

# Civil Law Agreement and Its Implication on Regulation for Prevention of Corruption within Covid-19 Pandemic

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## **Civil Law Agreement and Its Implication on Regulation for Prevention of Corruption within Covid-19 Pandemic**

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### **Abstract**

The purpose of this study is to determine the social impact of the learning process of agreements and regulations in the Civil Law regarding the procurement of goods and services during the Covid-19 pandemic, its implications for preventing corruption in Indonesia. The research method used is normative using a theory-in-use approach. The results of the study found three crucial points. First, the law of goods and services agreements gives freedom to people who do not have restrictions in the code for that. The contract for the procurement of products and services during the Covid-19 pandemic was categorized as a relatively temporary force majeure so that it could renegotiate to rearrange the implementation schedule. Second, good faith is the key to success in resolving frustrating agreement problems to save the agreement to provide benefits and benefits to both parties. Third, in the end, civil law provides an essential lesson that in transactions based on good faith where there are values of decency, honesty, and fair wisdom is the prevention of corruption in the procurement of goods. Good faith is the key to success in resolving frustrating agreement problems to save the agreement to provide benefits and benefits to both parties. And service in difficult times like today.

**Key words:** *Agreement; Civil Law; Learning; prevention of corruption; regulation; Social crisis;*

### **Introduction**

Before the Covid-19 pandemic broke out in society, the modern world had many economic interactions. However, upon the arrival of COVID-19 pandemic all countries were no exception affected. Under these circumstances, business people experience holdups and uncertainty in economy due to the restrictions caused by the pandemic worldwide. Various activities of goods and service procurement agreements were also affected. As the result, the previously made agreements become constrained or entirely canceled. This forceful situation caused a lot of polemics in society, especially since it affected business people whose business was in the procurement of goods and services (Grazyna, 2020).

One condition that is of concern and very influential in the case of terminating contract agreements amid the conditions of the Covid-19 pandemic is force majeure. Civil law treaty

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experts call this a condition to terminate the agreement or cancel the agreement (Dainow, 1966). Theoretically, the force is divided into two types, namely a relative or an absolute force. Force majeure has implications for changes in the agreement through renegotiation to agree on changes to certain clauses of the agreement must be canceled because the object of the agreement has been destroyed (Stein, 1991).

On the other hand, common law jurists have voiced a doctrine of impossibility which is conceptually different from the absolute doctrine of force majeure. The doctrine of impossibility can likely affect the agreement performance for there is a provision to declare a void on a closed agreement (Smyth & Gatto, 2018). On the basis of this understanding, it seems that civil law and general law are conceptually two different paths but leading to the same goal (Pejovic, 2001; Singh & Bhardwaj, 2019). All efforts are made to fulfill the agreement under tremendous circumstances such as the Covid-19 pandemic. Thus, there are two views regarding the agreement <sup>2</sup> for the procurement of goods and services in force majeure or in conditions that are very difficult to implement.

An agreement is a contract enforced by law by which the parties provide mutual benefits and benefits. Additionally, an agreement is the soul for business activities and ideally made on a contract and ended up with achieving the goal, namely creating benefits and or benefits for both parties (Peel & Treitel, 2007; MacDermott, 2007). In developing countries trade agreements must promote democratization because they undermine the ability of governments to distribute rents to maintain autocratic regimes (Manger & Pickup, 2016).

Therefore, the agreement must be made and signed by the two parties to place their respective interests in the scope of benefits and benefits. In modern trade agreements such as today, it has gone beyond reducing tariffs by setting rules, such as market access and regulation on Foreign Service providers (Dhingra, Freeman, & Mavroeidi, 2018). Furthermore, the findings reveal that negotiation services, investment and competition terms in future deals can relatively enhance trade to be more professional, scientific, and technical.

Good faith is the soul and key to successfully meet the purpose of the agreement (Summers, 1968; Bridge, 2017). Without good faith in an agreement for the <sup>2</sup> procurement of goods and services, it is likely prone to cases of legal violations, especially fraud. For example, monopolistic practices, breaches to agreements, and unfair competition in running businesses (Setyawati & Audila, 2019). Previous studies related to cases of violation of the Ghana Public

Procurement Act revealed the importance of learning in understanding a treaty law. Non-competitive, single procurement without approval from the appropriate Review Board was the most frequently violated area of the law (Atiga & Azanlerigu, 2017).

Good learning in understanding the practice of goods and service procurement agreements is an important asset to achieve the desired results of stakeholders, especially for the wider society (Grandia & Meehan 2017). Previous studies raised various foresights in the legal problems of goods and services procurement contracts and then linked them with the dimensions of good faith.

The use of communication technology, media and information technology, is able to influence a business agreement. In this case, it is essential to grasp the intentions and foresight/security enforced in law to subsequently benefit a business partnership agreement (Mariyam, 2020). Furthermore, the role of the state in contract law learning contractual agreements enforces social preferences (Pargendler, 2018). With good faith applied in endorsing social preferences, society will hold sound attitudes, religiosity, and perceptions as well as behavioral control towards fraud prevention efforts (Traikova, Manolova, Mollers, & Buchenrieder, 2017). One illustration is the effort to prevent fraud through society legal education (Suryanto, Seregig, Hartono, & Rivai, 2018). This education can generate morally sound behaviors on individuals such as honesty, fairness, openness, care and goodwill (Rufai & Adelopo, 2018).

The reason intended for upgrading morality in government is the prevention of increasingly practiced corruption in Indonesia. As such, this refers to all actions aimed to deter, restrain, or prevent varied forms of abuse, of course, usually involving practices against legal standards (Svensson, 2005). Previous studies have revealed that an organizational culture that prioritizes integrity is accompanied by a strong knowledge of norms and a high level of acceptance of programs and regulations relating to corruption prevention efforts (Damm & Shishko, 2016; Bussamann, Niemecek, & Vockdrodt, 2018). Even now, modern technology (information, innovation, and intelligence) has developed as a catalyst to fight corruption (Maslii, et al, 2018).

The data issued by the Corruption Eradication Commission (KPK) in August 2020 showed an asset handover worth IDR 11 billion to the Ministry of Law and Human Rights (HAM). This asset functions as a recovery of state losses resulted from corruptions in Indonesia. Notably, the

fraud occurs due to the lack of integrity, poor or defective institutional structures and systems prompting fraudulent behaviors (Shleifer & Vishny, 1993; Rose-Ackerman & Palifka, 2016; Grundler & Potrafke, 2019).

There were 359 corruption cases within the central government level in 2004-2019. The Indonesian Anti-Corruption Behavior Index (IPAK) in 2020 indicates an increase on corruption compared to the 2019 IPAK which is 3.84 on a scale between 0 and 5 (Central Statistics Agency, 2020).

Consequently, corruption and other fraudulent activities are likely to escalate amid the Covid-19 pandemic whether applied in public services, agreements or regulatory implications in civil law (Terziev, Venelin, & Georgiev, 2020; Ruiz, 2020). Such fraudulent practices cover maladministration and abuse for personal gains. To a great extent, corrupt contracts cannot be held liable in court since officials can renege on agreements by accepting bribes or requiring other bribes to provide the same service (Boycko, Shleifer, & Visny, 1996).

### **Research Questions**

Drawing the aforementioned background, the following three research questions were listed to guide the research process:

- 1) What clauses does the agreement comprise of to procure goods and services within civil law implementation to prevent corruptions amid the Covid-19 pandemic?
- 2) What are the reasons that make good faith so important in the process of procuring products and services?

### **Methods**

#### **Design**

The research approach used to analyze the data is qualitative. Qualitative research engages in inquiry, studying empirical evidence inductively to produce descriptive narratives (Patton, 2005). Content analysis design is a qualitative research technique used to interpret the meaning of text data content, and that's why the research design follows a naturalistic paradigm (Hsieh & Shannon, 2005). The content analysis design is able to provide epistemologically strong standards to critically justify and evaluate findings (Krippendorff, 2018). The study analyzed written documents from the agreement for the procurement of goods and services and Civil Law. As explained that qualitative research analyzes data from documents. The Civil Law Approach

referred to in research is a general provision concerning deregulation on budget absorption as referred to in the government goods/services procurement regulations.

The research objective was to determine the social impact of learning process on Civil Law agreements and regulations related to the procurement of goods and services during Covid-19, and its implications associated with efforts to prevent corruption in Indonesia.

### **Data and Sources of Data**

Normative legal research uses secondary data as the main data (Marzuki, 2006). This study consists of two kinds of secondary data:

Primary legal materials that are authoritative in: 1) the form of Presidential Regulation of the Republic of Indonesia Number 16 of 2018 concerning Government Procurement of Goods/Services. Procurement of goods and services has the connotation of "Goods are all objects, both tangible and intangible, movable or immovable, which can be traded, used, used or utilized by the Property User". Whereas service is defined as; "Consulting services and non-consulting services or services that require work equipment, certain methodologies, and/or skills in governance systems that are widely recognized in the business world to complete a job (LKPP, 2020)"; 2) Circular (SE) No.8 of 2020 which regulates the prevention of corruption related to the use of the goods/services procurement (PBJ) budget to accelerate the handling of Covid-19; 3) Government Regulation in Lieu of Law No.1 of 2020 (PERPPU 01/2020) concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and/or in the Context of Facing Threats Endanger the National Economy and/or System Stability Finance; and 4) Presidential Regulation (Perpres) No. 54 of 2020 concerning Posture Changes in Details and the 2020 State Budget. This Presidential Regulation is a follow-up to Perppu No. 1 of 2020.

Secondary legal materials in the form of legal opinions/doctrines/theories/scientific articles and related websites collected from: 1) documents on the operation of the Procurement Service Unit (ULP) and Electronic Procurement Services (LPSE). Types of procurement include all types of procurement as regulated in the relevant laws and regulations; 2) The annual government reports issued by the Corruption Eradication Commission (KPK); 3) Manuals for the procurement of goods and services by the Ministry of Monetary, public documents of the Information Management and Documentation Officer (PPID) of the Government Procurement /

Service Policy Institute of the Republic of Indonesia (LKPP-RI); and 4) Other documents regarding the time span during the Covid-19 pandemic.

### **Data collection techniques**

In this study, data collection only focuses on documentation analysis. In the data collection process, the theme is related to; 1) procurements; 2) provisions on the amount of money and regulations on the procurement of goods and services for increasingly using domestic products, enhancing the role of Micro, Small and Medium Enterprises (MSMEs) and developing the national and regional economy; and 3) an agreement between PPK and the Provider in contract execution

### **Data Analysis Techniques**

Data analysis refers to inductive content analysis with a directed approach. The analysis begins with relevant research findings as initial code guidelines (Hsieh & Shannon, 2005). The research instrument consisted of four categories with three main variables using codification, namely; Civil Law, Learning from the System in the Regulation of Goods and Services Procurement, and Corruption Prevention.

The data analysis technique used to answer RQ 1 and RQ2 consists of several stages, namely: changing qualitative data in the form of public documents originating from the Information and Documentation Management Officer (PPID) of the Indonesian Government Procurement/Service Policy Institute (LKPP-RI) and Quantitative information collected also comes from the activities of the Procurement Service Unit (ULP) and Electronic Procurement Services (LPSE) into written text; 2) determine the analysis unit based on the written text theme and place a code on each unit of analysis; 3) determine coding guidelines consisting of category names, coding, definitions or rules, and examples; 4) assign coding to all units of analysis by examining code and instances; 5) testing the coding system by checking the coding consistency, and revising the coding rules to obtain a suitable coding consistency; 6) assessing consistency of coding by involving re-checking the coding data from the entire data set, and 7) drawing conclusions and presenting a reconstruction of meaning obtained from the findings that have been presented.

## **Results and Discussion**

### **The clauses contained in the agreement to procure goods and services within the civil law implementation to prevent corruptions during the Covid-19 pandemic (RQ1)**

In its development, the Covid-19 pandemic situation has an impact on goods and service procurement activities. Such activities most likely lead to corrupt practices by negligent individuals, including in the goods and services procurement regulatory (PBJ) contract.

Public information disclosure refers to the Decree of the Information Management and Documentation Officer of LKPP No. 3 of 2019 concerning the Establishment of the List of Public Information in the LKPP Environment. (Data 1)

- (1) “There are precisely 18 work units described in the regulation, namely: Inspectorate; PBJ Education and Training Center; Planning, Organization and Management Bureau; General and Finance Bureau; Legal Bureau, Information System and Civil Service; LPSE LKPP; Directorate of Public Procurement Strategy and Policy Development; Directorate of Special Procurement Strategy and Policy Development; Directorate of Business Climate Development and International Cooperation; Directorate of Procurement Monitoring and Evaluation Planning; Directorate of Catalog system Development; Directorate of Electronic Procurement System Development; Directorate of Professional and Institutional Development; Directorate of Professional Certification; Directorate of Professional Certification; Directorate of Advocacy and Dispute Resolution Area 1; Directorate of Advocacy and Dispute Resolution Region II; and the Directorate of Legal Problem Handling.”

The 18 work units are considered to be at risk of corruption because there is some information that is indeed excluded by LKPP as stated in the PPID LKPP Decree No.4 of 2019. Although the reasons for the impact of disclosing information can reveal personal secrets and can interfere with the interests of the right to property. intellectual. However, on the other hand, some of the excluded information is quite important for the public to know because it involves LKPP activities itself. Information that is excluded has sufficient reasons to be confidential, but also creates the potential for fraud because it cannot be directly monitored by the public. By providing access to exclusion information for this reason minimizes fraud during an audit or evaluation. Unfortunately, this can also lead to differences of opinion and can lead to conflict among stakeholders.

One of them is the Work Unit of the Directorate of Planning, Monitoring, and Evaluation of Procurement has excluded information, namely Procurement Planning, Monitoring and Evaluation application systems (SIRUP, MONEV, TEPR, MONEV NG, SUMON, AMEK) as



well as a stipulation document and/or cancellation of the Black List sanctions submitted by the PA/KPA to LKPP.

The work unit of the Directorate of Planning, Monitoring and Evaluation of Procurement implements technology through an application system, unfortunately this is precisely excluded. In fact, the use of technology will actually make it easier for the public to help supervise the activities of the Procurement Planning, Monitoring and Evaluation Directorate so that fraudulent practices can be avoided. Through technology, PBJ's public information can be accessed easily. Modern technology (information, innovation, and intelligence) can also apply as a catalyst to fight corruption (Maslii, et al, 2018). Despite the limited access to information provided for public information users, this literally represents the government transparency and accountability towards goods and service procurement activities. Djankov, LaPorta, Lopez -de- Silanes, and Shliefer (2008) explained that misdemeanors such as corruption, collusion, and nepotism (KKN) can be diminished with proper transparency and accountability.

The legal reference/basis for its stipulation is Presidential Regulation No. 16 of 2018, LKPP Regulation No. 17 of 2018, and Presidential Regulation No. 16 of 2018. As mentioned in CHAPTER I General Provisions Article 1 paragraph 20, (Data 2)

(2) *"Electronic Procurement Services are information technology management services to facilitate the implementation of electronic procurement of goods/services."*

As explained in the Structure of Presidential Regulation No. 16/2018 consists of 15 CHAPTER 94 Articles. When examined, the procurement guidelines in handling emergency procurement during the Covid-19 pandemic have been regulated in it, and procurement in an emergency is also regulated by Presidential Regulation No. 16 of 2018 in CHAPTER VIII Special Procurement Article 59 paragraph (1) The statement of the regulation is as follows, (Data 3)

(3) *"Handling of an emergency is carried out for the safety/protection of the public or Indonesian citizens who are in the country and/or abroad, the implementation of which cannot be postponed and must be done immediately."*

The state of emergency also applies to the covid-19 situation because its implementation cannot be postponed and must be done immediately to maintain stability and the community's economy. In addition, LKPP has issued LKPP Circular Letter No.3 of 2020 concerning Explanation of the **Implementation of Procurement of Goods/Services** in the Context of Handling

Corona Virus Disease 2019 (Covid-19). The circular contains the new PBJ mechanism in handling the Covid-19 outbreak in Indonesia. It was explained that the emergency condition was simple and distinctive, namely by direct appointment, the Budget User (PA) ordered the KPK to appoint a provider to carry out work based on the PA's needs for handling Covid-19. Providers supply the needs of work units provided that there is no conspiracy, considered as harmful to the state, exercised when delivering services such as mark-ups, kickbacks, bribes or promises to provide other following specific services upon the completion of one service.

Circular No.4 of 2020 concerning Procedures for Proving Qualifications and Negotiations on Provider Selection during the Corona Virus Outbreak (Covid-19) explained that there are two important points, namely: (1) for the necessities of providing goods/services promptly, consisting of (a) Proofs of qualifications and online negotiation to ensure qualifications and negotiation with no requirements of field visit, (b) Verification of qualifications and offline or face to face negotiations to prove qualifications/classifications and negotiations that require field visits by applying a protocol to prevent further coronavirus outbreak (COVID-19). (2) For the necessities for goods/services that can be postponed.

During the pandemic period, procurement management, especially commitment-making officials, continued to carry out PBJ executions related to the handling of COVID-19. Moreover, PPID, LKPP explains that the major need for Procurement of Goods and Service (PGS) in the context of handling covid-19 has affected the way LKPP implements PBJ because the government must face an asymmetric information situation regarding cost or price information for goods and services. In a normal situation, prices are easily predicted. Yet, within an emergency condition, the government as the buyer will find it difficult to obtain fair price information or market willingness.

To monitor PGS activities during COVID-19, access to information and PGS regulations moved intensively so that the procurement could be carried out in an accountable, effective, and transparent manner. In addition, Providers who normally provide for work units are monitored by the Government Financial Supervisory Agency, which also provides assistance in the implementation of procurement. The implementation of PGS must also go through an audit process if it is proven that it has carried out Corruption, Collusion, and Hypothesis (CCH). Then the tender/selection failed. Also, if there is fraud and it is not in accordance with the contract agreement, it will be subject to sanctions.

In Presidential Regulation No. 16 of 2018 CHAPTER 1 General Provisions Article 1 paragraph 21, (Data 4)

- (4) "The Government Internal Supervisory Apparatus, hereinafter abbreviated as APIP, is an apparatus that carries out supervision through audits, reviews, monitoring, evaluation, and other supervisory activities on the implementation of government tasks and functions... "Meanwhile, in Part Two Tender/Selection Failed Article 51 paragraph 2, explains that "Tender/Selection fails in terms of:... e. all participants were involved in Corruption, Collusion, and Hypothesis (CCH)."

Then in Part Three Sanctions Article 78 paragraphs 1-3. Paragraph 1, (Data 5)

- (5) "The actions or actions of election participants that are subject to sanctions in the implementation of the selection of Providers are: a) submitting false/untrue documents or information to fulfill the requirements specified in the Bidding Document; b) there are indications of conspiracy with other participants to fix the bid price; c) indicated that they have conducted CCH in the selection of Provider; or resign for reasons that are not accepted by the Procurement Officials/Election Working Groups/Procurement Agents. Paragraph 2, "Actions or actions of election winners who have received SPPBJ that can be subject to sanctions are winners resigning before signing the contract." Paragraph 3, "The actions or actions of the Provider that are subject to sanctions are deemed as: a) not performing the contract, not completing work, or not carrying out obligations during the maintenance period; c) submitting a non-redeemable warranty; d) making faulty calculations on the volume of work results on the basis of audit result; e) delivering goods/services whose quality is unspecified in the Contract based on audit results; or f. Exceeding the due date of work completion as described according to the contract."

As a result of this civil law, good intentions and rationality emerged to act properly when executed. From these regulations, it is actually a lesson that in the PBJ process during the Covid-19 period it can prevent Corruption, Collusion, and Hypothesis (CCH).

The covid-19 pandemic condition is also not defined as a force majeure. The public or individuals who suffer losses due to the enactment of Government policies or are suspected to have dealt with conspiracy practices can file a lawsuit. This is a form of consistency of the government towards the stipulated regulations. The previous research is in line with these findings. In the COVID-19 suits, the injured parties are physically under the governmental custody and directly vulnerable to the conditions that this custody affirmatively imposes.... To be sure, climate change will unfold much more slowly than the destructive pandemic we are facing today. Yet government action is no less important in stopping... which is entirely preventable... For COVID-19, the warning signs are more acute and recent. One COVID-related misinformation suit that has received national attention is the Washington state court complaint

by a non-profit organization focused on transparency and ethics against Fox News, Rupert Murdoch, AT&T, and Comcast, among other defendants. The defendants were allegedly charged of an “act [ed] in the broad stream of commerce [to] knowingly disseminate false, erroneous, and incomplete information, which was reasonably relied upon by the public and which had the effect of delaying and interfering with the implementation of effective mitigation and countermeasures against the virus (Bronin, 2020)

The attitudes applied in perceiving the situation can lead the parties, LKPP, K/L/PD, or other goods providers/construction workers/consulting services/services to be constrained in the COVID-19 situation. However, this does not hinder the implementation of PBJ due to the enactment of regulations used as a reference to enable optimum work and as an effort to prevent Corruption, Collusion, and Hypothesis (CCH). Previous studies have also explained that corruption prevention can be done by strengthening regulations regarding efforts to prevent corruption (Damm & Shishko, 2016; Bussamann, Niemeczek, & Vockdrodt, 2018).

### **The Reasons That Make Good Faith So Important In The Process Of Procuring Products And Services(RQ2)**

Based on primary legal materials and secondary legal materials for research,the findings (RQ2) reveal the reasons that make good faith important in the process of procuring products and services, as follows;

In Presidential Regulation No.16 of 2018, it explains the importance of principles and ethics in implementing PBJ so that there is no breach of contract that could harm one of the parties who entered into the contract agreement. Burton (1980) corroborates this finding. The researcher explained that the prevention of breaches of contracts and common law obligations occurred because of good faith. It can be understood that principles and ethics are part of good faith.

<sup>2</sup> Quoted from Presidential Regulation No. 16 of 2018 in the third part of the Principles of Procurement of Goods/Services Article 6 applies the following principles: (Data 1)

- (1) "a. Efficient; b. Effective; c. Transparent; d. Open; e. Compete; f. Fair; and accountants. Furthermore, the fourth part of the Ethics of the Procurement of Goods / Services Article 7 (1) All parties involved in the procurement of goods/services comply with the following ethics: a. Carry out tasks in an orderly manner, accompanied by a sense of responsibility to achieve the goals, smoothness and accuracy of the objectives of the procurement of goods/services; b. Work professionally, independently, and

maintain the confidentiality of information ....; c. Do not influence each other, either directly or indirectly which results in unfair business competition; d. Accept and be responsible for all decisions made ....; e. Avoid and prevent conflicts of interest of related parties ...; f. Avoid and prevent waste and leakage of state finances; g. Avoid and prevent abuse of authority and/or collusion; and h. Not accepting, not offering, or not promising to give or receive gifts ...."

In the covid-19 condition, direct cash assistance (BLT) is required in the state budget (APBN) and regional income expenditure budget (APBD), the value is very large. Based on data from the Ministry of Foreign Affairs of the Republic of Indonesia (2020), the budgets of several Ministries were cut by IDR 97.42 trillion. The budget allocation policy is a follow-up to the Government Regulation in lieu of Law No.1 of 2020 concerning State Financial Policy and Financial System Stability for Handling Covid-19 and Presidential Regulation No.54 of Year 2020 concerning Posture Changes in Details and the 2020 State Budget. Meanwhile, the total budget for handling the Covid-19 pandemic reaches IDR 405.1 trillion. This large amount of aid for residents experiencing economic downturns is one of the triggers for corruption in implementing PBJ in the Covid-19 situation. Therefore, good faith is needed to prevent corruption in aid funds for people affected by Covid-19.

Good faith is the key to drafting and implementing the contents of the agreement. According to English law, good faith is a basic principle drawn from the principle of *pactasuntservanda*. Good faith is simply defined as honesty. There are two measures, good faith, namely good faith state of mind and good faith performance (O'Connor, 1990). Actions that are consistent with the contents of the agreement come from goodwill that is in the mind or heart.

The question raised as to whether the principle of good faith should be deemed as to play a role during the application of the contract or should it play a role upon the making of contract? (Agustina, 2012). In the author's view, good faith should simultaneously exist at the time of making the agreement, implementing the agreement, and in a forceful state to find a solution that safeguards the interests of both parties. Based on the doctrine of consideration, which is the interest of both parties to provide mutual benefits and benefits.

Good faith becomes the basis for applying renegotiations with facts that are mutually recognized as a key issue. "The duty of good faith arises to qualify all performance obligations, and, of course, the courts have responded to particular situations according to the context presented. Indeed, some lines of cases have become so driven by context that it is not clear

whether they represent the overall doctrine; the good faith obligations of employers towards employees, for example, seem to have a life of their own (Rakoff, 2007).”

Renegotiations carried out were based on good faith to maintain the essence of the agreement: by providing benefits and shared benefits for both parties through the implementation of achievements.

The renegotiations cover issues such as changing the contents of the locked agreement with the Covid-19 pandemic, including rescheduling the implementation of obligations. This is said to be a moral value contained in the contract law principles of civil law, as adopted in the Civil Code (Gunanto, 1997). Covid-19 represents impossibility on the common law viewpoint, while civil law categorizes it as force majeure. The Covid-19 pandemic is a relative force majeure, despite the intense circumstances and timing of its occurrence and holdups in mobility of people, goods, and services. Force majeure is a condition beyond the control of the parties. The failure to perform the promised clause in the agreement was caused by completely unpredictable events where he was prevented from taking actions under affliction or tremendous circumstances beyond his expectations (Subekti, 1982). Good faith from the parties allowing renegotiating the agreement. “On the one hand, good faith has been celebrated as ‘the queen of rules’, and on the other hand it has been said to play the role of “the Emperor’s clause(Rotolo, Sartor, & Smith, 2009).”

For civil lawyers who are fond of moral values asserting that good faith is the crown jewel of the agreement. The agreement is unable to run to achieve its goals if there is no good faith on the part of both parties. Such is the importance of good faith for the agreement so that it is always necessary from the creation to the implementation of the agreement.

This means that good faith is still needed when there is a relative force or impossibility to save the agreement, especially since the parties are already at the stage of implementing the agreement, so that, if the agreement is left in a relative force, it will not cause greater losses and will be held in a longer period of time.

In the case of imposing risks due to damage to goods upon work performance by merely providing or conducting work without providing materials. If an agreement fails to fulfill the requirements stipulated in Article 1320 of the Civil Code, the agreement is declared as "legally flawed" (Article 1321 of the Civil Code). A legally flawed agreement is both a null and a void. Should the agreement, which is declared a null and a void, harm the parties bound by the

agreement would consequently make the subject of the agreement be declared as a void. In this regard, the Project Manager/Project Director should be declared to have committed an illegal conduct and can be prosecuted for committing fraud as referred to in Article 378 of the Criminal Code. The article stated,(Data 2)

- (2) *"Anyone with the intent to unlawfully benefit himself or others by using a false name or dignity, by deception, or a series of lies to motivate another person to give up something or provide a debt or write off a debt."*

Furthermore, the 'legally flawed' conduct as it is treason against the government policies is defined and regulated in Presidential Regulation No.16 of 2018 concerning PBJP. There are several lessons learned from various goods and service procurement agreements attempted to prevent frauds, especially corrupt behavior. Referring to the concept of agreement formulation pinpointed by Dunne (1999), the learning benefits referred to include three stages.

First, drafting of agreement/pre contractual texts. In the early stages, the agreement was based on the obligation to negotiate in good faith to draw up an agreement in accordance with a mutual consent (Marsden &Siedel, 2017). Both parties grasp their respective obligations and rights. Without good faith from the outset, the agreement for the procurement of goods and services should only benefit one party and harm the other. This is what underlies fraud prevention efforts concerning the clauses contained in the goods and services procurement agreement for basically, agreement learning in the process seeks to ensure that contract partners comply with society standards of decency, justice and fairness (Fagan, 2020).

Second, performing obligations to fulfill the agreement/contractual provision. If good faith has been applied in the onset of the agreement and both parties have understood the risks and obligations and fair policies, frauds so called 'legal defects' or treasons against the law should never exist (Iliquini & Hutchison, 2016).

Third, the contractual forced stage. This stage is a crucial part of the learning process where both parties are obliged to fulfill the contract agreement. However, it needs to be underlined that the learning in question is about the importance of understanding risks in certain conditions beyond the contractual agreements. For example, in the case when each party is incapable of performing his obligations under particularly difficult circumstances due to force majeure such the Covid-19 pandemic. In this context, good faith delivers substantial benefits to avoid felony. Thus, learning about good faith in the process of goods and service procurement

agreements can be understood by both parties as they are not merely exposed to obligations. Instead, they collaborate to resolve the problems at hand (Mcmeel, 2017). In good faith, the aggrieved parties would not necessarily file a lawsuit against the other parties or cause irregularities in the procurement of goods and services associated with the Covid-19 pandemic due to the failure to fulfill the contract agreement.

Thus, Civil law, serves as a basic guideline for learning business agreements that apparently grows an anti-corruption attitude capable of reducing frauds, especially the implications for preventing maladministration and abuse within the government public service offices. This finding is in line with previous research which revealed that fraud that occurs in economic or governmental activity is due to a lack of integrity and weakness, poor or defective institutional structures and systems leading to gaps for fraudulent behavior (Shleifer&Vishny, 1993; Djankov, LaPorta, Lopez -de- Silanes, &Shliefer, 2008).The social implications of the learning process minimize other fraudulent activities amid affliction resulted from the Covid-19 pandemic either in public services, agreements, or regulatory implications in civil law (Terziev, Venelin, &Georgiev, 2020; Ruiz, 2020)

The Corruption Eradication Commission (KPK) issued Circular (SE) No.8 of 2020 concerning the Use of Budget <sup>2</sup> for the Procurement of Goods/Services in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19) Related to the Prevention of Corruption Crime. Based on the provisions stipulated in Article 6 letters a, b, and c of Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 Concerning the Corruption Eradication Commission (KPK) explains regarding the prevention of corruption as follows, (Data 3)

- (3) "1) PBJ still pays attention to applicable laws and regulations including specific rules that issued by the Government Goods and Services Procurement Policy Institute (LKPP) regarding the implementation of the procurement of goods and services in the context of handling Covid-19 .....; 2) The principle of PBJ in emergencies is effective, transparent, and accountable, while still holding on to the concept of the best price (value for money) as stated in Article 4 of Presidential Decree No. 16 of 2018 concerning Procurement of Goods / Services ... ; 3) KPK reminded that in all stages of implementing PBJ, always avoid actions that are categorized as criminal acts of corruption, including: a) Not conspiring/collusion with goods/service providers ..., b) not getting a lockback from the provider ....., c) does not contain elements of bribery ....., d) does not contain gratification ..., e) does not contain elements of collision interest in procurement ....., f) does not contain elements of fraud and / or mal-administration ....., g) does not have any malicious intent by taking advantage of



*emergency conditions ...., h ) do not allow the occurrence of a criminal act of corruption ...."*

Based on the contents of circular No. 8 of 2020, the KPK through the SE aims to accelerate the handling of covid-19, especially the provision of Personal Protective Equipment (PPE), monitoring and coordination to assist the Task Force for the Acceleration of Handling Covid-19 in Indonesia.

Pujiono, Setiawan, and Hutabarat (2019) revealed that anti-corruption law enforcement has shown a fairly good performance in eradicating corruption. However, the trigger for corruption in the covid-19 aid fund is a challenge in itself for the performance of corruption eradication. As has been explained, the reason for the importance of good faith in the implementation of the procurement of goods and services is that the instruments are capable of preventing corruption. Although not explained in detail, part of the documents, namely the principles and ethics of the procurement of goods/services, describes efforts to avoid acts that are categorized as criminal acts of corruption. In other words, theoretically based on normative legal studies related to government regulations in the procurement of goods / services it should have implications for the effectiveness and efficiency of covid-19 aid funds and the prevention of corruption. But in fact, it is still not effective in preventing corruption.

Based on data from the special Joint Unit for Supervision of Covid-19 Funds, the Indonesian Police Headquarters (Mabes Polri) recorded 102 cases of misappropriation of social assistance by the end of July 2020 (Arunanta, 2020). There have been 17 cases of alleged misappropriation of covid-19 pandemic social assistance funds and all of them have not yet entered the investigation stage and are likely to continue to increase if not handled quickly. This is an obstacle to preventing corruption in Indonesia. Good faith is an important part of efforts to prevent corruption, but the time-consuming process of investigation and handling makes even the principles and ethics in government regulations not effective enough to prevent corruption.

### **Conclusion and Implications**

In summary, the findings and discussion conclude two important things: The first finding is about an agreement for the procurement of goods and services in the application of civil law to prevent corruption during the Covid-19 pandemic. Contract agreements for the procurement of goods/services that can trigger corruption are contract agreements that have a large budget, such

as covid-19 assistance funds. Civil law articles confirming the criminal act of corruption at the time of Covid-19 are contained in the Corruption Eradication Commission (KPK) issuing Circular (SE) Number 8 of 2020 concerning Use of Budgets for Procurement of Goods/Services in the Context of Accelerating Handling of Corona Virus Disease 2019 ( Covid-19) Regarding the Prevention of Corruption Crime.

The regulations relevant to the research elaborate three things; 1) the new changes and designs made by LKPP are in the context of realizing sustainable development in spite of the Covid-19 situation; 2) disclosure of public information as a form of <sup>2</sup> transparency and accountability in efforts to prevent corruption, collusion and nepotism; and 3) imposing strict sanctions for fraudulent actors who breach the contract agreement is comprehensible and noted as the government's consistency and perseverance with fighting against corruptions.

The second finding reveals the reasons for good faith are very important in the Contract even though there are unclear statements to justify the reasons. Several articles in the agreement identify principles and ethics in the implementation of the procurement of goods and services. Both instruments are part of good faith. In other words, the importance of good faith. In other words, good faith is basically part of government regulations in achieving national development goals. The point of why good faith is so important in a contract is to avoid breaches and reduce losses suffered by both parties. This can practically be an effort to prevent corruption in Indonesia.

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