planning stage (announcement of the General Procurement Plan and Preparation of HPS), the selection stage (announcement of the auction, evaluation, and determination of the winner) to contract management.[8]

The digital transformation of procurement is expected to give a positive influence on aspects of increasing efficiency and transparency, wider access to create a conducive business climate, healthy competition, growing innovation and collaboration as well as realizing economic recovery and domestic industrial growth.[9]

The digital transformation developed by LKPP starts from the planning stage (announcement of the General Plan for Procurement and Preparation of HPS), and the selection stage (announcement of the auction, evaluation, and determining the winner). However, until now the contract management stage is still carried out manually, meaning that contracts agreed by the government/KL with providers of goods and services are still carried out conventionally.

Contracts for the procurement carried out manually/conventionally often give rise to problems and problems during the implementation stage. What often happens is that when using a manual contract, both parties are late in signing the contract agreement even though the work has already been carried out. Meanwhile, we all know that the basis for carrying out work is a contract. This becomes problematic when there is a difference in perception between the both sides while the contract has not been signed before. Not to mention that when implementing a work addendum, the contract is signed at the end of the work implementation. According to the author, this is contrary to the principle of fairness in a contractual agreement and can result in losses for one of the parties, both the provider and the government.

The implementation of electronic contracts in the procurement digital transformation is expected to provide legal certainty for both sellers and buyers. Implementing electronic contracts in the digital transformation of procurement means that all information about procurement contracts that regulate rights and obligations can be organized systematically. All engagements, rights, and obligations, both technical and non-technical, are recorded systematically. Everything contained in an electronic contract is binding, and legally enforceable by each party.[10]

The role of openness and legal certainty in contracts is very important to prevent failure. Transparent business contracts where the rights and obligations of the parties are clearly explained, significantly reduce the risk of misunderstandings and increase the trust of the parties.[5]

Automation of the process of preparing electronic contract documents makes the workflow more efficient. Apart from that, this automation process can also simplify, speed up, and modernize the procurement cycle while minimizing errors caused by human error. [11]

Electronic contracts are equipped with the use of digital signatures to maintain contract authentication and security. Electronic signature is a signature consisting of electronic information that is attached, associated, or related to other electronic information that is used as a verification and authentication tool. By verifying and authenticating documents, their security and authenticity are guaranteed.[12]

Information presented electronically and systematically will increase the transparency of procurement process. All information and provisions regarding the procurement including technical requirements for procurement administration, evaluation procedures, evaluation results, and determination of prospective providers, which are open to all participating goods/service providers. Transparency regarding the rights and obligations that must be carried out by the parties will reduce misunderstandings between the government and companies as providers so it is hoped that there will be mutually beneficial cooperation between the parties / no one will be harmed. Transparency will increase public trust so it is hoped that the principle of fairness will be achieved and create a good business climate in society.[13]

The use of electronic contracts makes it easier to record automatically and systematically, thereby enabling real-time reporting that presents accurate and accountable data, making it easier to audit processes and provide public information disclosure. By implementing electronic contracts, it can increase efficiency, transparency, and legal certainty in the process of procuring goods and services so that in the end it can provide added value in the procurement process or Value for Money.[14]

To date, the Constitutional Court has not implemented electronic procurement contracts for goods and services. However, developments towards electronic contracts have been seen through the use of digital signatures as a precursor to electronic contracts which have been implemented in the Constitutional Court. Apart from that, the Constitutional Court has also signed MoUs with third parties electronically several times, which are said to be agreements/contracts.

Nationally, electronic signatures have begun to be widely used in government agencies. Even in state financial governance, electronic signatures have begun to be used. The Ministry of Finance developed the SAKTI (Agency Level Financial Accounting System) application with the implementation of electronic signatures issued by BSSN. So that all ministries, both central and regional institution, are required to use electronic signatures in the process of disbursing funds/payments. This proves that the development of electronic contracts is very possible to be realized in government.

III. METHOD

The method used in this research was descriptive qualitative research which was based on a literature study of literature and various regulations related to government procurement. A qualitative approach was used to gain an understanding of the phenomenon being researched. Meanwhile, the descriptive approach provided a detailed description and explanation of the data based on the qualitative approach that researchers took from various literature studies.

Data was obtained through literature study from various sources such as literature, scientific articles, journals, books, news, official information sources, and reports related to related research objects. This research aims to build a theoretical basis and present a comprehensive understanding of the research topic being studied.

IV. FINDINGS AND DISCUSSION

This research obtained the results that the use of electronic procurement contracts is very much needed in the digital era so that it provides a greater sense of justice and provides legal certainty for both parties. Through electronic procurement contracts, it is hoped that it can reduce the potential for errors, both intentional and unintentional and ultimately prevent and reduce criminal acts of corruption.

The implementation of electronic procurement contracts is expected to realize transparent, efficient, and accountable procurement implementation at every stage of procurement. The role of openness and legal certainty in contracts is very important to prevent failure. Transparent business contracts where the rights and obligations of the parties are clearly explained, significantly reduce the risk of misunderstandings and increase the trust of the parties.

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The use of electronic procurement contracts has not yet been implemented in the Constitutional Court. However, the use of digital signatures as a precursor to electronic contracts has been implemented massively in the Constitutional Court. Nationally, there is still a legal vacuum in regulating contracts for the electronic procurement, whereas in the procurement regulation and its amendments there are no regulations regarding electronic contracts.

V. CONCLUSIONS

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The implementation of electronic procurement contracts is expected to realize transparent, efficient, and accountable procurement implementation at every stage of procurement. The role of openness and legal certainty in contracts is very important to prevent failure. Transparent business contracts where the rights and obligations of the parties are clearly explained, significantly reduce the risk of misunderstandings and increase the trust of the parties

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Researchers recommend that in the future the Constitutional Court can prepare infrastructure as a form of accelerating the implementation of electronic procurement contracts at the Constitutional Court.

Nationally, there is still a legal vacuum in regulating contracts for the electronic procurement, whereas, in the procurement regulation and its amendments, there are no regulations regarding electronic contracts. So it is necessary to make further regulations regarding contracts for the electronic procurement through the revision of the presidential regulations regarding the procurement and the regulations below. Apart from that, the author suggests that the government prepare infrastructure in the form of applications that encouraging the implementation of electronic contracts for the procurement nationally, both at the central and regional levels.

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