On the Legal Problems of Using Direct Appointment method
Procurement of Goods / Services

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Received 23 March, 2015; Accepted 10 April, 2015 © The author(s) 2015. Published with open access at www.questjournals.org

Abstract: Procurement of goods / services of government is that government activity has generally been stipulated in Presidential Decree No. 54 of 2010 Concerning the Procurement of Goods / services of the Government. Problems of law on the use of direct appointment method of procurement of goods / services that have been put forward, shows the legal analyzes of material facts and legal considerations set out in the judge's ruling, that the existence of irregularities in the procurement of goods / services of a certain state criteria to legal liability user budget as part of an organ procurement of goods / services of government. The government's efforts to prevent and eradicate the practice of corruption procurement of goods / services, did not show satisfactory results. Based on this assumption, it is clear that the practice of corruption is caused by misuse of the method of procurement of goods / services, harm the direct appointment method of procurement of goods / services on criteria specific circumstances and criteria for special circumstances. Therefore, Presidential Decree No. 80 of 2003 on guidelines for the procurement of goods / services of the government and its changes are used to explain the behavior deviate from the use of direct appointments made by the user in the procurement budget of fiscal year 2005-2008. To the legal principles of transparency, accountability and competition as a measure to control the procurement of goods / services using the method of direct appointment provider of goods / services. Concluded that the law setting the procurement of goods / services criteria specific circumstances that do not refer to the legal principles of transparency, accountability and competition, a consequence of irregularities in the election process and administration providers of goods / services of government.

Keywords: Procurement of goods / services, methods of direct appointment

I. INTRODUCTION

In the procurement of goods / services according to the needs of government, organ procurement processes the two (2) ways, namely: a) the selection of providers of goods / services; and b) self-management. Procurement involving providers of goods / services, and administrative processes and requirements made organ procurement and implemented by providers of goods / services. While the procurement of goods / services by way of self-management, and administration in the process of procurement of goods / services, can be done from the Ministry / Agency / Regional / Agency itself as a responsible budget, other government agencies and community groups implementing self-management.

Dynamics of changes in procurement arrangements government goods / services from time to time experienced improvements. Laws and regulations that follow the principle of formal and material principles of character formation certainly accommodating the demands, needs and development of society in order to realize a democratic constitutional state or the so-called modern welfare state (welfare state) [1].

In positive law, the procurement of goods / services based on the Act No. 18 of 1999 on Construction Services, Government Regulation No. 59 Year 2010 regarding the amendment of the Government Regulation No. 29 of 2000 on the Implementation of Construction Services, Presidential Decree (Decree ) No. 80 of 2003 on guidelines for the procurement of goods / services of the government to change the seventh, and last and current, Presidential Decree No. 70 of 2012 on the second amendment of Presidential Decree No. 54 of 2010 on the procurement of goods / services of government.

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Governance of procurement of goods/services of electronic government (electronic procurement) is a means of realizing the election provider of goods/services that are transparent, accountable, and competition. In view of Lina Wu, [2] that the electronic procurement system is the modernization process of procurement (procurement), becomes a necessity today, because it has great benefits, such as to obtain a cheaper price (low price), the quality of goods and services more good (high quality), and can reduce fraud, collusion and corruption on the other hand, Indonesia is one country in the past two decades, constantly faced with natural disasters test [3]. Other than that, the slump main weaponry system (Alutsista) this country far behind neighboring countries [4].

In addressing these conditions, budget users (Act 1 of 2004) along with other procurement organs, perform direct appointment method of procurement of goods/services.

The use of direct appointment method relates to the criteria of goods/services on Appendix I of Chapter I of Part C figure 1, paragraph (4) letter a and b of Presidential Decree No. 80 of 2003 on guidelines for the procurement of goods/services of the government, declared: Part C of paragraph (1) item 4: direct appointment can be implemented in terms of meeting the following criteria:

**a)** Certain circumstances, namely: (In Article 38 (4) of Presidential Decree 70 of 2012 on the second amendment of Presidential Decree 54 of 2010 on the procurement of goods/services of the government) (1) Handling of emergency for the country's defense, security and safety of the public that the implementation of the work can not be delayed, or should be done immediately, including the handling of emergency due to natural disasters and/or (2) The work that needs to be kept secret relating to national defense and security established by the President; and/or (3) The work of small scale with a maximum value of Rp 50,000,000, - (fifty million dollars) with the following provisions:

1. For its own purposes; and/or
2. Simple technology; and/or
3. Small risk; and/or
4. Implemented by providers of goods/services of individual business and/or small business entities, including small cooperatives.

**b)** Procurement/special services, namely: (In Article 38 (5) of Presidential Decree No. 70 of 2012 on the second amendment of Presidential Decree No. 54 of 2010 on the procurement of goods/services of government).

(1) The work is based on the official rate set by the government; (2) Work/specific goods that can only be performed by a provider of goods/services, manufacturing, patent holders; (3) Represents the production of small business or small cooperatives or small industrial craftsmen who have had the market and prices are relatively stable; (4) Work complex that can only be implemented with the use of specific technologies and/or there is only one provider of goods/services able to apply.

Responsibility that define procurement through direct appointment method, is the scope of the main tasks of users of goods/services, as well as Presidential Decree No. 80 of 2003, stated: "Article 9 paragraph (3): the main tasks of users of goods/services, namely; (a) "planning the procurement of goods/services"; Jo letter (c) \"sets the work packages with the provisions of the increased use of domestic production and an increase in the provision of opportunities for small businesses, including small cooperatives, and community groups\". (In regulation 70 In 2012, 17 paragraph (2) letters a, b that the principal task of Procurement Services Unit (ULP)/Committee include: preparing for the election of Goods/Services and establish Procurement Documents).

Another key task of the user of goods/services, which are not separate from the main tasks of the committee/procurement official in the procurement of goods/services through direct appointment method, is set in Annex I Section I letter D figure 1e in Presidential Decree No. 80 of 2003, mentioned as follows: Figures 1e: Direct appointment, include: (Decree 80 of 2003, Article 10 paragraph (4) d, that the task of the committee/procurement officer in the OT include: invitations selected participants, introduction of pre-qualification documents, assessment of qualifications and explanations, submission of bids, bid evaluation, Article 9 paragraph (3) includes: negotiation both technical and price-setting/designation of providers of goods/services, the signing of the contract are authorized users of goods/services. While in regulation 70 in 2012, 17 (2) an assignment ULP/procurement officer, except Article 11 (1) b, c, that authority officials commitment makers: including: issuing appointment letters provider of goods/services and sign the contract).

Another authority of the user of goods/services, has been set up in Article 26 of Presidential Decree No. 80 of 2003, stated: (Authority budget users (PA) set the provider of goods/services of all types of procurement over Rp 50 billion under Article 26 (b), letter (c) of Presidential Decree 80 of 2003; whereas the authority of the PA set provider of goods/services of all types of procurement of more than Rp 100 billion for procurement/construction/other services, over Rp 10 billion for the procurement of consulting services.

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package is set at Article 8 paragraph (1) f of regulation 54 of 2010. Subparagraph (a): the user of goods / services for procurement that is worth up to Rp 50,000,000,000, without the approval of the Minister / Commander of the Army / Police Chief / Leader Institute / Board of Governors / Leader BHMN / Directors of SOEs / enterprises, superior officers users goods / services Jo letter (b): Minister / Commander of the Army / Police Chief / Leader Institute / Board of Governors / leader BHMN / Directors of SOEs for the procurement of goods / services financed from the state budget funds worth over Rp 50,000,000,000.

Based on the above, there are three (3) important in explaining the procurement of goods / services through direct appointment method (MPL), namely: (Description Setyabudi Artijanta Experts from LKPP RI, that: the appointment may be made directly (PL) for the procurement emergency, such as evacuation, provision of temporary shelter, and emergency drug supply, as for the reconstruction and rehabilitation can not be OT: the other thing that the emergency response must not be planned, since there is no budget see p. 548-849 Decision No. 29 / Pid.Sus / TPK / 2013 / PN.Kt.Pst).

a) Priority use of electronic procurement systems in procurement through the MPL as a form of transparency, accountability and competition in preventing abuse of authority;

b) Authority set a budget users provider of goods / services for all types of provider selection of goods / services with a budget ceiling above Rp 50 billion;

c) The supply of goods / services criteria specific circumstances and criteria for special circumstances, when a state of emergency, is not planned in advance.

The government's efforts to prevent and eradicate the practice of corruption procurement of goods / services, did not show satisfactory results. The indication is, to justify a Busro Muqoddas Muhammad that the model of corruption in the procurement of goods / services, sourced from misuse method of selecting providers of goods / services by 43.9 percent, 29.1 percent bribery, misuse of funds 15.8 percent, 6.12 percent levy and licensing 5.1 percent [5]. The same thing, expressed guru economist Soemitro Djiojohadikusuma, that not less than 30 percent leak state budget sourced from procurement of goods / services of the government [6]. Based on this assumption, it is clear that the practice of corruption is caused by misuse of the method of procurement of goods / services, harm the direct appointment method of procurement of goods / services on criteria specific circumstances and criteria for special circumstances.

Therefore, Presidential Decree No. 80 of 2003 on guidelines for the procurement of goods / services of the government and its changes are used to explain the behavior deviate from the use of direct appointments made by the user in the procurement budget of fiscal year 2005-2008. As examples of the corruption cases of procurement of goods / services through direct appointment method as follows:

First, the alleged corruption of the Minister of Health, the budget users on the procurement of medical devices (Medical Devices) and hospital supplies which specifies the use of direct appointment method, with a project value of Rp 15.5 billion [7] in fiscal year 2005, the procurement of the project value Rp 24.6 billion in fiscal year 2006, the procurement project worth Rp 17.18 billion in fiscal year 2007, and the procurement of Rp 30 billion and Rp 50 billion in budget revision in 2007. in this case, has prosecute former Director of Medical Services basic, Ratna Dewi Umar as the authorized user and concurrent budget commitments maker officials [8].

Second, the alleged corruption of the Minister of Justice and Human Rights as the procurement budget users Automatic Fingerprint Identification System (Afis) which specifies the use of direct appointment method, with a project value of Rp 18.48 billion in fiscal year 2004. In this case, has been penalize Zulkarnain Jonah former Director General of Legal Administration, Aji Affendi as officials commitment makers, and providers of goods / services Eman Rahman, Director of PT Central Filling [9].

Third, the alleged corruption as the Minister of Foreign Affairs budget users through the use of direct appointment on the “implementation of a sudden preparation of the conference to follow international commitments and was attended by the President / Vice President, with a project value of USD 18 billion in fiscal year 2004-2005. In this case, prosecute the former Secretary General of the Ministry of Foreign Affairs, as the proxy user Sudjadman Parohadiningrat budget [10].

Fourth, the alleged corruption in the procurement Main Equipment and Weapons Systems (Alutsista) TNI in the Ministry of Defence, which revealed Impartial-ICW NGOs, such as the difference in price of US $ 56.7 million or equivalent to Rp 538.6 billion [11]. Alleged mark up on the procurement, budget users use agents / brokers and directly appoint providers of goods / services [11].

Fifth, the alleged corruption Sulawesi governor as budget users Southeast Sulawesi Provincial Government procurement official car which specifies the use of direct appointment method, with a project value of Rp 2.5 billion in fiscal year 2008. In this case, has been penalize Bedy Manuhutu as Chairman of the Committee for the procurement and Chandra Liwang Commissioner CV Noble Aditama Kendari Center. (High Court of South East Sulawesi Corruption No. 07 / Corruption / 2012 / PT. Sultra On 30 may 2012, p. 2) Picture
position above case, showing the procurement of goods / services on criteria specific circumstances and criteria specific circumstances, it takes the decision to set a budget users direct appointment method of selecting providers of goods / services, by reason of urgent (emergency) and state criteria goods / services are only able to implemented by 1 (one) providers of goods / services, so that the procurement process and the administration do not need a printed or electronic media transparency, evaluation and other providers offer.

Another problem, related to law enforcement only charged with the responsibility to users for goods / services or the manufacturer's official commitments and procurement committee. Conversely, it does not involve the responsibility of the user budget exceeded its authority establishes direct appointment method. Corruption in the procurement of goods / services using the method of direct appointment, in fact legal to explain there are 3 (three) forms of deviation, include the following:

a) User budget establishes a direct appointment method is not suitably qualified goods / services criteria specific circumstances and criteria specific circumstances and authority;

b) Legal liability only on the procurement of organs bottom layer, but does not involve the responsibility of budget users;

c) The procurement process through direct appointment method, affect the principles of transparency, accountability and compete in the determination of the provider of goods / services, the preparation of the price / budget and technical specifications of goods / services.

Referring to the case of the above position, the need for electoral reform concept provider of goods / services procurement criteria specific circumstances, such as:

"The activities concerning national defense stipulated by the Ministry of Defence as well as activities related to security and public order established by the Chief of Police of the Republic of Indonesia", includes: (Using a systematic interpretation method of procurement of goods / services criteria specific circumstances, Article 38 paragraph (4) letter a number 1, number 2 Jo Article 113 of Presidential Decree No. 70 of 2012 on the procurement of goods / services of the government).

1. The main tool is a weapon system (defense equipment) Indonesian Armed Forces (TNI) are used for the benefit of the State defense stipulated by the Minister of Defence, based on inputs from the military commander;

2. Equipment special material (almatsus) Indonesian Police used for the interest of security and public order established by the Chief of Police of the Republic of Indonesia.

Problems of law on the use of direct appointment method of procurement of goods / services that have been put forward, shows the legal analyzes of material facts and legal considerations set out in the judge's ruling, that the existence of irregularities in the procurement of goods / services of a certain state criteria to legal liability user budget as part of an organ procurement of goods / services of government.

II. RESEARCH METHODS

The research method used normative legal research (normative law research) on a case study of normative law against the law of product behavior. Focus of this study, which is conceptualized as the legal norms applicable to the organ procurement process the direct appointment method of procurement of goods / services of a certain state criteria.

In the first formulation of the problem, approaches that can be used, among others, a) the regulatory approach procurement of goods / services (statute approach) concerning the hierarchy and the principles of the laws and regulations [12] b) conceptual approach (conceptual approach) , with reference to legal principles. In the legal principles found in the views of scholars or legal doctrines. [12].

The collection of legal materials in the research library research is documentary techniques, which are collected from the study of archives or literature, such as books, papers, articles, magazines, journals, newspapers or the work of experts.

III. RESULTS AND DISCUSSION

In a legal dictionary releases Elizabety A. Martin, explaining the legal harmonization (Harmonization of law), are: [13]. "The process by which the member states of the EU the make changes in Reviews their national laws, in accordance with, Community legislation, to produce uniformity, particularly Relating to commercial matters of common interest. The Council of the European Union has, for example, issued directives on the Harmonization of company law and of units of measurement " . (free translation: the process in which the member countries of the European Union made changes in national law within the community in accordance with the law to produce uniformity, particularly with respect to commercial matters same interests. Council of
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the European Union has, for example, issued a directive on the alignment of company law and the monitoring unit).

Another explanation put forward Moh. Hasan Wargakusumah et al, that the harmonization of the laws is scientific activity towards harmonization process of writing which refers both to the values of the philosophical, sociological, economical and juridical [14]. While the definition of synchronization according to Endang Sumiarni that:

"How to understand the fit or alignment of legislation vertically based systematization of positive law, namely the legislation higher with legislation lower. While the terms of harmonization with the synchronization word is the legislation under study. The word is used to assess the suitability of harmonization between legislation horizontally or its equivalent in the systematization of positive law [15].

From the above, shows that the harmonization and synchronization of focusing harmony, conformity and harmony. Parameter laws and regulations are harmonized and synchronized, it can be seen from the charge principles or legal principles applied between the legislation of the other legislation governing the subject and object of the same law.

Therefore, the legal principle of transparency, accountability and competition as a measure to control the procurement of goods / services using the method of direct appointment provider of goods / services. Explanation formulated as follows:

1. Analysis of Harmonization and Legal Principles of Transparency Against Synchronization Method for Direct Appointment of Goods / Services

Law principle of transparency in the procurement of goods / services that governments using direct appointment of election goods / services provider, are the heart of Act No. 14 of 2008 on Public Information. Interpreted as well as the principles of the legal system of procurement of goods / services that are binding on the substance, structure and culture of provider selection of goods / services. Paul Scholten, citing the opinion that the principle of the rule of law is a fundamental assessment in a legal system. He said again, legal principles include the following: [16]

"Thoughts base, which is present in and on the back of each legal system defined in the rules of law and the decisions of the judges, in regard to the provisions and individual decisions can be viewed as elaboration" Thus, this legal principle which has a dual function as a foundation of positive law and as a touchstone positive critical of the legal system. [16]

Harmonization Act No. 14 of 2008 on Freedom of Information to Law No. 18 of 1999 on Construction Services, the use of direct appointment method, described as follows:

1. Law No. 14 of 2008, stated : "Article 2: Each Public Information is open and can be accessed by any user of Public Information".
2. Article 2 of Law No. 18 of 1999, stated :"Article 2 Setting construction services based on the principles of honesty and fairness, benefits, harmony, balance, independence, openness, partnership, security and safety for the sake of the community, the nation, and the state".

The principle of transparency law as a guide for the procurement of organs in carrying out the implementing regulations provider selection of goods / services through direct appointment method. In the perspective of the implementing regulations synchronization procurement of goods / services through direct appointment method. The use of the legal principle of transparency is defined as follows:

1. Article 8 paragraph (1) letter b Presidential Regulation No. 70 Year 2012 on the second amendment of Presidential Decree No. 54 of 2010 on Procurement of Goods / services of the Government, stated : "Users have the duty and authority budgets widely announced Public Procurement Plan at least on the website of the Ministry / Institution / Regional / Agencies".

The doctrine of the legal principle of transparency in the procurement of goods / services mentioned Mardiasmo government that the procurement of goods / services must be achieved, namely [17] "Ensuring legal certainty of public information or transparent procurement of goods / services are planned, implemented and handover acceptance ".

The same opinion was brought Adrian Sutedi, that the legal principle of transparency in the procurement of goods / services are: [18]

"Give me all the information and conditions regarding the procurement of goods / services, including administrative requirements, evaluation procedures, determination of potential suppliers of goods / services that are interested, as well as for society at large".

Thus the legal principle of transparency means that the selection process guaranteed provider of goods / services of government, the nature of providing information on the procurement of goods / services to the community government.

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2. Analysis of Harmonization and Synchronization Principle Accountability Law Against Method Direct Appointment Goods / Services. Harmonized approach in Act No. 25 of 2009 on Public Services to Law No. 18 of 1999 on Construction Services, when viewed from the principle of election law accountability providers of goods / services through direct appointment is described as follows:

a. Law No. 25 of 2009, stated :Article 25 paragraph (2): Executive shall provide a report to the organizers about the conditions and needs of facilities, infrastructure, and / or public service facilities as well as the executor in accordance with the demands of service standards”.
b. Law No. 18 of 1999, stated : ”Article 17 paragraph (4): Selection of suppliers of goods / services should consider the suitability of the field, the balance between capacity and workload and performance of providers of goods / services”.

Similarly, the implementing regulations synchronization procurement of goods / services through direct appointment method. The principle of accountability to the public service law, described as follows:

1. Government Regulation No. 59 Year 2010 regarding the amendment of the Government Regulation No. 29 of 2000 on the Implementation of Construction Services, stated :- Selection of construction planner and supervisor under Article 8 paragraph (1) letter a: certain circumstances, namely the emergency response to the security and safety of the public that the implementation of the work can not be postponed or should be done immediately; Appointment directly to the contractor as referred to in Article 3 is set in Article 12 paragraph (1) letter a number 1, certain circumstances that emergency response to community safety that can not be postponed implementation work / should be done immediately.

2. Presidential Regulation No. 70 Year 2012 on the second amendment of Presidential Decree No. 54 of 2010 on Procurement of Goods / services of the Government, stated :- Article 38 paragraph (1) letter a and b for direct appointment of one (1) provider of goods / construction / other services can be done in certain circumstances and procurement of Goods / special construction work / other services that are special.

In the context of selecting suppliers of goods / services through direct appointment, according to Jeremiah T Keban, the legal principle of accountability is a form of public service means: [19] "An act granting of goods and services to the public by the government in the framework of its responsibilities to the public, either given directly or through partnerships with the private sector and the community, based on the type and intensity of people's needs, capabilities and market society". Different opinions ejected from Miriam Budiardjo said that : "Accountability as accountable parties are given the mandate to govern to those who gave the mandate. [20] Meanwhile, according to Peter Guy, accountability has three types, namely: 1) Financial Accountability;2) Administrative Accountability; and 3) Accountability of public policy. [21].


Harmonized approach in Act No. 18 of 1999 on Construction Services to Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition, the dimensions of a monopoly setting, formulation of direct appointment is described as follows:

a. Law No. 18 of 1999, stated :- Article 17 paragraph (3): In certain circumstances, the establishment of service providers can be done by direct election or appointment directly; elucidation of the article said that the complex work that can only be implemented by service providers who are very limited or can only be done by the right holder;
b. Act No. 5 of 1999, stated : - Article 17 paragraph (2) b: Business agents suspected or deemed to control the production and or marketing of goods and or services referred to in paragraph (1) if it results in other businesses can not enter into competition of goods and or services the same one; elucidation of the article said that the definition of other businesses are businesses that have a significant competitive edge in the relevant market. - Article 22: Performer is prohibited conspire with others to arrange and or determine the winner of the tender so as to result in unfair competition. In his explanation that the tender is submitted bid price to buy a job, to hold the goods, or to provide services.

Setting the direct appointment method contained in the Construction Services Act as the legal protection of monopoly rights holders. However, the consistency principle of competition law within the scope of the rights holder, set the ban on organ procurement conspiracy in the preparation of terms of reference in the procurement document are not directed a name holders of intellectual property rights, so it is not the post-bidding. (Explanation of Article 79 paragraph (2) ) RI Presidential Decree 54 of 2010 on Procurement of Goods / services of the Government, that the post-bidding is bidding post action that acts to change, add, replace and / or
reduce the Procurement Documents and / or bid after the deadline for submission of bids. See also Appendix II
figures 2 Perka LKPP RI No.14 of 2012 on the technical manual regulation 70 of 2012 on the second
amendment to regulation 54 of 2010 on the procurement of goods / services.). Similarly, the synchronization
rules implementing procurement of goods / services through direct appointment method. Setting a monopoly is
defined as follows:

1. Government Regulation No. 59 Year 2010 regarding the amendment of the Government Regulation
No. 29 of 2000 on the Implementation of Construction Services, stated: 1. Article 8 paragraph (1) letter a number
2: Selection of construction planning and construction supervisor by direct appointment, which is a complex
task that can only be implemented by service providers who are very limited in number, provided the work can
only be done with the new technologies and service providers are able to apply only one;
2. Article 8 paragraph (1) letter b: Work only done by the copyright holder or other party has been
licensed;
3. Article 12 paragraph (1) letter a number: Appointment directly to the contractor, which is a complex
job that can only be implemented by service providers who are very limited in number, provided the work can
only be done with the new technology and service providers are able to apply only the only one;
4. Article 12 paragraph (1) letter b: The work can only be done by the patent holder or other party who
has obtained a license.

5. Presidential Regulation No. 70 Year 2012 on the second amendment of Presidential Decree No. 54 of
2010 on Procurement of Goods / services of the Government, stated :
a) Article 38 paragraph (4) letter d: goods / construction / other service-specific and can only be carried
out by one (1) provider of goods / services other for one (1) manufacturer, 1 (one) the patent holder, or parties
who have received permission from the patent holder, or a party who wins the auction to get permission from
the government.
b) Article 38 paragraph (5) c: goods / construction / other services that are complex that can only be
implemented with the use of specific technologies and there is only one (1) provider capable.

Legal norms monopoly procurement arrangements Goods / services through direct appointment providers of
goods / services, by Susanti Adi Nugroho mapped monopoly theory into two parts: [22]. Natural monopoly
(natural monopoly), which occurs due to the monopoly of the business operators have the technical capabilities
include:
1. Business actors that have the ability or knowledge (special knowledge) that enables efficient
production.
2. The economies of scale which increasingly large-scale production, the marginal cost decreases, so
that the cost of production per unit (average cost) is lower.
3. Business actors have the ability to control the source of production factors, both natural resources,
human resources and production sites
4. Monopoly obtained through legislation, are:
a. Intellectual property rights, ie in which the state monopoly to businesses to manufacture or market the results
of an innovation.
b. Exclusive rights, the rights granted by the government to certain businesses that are not obtained by other
businesses, for example a single agent, the sole importer, single buyer, and so forth.

Setting a monopoly by the state or government in relation to the Business Competition Act, if a
monopoly with regard to production and / or marketing of goods / services that dominate the life of the people
and production branches which are important for the country. The use of state monopoly rights by the State
Owned Enterprises (SOEs) in accordance W. Friedman opinion that:

"State intervention in the market can be divided into three types: a) the state as regulator (de
stuurende); b) the state as a provider of goods / services (de presterende); and c) the state as entrepreneur
(intrepreneur) "[23].

From the above description, the harmonization of legislation on the level of Formell Gesetz (Act)
relating to the procurement of goods / services harmonization of the substance of the government shows that
knotted by legal principles of transparency, accountability and competition.
The substance of legislation in harmony with one another, Ahmad Ruslan call as an internal function, which
includes the function of the rule of law [1]. According to the dimensions of the rule of law must meet other
requirements, namely:

1) It is clear in its formulation (unambiguous);
2) Consistent in its formulation internally or externally;
3) Preparation of a language that is easily understood that the language used community.

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Instead there is synchronized to the basic rules of the implementing regulations on administrative arrangements and procurement process / service criteria specific circumstances. Parameters used are the legal principles of transparency, accountability and competition. Synchronized, illustrated in the following matrix:

<table>
<thead>
<tr>
<th>No</th>
<th>Law RI About Construction Services</th>
<th>Government Regulation (PP) on Procurement of Goods / services Specific criteria through direct appointment method</th>
<th>Presidential Decree (Decree) Procurement of Certain criteria through direct appointment method</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Article 2 of Law No. 18 Year 1999 on construction: construction services settings based on the principle of openness.</td>
<td>Article 12 paragraph (3) a PP 59 Year 2010 concerning amendments to Regulation No. 29 of 2000 on the implementation of construction: construction procedures for implementing the selection criteria of the specific circumstances of &quot;invitation&quot;.</td>
<td>Article 57 paragraph (3) b of the 2nd Presidential Decree No. 70 of 2012 on the second amendment of Presidential Decree No. 54 of 2010 on Procurement of Goods / services of the Government: the determination of the type, technical specifications and volume of work, and job completion time</td>
</tr>
<tr>
<td>2.</td>
<td>&quot;Article 17 (4) of Law No. 18 Year 1999 on Construction Services: Elections should suitability field, balance between capacity and workload, and performance of service providers.</td>
<td>Article 12 paragraph (3) letter d PP 59 Year 2010 concerning amendments to Regulation No. 29 of 2000 on the implementation of construction services, stated that: &quot;negotiation&quot;.</td>
<td>Article 57 paragraph (3) letter b-8 Presidential Decree No. 70 of 2012 on the second amendment of Presidential Decree No. 54 of 2010 on Procurement of Goods / Government services, emergency response stated that: &quot;clarification and negotiation&quot;</td>
</tr>
<tr>
<td>3.</td>
<td>Article 17 paragraph (3) of Act 18 of 1999 on Construction Services: under certain circumstances determination made by the provider of direct election or appointment directly</td>
<td>Article 12 paragraph (2) letter e PP 59 Year 2010 concerning amendments to Regulation No. 29 of 2000 on the implementation of construction: &quot;the determination of service providers&quot;</td>
<td>Article 38 paragraph (2) Presidential Decree No. 70 of 2012 on the second amendment of Presidential Decree No. 54 of 2010 on Procurement of Goods / Services: &quot;Invite 1 (a) providers of goods / construction / other services&quot;</td>
</tr>
<tr>
<td>4</td>
<td>Law RI About Construction Services</td>
<td>Government Regulation (PP) on Procurement of Goods / services Specific criteria through direct appointment method</td>
<td>Presidential Decree (Decree) Procurement of Certain criteria through direct appointment method</td>
</tr>
<tr>
<td>5.</td>
<td>Article 2 of Law No. 18 Year 1999 on construction: construction services settings based on the principle of openness.</td>
<td>Article 12 paragraph (3) a PP 59 Year 2010 concerning amendments to Regulation No. 29 of 2000 on the implementation of construction: construction procedures for implementing the selection criteria of the specific circumstances of &quot;invitation&quot;.</td>
<td>Article 57 paragraph (3) b of the 2nd Presidential Decree No. 70 of 2012 on the second amendment of Presidential Decree No. 54 of 2010 on Procurement of Goods / services of the Government: the determination of the type, technical specifications and volume of work, and job completion time</td>
</tr>
</tbody>
</table>

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There are also synchronized between the Government Regulation No. 59 Year 2010 regarding the amendment of the Government Regulation No. 29 of 2000 on the Implementation of Construction Services, stated:

"Article 11 (1): the selection of a contractor by way of direct election as referred to in Article 3 applies to the particular circumstances, namely: a) the emergency response to the security and safety of the public is still possible to hold direct elections process; b) a complex job that can only be implemented with the new technology and service providers are able to apply a very limited; c) the work that needs to be kept secret, concerning the safety and security of the State are determined by the President; and or d. small-scale work with the following provisions: 1) for the benefit of public services; 2) have a small risk; 3) using simple technology; and or 4) executed by individual business service providers or small business entities ".

Layout synchronized with government regulation above, can be seen from the contents of Presidential Regulation No. 70 Year 2012, stated:

"Article 1 paragraph 26: Direct election is a method of selecting providers Construction works for most high-value jobs Rp 5,000,000,000.00 (five billion dollars)"

"Article 37 paragraph (1) letter b: Procurement jobs that are not complex and the most high-value Rp 5,000,000,000, - (five billion dollars) can be done by direct elections for the procurement of construction works.

From the aspect of the characteristics of a particular state procurement criteria, processes and administration using the method of direct elections, in terms of Government Regulations and Presidential Decree (Decree), there is a conflict of content, from the regulation, that "procurement of jobs that are not complex". Meanwhile, the procurement of goods / services that are characterized by a certain state criteria based on the Government Regulation, include:

a. Emergency Management;
b. Work complex;
c. Work of confidentiality;
d. The work of small scale;
e. Further work; and
f. The holder of a patent or any other party who has obtained a license.

Based on the analysis above synchronized form, Construction Services Act gives the choice between direct and immediate appointment goods / services provider criteria specific circumstances, does not mean the substance of the implementing rules governing the administrative process and pengadanan goods / services is made with the exclusion of state criteria the legal principles, except as described previously. Applicability of the legal principles of transparency, accountability and competition are incorporated into the implementing rules of procurement of goods / services, in terms of content and nature, classified messenger (Geod, obligattere) or imperative that contains what must be done by a human (organ procurement) form of command to do something [24]. For example, procurement of major weapons systems and tools are generally special material into the international market [25].

Synchronized procurement law setting specific criteria that do not refer to the legal principles of transparency, accountability and competition consequences of irregularities in the process and administration as well as the procurement of major weapons systems and tools specific material. Organ procurement tendency to choose a method of direct appointment rather than direct elections, organ procurement easier conspired and make the use of price and technical specifications of the existing providers of goods / services.

Contention that the implementing regulations of the Presidential Decree implementing regulations are higher in government regulation, just be the principles of conflict resolution (the principle of preference), namely:

1. Lex posteriori derogat legi priori, that the legislation that is later defeated laws and regulations that exist beforehand.
2. Lex specialis, namely legislation specifically defeat legislation that common.
3. Lex superior derogat legi inferiori, namely legislation higher defeat legislation lower below [26].

Thus the function of Government and Regulation of the President as an implementing regulation, must not contradict the function of legislation. The explanation can be seen as follows: [1]. Running Act as appropriate; 2. Organizing the material ordered Act and to implement government regulation; Organizing the power of the government.

IV. CONCLUSION

The legislation of the procurement of goods / services criteria specific circumstances that do not refer to the legal principles of transparency, accountability and competition, a consequence of irregularities in the election process and administration providers of goods / services of government.

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