



Procurement of Goods and Services by PT PLN (Persero) Mataram Branch Anti-Monopoly Perspective and Unfair Business Competition

Munandar¹; Zainal Asikin²; L.Wira Suhartana²

¹ Student of Magister Law Study Program, Postgraduate Program, Mataram University, Indonesia

² Lecture of Law Faculty Mataram University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i3.1526>

Abstract

This study aims and analyzes the mechanism of procurement of goods and services by PT PLN (Persero) Mataram branch and procurement of service goods at PT PLN (Persero) Mataram branch in the context of business competition. Normative type of research is often the law conceptualized as what is written in the legislation. By using the Legislative approach and Conceptual approach. The collection of legal materials with literature studies, then analyzed using interpretations consisting of systematic interpretation and authentic interpretation to build legal argument as a fact which is compiled deductively infer from the general to the specific. Conclusion The mechanism of procurement of goods and services by PT. PLN (Persero) Mataram Branch, based on Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 40 of 2007 concerning Limited Liability Companies, Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services, Regulation of the Minister of State-Owned Enterprises Number 15 of 2012 concerning Guidelines for Procurement of Goods / Services of PT PLN (Persero).

Keywords: *Procurement; Goods Services; Monopole*

Introduction

Presidential Regulation Number 16 Year 2018 concerning Procurement of Government Goods or Services ¹ only limit to Government procurement. In accordance with the definition of Government Procurement as explained in Article 1 number 1, Government Procurement of Goods or Services is defined as the Procurement of Goods or Services by Ministries or Institutions or Regional Apparatuses financed by the State Budget or Regional Budget whose process starts from identifying needs, up to the handover of work results. Referring to the scope and definition above the Presidential Regulation only regulates procurement within the scope of the government.

¹ The basis for stipulating Presidential Regulation 16 of 2018 concerning Procurement of Government Goods / Services is Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2004 concerning State Treasury, Law Number 30 of 2014 concerning Administration Government.

BUMN or BUMD and Semi-Government Institutions are basically possible to get budgets sourced from the APBN / APBD. But the mechanism is different from KLPD. BUMN / BUMD will get capital participation from KLPD, while Semi-Government Institutions will get the budget through a grant mechanism. The capital investment and grant budget goes to the BUMN / BUMD or Semi-Government Institution treasury and the SOE / BUMD and Semi-Government Procurement payment process will be sourced from company or institutional cash with procurement and financial provisions in accordance with applicable regulations in companies and institutions. Thus, it can be said that BUMN / BUMD indirectly uses state finances as well as in their business activities, although with different mechanisms from other state institutions. However, BUMN or BUMD does not refer to Presidential Regulation 16/2018 in the procurement of goods or services.

The scope of the Procurement of Services Goods by SOEs and Semi-Government Institutions continues to be debated because the difference in interpretation of the funding comes from the State Budget. PT PLN (Persero) is a State-Owned Enterprise (BUMN) in the form of a Limited Liability Company that obtains business capital sourced from state finances. The characteristic of a legal entity is the separation of legal assets from the owners and management. Thus, a Legal Entity of a Limited Liability Company has assets separate from the assets of the Directors (as management), Commissioners (as supervisors), and Shareholders (as owners).²

Procurement of goods and services in large quantities and for the benefit of the country or the people must of course be arranged in such a way. This is intended to prevent misuse and or abuse of authority that can harm the country.³

However, the procurement of goods or services carried out by PT PLN Persero does not refer to Presidential Regulation Number 16 of 2018, as is known in the procurement of goods / services carried out by PT. PLN (Persero) Mataram branch, because of the position of PT. PLN as BMUN which is only included in semi-government institutions. With the practice of procurement of goods / services carried out by PT. The PLN will potentially lead to monopolistic practices or unfair business competition. This is because Presidential Decree No. 16 of 2018 concerning Government Goods / Services Procurement is only limited to Government procurement, on the one hand PT PLN Persero is a state-owned company which is a government share above 51%. This causes legal uncertainty, so that the procurement of goods and services will lead to unfair business competition. Therefore, the legal problem in the procurement of goods and services by PT. PLN (Persero) Mataram branch as a BUMN whose shares are mostly from the APBN in the procurement of goods and services refer to the Directors' Regulation of PT. PLN (Persero) Number 0164/DIR/2019 concerning Guidelines for Procurement of Goods / Services of PT. PLN (Persero).

Based on the background description above, the problem that will be examined is how the procurement of goods and services by the Mataram branch of PT PLN (Persero) and whether the procurement of goods in the PT PLN (Persero) Mataram branch in the context of business competition.

This research is a normative legal research. Normative research is often the law conceptualized as what is written in the legislation (law in books).⁴ The approach method used is the Statute Approach, Historical Approach Conceptual Approach, this research legal materials used consist of Primary legal

² PT. PLN, *Pedoman Pengadaan Barang/Jasa PT PLN (PERSERO)*, PT PLN (Persero) 2016, p. 3.

³ Supardin, *Pertanggungjawaban Pidana Kelompok Kerja (Pokja) Dalam Proses Pelelangan Pengadaan Barang/Jasa Pemerintah*, Thesis, Master of Law Study Program, Faculty of Law, University of Mataram, 2019, p. 4-5.

⁴ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Matter VII, PT Raja Grafindo Persada, Jakarta, 2006, p. 118.

legal materials namely legal material that has binding legal force consisting of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 30 concerning Electricity, Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services, Regulation of the Minister of State-Owned Enterprises Number 15 of 2012 concerning Amendment to the Regulation of the Minister of State-Owned Enterprises Number 5 of 2008 concerning General Guidelines for the Implementation of Procurement of Goods and Services of State-Owned Enterprises, and Regulations Directors of PT. PLN (Persero) Number 0164/DIR/2019 concerning Guidelines for Procurement of Goods / Services of PT. PLN (Persero). Secondary legal materials, namely legal materials that explain the primary legal material, Tertiary Legal Materials, namely materials that provide instructions and explanations for primary and secondary legal materials. Collection of legal materials with documentation study techniques by collecting and reviewing legal materials. Legal materials are systematically analyzed using interpretations consisting of systematic interpretations and authentic interpretations. By using this interpretation to build legal arguments or better-known legal constructions as a fact that is compiled deductively from general to specific matters.

Result and Discussion

1. Mechanism for Procurement of Goods and Services by PT. PLN (Persero) Mataram Branch

The State of Indonesia is a state based on law as contained in the 1945 Constitution which means the state is based on law (*rechtsstaat*). The concept of the rule of law rule of law is the concept of a state identical to positive law, namely the law in force in a country or what is often referred to as a law in book. What is meaningful as a way of life in a country as a basis for behavior is including in carrying out the functions of the State which regulates and protects the lives of its citizens. Therefore, every act in carrying out the function of protecting and regulating must be based on the law as a basis, as well as in the case of procurement of goods and services both by the Government itself and subsidiaries owned by the government under BUMN.

Legal Basis for the Procurement of Goods and Services, which forms the basis, especially SOEs as State-Owned Enterprises, must be guided by the SOE law itself, as stated in the general explanation of the second part of Act Number 19 of 2003 concerning State-Owned Enterprises.

In the national economic system, BUMN plays a role in producing the goods and / or services needed in order to realize the greatest prosperity of the people. The role of BUMN is felt to be increasingly important as a pioneer and / or pioneer in business sectors that are not yet interested in private business. In addition, SOEs also have a strategic role as implementing public services, balancing large private forces, and helping to develop small businesses / cooperatives. BUMN is also a significant source of state revenue in the form of various types of taxes, dividends and privatization proceeds. The implementation of the SOE's role is manifested in business activities in almost all economic sectors, such as agriculture, fisheries, plantation, forestry, manufacturing, mining, finance, post and telecommunications, transportation, electricity, industry and trade, and construction.

In Regulation of the Minister of State-Owned Enterprises Number: PER-15/MBU/2012 Regarding Amendments to the Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/2008 concerning General Guidelines for the Implementation of Procurement of Goods and Services of State Owned Enterprises. Article 1 expressly states that in the Regulation of the Minister of State-Owned Enterprises, what is meant by the Procurement of Goods and Services is the procurement of goods and services carried out by State-Owned Enterprises for which the financing does not use funds and

the State Budget/Regional Budget. Types of procurement of goods and services are all forms of products and/or services needed by users of goods and services. The provider is a business entity, including BUMN, legal entity, or individual/legal subject whose business activities are to provide goods and services.

Based on the SOE Ministerial Regulation, PT. PLN (Persero) is also included as a state-owned company in the form of a legal entity whose business activities are to provide goods and services. What is meant by SOE Subsidiaries is a company whose shares are a minimum of 90% owned by the BUMN concerned, a company whose shares are a minimum of 90% owned by another SOE, and a joint venture company with a combined total shareholding of SOEs of at least 90%.

In Act Number 40 of 2007 concerning Limited Liability Companies, it does not explain the procurement of goods and services, but it can be seen the purpose and purpose of the law. The national economy which is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainable, environmentally friendly, independent, and by maintaining a balance of progress and national economic unity, needs to be supported by solid economic institutions in order to realize the welfare of society. This means that to prepare for these objectives must be accompanied by facilities that are able to build a sustainable industry so that PT. PLN Persero in improving the quality of service to developments to realize the welfare of the community by procuring the goods and services of PT PLN itself.

In general, the procurement of goods and services of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services, as a basis for Procurement of Goods or Services, the Government has an important role in the implementation of national development to improve public services and national and regional economic development. In this Presidential Regulation, what is intended by Government Procurement of Goods / Services, hereinafter referred to as Procurement of Goods / Services, is a Procurement of Goods / Services by the Ministry / Institution / Regional Apparatus funded by the State Budget / Regional Budget, the process of which is from the identification of needs, until the handover of the results profession.

Based on the description of the procurement of goods and services by PT. PLN (Persero), which is guided by Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 40 of 2007 concerning Limited Liability Companies, Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services, and Regulation of the Minister of State-Owned Enterprises Number: Per-15 / MBU / 2012 concerning Amendments to the Regulation of the State Minister for State-Owned Enterprises Number Per-05 / MBU / 2008 concerning General Guidelines for Procurement of Goods and Services of State-Owned Enterprises.

Procurement of goods and services carried out by PT. PLN (Persero) Mataram Branch, in accordance with the Directors' Regulations of PT. PLN (Persero) Number 0164 / DIR / 21019 concerning Guidelines for Procurement of Goods / Services of PT PLN (Persero). This is based on the law of Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 40 of 2007 concerning Limited Liability Companies, Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services, and Regulation of the Minister of State-Owned Enterprises Number : Per-15 / MBU / 2012 concerning Amendments to the Regulation of the Minister of State Owned Enterprises Number Per-05 / MBU / 2008 concerning General Guidelines for the Procurement of Goods and Services of State-Owned Enterprises.

In an interview at the Office of PT. PLN (Persero) Mataram Branch, which in essence is for the NTB region for the procurement of goods and services that form the legal basis, namely the Regulation of

the Directors of PT. PLN (Persero) Number 0164/DIR/2019 concerning Guidelines for Procurement of Goods / Services of PT. PLN (Persero). When using the state budget using Presidential Regulation, until the last year of 2011/2016 no longer use Presidential Regulation.”

Based on the results of the interview, it can be seen the mechanism of procurement of goods and services by PT. PLN (Persero) Mataram Branch refers to the Directors' Regulations of PT. PLN (Persero) Number 0164/DIR/2019 concerning Guidelines for Procurement of Goods / Services of PT. PLN (Persero), namely as follows:

- a. Design of Goods and Services Procurement
 - 1) Preparation of Preparation of Procurement Plans
 - 2) Procurement Plan Document
 - 3) Bidding documents or work plans and conditions
 - 4) Selected Provider's Documents
 - 5) Provisions for the qualification for the supply of goods / services
 - 6) Engineering Calculation Price (HPE)
 - 7) Motede procurement of goods or services
 - 8) Join Procuremen
 - 9) Period of procurement

- b. Implementation of Goods / Services Construction / Other Services Procurement
 - 1) Stages of Procurement Preparation
 - 2) Develop Estimated Price (HPS)
 - 3) Stages of the Procurement Process
 - 4) Bidding Documents Addendum / RKS
 - 5) Bidding Document
 - 6) Methods of Submission of Bid Documents
 - 7) Goods and Services Procurement Guarantee
 - 8) Evaluation Implementation
 - 9) Price Offer Evaluation Provisions
 - 10) Limp Price Evaluation
 - 11) Arithmetic Correction
 - 12) Clarification of Offer
 - 13) Bidding Negotiations
 - 14) Evaluation Report
 - 15) Determination of Auction Winners
 - 16) Announcement of Auction Winners
 - 17) Refutation
 - 18) The designation of a winner
 - 19) Procurement Failed and Re-Procurement
 - 20) Contract Discussion Agreement (CDA).

In the mechanism of procurement of goods and services by PT PLN (Persero) Mataram Branch with reference to the Regulations of the Directors of PT. PLN (Persero) Number 0164/DIR/2019 concerning Guidelines for Procurement of Goods / Services of PT PLN (Persero), will cause unfair business competition in the process of tender for the procurement of goods and services because it does not refer to Presidential Regulation Number 18 of 2016. Procurement of goods and services by PT PLN,

which does not refer to Presidential Regulation Number 18 of 2016 concerning Procurement of Goods and Services, cannot be directly monitored by the government, so that it has the potential to cause state financial losses as the majority shareholder in a State-Owned Enterprise.

Presidential Regulation Services Goods Procurement Mechanism Number 16 of 2018 concerning Procurement of Government Goods / Services. In Article 4 that the procurement of goods or services there are several objectives that must be achieved namely first to produce the right goods or services from each money spent, measured in terms of quality, quantity, time, cost, location, and provider, secondly increasing the use of domestic products, thirdly increasing the role of Micro, Small and Medium Enterprises, fourth increasing the role of national business actors, and fifth supporting the implementation of research and utilization of research products / services, sixth increasing the participation of creative industries, aiming at encouraging economic equality and eighth encouraging Sustainable Procurement.

Government Goods or Services Procurement is an activity of Procurement of Goods or Services by the Ministry / Institution / Regional Apparatus funded by the APBN / APBD, the process of which has since identified the needs, up to the handover of the work. This means that when viewed from the word "government" in the Presidential Regulation it also includes subsidiaries under SOEs whose shares are 50 plus 1 owned by the government. So that PT. PLN as a SOE subsidiary should be in procurement of goods and services referring to Presidential Regulation Number 18 of 2016 concerning Procurement of Goods and Government Services.

2. Procurement of Goods and Services at PT. PLN (Persero) Mataram Branch in the Context of Business Competition

The Constitution gives control to the State to manage natural resources in the welfare of the people. This is stipulated in Article 33 paragraph (3) of the 1945 Constitution "The earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This means that the State is given sovereignty to improve the welfare of its people, this is the goal of the State's formation. So, the purpose of law is to provide the greatest benefit and happiness to as many citizens as possible. The concept of putting benefit as the main goal of law. The size is happiness as much as possible for as many people as possible. Judgment of good-bad, fair or not this law is very dependent on whether the law is able to provide happiness to humans or not. Benefit is interpreted the same as happiness. From this goal the State plays an important role in providing welfare to its people. So that the State controls the most important sectors related to the lives of many people. As stated in Article 33 paragraph (2) of the 1945 Constitution, "Production branches which are important for the state and which control the livelihoods of the public are controlled by the state."

The State's Role in Procurement of Goods and Services Based on Antimonopoly Law and Unhealthy Business Competition. Procurement of goods and services is a process of activities to fulfill or supply the needs and pairs of goods or services under a contract or direct purchase to meet business needs. Procurement can affect the whole process of the flow of goods because it is an important part of the process.

Business actors are prohibited from exercising control over the production and or marketing of goods and or services resulting in monopolistic practices. This means that in the procurement of goods and services there is also a prohibition on cheating. This is to avoid cheating in winning tenders.

The Rule of Reason is to state that an act allegedly violates competition law, then law enforcement must consider the circumstances around the case to determine whether the act limits

competition improperly, and for that it requires that law enforcement must be able to show the consequences the result of anti-competition, or a real loss to competition.”⁵

However, in carrying out the mandate of the constitution, the branches of production which are important for the state and which control the lives of many people are controlled by the state. Regarding the Procurement of Goods and Services based on the Antimonopoly Law and Unhealthy Business Competition. In Article 5 of Law No. 5 of 1999 It is permissible to conduct monopolies and or centralization of activities related to the production and or marketing of goods and or services that control the lives of many people and production branches that are important to the state are regulated by law and organized by state-owned companies and or agency or institution established or appointed by the Government. This means that the State will appoint a State-Owned Enterprise that is allowed to conduct a monopoly for the livelihood of many people such as PT. PLN Persero, can do a monopoly in the procurement of goods and services if it concerns the public interest, this is seen as a social function that takes precedence over the function of its synonym.

In the Regulation of the Minister of State-Owned Enterprises Number: PER-05/MBU/2008 concerning General Guidelines for the Implementation of Procurement of Goods and Services of State-Owned Enterprises. Procurement of goods and services at PT. PLN (Persero) Mataram Branch Context of Competition Business procurement of goods and services still refers to the Directors' Regulation of PT. PLN (Persero) Number 0164/DIR/2019 concerning Guidelines for Procurement of Goods / Services of PT PLN (Persero).

The Law on State Finance categorizes the wealth of state enterprises as part of State finance. This provision seems to provide legitimacy for the state to intervene in the management of BUMN BUMN which is an independent legal entity. This is what then has so many implications both in the normative level and in the practical level. One of them is about state intervention in the management of BUMN Persero which is continually being carried out to cause various problems and often not even an indication of monopoly.⁶

Conception of the independence of the company's legal entity specified in Act Number 40 of 2007 concerning Limited Liability Companies, BUMN Persero is an independent legal entity. The enactment of the independence of BUMN Persero as an independent legal entity was granted juridical recognition based on the provisions of Law Number 19 of 2003 concerning BUMN (UU BUMN). In particular, the SOE Law provides regulations for the enactment of all the provisions and principles of Limited Liability Companies for BUMN Persero.⁷

State Electricity Company (PLN) or its official name is PT PLN (Persero) is a state-owned company that deals with all aspects of electricity in Indonesia. PLN is the only company selling electricity services in Indonesia. In the electricity distribution service, PLN divides the functions of the parent unit into several main units based on the electric power system, namely generation, transmission, and distribution. In addition, there are also parent units or other centers to support the company's operations. Because of the wide scope of PLN's work area, PLN has units throughout Indonesia that have their respective functions in accordance with their parent units. PT. PLN (Persero) is divided into several

⁵ Ari Purwadi, *Praktik Persekongkolan Tender Pengadaan Barang dan Jasa Pemerintah*, Jurnal Hukum Magnum Opus Agustus 2019 Volume 2, Nomor 2, p. 17.

⁶ Inda Rahadiyan, *Kedudukan BUMN Persero sebagai Separate Legal Entity dalam Kaitannya dengan Pemisahan Keuangan Negara pada Permodalan BUMN*, Jurnal Hukum IUS QUIA IUSTUM No. 4 Vol. 20 October 2013, p. 625-626.

⁷ *Ibid*, p. 628.

Regions to take care of Generating, Distribution (Transmission) and Load Regulator, and Distribution to customers is divided into parent units.

BUMN has a role as a source of foreign exchange income through the production of various goods or services needed by the community. As one of the service providers in Indonesia, SOEs have the goal of creating a quality procurement of goods or services for all stakeholders.⁸

In the Procurement of Goods and Services at PT. PLN (Persero) Mataram Branch in the Context of Business Competition, which uses the foundation of the Board of Directors' regulation which is located under the BUMN Regulation. Directors' Regulations PT. PLN (Persero) Number 0164/DIR/2019 concerning Guidelines for Procurement of Goods / Services of PT PLN (Persero), that in the preparation of goods and services has a purpose and objective. The purpose of implementing the Board of Directors' Regulation is to regulate the implementation of the Procurement of Goods / Services within PT PLN (Persero), Support the creation of added value in SOEs, Simplify and accelerate the decision making process, Increase independence, responsibility and professionalism, Increase the use of domestic production, and Improve synergy between BUMN / BUMN subsidiaries and / or BUMN affiliated companies.

Procurement of goods and services in the PT. PLN (Persero) Mataram Branch is the Regional Main Unit Group and the Project Main Unit Group, in the procurement of goods and services to avoid permanent business competition through electronic tenders, then distributed by the center to Regional units and Regional units distributing regional implementation units.⁹

The Board of Directors responsible for procurement of goods and services at the center is the Board of Directors as explained in the appendix section of the Board of Directors' Regulations, that the Board of Directors is a PLN organ consisting of members of the Board of Directors / Directors who are fully responsible for the management of PT. PLN for the interests, purposes and represent the interests of PLN. Director is a member of the Board of Directors who oversees certain Directorates in accordance with the division of tasks determined by the Meeting of the Directors of the Company. So that in carrying out their duties, members of the Board of Directors must devote their full energy, thoughts and attention to the gas, obligations, and achievement of the objectives of the Company.

Goods or Services Users are Directors or Structural Officers one level below the Directors in accordance with the needs and limits of applicable authority, or Structural Officers under Management for Special/upper Management or Executive Unit Managers who are authorized or delegated with authority, who use and/or receive benefits directly or indirectly from goods/services resulting from the procurement of goods/services. The Head Office is the parent organization of PLN which oversees the Parent Unit.

In the Ultra Vires doctrine is the exceeding authority of a limited liability company against the applicable laws and regulations, the provisions of the Articles of Association of the company and general meeting of shareholders (both directly and indirectly).¹⁰ In carrying out the authority of the Director who

⁸ Triana Puji Rahayu, Choirul Saleh, *Wima Yudo Prasetyo, Implementasi Kebijakan E-Procurement Untuk Mewujudkan Efisiensi dan Transparansi (Studi pada PT.PLN (Persero) area Malang)*, Jurnal Administrasi Publik (JAP), Vol 1, No.2, p.290.

⁹ Interview with Mr. Wisnu and Alpred as Implementing Goods and Services Procurement in PT. PLN (Persero) Mataram Regional Branch Parent Unit, Monday 3 February 2020.

¹⁰ Zainal Asikin dan L. Wira Pria Suhartana, *Pengantar Hukum Perusahaan*, Matter I, Prenandamedia Grub, Depok, 2016, p. 231.

is authorized to and on behalf of the Board of Directors make decisions in certain fields according to applicable regulations. Because every action of a PT organ outside its control is based on the PT goals contained in the articles of association. This means that back here to the purpose and intent of the establishment of PT. PLN (Persero).

In the procurement of goods and services within PT. PLN (Persero) Mataram Branch, in this case, is responsible, namely General Manager as the person responsible and authorized for and on behalf of PT. PLN (Persero) Mataram Branch to make decisions in certain fields in accordance with applicable regulations, including the decision to conduct a tender registration from the registration stage to the completion of registration.

“Hostilities who will participate in the procurement tender must first register online, then they can immediately register, if they have registered there will be a reply via email, later what data must be conveyed. There is a verification process. Once verification is done, just bring the manual data to the PLN office, for example SIUP and others. After that, they can participate in all the procurement and auctions available at PLN.”¹¹

In the procurement of goods and services when there is a rebuttal and complaint from the counterpart, PT. PLN (Persero) Mataram Branch conducted transparently through online repaying objections and complaints.

“If the process is transparent through the web. Internal inspection and supervision periodically once a year. Special supervision of Bali and Nusa Tenggara Regional. On average, there are no objections or complaints from the participating providers regarding the tender process. If the objection is not satisfied, there is objection I and objection II. The first protest was through the procurement officials by online while the second was through the user, namely GM and written. If there are 2 potential winners. The lowest value and price system if the qualifications are equally entered, the lowest price is used. Weighting in terms of price and qualifications. But rarely, directly the lowest price.”¹²

PT. PLN (Persero) Mataram Branch in this case the General Manager is given the authority to act, in the ultra vires doctrine of the action taken by a legal entity (PT) which is outside the objectives and therefore outside the authority of the legal entity. With a view to regulating the implementation of the Procurement of Goods / Services within PT PLN (Persero), supporting the creation of added value in SOEs, simplifying and accelerating the decision making process, increasing independence, responsibility and professionalism, increasing the use of domestic production, and increasing synergy between BUMN / Subsidiary of BUMN and / or BUMN Affiliated Company by continuing to implement the electronic tender process, this is a good faith from PT. PLN Mataram Branch to avoid monopolistic practices and unfair business competition in the procurement of goods and services. But Law No. 5 of 1999 It is permissible to conduct monopolies and or centralization of activities related to the production and or marketing of goods and or services that control the lives of many people and production branches that are important to the state are regulated by law and organized by state-owned companies and or agency or institution established or appointed by the Government. PT. PLN (Persero) is a BUMN business which is engaged in electricity.

Law Number 30 Year 2009 concerning Electricity, which philosophically means that national development aims to create a just and prosperous society that is equally materially and spiritually based

¹¹ Interview with Mr. Dody Acting Officer in Procurement of Goods and Services, on Wednesday 12 February 2020.

¹² Interview with Mr. Dody Acting Officer in Procurement of Goods and Services, on Wednesday 12 February 2020.

on the Pancasila and the 1945 Constitution of the Republic of Indonesia. Electric power has a very important and strategic role in realizing the national development goals, the electricity supply business is controlled by the state and its supply needs to be continuously improved in line with the development so that there is sufficient, equitable and quality electricity available.

It means that it is seen from the objective of providing electricity for public use, therefore it can be done for monopoly and or centralization of activities related to the production and / or marketing of goods and or services that control the livelihoods of many people and production branches that are important for the state are regulated by Law and administered by State-Owned Enterprises and or bodies or institutions formed or appointed by the Government.

The purpose of State-Owned Enterprises and or agencies or institutions formed or appointed by the Government, to regulate business competition in the implementation of procurement of goods and services that control the livelihoods of many people and important production branches remain strictly regulated and monitored, as we know PLN is the only provider of electricity in Indonesia to provide service to the community and the most important part for equitable national handling. So that PT. PLN should use the Presidential Regulation because it is a concern for the lives of many people, because Presidential Regulation is a guideline for the procurement of goods and services so that the procurement is directly monitored by the Government because social interests take precedence over economic interests.

Conclusion

1. Based on the discussion above, the conclusions can be drawn, namely: The mechanism of procurement of goods and services by PT. PLN (Persero) Mataram Branch, which is based on Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 40 of 2007 concerning Limited Liability Companies, Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services, Regulation of the Minister of State-Owned Enterprises Negara Number: Per-15 / MBU / 2012 concerning General Guidelines for the Implementation of Procurement of Goods and Services of State-Owned Enterprises, as well as the Directors' Regulations of PT. PLN (Persero) Number 0164/DIR/2019 concerning Guidelines for Procurement of Goods / Services of PT PLN (Persero).
2. Procurement of service goods at PT. PLN (Persero) Mataram branch in the context of business competition that uses the foundation of the Board of Directors regulations Board of Directors PT. PLN (Persero) Number 0164/DIR/2019 concerning Guidelines for Procurement of Goods / Services of PT PLN (Persero) with a view to regulating the implementation of Procurement of Goods / Services within PT PLN (Persero), in the supply of electric power aimed at ensuring the availability of electric power in quantities sufficient, good quality, and reasonable price in order to improve the welfare and prosperity of the people fairly so that the procurement of goods and services can be done monopolized and or centralized activities related to the production and or marketing of goods and or services that control the lives of many people and important production branches for the state are regulated by Law and organized by State-Owned Enterprises and or bodies or institutions established or appointed by the Government as regulated in Article 51 of the Anti-Monopoly Law and Unfair Business Competition.

References

Books

- Amiiruddin, *Korupsi Dalam Pengadaan Barang dan Jasa*, Matter I, Genta Publishing, Jogjakarta, 2010.
- Ari Siswanto, *Hukum Persaingan Usaha*, Ghalia Indonesia, Jakarta, 2002.
- Budi Kagmaranto, *Mengenal Hukum Persaingan Usaha*, Laras, Surabaya, 2004.
- Munir Fuady, *Doktrin-Doktrin Modern dalam Corporate Law (eksistensinya dalam Hukum Indonesia)*, Bandung: Citra Aditya Bhakti, 2002.
- PT Pesero, *Pedoman Pengadaan Barang/Jasa PT PLN (PERSERO)*, PT PLN (Persero) 2016.
- Sentosa Sembiring, *Hukum Perusahaan tentang Perseroan Terbatas*, Matter IV, Nuansa Aulia, Bandung, 2013.
- Zainal Asikin dan L. Wira Pria Suhartana, *Pengantar Hukum Perusahaan*, Matter I, Prenandamedia Grub, Depok, 2016.

Thesis and Journal

- Ari Purwadi, *Praktik Persekongkolan Tender Pengadaan Barang dan Jasa Pemerintah*, Jurnal Hukum Magnum Opus August 2019 Volume 2, Number 2.
- Inda Rahadiyan, *Kedudukan BUMN Persero sebagai Separate LegalEntity dalam Kaitannya dengan Pemisahan Keuangan Negara pada Permodalan BUMN*, Jurnal Hukum IUS QUIA IUSTUM NO. 4 Vol. 20 October 2013.
- Isis Ikhwansyah, An-an Chandrawulan dan Prita Amalia, *Optimalisasi Peran Badan Usaha Milik Negara (BUMN) pada Era Masyarakat Ekonomi Asean (MEA)*, Jurnal Media Hukum, Vol. December 25, 2018.
- Supardin, *Pertanggungjawaban Pidana Kelompok Kerja (Pokja) Dalam Proses Pelelangan Pengadaan Barang/Jasa Pemerintah*, Thesis, Master of Law Study Program, Faculty of Law, University of Mataram, 2019.
- Triana Puji Rahayu, Choirul Saleh, Wima Yudo Prasetyo, *Implementasi Kebijakan E-Procurement Untuk Mewujudkan Efisiensi dan Transparansi (Studi pada PT.PLN (Persero) area Malang)*, Jurnal Administrasi Publik (JAP), Vol 1, No.2.

Regulations

- Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, LN Number 1999 Number 33 TLN NUMBER 3817.
- Law Number 19 of 2003 concerning State-Owned Enterprises, LN of 2013 Number 70.
- Law Number 40 of 2007 concerning Limited Liability Companies, LN Year 2007 Number 106 TLN Number 4756.
- Law Number 30 Year 2009 concerning Electricity, LN 2009 Number 133 TLN Number 5052

Government Regulation Number 23 of 1994 concerning the transfer of the form of electricity company (Perum) electricity, LN Year 1994 Number 34.

Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods / Services, LN 2018 Number 33.

Regulation of the Minister of State-Owned Enterprises Number: Per-15 / MBU / 2012 Concerning Changes to the Regulation of the Minister of State-Owned Enterprises State Number-05 / MBU / 2008 concerning General Guidelines for the Implementation of Procurement of Goods and Services of State-Owned Enterprises.

Regulation of the Directors of PT PLN (Persero) Number 270.K / DIR / 2013 2013.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).