

The Validity of the Form of Agreement in Fulfilling Pharmaceutical Supplies in Government Hospitals

Keabsahan bentuk kerja sama dalam pemenuhan sediaan perbekalan farmasi di Rumah Sakit Pemerintah

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Abstrak: Penelitian hukum normatif ini mengkaji limitasi terhadap asas kebebasan berkontrak dalam pengadaan perbekalan farmasi untuk Rumah Sakit Pemerintah di Indonesia. Asas kebebasan berkontrak yang diatur dalam Pasal 1338 Kitab Undang-Undang Hukum Perdata dibatasi oleh ketentuan perundang-undangan khusus yang mengatur pengadaan barang/jasa pemerintah. Penelitian ini menggunakan *statute approach* dan *conceptual approach* untuk menunjukkan bahwa pengadaan perbekalan farmasi wajib dilaksanakan secara elektronik melalui sistem E-Purchasing dan katalog elektronik (E-Catalogue) pemerintah sebagaimana diatur dalam Peraturan Menteri Kesehatan tentang Perencanaan dan Pengadaan Obat berdasarkan Katalog Elektronik *juncto* Peraturan Presiden tentang Pengadaan Barang/Jasa Pemerintah yang berlaku. Jenis kontrak yang digunakan adalah jual beli, yang harus memenuhi syarat sahnya kontrak Pasal 1320 KUHPer serta kewenangan pengadaan berada pada organ tertentu dalam struktur rumah sakit: Pejabat Pembuat Komitmen (PPK) yang berwenang mengambil keputusan pengeluaran anggaran dan menandatangani kontrak, serta Kelompok Kerja (Pokja) yang membantu PPK dalam proses pemilihan penyedia. Terdapat konsekuensi hukum terhadap kegiatan kontraktual dalam pemenuhan sediaan perbekalan farmasi di rumah sakit pemerintah sampai dengan pelaksanaan harus tunduk pada peraturan perundang-undangan yang berlaku, jika proses penyusunan kontrak sampai dengan pelaksanaan tidak sesuai dengan pengadaan barang/jasa maka dapat dibatalkan/batal demi hukum sebagaimana tidak terpenuhinya Syarat Sah Kontrak 1320 KUHPer serta berpotensi melanggar prinsip transparansi, ternyata konsep konsinyasi dalam perbekalan farmasi tidak sesuai dengan mekanisme pengadaan barang/jasa.

Kata Kunci: Kebebasan Berkontrak, Pengadaan, Perbekalan Farmasi, Rumah Sakit Pemerintah, E-Purchasing.

Abstract : *This normative legal research examines the limitations of the principle of freedom of contract in the procurement of pharmaceutical supplies for Government Hospitals in Indonesia. The principle of freedom of contract, as regulated in Article 1338 of the Civil Code, is limited by specific statutory provisions governing the procurement of government goods/services. This research uses a statute approach and a conceptual approach to show that the procurement of pharmaceutical supplies must be carried out electronically through the E-Purchasing system and the government's electronic catalog (E-Catalogue) as regulated in the Regulation of the Minister of Health concerning Drug Planning and Procurement based on the Electronic Catalogue in conjunction with the applicable Presidential Regulation concerning the Procurement of Government Goods/Services. The type of contract used is a sale and purchase, which must meet the requirements for a valid contract in Article 1320 of the Civil Code and the procurement authority rests with specific organs within the hospital structure: the Pejabat Pembuat Komitmen/Commitment Making Officer (PPK) who is authorized to make decisions on budget expenditures and sign contracts, and the Kelompok Kerja/Working Group (Pokja) who assists the PPK in the supplier selection process. There are legal consequences for contractual activities in fulfilling pharmaceutical supplies in government hospitals until the implementation must comply with applicable laws and regulations, if the process of*

drafting the contract until the implementation is not in accordance with the procurement of goods/services then it can be canceled/nulled by law as it does not fulfill the Valid Contract Requirements 1320 of the Civil Code and has the potential to violate the principle of transparency, it turns out that the concept of consignment in pharmaceutical supplies is not in accordance with the mechanism for procurement of goods/services.

Keywords: Freedom of Contract, Procurement, Pharmaceutical Supplies, Government Hospitals, E-Purchasing.

INTRODUCTION

The Constitution of the Republic of Indonesia guarantees the right to health, where the state is responsible for providing service facilities to have a good and healthy life, as stated in Article 28 H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). In line with this, healthcare needs to be addressed to fulfill the human rights aspect, which is the essential right of society to have a healthy body.¹ To safeguard the right of every individual to a healthy and fulfilling life, the government, representing the authority of the state, must enact and enforce laws that guarantee these essential rights. Health law, as a vital specialization within legal science, encompasses all regulations governing the health sector, ensuring that the well-being of the population is not only prioritized but also protected.²

In hospitals, the health sector plays a crucial role by encompassing both medical and non-medical services. Medical services are vital because they involve direct interactions between doctors, healthcare professionals, and patients, ensuring quality care and treatment. Equally important are non-medical services, which underpin these medical efforts by delivering essential resources—such as pharmaceuticals, state-of-the-art medical equipment, and crucial disposable medical supplies. Together, these services create a comprehensive healthcare experience that prioritizes patient well-being and effectiveness in treatment. In relation to medical support, it is regulated in Article 186 paragraph (1) of Code Number 17 of 2023 concerning Health (Code 17/2023), which states that medical support elements are included in the hospital organization. Further provisions, as regulated in the Regulation of the Minister of Health Number 3 of 2020 concerning Hospital Classification and Licensing (Permenkes 3/2020), also stipulate that certain hospitals must provide medical services and medical support; however, the meaning of medical support itself is not expressly defined.

In practice, hospitals operate in a dual capacity, serving as both business actors and consumers in business activities.³ Their provision of healthcare services, health consultations, and sale of medicines demonstrates their role as business actors. Simultaneously, their need to purchase supplies for medical services and support activities underscores their role as consumers, managing pharmaceutical supplies and medical equipment with equal importance.

Regarding the urgency of pharmaceutical supplies, it can be inferred that ensuring drug availability is a crucial strategy for health development and supports hospital medical

¹ Syamsul Rijal Muhlis et al, Kekuatan Hukum Penyelesaian Sengketa Medis Pasien dengan Rumah Sakit Melalui Jalur Mediasi, *Jurnal Ilmiah Dunia Hukum*, Volume 5 Nomor 1, 2020, p. 32

² Hendrik, *Etika & Hukum Kesehatan*, Penerbit Buku Kedokteran EGC, Jakarta, 2012, p. 24

³ Nurul Ismaya Akli, Kedudukan Tanggung Jawab Hukum Rumah Sakit Dalam Pemberian Pelayanan Jasa Kesehatan Terhadap Masyarakat, *Lex Privatum*, Vol. IX, No. 12, 2021, p. 58

services.⁴ Administrative orders are essential to hospital business activities, particularly contracts, which should ensure security and benefit all parties involved.⁵ The preparation of contracts is guided by the principle of freedom of contract (“FOC”), as regulated in Article 1338, paragraph (1), of the Civil Code, namely that every contract made legally binds those who make it. The existence of the principle of FOC is a consequence of the application of the principle of contract as a regulatory law. Book III of the Civil Code adheres to an open system, grounded in contract law, which provides freedom, allowing everyone to have the right to make and enter into agreements in accordance with the wishes of the parties. The broadest possible freedom is open to regulate and determine the contents of the agreement, provided it does not violate morality, public order, or the law.⁶

The sale and purchase of pharmaceutical supplies by hospitals and healthcare providers is a critical process that necessitates a well-defined procurement framework to ensure compliance with all relevant laws and regulations. For government hospitals, this procurement process is grounded in the FOC principle, which grants the parties involved significant rights and responsibilities. This principle enables them to determine whether to engage in a contract, select their contracting partners, outline the terms and structure of the contract, and clarify its purpose.⁷—all while ensuring their decisions comply with legal standards, public order, and ethical considerations.

Several previous studies have discussed drug planning and procurement, the analysis of cooperation agreements, and ethics in the distribution of pharmaceuticals in accordance with regulations, but none have identified any legal gaps, critiques, or proposed solutions to improve pharmaceutical supply procurement regulations in government hospitals. According to Molou et al.'s research, a qualitative description of drug planning and procurement within the government-implemented system, namely e-purchasing, direct purchasing, and tenders, is provided.⁸ ktivian et al. described the form of agreement and presented a case study of a cooperation agreement for the procurement of drugs, medical devices, and consumable medical materials between PT APL and PBA Hospital, using qualitative analysis. Additionally, Arrasily et al. discussed the substantial gap between comprehensive pharmaceutical distribution regulations and operational logistics implementation, focusing on human resources and internal operational regulations.⁹ In contrast, this research offers novelty by directly identifying legal gaps in current pharmaceutical procurement regulations in government hospitals and by proposing concrete legal solutions to address them, thereby contributing new insights to the law on the procurement of goods/services, especially pharmaceutical supplies. It is essential to recognize that within pharmaceutical supply contracts, specific limitations are in place. These restrictions aim to ensure compliance with the Procurement of Goods and Services Regulations, as set out in Presidential Regulation No. 16 of 2018 and its amendments,

⁴ Abdrhman Mahmoud Gamil, Pharmaceutical procurement practice aspects, *World Journal of Advanced Research and Reviews*, 8(3), 2020, p. 338

⁵ Lukman Santoso, *Teori Hukum dan Teknis Pembuatan Kontrak, Kerja Sama, dan Bisnis*, Setara Press, Malang, 2016, p. 64

⁶ Rebecca Stone, Putting Freedom of Contract in its Place, *Journal of Legal Analysis*, Volume 16 Issue 1, 2024, p. 102

⁷ Izzah Khalif Raihan Abidin, et al., Business Competition Related to the Rapid Test Service For Diagnosis of Covid-19 in Hospitals in Surabaya, Indonesia, *Journal of Peace, Development and Communication*, Vol 05 Issue 04, 2021, p. 54

⁸ Muh Dwi Septian Molou, et al., Gambaran Perencanaan dan Pengadaan Obat di Rumah Sakit Umum Daerah Daya Kota Makassar, *Jurnal Riset dan Pengabdian Interdisipliner*, Vol 3 (1), 2026, p. 133-135

⁹ Nailul Fithri Arrasily, et al., Regulation of Drug Procurement and Supply Chain Management in Indonesia Hospitals : Implications for Drug Availability and Mitigation of Drug Shortage, *JIEE: Jurnal Ilmiah Ekotrans & Erudisi*, Vol 5 (2), 2025, p. 197

including Presidential Regulation No. 46 of 2025 (“Procurement Regulation”) – guarantee that government procurement of goods and services not only complies with legal requirements but also upholds the highest standards of accountability and integrity.¹⁰

RESEARCH PROBLEMS

Based on the background above, the formulation of the problem in this research is as follows: 1) Limitations on freedom of contract (“FOC”) in the provision of pharmaceutical supplies in government hospitals, and 2) Limits on the authority of procurement organs in the provision of pharmaceutical supplies.

METHOD

This study employs a normative research method, using both a statutory and a conceptual approach.¹¹ The statutory approach is necessary to comprehend the hierarchy and principles of statutory regulations. In contrast, the conceptual approach is used to develop and explore concepts grounded in legal principles derived from doctrines and views that have evolved in the field of legal science.¹² This comprehensive approach allows us to examine the validity of cooperation in fulfilling pharmaceutical supplies in Government Hospitals, based on primary and secondary legal sources.¹³ A statutory approach is necessary to understand the hierarchy and principles of laws and regulations related to government procurement of goods and services, in particular, Presidential Regulation (Perpres) Number 46 of 2025 concerning the Second Amendment to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services. This approach clarifies the legal framework governing procurement processes. Conversely, a conceptual approach is used to develop and explore concepts grounded in legal principles of FOC, enabling a deeper understanding of contractual arrangements. This comprehensive approach thus allows us both to assess legal compliance and to examine the validity of cooperation in fulfilling the supply of medicines in Government Hospitals.

The analysis of legal materials in this study is conducted through a literature review. The types of legal materials used include primary sources, like laws, and secondary sources, such as books, journals, and research reports. Data were collected through a literature review and analyzed by interpreting legal rules and principles to address the legal gap.¹⁴ This aims to ensure that the procurement of pharmaceutical supplies in government hospitals supports transparent contract drafting and prevents overlapping roles among officials.

DISCUSSION

a. Limitation of the FOC Principle in the Supply of Pharmaceutical Preparations in Government Hospitals

Hospitals play an essential role in our healthcare system, providing a broad spectrum of vital services, including promotion, prevention, treatment, recovery, and comfort care.

¹⁰ Faizal Kurniawan, et al., Legal Framework of Sustainable Construction Procurement to Prevent Land Degradation : Comparison Between Indonesia, Singapore and Thailand, *Journal of Property, Planning and Environmental Law*, Vol. 16 (2), 2024, p. 97-98

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi, Prenadamedia Group, Jakarta Timur, 2005, p. 137

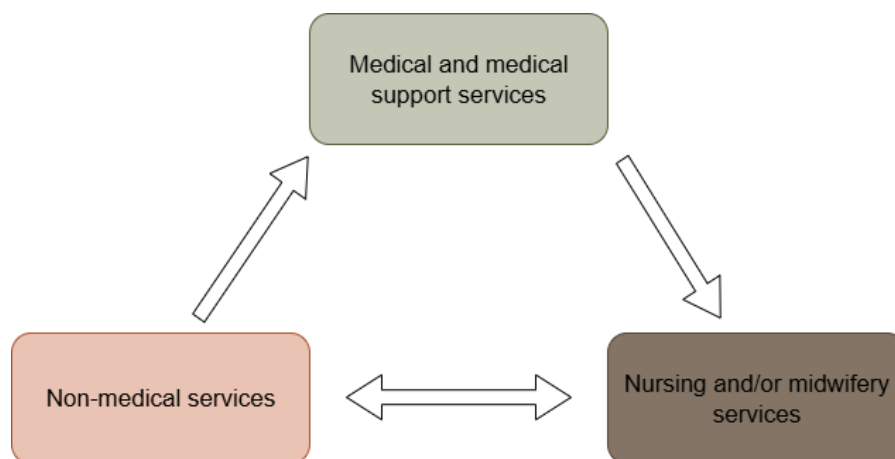
¹² Zulfadli Barus, Analisis Filosofis Tentang Peta Konseptual Penelitian Hukum Normatif Dan Penelitian Hukum Sosiologis, *Dinamika Hukum*, Vol 13, No 2, 2013, p. 313

¹³ Farid Irfan Siddik, et al., The Urgency of Banks in Implementing the Precautionary Principle as Consumer Protection in the Standard Clauses of Credit Agreements, *Media Iuris*, Vol 7, No 3, 2024, p. 459

¹⁴ Omar Damaraji Dewananda, et al., Tender Rigging as a Violation of Competition Law: A Study of KPPU Decision No. 02/KPPU-L/2024, *Justitia Jurnal Hukum*, 10 (1), 2026, p. 117

They are dedicated to providing crucial support through inpatient, outpatient, and emergency services, empowering individuals to enjoy healthier, happier lives (vide Article 1, number 10, of Code 17/2023). Management structures for hospitals vary and may include oversight by the Central Government, the Regional Government, or private-sector entities. For private hospitals, this entails adherence to specific organizational guidelines, including legal frameworks and financial management practices that ensure efficiency and accountability (vide Article 185 of the Code 17/2023 and Article 2 of the Minister of Health Regulation No. 3 of 2020 concerning Hospital Classification and Licensing). For hospitals established by the Central Government and Regional Governments, they must be in the form of Technical Implementation Units from Agencies tasked with the health sector, or certain Agencies with management by Public Service Agencies or Regional Public Service Agencies, while for those established by the private sector, they must be in the form of legal entities whose business activities are only in the hospital sector. However, there are exceptions for hospitals managed by non-profit legal entities that can operate in areas outside the hospital sector (vide Articles 3-4 of the Minister of Health Regulation No. 3 of 2020).

Hospitals are categorized into two types based on the services they provide: General Hospitals and Specialized Hospitals. However, Minister of Health Regulation No. 3 of 2020 explicitly stipulates that the health services provided by these two hospitals must consist of at least:



Picture 1.

Minimum requirements for health services provided

Source: Minister of Health Regulation No. 3 of 2020

It is understood that in addition to providing medical services, hospitals are also required to provide medical support and non-medical services. Examples of medical support services include pharmacy, medical equipment, and hospital infrastructure. Non-medical services, including human resources, finance/accounting, and other support functions, do not involve patient care but rather focus on the hospital's operations.

Pharmaceutical services are carried out at the Pharmacy Installation in each hospital to ensure the availability of safe, high-quality, beneficial, and affordable pharmaceutical preparations, medical devices, and consumable medical materials in a one-stop shop. The one-stop shop system is a pharmaceutical policy including the creation of formularies, Procurement, and distribution of Pharmaceutical Preparations, Medical Devices, and Consumable Medical Materials, which aims to prioritize the interests of

patients through the Pharmacy Installation so that the role and responsibility for a series of pharmaceutical preparation management are primarily at the Pharmacy Installation in each hospital. Drug procurement, as outlined in Minister of Health Regulation No. 5 of 2019, is based on the planning and Procurement of drugs through electronic catalogs, achieved via E-Purchasing, which utilizes electronic catalogs and has been established by the Government as the procedure for purchasing drugs through an electronic information system.

Based on the Decree of the Deputy for Monitoring-Evaluation and Development of Information Systems Number 7 of 2015 concerning the Terms and Conditions for Purchasing Goods Online, which regulates the procedures for purchasing goods, namely as follows:

Table 1. Procedures for Purchasing Goods Online in the Procurement of Goods/Services in Indonesia

| | |
|----------------|--|
| Ordering Goods | <p>Ordering of these goods can be done by the Procurement Officer or a PPK-appointed official, with a different flow.</p> <p>a. The role of Procurement Officers, crucial to the operations of each agency or institution, encompasses the following duties:</p> <ol style="list-style-type: none"> 1) With meticulous attention to detail, create a procurement package through the e-purchasing application. This should be based on the technical specifications and Estimated Price provided by the PPK/appointed official, as well as the goods data contained in the electronic catalog system. 2) The Procurement Officer sends a purchase request to the Supplier registered in the electronic catalog system through the e-purchasing application. 3) It is the responsibility of the Procurement Officer to ensure the Supplier approves the purchase request. Once this is done, the Procurement Officer then sends the purchase request to the PPK/appointed official, a crucial step in the procurement process. 4) The PPK/appointed official approves the submitted purchase request. 5) The Procurement Officer sends a Purchase Order for the goods approved by the PPK/appointed official through the e-purchasing application. <p>b. The PPK or an official appointed by the head of the agency/institution:</p> <ol style="list-style-type: none"> 1) Creates a purchase package for goods through the e-purchasing application, based on the goods data contained in the electronic catalog system. 2) Sends a purchase request to the Supplier registered in the electronic catalog system. 3) The Supplier approves the request. 4) The PPK/appointed official sends a Purchase Order to the Supplier registered in the electronic catalog system. |
| Goods Purchase | In 2022, LKPP, through the Decree of the Head of the Government |

| | |
|-----------|--|
| Agreement | <p>Goods/Services Procurement Policy Agency Number 122 of 2022 concerning Procedures for Organizing the 2022 Electronic Catalog, regulated the E-purchasing mechanism implemented by PPK and/or procurement officials, including:</p> <ol style="list-style-type: none"> a. The PPK or procurement officer orders and purchases goods or services through an electronic catalog; b. The prospective supplier receives a purchase order from the PPK or procurement officer; c. The PPK or procurement officer negotiates with the prospective supplier regarding pricing and technical details; d. A goods/services purchase agreement is made between the PPK/Procurement Officer and the prospective supplier; e. Issuance of a Purchase Order. |
|-----------|--|

Source: Summary obtained from several applicable provisions.

Considering that the principles of government procurement of goods/services are practical, efficient, transparent, open, competitive, fair and non-discriminatory, and accountable, then to prevent allegations of unfair business competition violations, the selection of Providers to be included in the Electronic Catalog must go through a process determined by LKPP, namely starting with an open announcement on the website www.lkpp.go.id which Providers and the public can access, this is an effort to avoid collusion between certain Providers and other Ministries/Institutions/Regional Work Units/Institutions, hereinafter referred to as K/L/D/I, which are agencies/institutions that use the State Revenue and Expenditure Budget (APBN) and/or Regional Revenue and Expenditure Budget (APBD). The process of government procurement of goods/services can be conducted electronically using E-Purchasing, which enables the creation of packages, downloading or uploading of agreement letters or marketing letter formats, and downloading or uploading of scanned, signed contracts, among other functions.¹⁵

When discussing the requirements for the validity of an agreement and a contract, the question arises regarding the validity of the goods/services procurement contract document through the E-Purchasing mechanism, which utilizes an electronic system. The provision of space in electronic documents has been recognized as evidence with legal force and the same legal consequences as written documents. The validity of electronic documents and/or their printouts constitutes valid legal evidence, as per the provisions of Article 1, paragraph 1, of Law Number 19 of 2016, which amends Law Number 11 of 2008 concerning Information and Electronic Transactions.¹⁶

An online digital procurement contract for pharmaceutical supplies is a valid contract and therefore legally binding on the parties who agree to certain obligations.¹⁷ The main difference between an electronic contract and a conventional contract lies in the means used: an electronic contract requires an electronic system in which the parties do not meet face-to-face, and the contract is sent via the internet.¹⁸ However, it is essential to

¹⁵ Johan Wahyudi, Penerapan Prinsip Transparansi dan Prinsip Akuntabilitas pada Pengadaan Barang/Jasa Pemerintah dalam Tanggapan Darurat COVID-19, *Jurist-Diction*, Vol. 5 No. 6, 2022, p. 2263

¹⁶ Christine Widjaya and Adriano, The Legal Power in Evidence of Electronic Medical Records As A Substitute for A Doctor's Signature, *SOEPRA Jurnal Hukum Kesehatan*, Vol 10 No. 1, 2024, p. 19

¹⁷ Chaliza Adnan, et al., Application of Aspects of Consent in Medical Procedures (Informed Consent) As a Form of Conesualism Principle, *SOEPRA Jurnal hukum Kesehatan*, Vol. 8 No. 2, 2022, p. 237

¹⁸ Ridwan Khairandy, Perbaharuan Hukum Kontrak sebagai Antisipasi Transaksi Electronic Commerce, *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 16 No. 8, 2016, p. 46

recognize that contracts in an e-catalog are not executed electronically via digital media for signing; there is a clear distinction in how the parties reach a mutual agreement. Even though they cannot meet in person to sign the contract, they must still include the agreed-upon terms in the e-catalog so the contract can be properly implemented.¹⁹ Considering that the e-purchasing contract has a specific characteristic, namely that it has been determined through a catalog contract template that the Procurement Officer/PPK can access on the E-Purchasing application account. What kind of government efforts are there to ensure that providers (sellers) and Procurement Officers/PPK comply with the cooperation agreement that only refers to the listing of goods/services? This matter remains complicated to ensure, as in reality, the parties may make modifications that do not comply with the template.

In the procurement of goods/services via the e-catalog, the contract document is listed as a contract standard from LKPP, also known as a Purchase Order (SP)/request order. This serves as evidence of the agreement between the Procurement Officer and the Provider, which both parties must sign and stamp. Regarding the sanctions regulated in the draft SP, LKPP urges the Provider and PPK not to change or replace the clause on Sanctions. After the SP has been signed and stamped, the scanned document can be uploaded to each account for LKPP monitoring, serving as a basis for monitoring and evaluation. Suppose the SP is deemed by both parties to be insufficiently complex in regulating rights and obligations, as well as other details that must be agreed upon (besides the type of goods and price). In that case, it can be further regulated in a Cooperation Agreement, while still complying with the valid conditions of a contract, given that pharmaceutical supplies involve a very complex procurement mechanism in terms of the number of objects and their management methods. The condition of cause or reason that is permitted in an agreement is the purpose for which the agreement was made.²⁰ An agreement is needed to clarify the FOC principle, allowing the parties to define their relationship within appropriate limits.²¹

Based on the consideration of the Panel of Judges in the Supreme Court Decision Number 71 P/HUM/2013²² in the case of the objection request for the right to material review against the Regulation of the Head of the Government Goods/Services Procurement Policy Agency Number 17 of 2012 concerning E-Purchasing, that the implementation of the E-Catalogue and umbrella contract is an effort aimed at ensuring that the tender implementation for the procurement of government goods/services sourced from the APBN is carried out transparently with high accountability, so that it can prevent corruption, reduce transaction costs, create healthy business competition and the objectives of the procurement of goods/services will be achieved promptly, in the correct quantity, in the right quality, at the right price and on target. That the mechanism for registering goods in the E-Catalogue must be preceded by making or signing an Umbrella Contract, and that there is a clause if the transaction that occurs (purchase of goods/services by the government) is greater in value than the transaction to the public, then the entrepreneur (partner) will receive a sanction of 5 (five) times the

¹⁹ Indah Parmitasari, *Penerapan Asas Perjanjian pada Kontrak Elektronik* dalam Prosiding Seminar Hukum Perdata Departemen Hukum Perdata Fakultas Hukum Universitas Islam Indonesia, FH UII Press, Yogyakarta, 2021, p. 130 <<https://law.uui.ac.id/penerapan-asas-perjanjian-pada-kontrak-elektronik/>>

²⁰ Lintang Yudhantaka, Keabsahan Kontrak Jual Beli Rumah Susun Dengan Sistem *PreProject Selling*, *Yuridika*, Volume 31 No 1, 2017, p. 99

²¹ *Ibid.*

²² Case between Gabungan Perusahaan Alat-Alat Kesehatan Dan Laboratorium Indonesia (Gakeslab Indonesia), At the DKI JAKARTA Provincial Level, represented by IR. Y. TOMAN L. TOBING., et al VS LEMBAGA KEBIJAKAN PENGADAAN BARANG/JASA PEMERINTAH (LKPP), p. 31

difference in transaction value does not violate the valid conditions of an agreement Article 1320 points 1 and 3 Civil Code (vide page 31).

Based on the Procurement Regulation, several forms of contracts in the procurement of goods/services are mentioned, namely: a) proof of purchase/payment; b) receipt; c) Work Order (SPK); d) letter of agreement; and e) letter/proof of order. In the practice of pharmaceutical supplies, the parties can further determine the method of sale and purchase of medicines or consumables to be used in hospitals. There is no explicit regulation regarding the payment mechanism for the procurement of pharmaceutical supplies in Indonesia. Consequently, based on the habits of both hospitals and suppliers, they can choose between buying and selling or consignment. The consignment applies to specific products that require special treatment. Types of procurement contracts based on the legal relationship that occurs can be:²³ (1) sale and purchase, (2) Construction Work Contract, (3) Consulting service procurement contract, (4) Other service procurement contracts, (5) Cooperation agreements, and (6) management contracts.

In the procurement of goods, the sales and purchase contract is the most basic contract, and it is governed by the principles of sales and purchase set forth in Chapter 5, Book III, of the Civil Code, namely the principle of consensual agreement. However, it is also necessary to consider the specific provisions applicable to the procurement of government goods and services.²⁴ Furthermore, the conditions for the validity of the contract in Article 1320 of the Civil Code also apply to the procurement contract, namely agreement, competence, specific objects, and causes permitted by law.²⁵ Procurement Regulation has determined that the procurement concept must have gone through a series of processes for intent and purpose, with specific methods and mechanisms. In this case, whether through E-Purchasing, direct procurement, or direct appointment, the sales and purchase activities must first be planned, and the process of selecting the Provider must be carried out to determine the winner.

In the pharmaceutical consignment method, an item has not been determined through procurement planning, so the parties' rights and obligations have not yet been formed. Taking into account the provisions of Article 1320 Civil Code regarding the valid conditions of a contract that must be fulfilled cumulatively, which implies that the failure to fulfill one or more conditions (agreement, ability, certain things, and permissible causes) will cause the contract to be contested, either void/*nietig* or can be canceled/*vernietigbaar*.²⁶

As Article 1320, point 1, of the Civil Code requires an agreement as one of the conditions for the validity of the contract, it assumes that the parties mutually express their will in everyday situations, and what if there is a discrepancy between the will and the statement:²⁷ Does it cause a defect in will (*wilsgebreke*)? Then the process of forming the contract has legal consequences that can be canceled.²⁸ The existence of abuse of circumstances is considered contradictory and, therefore, will disrupt the existence of the contract in question.²⁹ Considering the reasons for canceling the contract according

²³ Yohanes Sogar Simamora, et al., *Pengantar Hukum Pengadaan Barang dan Jasa*, Airlangga University Press, Surabaya, 2021, p. 154

²⁴ *Ibid*, p. 156

²⁵ *Ibid*, p. 143.

²⁶ Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial*, Cetakan ke-5, Kencana, Jakarta, 2021, p. 180

²⁷ *Ibid*, p. 147-149

²⁸ *Ibid*, p. 154

²⁹ *Ibid*, p. 159

to the *New Burgerlijk Wetboek* (NBW), namely abuse of circumstances (*misbruik van omstandigheden*) which is a new development in the NBW regulations in the Netherlands, the element of abuse of circumstances by the Provider that is detrimental to the government hospital is seen in the implementation of consignment of certain products which can make a contract void because the Provider dishonestly intends to gain profit so that the government hospital depends on special products (only sold by certain companies), the urgent needs of the government hospital, ignorance, negligence, inexperience in procuring goods/services in accordance with applicable laws and regulations.³⁰

b. Limits of authority of procurement bodies in the provision of pharmaceutical supplies

The government has established drug planning and procurement based on an electronic catalog, where the management of pharmaceutical supplies goes through several stages, including:³¹

Table 2. Stages of pharmaceutical preparation management

| No. | Stages | Details |
|-----|----------------|---|
| 1. | Selection | At this stage, the hospital, under the leadership of the Hospital Director, prepares a formulary that refers to the National Formulary. This formulary contains a list of drugs agreed upon by the medical staff and is compiled by the Pharmacy and Therapy Committee/Team (see Attachment to Minister of Health Regulation 72/2016 Chapter II concerning Management of Pharmaceutical Preparations, Medical Devices, and Disposable Medical Materials). |
| 2. | Needs Planning | The Pharmaceutical Installation is required to determine the quantity and period of procurement of pharmaceutical preparations in accordance with the selection results. Through this stage, it will avoid drug shortages because it uses a method that can be accounted for and has been adjusted to the available budget. There are main points that must be considered in the planning guidelines, namely: a) available budget; b) priority setting; c) remaining stock; d) previous period usage data; e) order waiting time; f) development plan. |
| 3. | Procurement | On an ongoing basis, this stage will further determine the procurement method, supplier selection, contract specifications, procurement process monitoring, and payment. The Pharmaceutical Unit will carry out the procurement process, but if it involves areas/divisions outside the Pharmaceutical Unit, it must involve pharmaceutical personnel. There are several things to consider when procuring pharmaceutical preparations, including: a. A Certificate of Analysis must accompany drug raw materials. b. Hazardous materials must include a Material Safety Data Sheet (MSDS). |

³⁰ *Ibid*, p. 157-163

³¹ *Vide* Lampiran Permenkes 72/2016 Bab II tentang Pengelolaan Sediaan Farmasi, Alat Kesehatan, Dan Bahan Medis Habis Pakai, p. 15-25

| No. | Stages | Details |
|-----|---|--|
| | | <p>c. Pharmaceutical preparations must have a Distribution Authorization Number.</p> <p>d. The expiration date is a minimum of 2 (two) years, except for certain Pharmaceutical Preparations (vaccines, reagents, etc.), or under certain accountable conditions.</p> <p>Procurement Method :</p> <p>a. Purchase (in accordance with applicable goods and services procurement regulations)</p> <p>b. Pharmaceutical Preparation Production (by the Pharmaceutical Unit)</p> <p>c. Donations/Dropping/Grants</p> |
| 4. | Receiving | The Pharmaceutical Installation will receive the ordered goods in accordance with the contract or Order Letter in the agreed physical condition, and all goods receipt documents must be stored properly. |
| 5. | Storage | Before goods are distributed for health services, the Pharmaceutical Installation needs to store them to ensure the quality and safety of pharmaceutical preparations based on pharmaceutical requirements, applying the principles of First Expired First Out (FEFO) and First In First Out (FIFO) accompanied by a management information system, and providing appropriate naming and labeling, paying attention to "LASA, Look Alike Sound Alike". |
| 6. | Distribution | At this stage, pharmaceutical preparations are distributed from the storage location to the service unit/patient, ensuring quality, stability, type, quantity, and timeliness. |
| 7. | Destruction and withdrawal of pharmaceutical preparations, medical devices, and disposable medical supplies | Pharmaceutical preparations that cannot be used must be followed up in accordance with the provisions of applicable laws and regulations, namely withdrawal by BPOM or destruction. |
| 8. | Control | Drug use requires control carried out by the Pharmacy Unit in conjunction with the Pharmacy and Therapeutics Committee/Team through the following methods: <ol style="list-style-type: none"> 1. Evaluation of rarely used inventory (slow-moving); 2. Evaluation of inventory that has not been used for 3 (three) consecutive months (dead stock); 3. Stocktaking (counting inventory in the warehouse before use), which is conducted periodically and routinely. |
| 9. | Administration | This stage facilitates tracking activities, as evidenced by the recording and reporting of both pharmaceutical and financial aspects. |

Source : Author's Summary, Attachment to Minister of Health Regulation 72/2016.

Hospitals must establish a distribution system that ensures the supervision and control of pharmaceutical supplies, medical devices, and consumable medical supplies within

service units. For example, one of the state-owned university hospitals in Surabaya has established a verification, evaluation, and monitoring process for the planning, procurement, and distribution of pharmaceutical supplies and medical devices. Distribution can only occur after the needs plan has been approved by the PPK (Commissioner of Pharmaceuticals). This process requires the approval of the Pharmacy Logistics Officer (PJ), the Head of the Pharmacy Installation, the Deputy Director of Medical Support, and the Deputy Director of Finance and Resources. This process ensures the direction and transparency of each unit/installation's needs, ensuring that the goods received align with the approved needs plan and are accessible through the hospital procurement application.

The procurement of pharmaceutical supplies is the responsibility of various organs within the hospital organization, as defined below:

1. PPK

The Commitment Making Officer (PPK) is defined in Article 1, number 10 of the Procurement Regulation, namely an official who is given authority by the Budget User (PA)/Budget User Authorization (KPA) to make decisions and/or take actions that may result in the expenditure of the state budget/regional budget. There are several duties of the PPK in the procurement of pharmaceutical supplies as regulated in Article 11 of the Procurement Regulation, as amended, namely:

- a. Prepare procurement planning and determine technical specifications of goods/services. This initial stage is crucial, and the PPK in determining specifications should not be directed at a particular brand, so that every offer from the goods/services provider is based solely on the fulfillment of the technical specifications determined in the procurement document. In the procurement of pharmaceutical supplies, the specifications for the type of goods (drugs, medical devices, and/or consumables) prepared by the PPK must be in accordance with the planning and studies of the KFT and the Pharmacy Installation. This is because it is not necessarily a person who serves as a PPK in a hospital is a professional who understands drugs, medical devices, and consumables technically, but in general it is mandatory to understand the pharmaceutical supplies needed by the hospital so that a PPK does not only hide behind a tennis team or support team or also a planning consultant who prepares technical specifications. In this case, the PPK in the hospital must have the ability to understand the procurement flow as per the laws and regulations, understand the issues, both legal and health aspects, have a breadth of knowledge and experience, so that in carrying out his duties and authorities, he can be held accountable in a transparent and accountable manner. The preparation of these specifications also needs to be in line with the RKO by paying attention to the function of drugs or consumables by classifying their types based on their properties:³²
 - 1) *Fast-moving* drugs/consumables with a relatively fast turnover time, intended to meet the needs of fast-acting services, depending on the usage of each unit in the hospital. Examples: antibiotics, chronic medications, diabetes medications, and hypertension medications. These drugs will not be used only in one service unit; they may overlap with other units.
 - 2) *Slow-moving* drugs/consumables with a longer turnover time than fast-moving drugs.

³² Mohammad Anief, *Manajemen Farmasi*, Cetakan I, Gajah Mada University Press, Yogyakarta, 2001, p. 62

- 3) *Dead-moving* drugs/consumables that can be used for a relatively long time or have not moved for a year, or in other words, are unsold. This can be due to service interruption or the discontinuation of certain diseases. Example: Antiviral drugs for COVID-19.
- b. Preparing Your Own Estimated Price (HPS)
The HPS is calculated expertly and based on reliable data. The PPK must adequately document the HPS history. The general purpose of preparing the HPS is to serve as a tool for assessing the fairness of bids, including details, as a basis for determining the highest valid bid price, as a basis for price negotiations in direct appointment and direct procurement, as a basis for determining the value of bid bonds, and as a basis for determining the value of performance bonds for bidders whose value is lower than 80% (eighty percent) of the total HPS value. For HPS for pharmaceutical supplies conducted through the E-Catalog, direct appointment, or direct procurement, the HPS is crucial as a basis for the PPK to negotiate with suppliers. The HPS for pharmaceuticals must refer to the pricing policy established by the Minister of Health.
- c. Contract Drafting
- d. Implementing e-Purchasing for a minimum value of IDR 200,000,000 (two hundred million rupiah).
- e. Issuing a Letter of Appointment of a Goods/Services Provider
- f. Signing the Contract
The authorized party to sign a contract for the procurement of pharmaceutical supplies is the PPK. It is inappropriate for procurement documents to be signed by hospital management, such as directors or deputy directors, because this is inconsistent with the procurement scheme determined by the Ministry of Health, which refers to the goods/services procurement regulations (in this case, the Procurement Regulation). The contract becomes crucial, as it requires attention to the validity requirements of the authorized signatory.
- g. Controlling the Contract
As a signatory to the pharmaceutical supplies procurement contract, the PPK is obliged to implement the contract agreed upon with the Provider.
- h. Reporting on the implementation or completion of goods/services procurement
- i. Submitting the work results
At this stage, the work results differ from those in the construction and service sectors, which are project-based procurement. However, for pharmaceutical supplies, this is similar to the procurement of other goods. Once the Supplier has delivered the goods, the PPK can hand them over to the Pharmaceutical Installation via Logistics for distribution to the units requiring them based on the previously approved plan.
- j. Storing and maintaining the integrity of all activity implementation documents
- k. Assessing the Supplier's performance
2. Pokja
In the procurement of pharmaceutical supplies, in addition to the Procurement Officer (PPK), there is also a Working Group (Pokja) that assists the PPK in conducting reviews and managing the Supplier selection process. According to Article 1, number

12, of the Procurement Regulation, a Working Group is a human resource appointed by the head of the Goods/Services Procurement Work Unit to manage Supplier selection. For a series of pharmaceutical supplies procurement processes in hospitals, it would be more appropriate if the Working Group members had a background in pharmacy education to understand the needs, flow, and procedures established by the Ministry of Health. The members also had staff who understood procurement law, both from a legal and economic or accounting perspective. The selection Working Group's duties, as stipulated in Article 13 of the Procurement Regulation, are:

- a. Carrying out the preparation and implementation of Supplier selection;
- b. Carrying out preparation and implementation of Supplier selection for the electronic catalog; and
- c. Determining the winner of the selection/Provider for the following selection methods:
 1. Tender/Direct Appointment for the Procurement of Goods/Construction Work/Other Services package with a maximum Budget Ceiling of IDR 100,000,000,000 (one hundred billion rupiah); and
 2. Selection/Direct Appointment for the Procurement of Consulting Services package with a maximum Budget Ceiling of IDR 10,000,000,000 (ten billion rupiah).

The Pokja consists of three (3) members, as stipulated in Article 13, paragraph (2), of the Procurement Regulation. However, additional members may be added as long as the number remains an odd number, based on the complexity of the provider selection process. The selection working group is authorized to establish selection documents containing information and provisions that the parties must adhere to when selecting the provider (see Article 1, point 43, of the Procurement Regulation).

Based on their respective authorities, the officials mentioned above are required to ensure that a pharmaceutical procurement contract complies with the law and is legally binding on the parties (in this case, the buyer and the provider). Considering the FOC principle, a pharmaceutical procurement contract must be clear, specific, and detailed regarding general to specific provisions as determined in the Agreement Letter format in the E-Catalog. It must include technical specifications, the condition of the drug or consumables, financial aspects (payment and warranty), and sanctions. There is no explicit regulation requiring hospital pharmacists to fill the PPK and Pokja positions. These roles can be held by anyone who has obtained a Goods/Services Procurement certification and possesses a practical understanding of the technical aspects of purchasing drugs and consumables in hospitals. However, for the planning team, which is the starting point for the pharmaceutical supply procurement process, a pharmacist under the Pharmacy Installation plays an important role³³ in planning, distributing, managing, and destroying these pharmaceutical goods (see Table 2).

³³ Clara Ritawany Sinaga, et al., Evaluation of Drug Management in the Planning, Procurement, and Distribution Stages at the Hospital Pharmacy Installation, *Pharmakon: Jurnal Farmasih Indonesia*, Vol. 22 No. 1, 2025, p. 70

CONCLUSION

- a. Procurement of pharmaceutical supplies, particularly medicines, for government hospitals must be conducted through e-Purchasing. Under certain conditions, direct Procurement or direct appointment may be conducted, as stipulated in Minister of Health Regulation 5/2019, which refers to Procurement Regulation, by applying the principle of transparency from planning to contract implementation. The type of procurement contract for pharmaceutical supplies is a sale and purchase contract, governed by the principles of sale and purchase as stipulated in Chapter 5 of Book III of the Civil Code, and the conditions for contract validity in Article 1320 of the Civil Code apply.
- b. The limits of the procurement organ's authority in the provision of pharmaceutical supplies are regulated in the Procurement Regulation. The organs that have the authority in the Procurement of pharmaceutical supplies are the PPK, which has the authority to make decisions and/or take actions that can result in the expenditure of the state budget/regional budget, and the Working Group, which has the authority to assist the PPK in conducting studies and managing the Supplier selection process.

SUGGESTIONS

The preparation of the pharmaceutical supply procurement plan must be carried out in a coordinated manner by the Pharmacy Installation and Procurement Officer/PPK. This coordination is not just a formality but a key factor in ensuring a smooth, efficient procurement process. It is in accordance with Minister of Health Regulation 5/2019 and Presidential Regulation 16/2018 in conjunction with the secondary amendment. It is of utmost importance that these regulations are strictly adhered to, as they form the legal framework for the procurement process. The parties can further regulate this through a Cooperation Agreement for the pharmaceutical supply procurement contract if the SP does not clearly specify the agreed rights and obligations, while still complying with the validity requirements of Article 1320 of the Civil Code. The signing of the pharmaceutical supply procurement contract must be carried out by the hospital PPK based on its authority as stated in Article 10 paragraph (3) letter b of Presidential Regulation 16/2018, in conjunction with the secondary amendment, and does not apply the product consignment method as the basis for preparing the pharmaceutical supply purchase plan.

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