

ABSTRAK

Pengadaan Barang/Jasa Pemerintah yang selanjutnya disebut Pengadaan Barang/Jasa (PBJ) adalah kegiatan Pengadaan Barang/Jasa oleh Kementerian/Lembaga/Perangkat Daerah yang dibiayai oleh APBN/APBD. Masih tingginya korupsi dan penyimpangan dalam PBJ dan lemahnya pengaturan tentang PBJ menjadi latar belakang pemilihan judul rekonstruksi pengaturan sanggahan atas penetapan pemenang tender untuk mewujudkan PBJ yang berbasis nilai keadilan.

Perumusan masalah dalam penelitian ini adalah 1. Mengapa pengaturan sanggahan atas penetapan pemenang tender dan pelaksanaan sanggah atas penetapan pemenang tender PBJ saat ini belum berkeadilan? 2. Bagaimanakah kelemahan pengaturan sanggah atas penetapan pemenang tender dan kendala pelaksanaan sanggah atas penetapan pemenang tender PBJ saat ini. 3. Bagaimanakah rekonstruksi pengaturan sanggah yang ideal atas penetapan pemenang tender untuk mewujudkan PBJ yang berbasis nilai keadilan.

Tujuan penelitian ini 1. untuk menganalisa pengaturan sanggah atas penetapan pemenang tender dan pelaksanaan sanggah atas penetapan pemenang tender PBJ yang belum berkeadilan. 2. Untuk menganalisa pelaksanaan kelemahan-kelemahan pengaturan sanggahan atas penetapan pemenang tender dan kendala-kendala pelaksanaan sanggahan terhadap penetapan pemenang tender PBJ. 3. Untuk menganalisa dan menemukan rekonstruksi yang ideal atas penetapan pemenang tender untuk mewujudkan PBJ yang berbasis nilai keadilan

Metode penelitian bersifat deskriptif analitis, jenis penelitian yang digunakan adalah penelitian hukum doktrinal dengan metode pendekatan yuridis sosiologis yaitu pendekatan terhadap hukum sebagai suatu norma, dan pendekatan terhadap masyarakat dalam arti melihat realita yang ada di masyarakat.

Teori yang digunakan dalam penelitian ini adalah Teori Keadilan baik itu teori keadilan menurut Islam, Pancasila dan para ahli sebagai *Grand Theory*. Teori bekerjanya hukum dan teori sistem hukum sebagai *Middle Theory*. Dan teori hukum pembangunan, teori hukum progresif dan teori kewenangan sebagai *Applied Theory*.

Pelaksanaan penanganan sanggah masih ditemukan penyimpangan dan penanganan sanggah belum menjawab substansi permasalahan dan hanya sebatas sebagai formalitas. Kelemahan pengaturan sanggah antara lain karena faktor regulasi, faktor SDM dan faktor budaya hukum. Kendala-kendala yang dihadapi dalam pelaksanaan sanggah PBJ yaitu lemahnya pengaturan sanggah, kurangnya sosialisasi aturan pendukung pengadaan, lemahnya penguasaan pengaturan & proses PBJ.

Setelah mengetahui kelemahan dalam pengaturan sanggah atas penetapan pemenang tender PBJ, maka dapat dirumuskan rekonstruksi hukum pasal 3 Perpres No 157/2014 tentang LKPP, rekonstruksi pasal 50 Perpres 16/2018 tentang PBJ, dan rekonstruksi lampiran Perlem LKPP No 9/2018 tentang Pedoman Pelaksanaan PBJ.

Sanggah merupakan protes dari peserta pemilihan yang merasa dirugikan atas penetapan hasil pemilihan penyedia. Ada pergeseran penyimpangan PBJ yang dimulai dari tahap perencanaan dan penganggaran. Pengesahan RUU PBJ menjadi UU PBJ sebagai solusi atas banyaknya penyimpangan dalam PBJ.

Kata kunci : pengadaan barang/jasa pemerintah, sanggah, tender.

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ABSTRACT

Government Procurement of Goods/Services, hereinafter referred to as Procurement of Goods/Services (PBJ) is the Procurement of Good /Services by State Ministry/Institutions/Supporting District financed by the State Expenditure Budget (APBN) / District Expenditure Budget (APBD). The high numbers of corruption and deviation in PBJ also weakness of the rules about PBH became the background for the selection of the title refutation reconstruction for the determination of the tender winner to realize PBJ based on justice value.

The formulation of the problem in this research is (1) Why does the rebuttal arrangement for the determination of the winner of the tender and the objection of the determination of the winner of the current government procurement of goods / services not yet fair (2) How are the weaknesses of the refusal regulation on the determination of the winner of the tender and the constraints on the implementation of the objection on the determination of the winner of the current procurement of goods/services. (3) How is the ideal reconstruction of objectionable arrangements for the determination of the winner of the tender for the procurement of goods / services to realize the procurement of goods / services based on justice value.

The research purposes are 1. To analyse the refutation of the determination of the tender winner and the implementation of the objection for the determination of the winner of the PBJ tender which is not yet fair. 2. To analyse of the implementation the weaknesses in the rebuttal arrangements for the determination of the tender winner and the constraints on the implementation of the objection to the determination of the PBJ tender winner. 3. To analyse and find the ideal reconstruction of the determination of the tender winner to realize PBJ that is based on justice value.

The research method is descriptive analytical, namely by collecting data that describes or exposes facts and data as well as analysis of the results of research that aims to obtain an overview of objectionable arrangements to realize the procurement of goods / services that are based on the value of justice.

The theoretical framework used in this research is the Justice Theory, both the theory of justice according to Islam, Pancasila and experts as Grand Theory. Theory of Work of Law, and Theori of Law System as Middle Theory. And the theory of development law, progressive legal theory and the theory of authority as Applied Theory.

The implementation of handling objections is still found to be deviations and handling objections has not answered the substance of the problem and is limited to a formality as a step in the process of procurement of goods / services. Weaknesses in objection arrangements are partly due to regulatory factors, human resource factors and legal cultural factors. Constraints faced in the implementation of objections to government goods/services, namely the weak regulation of objections, lack of socialization of procurement support rules, weak mastery of regulation & the process of procurement of government goods/services.

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After knowing the weaknesses in the objection arrangement for the determination of the winner of the procurement of government goods / services, legal reconstruction article 3 of Presidential Regulation No. 106/2007 can be formulated regarding the tasks and functions of LKPP, article 50 reconstruction Perpres 16/2018 on Government Procurement of Goods / Services, and reconstruction attachment to LKPP No. 9/2018 concerning Guidelines for the Implementation of Government Goods / Services Procurement.

Objection is a protest from election participants who feel disadvantaged over the determination of provider selection results. There is a shift in PBJ deviations starting from the planning and budgeting stages. Ratification of the RUU PBJ into UU PBJ as a solution to the many numbers of irregularities in PBJ.

Keywords: government procurement of goods / services, objection,