

The Involvement of Soes in Procurement of Goods or Services in Indonesia: Is It Ethical?

¹Faizal Kurniawan, ²Xavier Nugraha, ³Ave Maria Frisa
Katherina, ⁴Erni Agustin

***Abstract**--The current study was conducted to determine whether the participation of SOEs in the procurement of goods or services in Indonesia is a violation of ethics or not, considering a form of ethical violations is when there are several business entities participate in the same Tender / Selection, controlled either directly or indirectly by the same parties, and / or share more than 50% ownership, even though there is a minimum of 51% of state ownership in SOEs. A normative research, this study has a statutory and conceptual approach. Based on this study, it was found that the involvement of two or more SOEs in the same Tender / Bids is a violation of ethics in the procurement of goods and services. In the event that a violation of ethics is not limited to ethical sanctions, but also legal sanctions, given the ethical norms have been stipulated in the positive law (in this context is the president's decree)*

***Key words**--SOEs, Procurement of Goods or Services, Ethics of Procurement of Goods or Services*

I. INTRODUCTION

There are four major economic activities that government is involved in, which are providing legal frameworks for economic activities, providing public goods and services (education, infrastructure, etc.), redistributing income (taxation and spending), and purchasing services, goods, and capital assets [1]. Public procurement by government is one way of purchasing goods/services. However, procurement of goods or services is one of the places where corruption blossoms in Indonesia. The Indonesian Commission of Corruption eradication or KPK data found that corruption in the procurement of goods or services are 80% of all corruption cases in Indonesia [2]. Indonesia Procurement Watch (IPW) shows 70% of corrupt practices are rooted in the government's procurement of goods or services system [3]. Corruption in the procurement of government goods or services is at the second level of corruption cases handled by the Corruption Eradication Commission (KPK) [4]. Therefore, all the prevention and handling of corruption in the field of procurement of goods or services should always be evaluated to reduce the rampant corruption rate in the field itself.

According to Sollish and Semanik, procurement practices in general are a set of activities undertaken by an organization (government institution, state-owned enterprises, etc.) to conduct an effective management of its supply chain [5]. Procurement of Government Goods/Services has a relation to what's called public-sector supply chain management. In global perspective, public-sector supply chain management is a part of government process which deals with the procurement, provision, delivery, and allocation of goods and services to and by the government or its citizens [6]. The process of public sector procurement begins with procurement planning, an advertisement to tender, projects, and works based on documents and specifications [7]. According

¹Universitas Airlangga, Surabaya-Indonesia, Email: faizal@fh.unair.ac.id

²Universitas Airlangga, Surabaya-Indonesia.

³Universitas Airlangga, Surabaya-Indonesia.

⁴Universitas Airlangga, Surabaya-Indonesia.

to Wagner, the role of supply chain managers entail “organizing the optimal flow of high-quality, value for money materials or components from a suitable set of innovative suppliers [8].

In order to promote effective management, several changes of procurement regulations must be taken based on research regarding its effectiveness or implementation. In 2018, Indonesia issued the Presidential Regulation No. 16 of 2018 concerning the Procurement of Government Goods / Services which revoked the previous regulation concerning procurement of government goods / services. This presidential regulation was issued for the better implementation of government procurement of goods / services, including to ensure the procedure to be free from corruption. This can be seen from the changes in the Presidential Regulation Number 16 of 2018 with the previous regulation. One that supports the statement is that Presidential Regulation Number 16 of 2018 puts forward the value for money ideals which means that it no longer pursues the lowest price competition, but an equal worth between price and quality, hence the price offer must be able to reflect its quality [9]. Value for money according to Mardiasmo is the concept of managing public sector organizations based on three main elements, namely economy, efficiency, and effectiveness [10].

The realm of ethics in the procurement of goods or services needs to be further examined in order to create the process of procurement of goods or services free of corruption. The World Bank estimation of corruption in procurement has mentioned that more or less 1.5 trillion in public contract has been influenced by corruption, as well as bribery, which has reach more or less 200 billion per year [11]. Procurement of government goods or services contains the philosophy that the procurement of government goods or services is an effort to obtain goods or services needed by using a logical, systematic thinking and adhering to applicable norms or ethics based on standard procurement processes [12]. Presidential Regulation Number 16 of 2018 concerning Procurement of Goods / Services The Government also discusses the ethics of the procurement of goods / services.

Article 7 paragraph (1) letter e of the Presidential Regulation Number 16 of 2018 concerning Procurement of Goods / Services of the Government states that "all parties involved in the Procurement of Goods / Services Must Comply with the following ethics: avoid and prevent conflicts of interests of related parties, both directly or indirectly, which results in unfair business competition in the procurement of goods / services. " This statement was written because the procurement of goods or services itself is prone to collusion that leads to unfair business competition as regulated in Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. As it is seen from the 35 decisions of Business Competition Supervisory Commission(KPPU) or 57% of the cases handled by them in the 2015-2018 period was the practice of conspiracy to procure goods or services that caused unfair business competition [13]. Conspiracy based on the Black's Law Dictionary is "a combination or confederacy between two or more persons formed for the purpose of committing, by their joining efforts, some unlawful in itself, but becoming unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful "[14]. Thus, an act of the parties involved in the procurement of goods or services that could potentially become a conspiracy is not only limited to unfair business competition, but can be pursued through ways that are included in criminal acts, such as corruption or bribery. The regulation regarding the ethics of the procurement of goods or services in the presidential regulation is clearly made to be one of the active measures of corruption prevention in the field of procurement of government goods / services.

The procurement of goods or services involves many corporations, including state-owned enterprises (SOE/SOE). According to Article 1 number 1 of Law Number 19 of 2003 concerning State-Owned Enterprises, SOEs are business entities with capital is Fully or largely owned by the state through direct participation from the separated state assets. SOEs are not immune from the rage of corruption in the procurement of goods or services. In the 2014-2019 period, there were eight SEO directors who were caught in a corruption case, including alleged bribery in order to win a project [15].

The prevention and eradication of corruption in the SOEs will help creating a Good Corporate Governance. Good Corporate Governance (GCG) according to the World Bank is a collection of legal rules, regulations which must be fulfilled and is able to improve the performance of company resources to work efficiently, generating long-term sustainable economic value for shareholders and the surrounding community as a whole [16] Prior to the Presidential Regulation Number 16 of 2018 regarding Procurement of Government Goods / Services, the principles of GCG can also be found in:

1. Presidential Regulation Number 35 of 2011 concerning the Amendment to Presidential Regulation Number 54 of 2010 concerning Procurement of Government Goods or Services
2. Presidential Regulation Number 70 of 2012 concerning Second Amendment to Presidential Regulation Number 54 of 2010 concerning Procurement of Government Goods or Services
3. Presidential Regulation Number 172 of 2014 concerning the Third Amendment to the Presidential Regulation Number 53 of 2010 concerning Procurement of Government Goods or Services
4. Presidential Regulation Number 4 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 54 of 2010 concerning the Procurement of Government Goods or Services.

The four presidential regulations are government guidelines for carrying out procurement of goods or services. Meanwhile, the procurement of goods or services by the private sector and other legal entities can be made with reference to the norms in the procurement regulations of government goods or services as a GCG reference [17].

The nature of SOE as a business entity owned by the state itself has been regulated in Act Number 19 of 2003 concerning State-Owned Enterprises. If seen based on Law Number 19 of 2003 concerning State-Owned Enterprises, there are several types of SOEs, namely limited liability companies and public companies. Based on Article 1 number 2 of Law Number 19 of 2003 concerning State-Owned Enterprises, if the SOE is a limited liability company, the capital of the company is divided into shares which all or at least 51% of the shares owned by the Republic of Indonesia for the sake of profit. Meanwhile, Article 1 number 4 of Law Number 19 of 2003 concerning State-Owned Enterprises states that if SOE is in the form of public companies, their capital is state-owned and not divided into shares for public benefit in the form of providing high quality goods and / or services while pursuing profits based on the principle of the company's management.

Although, the nature of the SOE itself will raise new questions over the conflict in the ethics of procurement of government goods / services regulated in Article 7 paragraph (2) letter f of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services. Article 7 paragraph (2) letter f of the Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services also explains that the conflicting interests of related parties as referred to in paragraph (1) letter e are, for example, "several business entities that participate in tenders / bids, is controlled directly or indirectly by the

same party, and / or more than 50% (fifty percent) of the share is controlled by the same shareholder. " The existence of such conflicts arises from ethics which states that there is a prevention of conflict between related parties in the procurement of goods or services, one of which is a number of business entities controlled by the same party joinings the same tender bids which makes them prone to conspire. Meanwhile, based on the definition stated above, all SOEs are business entity which controlled by the same party, the Republic of Indonesia. This certainly raises questions, because SOEs which in fact are owned by the state at least 51% of their shares are clearly in contradiction with the provisions prohibiting several business entities whose share ownership is more than 50% to participate in a tender / bids.

Whereas in reality, a lot of tenders / bids were participated by the majority of SOEs, such as construction bids which were generally joined even won by SOEs, such as PT Adhi Karya (Persero) Tbk., PT Wijaya Karya (Persero) Tbk., PT Nindya Karya (Persero). Does it mean that in the future only one SOE can participate in a tender bids in the procurement of goods or services? What are the consequences when there are two or more SOEs participating in a tender bids in the procurement of goods or services?

Based on this background, the formulation of the problem in this study are:

1. Can SOE still participate in Government Goods / Services Procurement in Indonesia?
2. What are the legal consequences when an SOE participate in Government Goods / Services Procurement in Indonesia?

The legal sources we referred in this research are laws, doctrines, and several studies in related journals / literature. The purpose of this study is to analyze the position and participation of SOEs in Government Goods / Services Procurement in Indonesia and the legal consequences that occur when SOEs participate in Procurement of Government Goods / Services in Indonesia. Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services has indeed been issued in 2018, but until now there has been no research that studies the involvement of SOEs in the procurement of government goods / services after the issuance of the presidential regulation. Therefore, a study on the involvement of SOE and its legal consequences in the procurement of government goods or services is a highly relevant to be the topic of discussion.

II. METHOD

The study is a doctrinal research. The steps to be taken in the type of doctrinal law research emphasize speculative-contemplative measures and normative-qualitative analysis [18]. In doctrinal research, the main characteristic is to examine the application of a case accompanied by legal arguments / considerations made by law enforcers, as well as the interpretation behind the enforcement of the law [19]. Doctrinal research is conducted to produce an analysis of the relationship between the law and the doctrines of it against the case in question. The problem approach is done using the statute approach and conceptual approach. Statute approach is an approach to the applicable laws and regulations. Conceptual approach, which is an approach by studying the views and doctrines that develop in the science of law on matter in question[20].

III. RESULTS AND DISCUSSION

SOE Involvement in Procurement of Government Goods / Services in Indonesia: Is it Allowed?

In order to achieve higher standards of public procurement, the understanding of principles, knowledge of national laws and regulations, and commitment to ethical responsibilities must be taken into account [21]. Presidential Regulation Number 16 of 2018 concerning the Procurement of Government Goods / Services is the latest guideline for procurement of government goods / services after it has been changed four times. It has been changed to achieve higher standards of public procurement. Grammatical interpretation based on Article 7 paragraph (1) letter e. Article 7 paragraph (2) letter f of Presidential Regulation Number 16 of 2018 concerning the Procurement of Government Goods / Services clearly shows that SOEs are not stated as parties in the procurement of government goods / services. However, its position in the public sector and private sector needs to be questioned as to its position in the Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services. This position needs to be questioned to find out the validity of Presidential Regulation Number 16 of 2018 concerning SOEs that are stated as parties in Presidential Regulation Number 16 of 2018 concerning the Procurement of Government Goods / Services.

Based on Article 1 number 1 of Presidential Regulation Number 16 of 2018 , regulations regarding procurement of government goods / services only apply to the procurement of goods / services carried out by the Ministry / Institution / Regional Apparatus. In other words, the user of the goods / services is the Ministry / Agency / Regional Apparatus. Previously, presidential regulations governing the procurement of government goods or services included SOEs in the scope of compliance with regulations on procurement of government goods or services by *expressis verbis*. Article 2 paragraph (1) letter b of Presidential Regulation Number 54 of 2010 along with its amendments has stated *expressis verbis* that the scope of the a quo presidential regulation also included the procurement of goods / services for investment within Bank Indonesia, State-Owned Legal Entities and State-Owned Enterprises (SOE)) / Regionally Owned Enterprises (ROE) whose financing is partly or fully charged to the regional/state budgetary. However, Article 2 of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services that revokes the provisions of Presidential Regulation Number 54 of 2010 does not provide scope for SOEs. Thus, due to the legal consequence as a logical consequence of the implementation for the new presidential regulation, SOE goods / services procurement is not bound by Presidential Regulation No. 54 of 2010. This means that Presidential Regulation No. 16 of 2018 concerning Procurement of Government Goods / Services, has granted more autonomy to SOEs that procure goods / services compared to previous presidential regulations.

The exclusion of SOEs from the scope of procurement of government goods / services can also be examined based on the source of funds for procurement of government goods / services itself. Based on Article 1 number 1 of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services, the definition of procurement of government goods / services is the procurement of goods / services by the ministries / institutions / regional institutions funded by the Regional/State budgetary, the process of which since the identification of needs, until the handover of the project. The definition included in Presidential Regulation No. 16 of 2018 has been modified when compared to the previous presidential regulation, such as the confirmation of the procurement cost of government goods / services, which funded by the State Budget / Regional Budget. This needs to be taken into consideration as state-owned enterprise has separated state assets,

which means there is a separation of state wealth from the state budget to be used as state capital in SOEs and its management system is no longer based on the same as the state budget spending [22]. The procurement planning with this state budget funding source is also a procurement plan to coincide with the process of drafting the work planning after the establishment of the Indicative Ceiling [23]. Thus, though received financing from the state budget does not make SOE a party that automatically falls within the scope of government goods / services procurement referred to in the definition.

SOE does have a public sector, considering the considerations of the formation of SOE which can be seen in the consideration of Law Number 19 of 2003 concerning State-Owned Enterprises, one of which is the role in managing the national economy in order to realize the welfare of society. Some legal experts such as Hamid S. Atattamimi, Saldi Isra, and Jimly Asshidiqqie also argue that SOE finance is included in the realm of state finance [24]. However, SOE also has a private sector, considering that SOE is also a business entity that also pursues profits based on Article 2 paragraph (1) letter b of Law Number 19 of 2003 concerning State-Owned Enterprises. Thus, SOE is also an economic player with risk of loss and profit [25]. This is often the responsibility of SOE when there is a loss in SOEs being biased. This habit of accountability is responded through Constitutional Court Decision Number 62 / PUU-XI / 2013. Based on this decision, the paradigm of SOE supervision must be changed based on the business paradigm, instead of the management of state assets in government affairs [26].

Although no longer within the scope of government goods / services regulations, the SOE Directors still have guidelines in procuring goods or services. Guidelines for SOE in carrying out the procurement of goods or services adhere to the Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia No. Per-08 / MBU / 12/2019 concerning General Guidelines for the Implementation of Procurement of Goods or Services of State-Owned Enterprises. This Regulation from the Minister of State-Owned Enterprises No Per-08 / MBU / 12/2019 was formed after the Presidential Regulation Number 16 of 2018 did not include SOE as the scope of the regulation. Based on the consideration of the a quo ministerial regulation, Presidential Regulation Number 16 of 2018 also does not become a pillar of the formation of Minister of State Owned Enterprises Regulation Number Per-08 / MBU / 12/2019.

Article 1 number 1 of the Regulation of the Minister of State-Owned Enterprises Number Per-08 / MBU / 12/2019 also stated in *expressis verbis* that the procurement of goods or services referred to in the a quo ministerial regulation is the procurement of goods or services carried out by SOEs at a finance sourced from the SOE budget.

Based on Article 6 of Presidential Regulation No. 16 of 2018 concerning Procurement of Government Goods / Services, the principles of procurement of government goods / services are efficient, effective, transparent, open, competitive, fair, and accountable. Since public procurement use a large portion of public resources itself, conducting a procurement process in an transparent, accountable, and well-managed manner is utterly important to ensure high quality service delivery and the public interest protection [27]. The lack of accountability and transparency are some of external factors which drive corruption [28]. Examined with logical reasoning, Article 7 paragraph (1) letter e jo. Article 7 paragraph (2) letter f of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services is a supporting factor for the principle of procurement of competing goods / services. Thus, the principle of procurement of government goods / services

itself supports the environment of the procurement process of government goods / services with fair business competition. In addition, based on Article 1 number 6 of Law No. 5 of 1999, Fair business competition is competition among business players in carrying out production / marketing / service activities conducted honestly / not against the law / does not hamper other business competition. The ethical arrangements for the procurement of government goods / services in Article 7 paragraph (1) letter e jo. Article 7 paragraph (2) letter f of Presidential Regulation Number 16 of 2018 takes a more specific precautionary measures to reduce the existence of unfair competition. In another words, those ethic regulations demand a competitive bidding, which is a process whereby suppliers are asked to make bids in terms of pricing before the buyer chooses the best offers [29]. The more companies participating in tender bids with the same controller, the easier and more open the opportunity to engage in collusion/conspiracy between companies participating in the tender bids. Conspiracy according to the Black's Law Dictionary is "a combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful in itself, but becomes unlawful when done by concerted action of the conspirators, or for the purpose of the conspirators, using criminal or unlawful means to the commission of an act not in itself unlawful." [30] As a result, procurement of goods / services aimed at producing good quality goods / services is failed to be achieved based on the tender / bids held.

Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number Per-08 / MBU / 12/2019 concerning General Guidelines for the Implementation of Procurement of Goods or Services of State-Owned Enterprises also has provisions regarding procurement ethics. Article 6 letter e of the a quo Ministerial Regulation also states the same ethics contained in Article 7 paragraph (1) letter e of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services. However, the a quo ministerial regulation does not provide specific limits or explanations referred to as "conflicting interests of related parties." Thus the provisions of ethics in the procurement of SOE goods or services cannot be fully equated with the ethics of procurement of government goods or services in the presidential regulation, especially related to the involvement of SOEs as related parties. The difference in these regulations also shows that private procurement and public procurement have different external demands and internal demands, which makes a regulation of private procurement is not as strict as public procurement [31]. However, the strict construction of ethic regulation in government procurement is a media to urge them to handle practical affairs according to law [32].

SOE involvement in the procurement of government goods / services does not violate procurement ethics based on Article 7 paragraph (2) letter f of the Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services if there is not more than one SOE participating in the same tender bids . This can be excluded through the argumentum a contrario interpretation of Article 7 paragraph (2) letter f of the a quo presidential regulation. Grammatically, the phrase "several business entities" contained in Article 7 paragraph (2) letter f of the a quo presidential regulation does not exclude SOEs as business entities that are outside the scope of the article. Moreover, the phrase business entity whose share ownership is more than 50% is controlled by the same shareholder (the state) is the scope of the definition of SOE in Law Number 19 of 2003 concerning State-Owned Enterprises. Thus, when there are two or more SOEs participating in a tender bids in the procurement of goods or services is considered to be a form of ethical violation committed by the state.

The following is an illustration of the permissibility of SOEs that are allowed (ethically) to procure goods or services after Presidential Regulation Number 16 of 2018 :

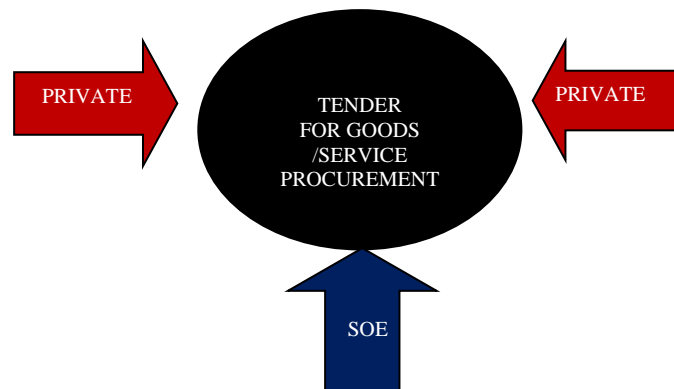


Figure 1. An allowed SOE involvement (ethical) in the procurement of goods or services

The following is an illustration of SOE permissibility that is not allowed (unethical) in the procurement of goods or services after Presidential Regulation Number 16 of 2018 :

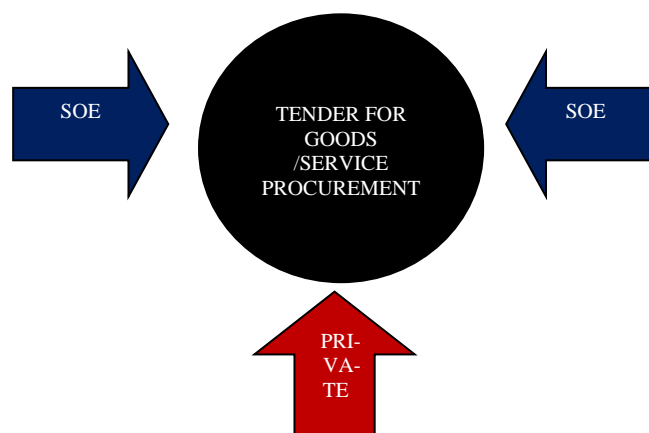


Figure 2. SOE involvement that is not allowed (unethical) in the procurement of goods or services

Legal Consequences of Ethical Breach of SOE Procurement

Ensuring proper use of public resources towards better service delivery to public can be brought by ethical practice in public procurement [33]. Based on Matheula, Matshabaphala, and Theletsane, ethics are set of principles defined as a system guiding conduct, upholding such conduct in the workplace while in theory is closely related to professionalism in the public service and places more impetus on human behavior [34]. Research shows that the code of ethics itself are needed as remedy to a malpractice in the process and enhance the effectiveness of the procurement process [35]. Differences in the formulation of procurement ethics in the procurement of government goods / services and goods / services in SOE resulted in different consequences. This shows that the procurement of goods / services in SOE is becoming more flexible, not bound by Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services [36].

The ethics formulation of procurement of goods or services to SOEs in the Minister of State Owned Enterprises Regulation Number Per-08 / MBU / 12/2019 does not limit the involvement of several SOEs as providers of goods / services. The regulation that support procurement ethics that oppose conflicts of interest between the parties in the procurement of goods or services, one of which is Article 19 of the Regulation of the Minister of State-Owned Enterprises Number Per-08 / MBU / 12/2019. The article a quo emphasizes that in the tender process that requires terms of reference or procurement documents for the procurement of goods or services, directors are required to make requirements / criteria that are fair and reasonable according to the needs of SOE as to be neutral, not in favor to win certain parties.

The implementation of Good Corporate Governance (GCG) is important in SOEs as there are no *expressis verbis* restrictions contained in the Regulation of the Minister of State-Owned Enterprises Number Per-08 / MBU / 12/2019. GCG is also a guideline for SOEs engaged in the procurement of goods or services to create a corruption-free environment. The implementation of Good Corporate Governance has actually been recognized in Ministerial Regulation No. Kep-117 / M-MBU / 2002 concerning the Implementation of Good Corporate Governance Practices in SOEs amended by Ministry of State owned Entreprises Regulation Number: PER-01 / MBU / 2011 concerning Implementation of Good Corporate Governance (GCG) for SOEs. Based on Article 1 number 1 of the Regulation of the Minister of State-Owned Enterprises Number: PER-01 / MBU / 2011 concerning the Implementation of Good Corporate Governance (GCG) for these SOEs, Good Corporate Governance is the principles that underlie a process and mechanism of company management based on laws and regulations and business ethics. The GCG principles are transparency, accountability, responsibility, independence, and fairness. The application of GCG in the procurement of goods or services to SOEs is closely related to the principle of transparency [37]. This is one of the considerations for the establishment of e-procurement thus government procurement of goods / services becomes more transparent. The competition among competitors will improve and human intervention in bidding process will be reduced when e-procurement is being implemented [38]. Although it cannot completely eradicate corruption, e-procurement is the best alternative to reduce the number of corruption in the procurement of goods or services, including in SOEs [39].

Eventhough the regulations make zero tolerance for violation, the lack of will to comply with all the regulations can cause violation [40]. In the event that there are two or more SOEs participating in a tender bids in the procurement of goods or services, then as has been stated above, the consequence is an ethical violation in the procurement of goods or services. Indeed, theoretically, violations of ethics have consequences with ethical sanctions. However, when an ethic has been set out in positive law (in this context it is a Presidential Regulation), violations of this matter, of course, not only have consequences on ethical sanctions, but also on legal sanctions.

In the event of a ethics violation, objections may also be filed by parties loss in the bids of the goods / services procurement committee to the competent court. Regarding the objection to the decision of the tender/bids winner, it can be submitted to the Administrative Court by the losing party.

IV. CONCLUSION

After the enactment of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services, SOEs in carrying out procurement is no longer need to comply with the regulation of the Procurement of Goods / Services like the Ministry / Institution / Regional Apparatus. However, when there is SOE participating in tenders / bids in the procurement of goods or services that provides goods / services procurement, SOEs are still subject to Presidential Regulation Number 16 of 2018 .

In Article 7 paragraph (1) of Presidential Regulation Number 16 of 2018 , it is stated that all parties involved in the Procurement of Goods / Services must comply to ethics, where one of the ethics is in accordance with Article 7 paragraph (1) letter e. a statement that avoids and prevents conflicting interests of the parties involved, both directly and indirectly, which results in competition. One form of conflict of interest, in Article 7 paragraph (2) of Presidential Regulation Number 16 of 2018 is a number of business entities that participate in the same Tender / Bids, controlled directly or indirectly by the same party, and / or ownership of more shares of the 50% (fifty percent) owned by the same shareholder.

Therefore, when there are two or more SOEs with 51% of the shares owned by the state, systematically it is not permitted to participate in the tender in the procurement of goods / services. Only one SOE can participate in a Tender/ bids in the procurement of goods / services.

In the event that there are two or more SOEs in the bids then this calls for ethical violations in the procurement of goods / services. Violation of the matter, of course, does not only have consequences on ethical sanctions, but also legal sanctions given that the ethical norms are set forth in the legal norms in the form of Presidential Regulation

REFERENCES

1. K. V. Thai, "Public Procurement Re-Examined," *Journal of Public Procurement*, vol. 1, no. 1, p. 9, 2001.
2. H. Meilisa, "KPK Sebut 80% Korupsi Terkait Pengadaan Barang atau jasa," February 28, 2019. [Online]. Available: <https://news.detik.com/berita-jawa-timur/d-4448060/kpk-sebut-80-korupsi-terkait-pengadaan-barang-dan-jasa>. [Accessed February 2, 2020].
3. B. Muqoddas, "Perpres Pengadaan Barang/Jasa di Tengah Raung Korupsi," November 2, 2015. [Online]. Available: <http://www.bpkp.go.id/sulut/berita/read/15080/190/Perpres-Pengadaan-BarangJasa-Di-Tengah-Raung-Korupsi.bpkp>. [Accessed February 2, 2020].
4. Ihsanuddin, "LKPP: Korupsi Pengadaan Barang atau jasa Peringkat 2 di KPK," November 6, 2019. [Online]. Available: <https://nasional.kompas.com/read/2019/11/06/11253441/lkpp-korupsi-pengadaan-barang-dan-jasa-peringkat-2-di-kpk>. [Accessed January 28, 2020].
5. W. N. Mokogi, C. Mairura, and K. Ombui, "Effects of Procurement Practices on the Performance of Commercial State Owned Enterprises in Nairobi County," *International Journal of Scientific and Research Publications*, vol. 5, no. 6, p. 1, June 2015.
6. R. Setino and I. M. Ambe, "Supply Chain Management Practices in State-Owned Enterprises Environment," *Risk Governance & Control: Financial Markets & Institution*, vol. 6, no. 4, p.381, 2016.
7. A. M. Kutosi, S. Eya, and M. Moses, "Contracting and Procurement Performance of State Owned Enterprises in Uganda," *Global Advanced Research Journal of Social Science*, vol. 4, no. 1, p. 2, July 2015.
8. S. M. Wagner, "Intensity and Managerial Scope of Supplier Integration," *Journal of Supply Chain Management*, vol. 39, no. 3, p. 4-13, 2003.
9. S.Firdha, "Poin Penting Pada Perpres No. 16 Tahun 2018 tentang Pengadaan yang Perlu Diketahui," March 26, 2019. [Online]. Available: <https://www.eproc.id/berita/detail/poin-penting-pada-perpres-no-16-tahun-2018-tentang-pengadaan-yang-perlu-diketahui>. [Accessed January 31, 2020].

10. D. Purwiyanti, "Analisis Kinerja Berbasis Konsep Value For Money pada Kegiatan Fisik Pekerjaan Irigasi Doggala Kodi (Study di Dinas Pekerjaan Umum Kota Palu)," *Jurnal Katalogis*, vol. 5, no. 3, p.190, 2017.
11. K. Matthew, K. Patrick, and K. Denise, "The Effect of Fraudulent Procurement Practices on Public Procurement Performance," *International Journal of Business and Behavioral Science*, vol. 3, no. 1, p. 17, January 2013.
12. H. Hamkah and H. Purwanto, "Kajian Etika Pengadaan Barang/Jasa Pemerintah," *Jurnal Simetrik*, vol. 8, no. 2, p. 109, 2018.
13. A. Purwadi, "Praktik Persekongkolan Tender Pengadaan Barang atau jasa Pemerintah," *Jurnal Hukum Magnum Opus*, vol. 2, no. 2, p.99, August 2019.
14. A. Purnama, D. Handoko, and M. Rumita, "Tinjauan Yuridis tentang Persekongkolan Tender (Menurut Undang-Undang Nomor 5 Tahun 1999)," *Privat Law 1*, vol. 2, no. 4, p.2, 2014.
15. D. Banjarnahor, "Ini 8 Direksi BUMN di Zaman Rini Soemarno yang Terjerat KPK," October 3, 2019. [Online]. Available: <https://www.cnbcindonesia.com/news/20191003185044-4-104308/ini-8-direksi-bumn-di-zaman-rini-soemarno-yang-terjerat-kpk>. [Accessed January 30, 2020].
16. I Gusti Ayu Ketut Rachmi Handayani, "Korupsi Pengadaan Barang/Jasa Pemerintah: Realitas Antagonis dalam Perwujudan Prinsip Clean Governance di Indonesia," *MMH*, vol. 42, no 1, p.9, January 2013.
17. A. Cahyadi, "Penerapan Prinsip-Prinsip Good Corporate Governance dalam Pengadaan Barang/Jasa Secara Elektronik (E-Procurement di Lingkungan Badan Usaha Milik Negara)," *DIH Jurnal Ilmu Hukum*, vol. 14, no. 28, p.76-77, August 2018-January 2019.
18. B. Sunggono, *Metodelogi Penelitian Hukum*, Jakarta, PT Raja Grafindo Persada, 2005, p. 102.
19. N.Xavier *et al.*, "2019, Rekonstruksi Batas Usia Minimal Perkawinan Sebagai Bentuk Perlindungan Hukum Terhadap Perempuan (Analisa Putusan MK No. 22/Puu-Xv/2017)," *Lex Scientia*, vol.3, no.1, p.43, May 2019.
20. H. M. Fauzan and B. Siagian, *Kamus Hukum & Yurisprudensi*, Depok, Kencana, 2017, p. 154.
21. D. S. Jones, "Public Procurement in Southeast Asia: Challenge and Reform," *Journal of Public Procurement*, vol. 7, no. 1, p. , 8, 2007.
22. I. Rahadiyan, "Kedudukan BUMN Persero sebagai Separate Legal Entity dalam Kaitannya dengan Pemisahan Keuangan Negara pada Permodalan BUMN," *Jurnal Hukum IUS QUIA IUSTUM*, vol. 20, no. 4, p.627-628, October 2013.
23. Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah, "Peraturan Presiden Nomor 16 Tahun 2018 tentang Pengadaan Barang/Jasa Pemerintah," [Online]. Available: <http://berkas.dpr.go.id/setjen/dokumen/ittama-Knowledge-Sharing-Bahan-Sosialisasi-Peraturan-Presiden-Nomor-16-Tahun-2018-tentang-Pengadaan-BarangJasa-Pemerintah-1524134653.pdf>. [Accessed February 5, 2020].
24. Y. Arifardhani, "Kemandirian Badan Usaha Milik Negara: Persinggungan Antara Hukum Privat dan Hukum Publik," *Jurnal Hukum Kenotariat*, vol. 1, no. 1, p.57, January 2019.
25. A. Mahyani, "Tanggung Jawab Pidana Direksi BUMN yang Merugi," *Jurnal Hukum Bisnis Bonum Commune*, vol.2, no. 1, p.1-2, February 2019.
26. H. Kasim, "Memikirkan Kembali Pengawasan Badan Usaha Milik Negara Berdasarkan Business Judgement Rules," *Jurnal Konstitusi*, vol. 14, no.2, p.443, June 2017.
27. M. J. Maria, W. Githii, O. T. Ombati, "Ethics and Procurement Performance of Humanitarian Organizations in Kenya," *American Journal of Industrial and Business Management*, 8, p. 836-837, 2018.
28. I. M. Ambe, "Public Procurement Trends and Developments in South Africa," *Research Journal of Business and Management*, vol. 3, no. 4, p. 279, 2016.
29. A. Eyo, "Corruption and the Challenge to Sustainable Public Procurement (SPP): A Perspective on Africa," *European Procurement & Public Private Partnership Law Review*, vol. 12, no. 3, p. 255, 2017.
30. A. Purnama, D. Handoko, dan M. Rumita, "Tinjauan Yuridis Tentang Persekongkolan Tender (Menurut Undang-Undang Nomor 5 Tahun 1999)," *Privat Law*, p.2, 2014.
31. S. Manyathi, "An Analysis of Various Types of Supply Chain Management Systems: Case of Global Public Sector versus Private Sector Procurement," *Asian Journal of Social Sciences and Management Studies*, vol. 4, no. 1, p. 13, 2017.
32. L. Xuexin, "On Procurement Management in China's Big State-owned Enterprises," 2nd International Conference on Science and Social Research, p. 301, 2013.
33. A. N. Lema and N. P. Mrope, "Determinants of Ethical Procurement Practices in Public Entities in Tanzania: A Case Study of the National Audit Office (NAO) Headquarters, Dar Es Salaam," *International Journal of Innovative Research & Development*, vol. 7, no. 10, p.229, October 2018.

34. Z. H. Elia and M. N. Erasmus, "Ethical Conduct of Procurement Officials and Implications on Case Study of Limpopo Provincial Treasury," *Public and Municipal Finance*, vol. 4, no. 3, p. 17, 2015.
35. J. Ndolo and E. Njagi, "Role of Ethics in Procurement Process Effectiveness in the Water Sector in Kenya: (A Case Study of EWASCO, Embu County)," *IJSCM*, vol. 3, no. 3, p. 132, September 2014.
36. Humas, "BUMN/D dan BLU Boleh Atur Tata Cara Pengadaan Sendiri," November 13, 2018. [Online]. Available: <https://jogjaprovo.go.id/berita/detail/bumn-d-dan-blu-boleh-atut-tata-cara-pengadaan-sendiri>. [Accessed February 5, 2020].
37. A. Cahyadi, "Penerapan Prinsip-Prinsip Good Corporate Governance dalam Pengadaan Barang/Jasa Secara Elektronik (E-Procurement di Lingkungan Badan Usaha Milik Negara)," *DIH Jurnal Ilmu Hukum*, vol. 14, no. 28, p.77, August 2018-January 2019.
38. A. Nurmandi and S. Kim, "Making e-procurement work in a decentralized procurement system A comparison of three Indonesian cities," *International Journal of Public Sector Management*, vol. 28, no. 3, p.201, 2015.
39. S. Dyah Nayabarani, "Membangun Transparansi Pengadaan Barang atau jasa Melalui Peningkatan Peran ICT dalam Mereduksi Korupsi," *Jurnal Hukum dan Pembangunan*, vol. 47, no.4, p. 486, 2017.
40. A. Licenji, "Standards and Challenges of Public Procurement," *European Scientific Journal*, vol. 11, no. 25, p.239, September 2015.
41. Ahmad, Latif, Yi He, Andrew J. Semotiuk, Quan Ru Liu, Hammad Ahmad Jan, and . 2019. Pan-Himalaya Ethnomedicine safety: Lithospermeae (Boraginaceae) Herbal Remedies Containing Toxic Pyrrolizidine Alkaloids. *Journal of Complementary Medicine Research*, 10 (3), 129-141. doi:10.5455/jcmr.20190513073648
42. Morgado, M., Rolo, S., MacEdo, A., Pereira, L., Castelo-Branco, M. Predictors of uncontrolled hypertension and antihypertensive medication nonadherence(2010) *Journal of Cardiovascular Disease Research*, 1 (4), pp. 196-202. DOI: 10.4103/0975-3583.74263