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A New Decade for Social Changes
Responsibility of commitment making officials in government procurement of goods/services

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Abstract. The implementation of good governance is the main prerequisite for carrying out state goals, especially in providing public welfare. In line with the large demands of society for the implementation of good governance, the government must provide quality public services. In this regard, development planning is needed that is systematic, directed, comprehensive, and responsive to the dynamics of community needs. In the government's efforts to provide public services, it is necessary to develop and implement a real legal accountability system for the implementation public services, so that the implementation of government and development can take place in an efficient, clean and accountable manner. The responsibility of Commitment Making Officials in the procurement of government goods/services consists of administrative responsibility and criminal responsibility. Administrative responsibility occurs if an administrative violation occurs, and will be subject to administrative sanctions. Meanwhile, criminal liability means the possibility that a criminal act has occurred and can be subject to criminal sanctions. However, this responsibility can also be imposed on other officials involved in the procurement of goods/services, such as Budget Users, Budget User Proxies, Procurement Officials/Election Working Group, as long as their involvement in the criminal act can be proven.

Keywords. commitment making; criminal act; procurement

Introduction
The implementation of good governance is the main prerequisite for carrying out state goals, especially in providing public welfare.[1] In line with the large demands of society for the implementation of good governance, the government must provide quality public services. In this regard, development planning is needed that is systematic, directed, comprehensive, and responsive to the dynamics of community needs. In the government's efforts to provide public services, it is necessary to develop and implement a real legal accountability system for the implementation public services, so that the implementation of government and development can take place in an efficient, clean and accountable manner.[2]

In the procurement of goods/services (procurement) as an effort to achieve community welfare, a goods/services procurement agreement is required between the government and the private sector which will organize the procurement of the goods/services.[3] The government is represented by the Goods and Services Procurement Officer, while the private sector is
represented by a private legal entity which acts as the party procuring government goods/services.[4]

Considering that the procurement of goods/services is carried out through a process towards the implementation of the rights and obligations of each party, the procurement of goods/services is outlined in an agreement or contract for the procurement of goods/services.[5] In line with democratization and decentralization policies, the procurement process for goods/services is no longer carried out centrally. Procurement mechanisms are no longer implemented by one technical department alone, but are implemented in a system involving many ministries and institutions, each with different functions and roles.

Agreements for the procurement of government goods/services carried out using agreements are basically legal acts in the field of private law. In this case, it is a legal act that is bound by a mutual agreement between the Commitment Making Officer and the person procuring the goods/services.[6] This bond creates reciprocal rights and obligations, for mutually beneficial purposes between the government and those procuring goods/services. The parties are bound to give and receive each other's rights and obligations as stated in the goods/services procurement agreement. What is the legal responsibility of Commitment Making Officials in procuring government goods/services.[7]

Research Method
This research is normative legal research.[8]

Results Method and Discussion
Government Procurement of Goods/Services, hereinafter referred to as Procurement of Goods/Services, is an activity of Procurement of Goods/Services by Ministries/Institutions/Regional Apparatus financed by the APBN/APBD, the process of which includes identification of needs, tender for procurement, implementation of work, up to handover of work results. (Central Government 2018). Several changes have been made to regulations on the procurement of goods/services, as an effort to realize transparency, efficiency, openness and competitiveness, affordability and quality, and can be accounted for both in terms of physical, financial and benefits for the smooth running of the government's duties in serving the community. Government procurement regulations for goods/services have undergone several changes, since the issuance of Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services, until now they have undergone several changes, first through Presidential Decree Number 35 of 2011; second, through Presidential Decree Number 70 of 2012; third, through Presidential Decree Number 172 of 2014, fourth, Presidential Decree Number 4 of 2015, fifth with Presidential Decree Number 16 of 2018 and finally with Presidential Decree Number 12 of 2021 concerning Amendments to Presidential Decree Number 16 of 2018. Any changes to the government procurement regulations for goods/services are made to complement previous regulations, and are adjusted to conditions related to the government procurement process for goods/services. Currently the regulations that apply in the procurement of goods/services are Presidential Decree Number 16 of 2018 as amended by Government Procurement of Goods/Services. One of the considerations in promulgating the Presidential Decree was that the previous Presidential Decree had shortcomings so that it was adjusted to the development of the government's needs regarding the regulation of goods procurement of goods/services. Presidential Decree Number 16 of 2018 as amended by Presidential Decree Number 12 of 2021 is expected to be able to meet the demands of needs, especially in meeting the demands of various parties, who expect that the
procurement of goods/services is truly efficient and beneficial for the community, nation and state, in realizing prosperity public.

In the procurement of goods/services, the government as the user of the goods/services is the Commitment Making Official procurement of goods and services. The responsibilities of the Commitment Making Officer are regulated in the provisions in Article 1 number 10 of Presidential Decree Number 16 of 2018 concerning Government Procurement of Goods/Services, which determines: The Commitment Making Officer is an official who is authorized by the Budget User/Budget User's Power of Attorney to make decisions and/or take action which can result in expenditure of the state budget/regional budget. [9]

After the reform, the position of Commitment Making Officer actually became a frightening position for the official. Because the position of Commitment Making Officer is a position that is very vulnerable to contact with legal issues, in this case criminal law, especially related to the procurement of government goods/services. Even when the procurement of goods/services is not in accordance with what was promised, then deviations in budget use arise, almost certainly always involving the Commitment Making Officer. In this case, the Commitment Making Officer must be responsible for his involvement in the implementation of the contract agreed with the goods/services provider.[10]

The responsibility of the Commitment Making Officer in the procurement of government goods/services is ability in Commitment Making Official to be responsible for the procurement of government goods/services. Referring to Van Dunn's contract theory, the responsibilities of the Commitment Making Officer start from pre-contract, contract implementation, to post-contract procurement of goods/services. Meanwhile, if we refer to the Vicarius Leability theory, the responsibility for procuring goods/services does not stop with the Commitment Making Officer, but also involves the Budget User or Budget User Proxy, as long as their involvement in the procurement of government goods/services can be proven.

This responsibility is based on the argument that according to the doctrine vicarious liability is a person's ability to be responsible for actions committed against another person, when both are included in a form of joint activity or joint activity. Thus, based on the theory of vicarious liability, the Commitment Making Official's superior as the authorizer, in this case the Budget User or Budget User Proxy, should take responsibility for what the Commitment Making Official does in the procurement of government goods/services, as long as it does not constitute an act of doing wrong. The person of Commitment Making Official.[11]

Based on this theory, the responsibilities of the Commitment Making Officer must of course be sorted and chosen, which is the responsibility of the Commitment Making Officer as the subject who carries out orders to carry out the authority given by the Budget User or Budget User Proxy. The sorting and selection which is the responsibility of Commitment Making Official independently and the responsibility of Budget User/Authorized Budget User or the Authorized Budget User as the giver of the order, is not easy, because the boundaries between these two actions cannot be clearly defined.[12]

The responsibility of Commitment Making Officials in the procurement of goods/services can be divided into 2 (two) types, namely: administrative responsibility and criminal responsibility. Administrative responsibility relates to administrative violations as referred to in the Presidential Decree on Procurement of Goods/Services while criminal liability relates to the possibility of criminal acts being committed by Commitment Making Officials in the procurement of government goods/services.[13]

Administrative sanctions are a tool used by the authorities and are public law as a reaction to someone's non-compliance with the obligations contained in the norms of state
administrative law. Administrative sanctions are administrative actions, and can also take the form of administrative fines imposed for violations of statutory provisions of an administrative nature. Administrative sanctions are imposed for administrative violations that are clearly regulated in law. Administrative sanctions are different from criminal sanctions. The difference between administrative sanctions and criminal sanctions can be seen from the purpose of imposing sanctions. Administrative sanctions are aimed at violations or actions that violate administrative law norms, while criminal sanctions are aimed at violators or perpetrators of violations by imposing punishment in the form of physical and psychological suffering on the perpetrators.\[14\]

The administrative responsibility of Commitment Making Officials in the procurement of goods/services basically results in the imposition of administrative sanctions for Commitment Making Officials in the procurement of government goods/services. Administrative sanctions in the procurement of government goods/services are a result of non-fulfillment of administrative obligations, or failure to carry out administrative obligations in accordance with applicable laws and regulations. Meanwhile, criminal sanctions are a form of administrative responsibility in the procurement of goods, not only imposed on the Commitment Making Official, but also imposed on the Budget User Authority, Budget Use Authority, and Procurement Officials, and also on the Election Working Group (Working Group) as long as their involvement can be proven.

Sanctions that violate the integrity pact can only be imposed if the violation has received a decision from the Business Competition Supervisory Commission, or a General Court judge, or a State Administrative Court judge, which has permanent legal force (inkracht van gewijste). So, as long as the violation of the integrity pact has not received a decision from the Court, then administrative sanctions in the form of disciplinary sanctions cannot be imposed. The use of administrative sanctions against Commitment Making Officials cannot be separated from their position as government officials or administrative officials, the provisions of which are contained in Law Number 30 of 2014 concerning Government Administration.\[16\]

Regarding the use of criminal sanctions, the possibility of being imposed on the Commitment Making Official is very large, so that if the Commitment Making Official is not careful in carrying out his authority, duties and responsibilities in procuring goods, then criminal sanctions cannot be avoided.\[17\]

Criminal sanctions imposed on Commitment Making Officials are generally related to mark ups or committing malicious collusion with service providers who win tenders for goods/services procurement work.\[18\] However, it is also possible that criminal sanctions can be imposed on Commitment Making Officials who commit collusion and nepotism which can harm state finances and/or the state economy, and benefit themselves and/or the corporation or other parties.\[19\]

The imposition of sanctions as regulated in Articles 80 to 84 of Law Number 30 of 2014 concerning Administration requires separate regulations. This is in accordance with the provisions regulated in Article 84, which are formulated: "Further provisions regarding procedures for the imposition of administrative sanctions as intended in Article 80, Article 81, Article 82 and Article 83 are regulated by Government Regulations."

Further regulation of the provisions of Article 84 of Law Number 30 of 2014 concerning Government Administration, relating to the procedures for imposing administrative sanctions, subsequently on October 31 2016, Government Regulation Number 48 of 2016 was issued concerning Procedures for Imposing Administrative Sanctions on Government Officials hold (here in after referred to as Government Regulation Number 48 of 2016).
Light Administrative Sanctions as referred to can be imposed directly by Officials who are authorized to impose Administrative Sanctions. Medium or heavy Administrative Sanctions can only be imposed after going through an internal examination process. Regarding the procedures for imposing sanctions, it is regulated in Article 11 of Government Regulation Number 48 of 2016, which is formulated as follows:

1. Light Administrative Sanctions as intended in Article 9 paragraph (1) can be imposed directly by Officials who are authorized to impose Administrative Sanctions.
2. Medium Administrative Sanctions or Heavy Administrative Sanctions as intended in Article 9 paragraph (2) and paragraph (3) can only be imposed after going through an internal examination process.

So, according to Government Regulation Number 48 of 2016, light administrative sanctions can be imposed directly by officials who have the authority to impose administrative sanctions without being preceded by an examination to determine whether or not there is any wrongdoing by the official concerned. Meanwhile, administrative sanctions in the serious category must be preceded by an internal examination to determine whether the official concerned is guilty or not. Likewise, Commitment Making Officials who are suspected of committing errors, whether administrative errors, must also receive the same treatment as regulated in Government Regulation Number 48 of 2016. However, if a violation of criminal law occurs, of course it will be processed based on the provisions of criminal law legislation.

According to Government Regulation Number 48 of 2016, an official's superior is an official who has the authority to impose administrative sanctions on government officials who are suspected of committing administrative violations. In the event of an Administrative Violation committed by a regional official, the Official authorized to impose Administrative Sanctions is the regional head. Meanwhile, in the event that an Administrative Violation is committed by an official within a ministry/institution, the Official who has the authority to impose Administrative Sanctions is the minister/head of the institution.

The problem that often occurs related to the imposition of administrative sanctions is non-compliance with administrative sanctions by officials against whom sanctions are imposed. The non-implementation of administrative sanctions is not only related to administrative violations, but also decisions of the State Administrative Court which have permanent force are also often not obeyed. In fact, sometimes officials who have the authority to impose sanctions do not impose sanctions that are within their authority.

Criminal liability of Commitment Making Officials, before discussing the criminal responsibility of Commitment Making Officials, first explain the term responsibility. Theoretically, the meaning of responsibility emphasizes the meaning of responsibility which is born from the provisions of statutory regulations, so that the theory of responsibility is interpreted in the sense of liability. Responsibility is related to a person’s legal obligation to be responsible for certain actions they have committed. Accountability is also often associated with certain sanctions that are threatened for actions carried out that are contrary to legal norms.

Conclusion

The responsibility of Commitment Making Officials in the procurement of government goods/services consists of administrative responsibility and criminal responsibility. Administrative responsibility occurs if an administrative violation occurs, and will be subject to administrative sanctions. Meanwhile, criminal liability means the possibility that a criminal act has occurred and can be subject to criminal sanctions. However, this responsibility can also
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