



## Ideal Concept of Goods/Services Procurement Regulation for Pandemic Emergency Situations

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### **Abstract:**

*The purpose of this article is to find corrective material for regulating the procurement of goods / services in an emergency / pandemic. The research method used in this research is the normative research method by taking a statute approach and a case approach. The results of this study indicate that there are serious challenges in complying with laws and regulations related to handling the Covid-19 Pandemic in 2020. Where the BPK finding number is the tip of the iceberg phenomenon of irregularities that may be committed by local governments. Where most of the local governments are not equipped with adequate evidence of price reasonableness. Therefore, the price of goods must be based on adequate price reasonableness documents, but most of the appointed goods and services providers do not have/will not submit evidence of adequate price reasonableness. This raises suspicions about whether the high price disparity is really a real economic phenomenon or just a fabrication by individuals trying to take advantage of the situation. In addition, there is an obligation from the Internal Auditor to conduct an audit of price reasonableness, but it was not carried out. In addition, BPK as an external auditor was also unable to conduct a maximum inspection due to constraints with the Health protocol and online audit system. This makes the opportunity or potential irregularities in financial management large and even undetectable.*

**Keywords:** *Ideal Concept; Procurement of goods/services; Pandemic*

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## Introduction

The entire country was infected with the coronavirus in 2020. This virus is named in scientific language with the word "corona" and the Yun n word "korone", meaning crowned or halo (aura/ring of light). The World Health Organization



announced that the corona virus initially spread in Wuhan province, People's Republic of China. Covid-19 was started by viruses that cause various types of diseases ranging from mild flu to severe flu have the same origin, such as SARS (Severe Acute Respiratory Syndrome) and MERS (Middle East Respiratory Syndrome caused by coronavirus) viruses were first transmitted from animals to humans (Husna 2020).

Due to the outbreak of the *corona virus* disease 2019 (Covid-19), Indonesia is experiencing a pandemic situation that is beyond normal limits. Rules that exceed emergency or normal limits are regulated in Articles 12 and 22 of the 1945 Constitution, Article 12 *"states that the President declares a state of emergency, the conditions and consequences of the state of emergency are determined by law"*. Article 22 of the 1945 Constitution *"states that in a state of urgency the president shall issue a government decree (perpu) in lieu of law"*. Based on these regulations, it can be argued that there are two categories of unusual or emergency situations, namely first, potentially dangerous situations, and second, situations that require immediate action (Taib 2017).

The Indonesian government has a constitutional basis to deal with emergencies such as the impact of a pandemic disaster, according to the provisions listed in Article 22 of the 1945 Constitution, the President has the authority to issue Government Regulations in Lieu of Laws (*Perpu*) in situations that require immediate and very urgent action.

In the face of the Covid-19 pandemic, the government issued Government Regulation Number 1 of 2020 concerning State Fiscal Policy and Financial System Stability in the fight against *Corona Virus Disease 2019* (Covid-19). This step was taken in response to the threat of a pandemic that threatens economic and/or financial system stability. The results of the determination regarding the amendment of Perpu No. 1 of 2020 have been approved by the House of Representatives (DPR) and have become Law No. 2 of 2020 which replaces the provisions of the Perpu. This decision was taken as part of the efforts to handle the 2019 coronavirus (Covid-19) pandemic and/or respond to threats that impact the economy and/or financial system stability (Gunawan 2020).



Central authorities require local governments to allocate funds in the Regional Revenue and Expenditure Budget-*APBD* or the Revised Regional Revenue and Expenditure Budget-*APBD-P* for health purposes. These expenditures are intended for Covid-19 prevention and treatment efforts, which are regulated in Minister of Finance Decree No. 19/PMK.07/2020 on the Distribution of Revenue Sharing Funds-*Dana Bagi Hasil (DBH)*, General Allocation Funds-*Dana Alokasi Umum (DAU)*, and regional incentive funds- *Dana Insentif Daerah (DID)* for the 2020 fiscal year (Republik Indonesia 2020). Local governments are allowed to use Revenue Sharing Funds *DBH* which include *DBH* from tobacco leaf excise-*CHT*, oil and gas.

Allocation Funds-*DAU*, and regional incentive funds-*DID* to overcome Covid-19. *DBH* of oil and gas can be used for Covid-19 prevention or control efforts within the framework of Special Autonomy for Health and Nutrition Improvement stipulated in the Special Autonomy Law for Papua and West Papua Provinces.

As a control measure, the central government is authorized to stop the distribution of the General Allocation Fund-*DAU* if the local government does not report health-related activities related to the prevention or control of Covid-19 for two consecutive months. *DAU* cuts will be considered based on the financial condition of the region and the estimated regional spending needs for the next three months. This provision is regulated through a decree issued by the Director of Bookkeeping of the Ministry of Finance. The handling of the Covid-19 outbreak by the national government is handled through three areas (Ulya 2020), namely:

- a) Health sector handling;
- b) Handling the social sector;
- c) Handling economic impacts;

The handling of the Covid-19 outbreak in these three areas is the result of changes in the focus and allocation of the Regional Budget-*APBD* which previously did not include a budget for handling Covid-19. To accelerate the handling of the Covid-19 outbreak, the Central Government requires Regional Governments to make adjustments, reallocations, and changes in the focus of regional income and expenditure. This is regulated in the Joint Regulation of the Ministers of Home



Affairs and Finance with Number 119/2813/SJ and Number 177/KMK.07/2020 dated April 9, 2020 regarding the acceleration of the revision of the 2020 Regional Budget. Handling COVID-19 is very important to maintain public security and the national economy. This provision regulates the budget adjustment process, prioritization of the use of budget allocations (*refocusing*), and changes in budget allocations (reallocation) for the 2020 Regional Budget-*APBD*. The results of budget adjustments will be allocated for handling Covid-19, especially in health care activities, handling economic impacts, and providing social safety nets.

Adjustments to regional spending that emphasize the handling of Covid-19 are placed in the Unexpected Expenditure-*BTT* post. The Directorate General of Fiscal Balance of the Ministry of Finance defines unexpected expenditure as budget expenditure required for extraordinary needs that are not expected to occur again, such as natural disasters, social disasters, and other unexpected expenditures that are very important in the implementation of central/regional government. Statement of Government Accounting Standards-*PSAP* Number 02 Paragraph 38 provides a similar definition of Unexpected Expenditure (Sugiri 2021).

Unexpected expenditure is a category of expenditure that is rarely used in local or national budgets, however, in the Covid-19 response, the use of budget for unexpected expenditure has increased significantly. Unexpected expenditure can be allocated for purposes such as natural disasters, non-natural disasters, social disasters, extraordinary events, search and rescue operations, and repair of damage to facilities/infrastructure that can disrupt public services.

The Covid-19 pandemic is a disaster that is not of natural origin and has a wide negative impact in a short period of time. To overcome this situation, the Government uses the Unexpected Expenditure budget. The use of Unexpected Expenditures in the *APBD* is a new thing in state/regional financial management. For this reason, there is no fully effective control system, and its flexible arrangements can allow misuse. Some regions in Indonesia experience obstacles in the use of Unexpected Expenditures, which are caused by various factors such as limited human resources, lack of adequate facilities and infrastructure, and low public awareness.



In the effort to handle the Covid-19 pandemic, it is very important to fulfill basic needs such as food, medicine, personal protective equipment (PPE), and disinfectants needed by officers or volunteers involved in handling Covid-19. These needs are very urgent and cannot be delayed. The mechanism of procurement of goods / services in general is still considered less fast when faced with pandemic / emergency conditions. Therefore, in the conditions of the Covid-19 pandemic, a special mechanism is needed in the procurement of goods/services during an emergency. The mechanism for the procurement of goods/services in an emergency period has been regulated in Presidential Regulation Number 16 of 2018 concerning Procurement of Goods/Services and more specifically has been regulated in *LKPP* Circular Letter (Government Procurement Policy Agency) Number 3 of 2020 concerning the implementation of the procurement of goods/services related to the handling of Coronavirus Disease 2019 (Covid-19). The pandemic situation at that time met the requirements for the procurement of goods and services with an emergency mechanism, so that the process of meeting the handling needs was not hampered. To ensure the availability of these needs, the Government must use the mechanism of procurement of goods and services in an emergency in accordance with *LKPP* (Government Goods / Services Procurement Policy Agency) Circular Letter Number 3 of 2020 regarding the implementation of the procurement of goods / services related to the handling of Coronavirus Disease 2019 (Covid-19). (Rahmaniah 2021).

Procurement procedures for goods and services-*PBJ* in the face of a pandemic situation are different from normal conditions. The main difference lies in the organization of the procurement process. During the peak of the Covid-19 pandemic, one of the main challenges was the significant price disparity, limited availability of goods, and increased demand especially for personal protective equipment-*PPE*. These price disparities have led to increased spending by Local Governments. This has placed a significant economic burden on the region (Sasongko, Suryawati, and Rahardjo 2021).

Direct appointment is one of the methods that can be used by Ministries, Institutions, and Local Governments in disaster situations. The direct appointment method can involve service providers or be carried out independently or self-managed. In procurement through service providers, the government can directly



appoint service providers who are considered to have the ability to carry out the required work, however, the direct appointment method can only be used in emergencies determined by the government based on the law. In the procurement of goods and services process under normal conditions, direct appointment is carried out through a pre-qualification system that involves an invitation to one selected business actor. This process usually involves technical as well as price negotiations, however, in a pandemic situation, direct appointments are made without going through a prequalification process and directly appointing service providers who are deemed to have sufficient competence (Hadiyanto and R Wiwin 2021).

Nevertheless, the direct appointment is still expected to be in accordance with the core principles of public procurement such as effective, efficient, transparent, open, competitive, fair, non-discriminatory, and accountable. The ethical principles of public procurement must also be maintained. The behavior of stakeholders in the procurement process can affect the quality of public procurement, including the level of transparency and fairness. Many problems have occurred as a result of the Direct Appointment practice. These problems were disclosed in an examination conducted by the Supreme Audit Agency regarding the handling of the Covid-19 pandemic in 2020. These problems arose as a result of the application of emergency procurement regulations applicable in Indonesia in that year (Pusdiklat, n.d.).

Researchers have identified a number of problems contained in 30 Compliance Audit Reports on Handling the Covid-19 Pandemic in 2020 conducted by the Supreme Audit Agency on 30 Local Governments in Indonesia, including:

- 1) Aceh Province;
- 2) Central Java Province;
- 3) Southeast Sulawesi Province;
- 4) Local Government of Yogyakarta;
- 5) Semarang City;
- 6) Yogyakarta City;
- 7) Tangerang City;



- 8) Siak District;
- 9) Badung Regency;
- 10) Hulu Sungai Selatan District;
- 11) Tegal Regency;
- 12) Gorontalo Province;
- 13) Bantul Regency;
- 14) Sleman District;
- 15) Rokan Hulu Regency;
- 16) Banyumas Regency;
- 17) Kulon Progo Regency;
- 18) Wonosobo District;
- 19) Merangin Regency;
- 20) Gunung Kidul Regency;
- 21) Tana Tidung Regency;
- 22) Morowali Regency;
- 23) North Lampung Regency;
- 24) Tarakan City;
- 25) Wakatobi Regency;
- 26) North Aceh District;
- 27) East Kalimantan Province;
- 28) Bone Bolango Regency; and
- 29) Majene District;

30) Belu District.

Researchers found that there were at least 87 problems involving local governments related to the use of budgets in efforts to deal with the Covid-19 Pandemic. These problems have a minimum deviation value of IDR 21,174,592,090.89 including:

- a. There were 10 problems with excess tax collection with a total deviation of Rp 6,238,589,362.59;
- b. There were 5 problems with indications of price gouging with a total deviation of Rp 4,329,657,901.00;
- c. There were 18 problems with a total deviation of Rp 2,768,638,550.04;
- d. Accountability does not match the actual conditions there are 3 problems with a total deviation of Rp 2,728,269,000.00;
- e. There were 7 problems of waste with a total deviation of Rp 2,452,563,549.68;
- f. Evidence of Accountability is not believed to be true there is one problem with a total deviation of Rp 1,579,140,098.49;
- g. Underpayment to the Provider there is one problem with a total deviation of Rp 704,600,000.00;
- h. Incomplete accountability of one problem with a total deviation of Rp144,187,600;
- i. There were three problems with late fees with a total deviation of Rp 91,566,527.00;
- j. There were two overpayments with a total deviation of Rp79,305,990.00;
- k. Under-collection of taxes there were four problems with a total deviation of Rp 40,790,612.09; and
- l. There were two problems with unaccounted expenditures with a total deviation value of Rp 17,282,900.00.





In addition to problems related to financial losses, there are also technical problems in financial management that cause deviations that are detrimental to state / regional finances in managing the budget in handling the Covid-19 Pandemic in 2020, including:

- a. Local governments made expenditures that were not equipped with adequate evidence of price reasonableness, there were 21 problems out of a total of 30 local governments;
- b. There were 4 problems with inadequate expenditure planning;
- c. There were no audits by the inspectorate for two issues;
- d. There was one issue of inadequate internal control;
- e. The provider does not have a business license there is one problem; and
- f. There is one potential conflict of interest issue.

Based on the explanation above, it can be concluded that there are serious challenges in complying with laws and regulations related to handling the Covid-19 Pandemic in 2020. Where the BPK findings figure above is only the tip of the iceberg phenomenon of irregularities that may be committed by local governments. The value of the above findings worth Rp 21,174,592,090.89 is only 0.53% of the total budget realized by the 30 local governments above, which amounted to Rp 3,964,425,216,244.36. Where most of the local governments are not equipped with adequate evidence of price reasonableness. During the handling of the Covid-19 Pandemic, there were shortcomings in the process of procuring goods and services where the Regional Government (*Pemda*) did not prepare its own estimated prices and did not select providers. Therefore, the price of goods must be based on adequate price reasonableness documents, but most of the appointed goods and services providers do not have/will not submit evidence of adequate price reasonableness.

This raises suspicion over whether the high price disparity is really a real economic phenomenon or just a fabrication by individuals trying to take advantage of the situation. In addition, there is an obligation from the Internal Auditor to conduct an audit of the reasonableness of prices, but it was not carried out. In



addition, BPK as an external auditor was also unable to conduct a maximum examination due to constraints with the Health protocol and online audit system. This makes the opportunity or potential irregularities in financial management large and even undetectable. Thus, researchers assume that pandemic conditions cause situations where laws / regulations cannot regulate optimally.

## Method

In writing this article, the researcher uses a normative research method by analyzing legal regulations, court decisions, legal documents, and other legal sources to identify arguments, theories, or the discovery of new concepts that can be used in overcoming legal problems (Ali 2021). Researchers can also make comparisons between various legal regulations or analyze legal developments to produce a better understanding and provide recommendations that can be used in legal practice.

## Discussion

### 1. Ideal Concept of Goods / Services Procurement Regulation in Emergency / Pandemic Situations

An ideal regulatory concept must meet criteria that contain a general view that reflects principles that are often recognized and adopted in designing ideal regulations. Here are views that are widely accepted by many experts, government organizations, and practitioners in the fields of law, economics, and public policy. These principles usually form the basis for formulating regulations in various countries and sectors to ensure that the regulations are effective, fair, and in accordance with the needs of society (Listiyanto 2012), including the following:

- 1) Primary Goals, Security and Prosperity: Regulations should be focused on protecting the safety and well-being of Indonesians. This includes consumer, environmental and public health protection.
- 2) Compliance and Law Enforcement:
  - a. Easy to Understand Compliance: Regulations should be drafted in simple language that is easily understood by all parties involved.



- b. **Effective Law Enforcement:** A strong enforcement system must be in place to ensure that regulations are followed and violations are punished in accordance with the law.
- 3) **Proportionality:** Regulation should be balanced and proportionate to the risks it seeks to address. Excessive regulation can hinder the growth of small and medium enterprises (SMEs).
- 4) **Openness and Participation:**
  - a. **Openness:** The regulation-making process should be transparent, and information about regulations should be easily accessible to the public.
  - b. **Participation:** Affected stakeholders, including the general public, should have the opportunity to provide input and participate in the regulatory formulation process.
- 5) **Flexibility and Adaptability:** Regulations must be able to adapt to developments and changes in the business and technological environment in Indonesia. They must be flexible to accommodate such changes.
- 6) **Fairness:** Regulations must be applied fairly and equally to all parties involved. There should be no discrimination or unfair treatment.
- 7) **Evaluation and Improvement:** Regulations should be periodically evaluated to ensure that they remain relevant and effective. Improvements or changes should be made where necessary. This research is a form of evaluation that the Government can use as input for the improvement of regulations related to Public Procurement Regulations in Emergency/Pandemic Situations.
- 8) **Consistency:** Regulations must be consistent with other existing laws and regulations in Indonesia. They should not contradict each other.
- 9) **Efficiency and Cost:** The ideal regulation should minimize administrative and compliance costs for companies and individuals, while achieving the goal of protecting society.



10) Public Interest: Regulations should always put the public interest ahead of individual or corporate interests.

11) Cultural and Social Context: Regulations should also consider the cultural and social context in Indonesia to ensure that they are in line with local values and norms.

In the discussion above regarding the substance of the regulation of the procurement of goods / services in the Covid-19 Pandemic emergency situation from the results of the analysis in general still leaves many problems, so that the regulation is not adequate and shows a lack of form (Ramli 2020).

- 1) The need for flexibility will trump accountability. Although regulations emphasize flexibility in procurement, there is a risk of sacrificing transparency and accountability. This shows that the preparation of goods / services procurement regulations in the Covid-19 Pandemic emergency situation is very weak in terms of compliance and law enforcement so that in practice many procurement actors are ignored. Although the speed in the procurement process is increased, regulators have the responsibility to develop regulations that can be complied with by *stakeholders*.
- 2) Private sector involvement is still not clearly regulated. Regulations have not clearly regulated how the private sector can participate effectively and safely. This shows that the regulation of goods/services procurement in the Covid-19 Pandemic emergency situation has not paid attention to the element of justice where the rights and obligations of each party have not been regulated in a balanced manner. A regulation must be applied fairly and equally to all parties involved. There should be no discrimination or unfair treatment.
- 3) Procurement procedures are not detailed Procurement steps in emergencies are not explained in detail, increasing the potential for confusion and abuse.

Meanwhile, specifically from the technical mechanism of its regulation, the results of the researcher's analysis show that there are shortcomings in the form of.

- 1) Non-standard evidence of price reasonableness or lack of standardization in evidence of price reasonableness;



- 2) Lack of sanctions. There are no clear sanctions for procurement actors who make mistakes;
- 3) Audit is not mandatory or there is no provision requiring audit as a condition of payment.

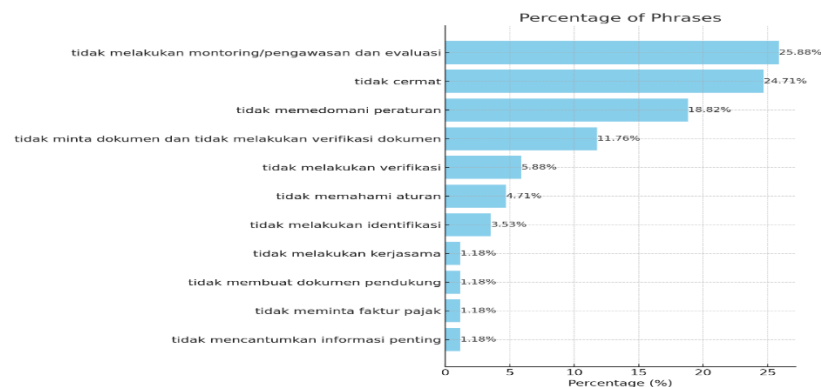
Problems with the shortcomings in the making of the above regulations have an impact as described in the problems that arise in the process of regional financial accountability for the Procurement of Goods / Services in the COVID-19 emergency situation. These problems are reflected in the results of BPK's examination of the financial accountability that has been carried out. The following is a summary of the causes of each problem that became BPK findings. Based on the problems discussed based on the BPK findings above, researchers have grouped them into eleven causes behind the occurrence of these problems, including (Romli, Sembiring, and Nugraha 2021).

- 1) Procurement authorities do not conduct monitoring/supervision and evaluation;
- 2) Procurement authorities are not careful in procuring goods and services;
- 3) Procurement authorities are not guided by applicable regulations;
- 4) The procurement authority does not request documents and does not verify the documents that make up the procurement administration;
- 5) The procurement authority does not verify either the documents or the quality of the goods and services in accordance with the contract;
- 6) Procurement authorities do not understand the procurement regulations that should apply;
- 7) Procurement authorities do not identify needs, especially in planning the procurement of goods and services;
- 8) The procurement authority does not cooperate with other authorities that can help the smoothness and efficiency of the procurement of goods and services;

- 9) Procurement authorities do not create supporting documents that are administrative requirements in the procurement of goods and services;
- 10) The procurement authority does not request the tax invoice on which the tax is calculated; and
- 11) Procurement authorities do not include important information in procurement documents to ensure that the procurement process runs smoothly.

From the grouping above, the analysis has been carried out and it was found that the largest presentation of the causes of the majority of problems that occur is as follows:

*Figure 2 Majority Cause Presentation of the Problem*



*The chart above is a grouping of causes of problems based on the occurrence of 30 LHPDTT BPK made by researchers*

From the chart above, it can be concluded that there are two main things from the three most common problems that cause problems that occur in the process of procuring goods and services during the Covid-19 pandemic carried out in 2020, namely.

- a) Non-compliance in implementing laws and regulations

Assessing from 100% of the problems that occurred 44.7% consisting of 18.82% of the problems were non-compliance with the goods





and services procurement authority by not guiding the rules for the procurement of goods and services that applied during the pandemic and 25.88% of the problems were problems of non-compliance with the goods and services procurement authority to control the procurement of goods and services by monitoring / supervising and evaluating the procurement of goods and services so that the process was smooth and did not experience obstacles. Control over the implementation of the procurement of goods and services is regulated in Presidential Regulation Number 16 of 2018 concerning Government Goods / Services Procurement in Article 57 paragraph (2) which states that PPK conducts an inspection of the goods / services delivered, besides that it is also regulated in the Regulation of the Minister of Home Affairs Number 77 of 2020 concerning Technical Guidelines for Regional Financial Management, in: Appendix to Chapter I section G.3. states that the duties of PPTK in assisting the duties and authorities of PA / KPA include, among others:

- Letter a, controlling and reporting on the progress of technical implementation of SKPD/SKPD sub-activities;
- Letter b, prepare documents in the context of budget execution for Expenses for the implementation of Activities/Sub-activities; and
- prepare documents for the procurement of goods/services for SKPD/SKPD activities/sub-activities in accordance with the provisions of laws and regulations governing the procurement of goods/services.
- Appendix to Chapter I section I, at:
- Point 3 letter a states that the PPK of the SKPD Unit has the duty and authority to verify SPP-TU and SPP-LS along with proof of completeness submitted by the auxiliary Spending Treasurer;

- Point 4 states that Verification is carried out to examine the completeness and validity of SPP-TU and SPP-LS submitted by the Substitute Expenditure Treasurer;
- Point 5 states that Verification is carried out to examine the completeness and validity of the accountability report of the Substitute Revenue Treasurer and Substitute Expenditure Treasurer.
- The Appendix to Chapter I section J.2.c.5) states that the Spending Treasurer has the duty and authority to examine the completeness of payment documents.

## b) Human Error

Assessing from 100% of the causes of problems in the procurement of goods and services during the Covid-19 pandemic, 24.71% of them were caused by the inattention of the goods and services procurement implementing authority in carrying out the goods and services procurement process. Here the implementing authority for the procurement of goods and services does not place the right people or does not have sufficient competence or the procurement authority does not make sufficient efforts to increase competence.

It is unfortunate that the BPK audit did not reveal the motive of each cause of the error so that it cannot be known whether the cause of the problem is *dolus* or intentional or *culpa* or negligence of the procurement authority. It also makes it impossible to assess whether the act was not a crime or merely a violation of the law. The causes of existing problems can be largely corrected by improving the formulation of rules or regulations governing the procurement of goods/services in emergency or pandemic situations. Some of the problems identified, such as non-compliance with the rules, carelessness in the implementation of the procurement process, lack of standardized evidence of price reasonableness, and lack of clear sanctions, can be addressed through improvements in the formulation of the regulations.



## **2. Clarify the terms of the price reasonableness document that must be prepared by the Service Provider so that the preparation is ensured to be credible and accountable.**

BPK RI findings related to price reasonableness documents were 21 cases that occurred in 21 local governments out of 30 local governments that were the object of analysis in this study. So it can be said that the findings of not fulfilling the price reasonableness document are the most common findings in the procurement of goods and services during the pandemic.

Price reasonableness documents in the procurement of goods and services during COVID-19 are very important because price reasonableness documents help create transparency in the procurement process. It makes it possible to follow the cost and price trail of each item ordered, thus enabling better monitoring and evaluation of budget utilization. It also helps in ensuring accountability and compliance with applicable regulations and procedures. Price reasonableness documents help in preventing misuse of public funds and acts of corruption. When all transactions and prices are recorded in detail, it is more difficult for dishonest parties to manipulate the system or take advantage of emergency or pandemic situations for personal gain.

Price reasonableness documents enable better evaluation of whether prices paid for goods or services are reasonable and effective in the context of an emergency or pandemic situation. This helps ensure that budgets are used wisely and efficiently. Clarification and Simplification of Regulations: Procurement regulations should be designed to be clear, easy to understand, and relevant to the emergency or pandemic situation. Regulatory language should be simplified to minimize ambiguity.

A price reasonableness document is an essential part of good financial accountability. It provides evidence that public funds have been used properly and in accordance with applicable regulations. When an audit or examination is conducted, the price reasonableness document will be an important piece of evidence. Price reasonableness documents are also important for maintaining legal security in the procurement process. They help ensure that all transactions are conducted in accordance with applicable laws, and that no legal violations occur in the procurement process. Given the importance of the price reasonableness document



mechanism in the procurement of goods and services during a pandemic, therefore, to realize an ideal concept of regulation of the procurement of goods and / or services in an emergency / pandemic situation, it is necessary to improve the term price reasonableness document (Septianingsih 2022).

Standardization and Evidence of Price Reasonableness: Implement clearer and more transparent standards for determining price reasonableness in the procurement process. These standards should be measurable and consistently applied. For example, the price reasonableness document should be regulated in detail to include the following:

a) Description of Goods/Services

The document must include a full and detailed description of the goods or services to be purchased. This includes any technical specifications, features or special characteristics that the supplier must meet.

b) Cost Calculation

The document should include a comprehensive cost calculation for the goods or services purchased. This calculation should include all relevant cost components, such as raw material costs, labor costs, overhead costs, transportation costs, taxes, and others.

c) Unit Price

Unit price is the price per unit of the desired goods or services. The document must state the unit price to be applied in the procurement. This price can be in the form of a unit price, price per kilogram, price per hour, or other forms appropriate to the type of goods or services being procured.

d) Profit Margin

If there is a profit margin specified in the procurement, the document must state the amount of profit margin allowed or agreed upon. This margin is the additional cost that will be passed on to the supplier as profit.

e) Quality Standard

The document should list the quality standards that the goods or services to be purchased must meet. These standards may include tolerances for defects or damage, expected quality levels, or other technical requirements.

f) Price Reference

The document may include the price reference, if any, used as the basis for pricing. These references may be current market prices, prices in similar projects, or prevailing industry price standards.

g) Legal Regulations and Requirements

The document must list all relevant legal regulations and requirements that the procurer must comply with. This includes applicable taxes, licenses, and other regulations.

h) Effective Date

The document should include the effective date or period of time for which the price applies. This is important to avoid any confusion about when prices will take effect or change.

i) Contact Data

Documents must include clear contact data for the supplier, the procuring party, and the authorized procuring authority. This includes addresses, phone numbers, and email addresses that can be contacted for questions or clarifications.

j) Signature

The document must bear the mark of the supplier who made the procurement. This indicates a statement of responsibility for the price that has been compiled (Dian Taufik Febrianto and Edi Priyanto S KM 2023).



By including all these elements in a standardized price reasonableness document, it will be easier to measure and ensure that the price submitted by the supplier is reasonable and in accordance with the applicable requirements and standards in the procurement of goods or services. It will also aid in transparency, accountability and responsibility in the procurement process.

### 3. Adding a Coercive Element to Compliance with Implementation of Regulations

Because of the problems that occurred from the procurement of goods and services during the covid-19 pandemic in the 2020 fiscal year, at least 44.7% were due to non-compliance with statutory regulations. So it is important to add a coercive element to a statutory regulation so that the level of compliance increases.

The increase in the level of compliance with laws and regulations is often related to the element of coercion or sanctions applied in these regulations. This is because sanctions or coercive elements in regulations have the potential to influence the behavior of individuals, organizations, or legal entities to comply with the rules set by the government. The relationship between increased compliance levels and the coercive nature of laws and regulations can increase the motivation for compliance for procurement actors. Sanctions or coercive elements in laws and regulations provide additional motivation for individuals or entities to comply with these rules. When there is a risk of unintended consequences, such as fines, license revocation, or imprisonment, the parties involved are more likely to comply to avoid such risks.

The coercive nature of regulations also serves as a means of controlling negative impacts in society. In situations where there are no strong sanctions or coercion, individuals or organizations may tend to ignore the rules and commit harmful acts. Sanctions can act as a filter to identify and reduce offenders who do not comply with the law. This can help improve the overall level of compliance in society or in the context of public procurement. The coercive nature of regulations helps create a clear legal framework that all parties involved can follow. This is important in public procurement, where a transparent and orderly process is needed (Rosana 2014).

Sanctions in laws and regulations can also increase respect for the law in society. This means that individuals and organizations will tend to be more careful





in complying with the rule of law, even without the need to be pressured by punishment. The coercive element in a regulation refers to the section or article in the regulation that regulates sanctions or legal consequences if a person or entity violates the provisions listed in the regulation. This coercive element aims to encourage compliance with regulations and laws, as well as to maintain order and justice in society (Biroli 2015).

It is important to understand the coercive element in laws and regulations as this will affect how the regulations are enforced and the impact on individuals or organizations that violate the provisions of the law. Understanding the coercive element also helps people to know the legal consequences that can arise if they do not comply with applicable laws and regulations. Include clear and firm sanctions in the regulations for violations of the procurement rules. These sanctions should be sufficient to deter violations. The following are some suggestions that can be added to increase the coercive element in the laws and regulations used for the procurement of goods and services during the pandemic, including.

## 1) Warnings and Clarifications

When there is a violation or non-conformity with the regulations, the authorities may give a written warning to the supplier. This warning can serve as a preventive measure that gives suppliers the opportunity to correct their mistakes without facing more severe sanctions.

## 2) Administrative Sanctions

In situations that require flexibility, lighter administrative sanctions may be applied, such as a delay in payment or temporary suspension of the contract. This allows the third party to adapt to changing circumstances without suffering excessive losses.

## 3) Proportional Sanctions

The sanctions applied must be proportional to the offense committed. This means that minor offenses should not be heavily sanctioned. This allows for flexibility in assessing different situations.



#### 4) Restitution Measures

Establish an obligation for the violator to return funds or assets unlawfully obtained as a result of the procurement violation. This measure can ensure that losses incurred as a result of the breach are recovered.

#### 5) Personal Responsibility

Ensure that individuals or officials involved in public procurement also have personal responsibility for any violations they commit. This may include sanctions such as dismissal or disenfranchisement.

#### 6) Prison Sentence

For serious violations or intentionally unlawful acts, imprisonment may be imposed on individuals or officials involved in procurement violations.

These sanctions should be carefully set out in legislation, and clear and effective enforcement procedures should also be in place to ensure that they are applied fairly and in accordance with the law. In addition, it is important to ensure that these sanctions are proportionate to the severity of the offense and do not conflict with applicable legal principles.

#### **4. Adding Supervisory Costs to the Budget Reallocation and Refocusing Rules for Emergencies for APIPs**

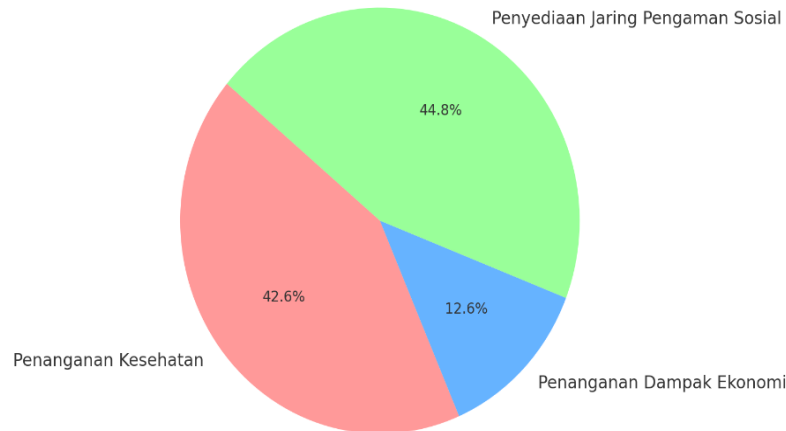
The highest cause of problems that occurred from the procurement of goods and services during the Covid-19 pandemic in the 2020 fiscal year was the absence of monitoring/supervision and evaluation of 25.88%. The central government in the effort to deal with Covid-19 has reallocated the *APBD* and *APBN* on the basis of Government Regulation in Lieu of Law Number 1 of 2020 and Presidential Regulation Number 54 of 2020. From the data of the Directorate General of Regional Finance of the Ministry of Home Affairs as of April 16, 2020, the budget allocation for handling COVID-19 amounted to IDR 56,571,490,043,798.50 (56.57T). The allocation consists of 3 allocation posts as follows:



- 1) Health Handling Amounts to IDR24,099,526,126,034.40 (24.10T), or 42.60% of the total budget allocation for handling COVID-19;
- 2) Economic Impact Handling amounted to Rp7,129,338,158,132.32 (7.13T), or 12.60% of the total budget allocation for handling COVID-19; and
- 3) The provision of social safety nets amounted to IDR 25,342,625,759,637.70 (25.34T) or 44.80% of the total budget allocation for handling COVID-19.

Image 1 Budget Allocation for Covid-19 Handling in 2020

Alokasi Anggaran Penanganan COVID-19 Ditjen Bina Keuangan Daerah Kemendagri per 16 April 2020



Source of data from the Directorate General of Regional Finance of the Ministry of Home Affairs as of April 16, 2020 Budget Allocation for Handling COVID-19, totaling Rp56,571,490,043,798.50 (56.57T)

Based on data presented regarding the budget allocation for handling COVID-19 by the Directorate General of Regional Finance of the Ministry of Home Affairs as of April 16, 2020, the data includes three main allocation posts: Health Management, Economic Impact Management, and Provision of Social Safety Net. However, from the information provided, there are no specific details or allocations mentioned for budget reallocation and refocusing, especially for the purposes of goods and services procurement supervision carried out by the Government Internal Supervisory Apparatus (APIP). Procurement oversight is an important aspect, especially in emergency situations such as the COVID-19 pandemic, where efficiency, transparency, and accountability in the use of public funds are critical.

In the context of government budgets, budget reallocation and refocusing is usually done to divert resources from one area to a more critical or urgent area (Muhaimin 2020). So that based on the results of the analysis of existing problems, the monitoring/supervision and evaluation aspects are very vital, especially for the supervision of the procurement of goods and services by APIP, the allocation may be budgeted to include funds for activities such as:



- a) Strengthening the capacity of APIP in conducting audits and supervision.
- b) Improved information technology and systems for more effective supervision.
- c) Additional resources to ensure compliance with procurement regulations and standards.

Given the absence of specific details on allocations for these activities in the data provided, it can be concluded that the government, at least as of the date of the data (April 16, 2020), has not reallocated and refocused the budget specifically for the purposes of oversight of procurement by APIP. It should be noted that budgetary situations and priorities may change, and decisions on reallocation may be taken after that date based on needs and developments in the situation.

The importance of supervision by the Government Internal Supervisory Apparatus (APIP) of the implementation of the procurement of goods and services, especially in the context of handling emergency situations such as the COVID-19 pandemic, there are several reasons why public procurement officers cannot rely on internal supervision in the procurement of goods and services and require external supervision by APIP, including:

- 1) Objectivity and Independence

Procurement executives may have conflicting interests, which can influence their decisions. Independent oversight by APIP assists in identifying and addressing potential conflicts of interest.

- 2) Objective Assessment

APIP provides an objective outside perspective, which is essential for assessing whether the procurement process is conducted in accordance with applicable regulations and standards.

- 3) Transparency and Accountability



Oversight by APIP helps ensure that procurement processes are conducted transparently, thereby reducing the risk of corruption, collusion and nepotism.

#### 4) Ensuring Accountability

External oversight ensures that all parties involved in the procurement process can be held accountable for their actions.

#### 5) Efficiency and Effectiveness

APIP ensures that resources are used efficiently and effectively, avoiding waste and misuse of funds.

#### 6) Quality Assessment

They also check whether the goods and services acquired meet the expected quality standards and are in line with the needs.

#### 7) Prevention and Early Detection of Violations

External oversight plays a role in preventing irregularities and violations in the procurement process and APIP can also detect potential problems or irregularities early, allowing timely intervention to avoid further losses.

#### 8) Building Public Trust

By ensuring fair and transparent processes, oversight by APIP assists in building and maintaining public trust in the management of public funds, especially in emergency situations such as a pandemic (Triasti 2021).

In emergency contexts such as the COVID-19 pandemic, where decisions must be made quickly and the volume of procurement of goods and services increases significantly, the role of APIP is crucial. Effective oversight by APIP not only ensures responsible use of resources but also supports the government's efforts to respond to the crisis effectively and efficiently. Therefore, researchers suggest that the implementation of goods and services procurement during the pandemic is more precise. The central government must add *reallocation* and *refocusing* posts to the supervision and evaluation functions carried out by *APIP*.





## 5. Adding Authority to the Supreme Audit Agency as an External Auditor in order to Access the Company's Financial Statement Data and its Forming Elements of Service Providers Conducting Transactions with the Government.

In the context of procurement of goods and services, especially in emergency situations such as the COVID-19 pandemic, there are challenges faced by governments in ensuring that transactions are fair and reasonably priced. One such challenge is the tendency of most suppliers or third parties not to produce or provide price reasonableness documentation as some suppliers may not fully understand the need or standards for providing price reasonableness documentation, especially in emergency situations where procedures and policies can change rapidly. In addition, emergency situations often require a rapid response, so providers may feel burdened to fulfill requests immediately, without sufficient time to compile complete documentation, including price reasonableness. However, in some cases, suppliers may deliberately avoid providing price reasonableness documentation to hide unreasonable price mark-ups or to prevent comparison with other suppliers.

For alleged *mark-ups* that may have been made by service providers if not submitted to BPK, an audit cannot be conducted. Without adequate documentation to conduct audits and ensure that funds are used efficiently and effectively. BPK does not have the authority to force the service provider to request internal financial documents from the service provider. Because based on Law No. 15/2006 on the Supreme Audit Agency, BPK is authorized to request explanations and/or documents that must be mandatorily provided by individuals, organizational entities of the central government, local governments, other state institutions, Bank Indonesia, state-owned companies, public service agencies, regionally-owned companies, and other institutions or agencies responsible for managing state finances (Umar 2020).

The subjects of the BPK audit are as follows.

### 1) Individuals

BPK's authority includes the right to request information or documents from individuals involved in the management or use of state finances, including those responsible for budget execution.

2) Central Government Organizational Entity

BPK has the authority to examine various units or departments within the central government, including ministries and non-ministerial government agencies.

3) Local Government

Included in the scope of BPK's authority is the examination of financial management at the local government level, ranging from provincial to district / city.

4) Other State Institutions

BPK is also authorized to examine other state institutions that play a role in the management of state finances.

a. Bank Indonesia

As the central bank, Bank Indonesia is included in the scope of BPK examination related to its duties and functions in managing state finances.

b. State-Owned Enterprises (SOEs)

BPK is authorized to examine SOEs that use or manage state finances, to ensure compliance with the principles of good financial management.

c. Public Service Agency-*BLU*

*BLU*, which is a work unit within a government entity that provides services to the public, is also included in the scope of BPK's audit.

d. Regionally Owned Enterprises-*BUMD*

Similar to SOEs, BPK is also authorized to examine BUMDs that manage finances at the regional level.

e. Other Institutions or Agencies



This includes other institutions or bodies given responsibility for the management of state finances, whether directly or indirectly involved (Anggoro 2018).

This authority of the BPK is intended to ensure transparency, accountability, and efficient use of state finances, as well as to identify and prevent irregularities, non-compliance, and corruption in the management of state finances. The Supreme Audit Agency (BPK) in Indonesia does not have the authority to request financial governance documents from private service providers if the provider is unwilling to provide such documents, especially in contexts where the service provider is involved in transactions with government agencies. This is because BPK's authority is specifically and legally limited to entities directly related to the management and use of state finances.

BPK has limited authority, focusing on public entities. BPK's authority is primarily aimed at auditing and examining government entities, including ministries, state agencies, SOEs, BUMDs, and other entities involved in the management of state finances which do not include the private sector. BPK is not authorized to audit or request documents from private companies or service providers that do not manage public funds, even if they conduct transactions with government agencies (Zakariya 2020).

In the Context of Transactions with Government Agencies, when a private service provider transacts with a government agency, the BPK has the authority to audit the government agency, including the examination of the transaction. However, BPK cannot force a private service provider to provide access to its financial governance documents if the service provider is unwilling, as it is beyond the scope of BPK's authority.

In this case, the service provider has privacy at the level of commercial law. Private service providers operate under regulatory and commercial laws that protect the privacy and confidentiality of their financial information, except in certain situations provided for by law. In certain situations, if there is suspicion of misuse of public funds or violation of the law, the BPK may cooperate with other oversight agencies or law enforcement to investigate certain aspects of transactions between



government agencies and private service providers. In conclusion, while the BPK plays an important role in ensuring accountability for the use of public funds, their authority does not extend to private service providers in terms of requesting access to their financial governance documents, except in certain situations where there is inter-agency cooperation or specific legal orders (Putri 2014).

In the context of examining price reasonableness documents, if the Supreme Audit Agency (BPK) has access to financial governance data from service or goods providers, it can indeed conduct a more in-depth and comprehensive analysis. This analysis can include several important aspects of the price reasonableness analysis including:

- 1) Cost Benchmarking

BPK can compare the costs incurred by service providers with industry standards or market prices to determine whether the prices offered to government agencies are reasonable.

- 2) Profit Margin

The analysis may include an evaluation of the service provider's profit margins to ensure that they are within reasonable limits and do not involve price gouging.

In practice, BPK's access to financial governance data of service or goods providers is not possible, except in certain contexts permitted by law or through cooperation with other oversight agencies. If this access were available, the BPK could utilize it to strengthen their analysis and oversight of government procurement of goods and services, in order to improve efficiency and integrity in the use of public funds (Prihantoro and Akbar, n.d.). The need for consideration to revise Law No. 15/2006 governing the Supreme Audit Agency (BPK) may therefore arise from the need to expand the BPK's authority to access financial data from service providers that enter into sale and purchase transactions with the government. This may be considered important for several reasons:

- 1) Strengthening Government Procurement Oversight

With access to providers' financial data, BPK can more effectively examine and ensure transparency and accountability in government transactions. It can also expand the BPK's access to help detect and prevent corruption or impropriety in the procurement of goods and services by the government.

## 2) Adapting to the Needs of the Times

Changes in economic and financial practices may require adjustments in regulations to ensure effective oversight. In addition, the need for greater access to financial information may provide the CPC with better analytical capabilities, assisting in more informed decision-making.

## 3) Harmonization with International Standards

Expanding the BPK's powers in line with global best financial oversight practices could improve oversight standards in Indonesia. Such a policy could lead to practices that are more in line with international standards of openness and transparency.

## 4) Protection and Efficient Use of Public Funds

By overseeing government service providers, the BPK can ensure that public funds are used efficiently and effectively. Access to this data can assist the BPK in protecting state finances from improper use.

Such a revision requires careful discussion and consideration of all relevant parties, including the government, service providers, and the general public, to ensure that the expansion of powers is done in a responsible manner and benefits the public interest. In addition, considerations in the Revision must take into account privacy and business regulations. There needs to be a balance between the audit authority and the right to privacy or confidentiality of the service provider's business. A clear legal framework should be formulated whereby the revised law should provide a clear and fair framework for the exercise of these new powers.

By making improvements in the formulation of public procurement regulations and implementing measures covering all aspects above, it can be expected that the



problems identified in the audit report by the BPK can be overcome and the public procurement process in emergency or pandemic situations will be more efficient, transparent, and in accordance with ideal regulatory principles.

## Conclusion

Existing regulations have been designed to provide sufficient flexibility and responsiveness for the government or related institutions in dealing with emergency situations, enabling the procurement of goods and services quickly and efficiently, but have not accommodated the elements of transparency and accountability. The applicable regulations have regulated the special mechanisms applied in the procurement of goods and services during emergencies, including simplifying procedures and cutting time to meet urgent needs. The applicable regulations do not guarantee adequate transparency and accountability in the use of public funds. The applicable regulations have involved providers of goods and services from the private sector or third parties, but only limited to the appointment of providers. The applicable regulations have not accommodated adequate monitoring and inspection mechanisms during the emergency period to maintain the level of accountability and public trust.

## Recommendation

Develop more adaptive and flexible regulations, which can adjust to the specific needs of emergency situations without compromising transparency and accountability. Create mechanisms that allow procurement of goods and services to be carried out quickly and efficiently, while ensuring that necessary procedures are followed. Emphasize the importance of transparency and accountability at every stage of procurement, including the provision of detailed reports and independent audits. Integrate more opportunities for the private sector and strategic partners in the procurement process, particularly in terms of innovation and technical capabilities. Strengthen the system of checks and balances, including the use of independent auditors and external oversight bodies, to ensure regulatory compliance and avoid abuse.

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