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## Potential of Corruption in Contract Procurement of Goods and Government Services by The State Agency

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**Abstract**—The procurement of goods and services (hereinafter abbreviated as PBJ) by the government in Indonesia often causes problems related to law. In fact, it is not uncommon to cause company leaders to become entangled in criminal acts of corruption and other criminal acts as a result of a conspiracy carried out between businessmen and authorized officials. In this article we take a sample of one of the state-owned companies in Indonesia, namely PT.Adi Karya (Persero) Tbk, with the intention to find out the PBJ work contract management system that has so far been carried out by PT.Adi Karya (Persero) Tbk, whether it is in accordance with applicable legal provisions in Indonesia or not. The method used in extracting data in the company is the interview method. The appointment of the informant was carried out using the purposive sampling method and the qualitative writing method. After conducting a research in the company, it was found that the implementation of the contract/agreement in PBJ with other parties (government or private) in PT.Adi Karya (Persero) Tbk is not implemented based on the Decree of the Directors of SKD Number 014-6 /2018/208 dated March 14, 2019, concerning the "power" delegated by the Directors to the General Manager in PBJP, but the "authority" granted by the Directors has been delegated again by the General Manager to the Project Manager / Project Director with a Letter of Assignment. Based on the provisions of the Company Law No. 40 of 2007, those who should act on behalf of PT.Adi Karya (Persero) Tbk to sign all contracts / agreements with other parties are the General Manager (as the Receiver of Power of Directors) as stated in the Notarial Deed. The General Manager (Power of Attorney) does not have a "legal standing" in reassigning the power he has received to other employees including the Project Manager / Project Director (Article 103 of Company Act Number 40 of 2007).

**Keywords:** companies; government contracts; legal provisions.

### Introduction

Procurement of Goods/Services (hereinafter referred to as PBJ) of government projects must meet the provisions stipulated in Presidential Regulation Number 16 of 2018 (<https://m.hukumonline.com>). This is because if this is not the case, the government project implementers have the potential to deviate or abuse the authority which can result in state financial losses. This has become one of the indicators of corruption.

Likewise, if the Limited Liability Company (hereinafter referred to as PT) in the signing of the agreement is not in accordance with the provisions of Article 103 of the Company Act Number 40 of 2007, the agreement indicates a legal flaw that has the potential to be a criminal offense. In this research, the object of the research is PT.Adhi Karya (Persero) Tbk. which is one of the State-Owned Enterprises (hereinafter abbreviated as BUMN) that has a reputation as one of the best national companies known in foreign countries. Based on the provisions of Law Number 19 of 2003, BUMN and Regionally-Owned Enterprises (hereinafter abbreviated as BUMD) are business entities in which the capital is owned by the government that comes from state assets. In implementing PBJ by PT.Adhi Karya (Persero) Tbk, all this time they are guided by the regulation of the Minister of SOE Number PER-15/MBU/2012 concerning Guidelines for

Implementing BUMN PBJ. In this regulation what is meant by PBJ is PBJ activities carried out by BUMN PT.Adhi Karya (Persero) Tbk. the financing of which does not use the State Budget (hereinafter referred to as APBN) funds, or the Regional Revenue and Expenditure Budget (hereinafter abbreviated as APBD).

The problem that will be examined in this study is how to sign the PBJ contract conducted by BUMN PT. Adhi Karya (Persero) Tbk and whether the provisions that must be obeyed by BUMN PT.Adhi Karya (Persero) Tbk. in signing PBJ contracts with parties (government and private). Given the large potential violations of the law that will arise in signing PBJ contracts, both with the government and with private parties, the PBJ, whose funds are sourced from state finances, must be guided by Presidential Regulation Number 16 of 2018, including BUMN and BUMD that get projects from government. In addition to these regulations, BUMN PT.Adhi Karya (Persero) Tbk must also be guided by UUPT Number 40 of 2007. As we know, because PT.Adhi Karya (Persero) Tbk is a state company that works on giant projects from the government, so these laws and regulations must be obeyed by PT.Adhi Karya (Persero) Tbk.

There are two views in the interpretation of state money invested in BUMN and BUMD. If the money invested by the government is declared as State Finance, the provisions that must be obeyed by BUMN and BUMD in the PBJ are Presidential Regulation Number 16 of 2018. However, if the government considers that the money handed over to the BUMN is not State Finance, then the BUMN PBJ will be bound to the Minister of BUMN Regulation, the mechanism of which is carried out by Commissioners, Directors and Employees of BUMN and UUPT Number 40 of 2007. If in financial management there are irregularities committed by the officials mentioned above, then in law enforcement depends on what violations are committed conducted by BUMN employees.

In conducting research, the methods used are normative juridical approaches, empirical juridical approaches, and dialogical approaches. Analysis of the data used is qualitative analysis. The problem faced in this research is PBJ within PT.Adhi Karya (Persero) Tbk, which refers to the Directors' Decree (hereinafter abbreviated as SKD) Number 014-6 /2018/208 dated March 14, 2019 based on the Minister of BUMN Regulation Number PER-15/MBU/2012 concerning PBJ- BUMN guidelines. Provisions in the issuance of SKD by the Project Manager/Project Director to sign a contract (purchase order) are deemed to have no clear legal basis, whereas based on the main duties and functions, the Project Manager/Project Director is not authorized to sign contracts that should be carried out by the Directors or one or more persons or other party who is given written authorization. Policies carried out by PT.Adhi Karya (Persero) Tbk have the potential to violate the law because the signing of the contract is not in accordance with the Company Act Number 40 of 2007. To provide an overview of whether the policy is in accordance/or not in accordance with the legal provisions, we conducted a study entitled "Juridical Analysis of Signing Contracts for Procurement of Goods and Services by BUMN (PT. Adhi Karya (Persero) Tbk)".

## Methods

This research uses Normative Juridical and Empirical Juridical Approach. With the Normative Juridical Approach, we will examine, study, cite the methods, norms, rules relating to the problem to be

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examined with a view to collecting various Regulations, Laws, Theories and Literature that are closely related to the problem in research. Meanwhile,<sup>1</sup> the Empirical Approach is a method in collecting primary data that is obtained directly in field research on the object of research by interviewing informants (primary sources) related to research issues, namely contracts for procurement of government goods and services.

The type of data needed in this study are; statements, letters related to the problem under study, namely; Secondary Data (data obtained by reading, quoting, studying and examining the literature, information material that has been available as a result of previous research,

regulations, laws relating to the problem under study); Primary Data (data obtained directly from the results of research in the field on the object of research conducted at PT.Adhi Karya (Persero) Tbk. To obtain these data, Data Collection and Processing Procedures are carried out which include Data Collection with library research (efforts to collect secondary data carried out by reading, studying, quoting, reviewing literature, regulations, laws, and other legal materials relating to the problem under study); Field Studies which include Observations and Interviews; and Data processing which includes techniques data analysis (attempts to find answers to questions about the problem being investigated). In this data analysis process, a series of data that has been arranged systematically according to its classification is then arranged using the Qualitative Method.

## Result and Discussion

### PBJ by BUMN

On June 19, 2003 Indonesia enacted Act Number 19 of 2003 concerning State-Owned Enterprises, hereinafter referred to as BUMN Act. With the enactment of this Act, the existing BUMN Act or State Enterprises have been declared null and void. According to Article 1 number (1) BUMN is a business entity whose entire or most of its capital is owned by the state through direct participation from separated assets. What is meant by separated state assets is state assets originating from the State Budget to be used as state capital participation in the Company (called Persero) and/or Public Company (called Perum) and other limited liability companies.

Related to the activities carried out by BUMN, there are several foundations that must be followed in PBJ activities such as Understanding Contract Theory. Contract theory is a theory that analyzes the legal relationship between one legal subject and another legal subject. This contract theory is very important in the life of society, nation and state. The contract is very closely related to accountability. If one party does not comply with a signed contract, it will result in a legal defect. Those who violate the contract may be subject to sanctions, both civil and criminal. The imposition of sanctions is a consequence that must be accepted by parties who do not comply with the contract. This result is called "liability." According to the Big Indonesian Dictionary (KBBI) "responsibility" is the obligation to bear everything. If it is related to the contract, the party that has to bear is the party who does not obey the contract. In the legal dictionary, responsibility is a must for someone to carry out what is required to him (Hamzah, 2005).

According to the law, responsibility is a result of the consequences of a person's freedom of conduct related to ethics or morals in carrying out an act (Notoatmojo, 2010). Accountability that follows a contract must be carried out fairly. The philosopher Aristotle, in a scientific work belonging to Nicoman Ethics, stated that justice is the essence of law. He interpreted justice as granting equal rights but not equality (Lubis, 1994). Liability also means that there is legal certainty for the parties to the contract. Legal certainty in society is needed for the establishment of order and justice. The increasingly complex and modern demands of life force every individual in society to have legal certainty so that each individual can determine their rights and obligations clearly and structured (Mahfud MD., 2006: 63). In addition to the theories of contract outlined above, it is also important to know the principles set forth in the legal contract, which are made up of 5 principles, namely: the principle of freedom of contract; the principle of consensual, the principle of legal certainty (*pacta sunt servanda*), the principle of good faith, and the principle of personality.

The several statutory provisions that have been used as the basis for the implementation of BUMN (PT. Adhi Karya) activities in the government PBJ are Act Number 19 of 2003 concerning State-Owned Enterprises, Act Number 40 of 2007 concerning Limited Liability Companies, Government Regulation Number 45 of 2005 concerning Establishment, Management, Supervision and Disbanding of State-Owned Enterprises, Presidential Regulation Number 16 of 2018 concerning Government PBJ, and BUMN Ministerial Regulation Number PER-15/MBU/2012 of 2012 concerning amendments to BUMN Ministerial Regulation Number

PER- 05/MBU/2008 concerning BUMN PBJ guidelines.

Specifically, the provisions that must be carried out in the activities of Government PBJ Contracts (hereinafter abbreviated as PBJP), those carried out by both BUMN and Private Business Entities, must refer to the provisions stipulated in General Provisions Article 1 of Presidential Regulation Number 16 of 2018 concerning government PBJ as follows:

Article 1 point 1 states:

PBJP, hereinafter referred to as PBJ, is a PBJ activity by the Ministries/Institutions/Regional Apparatuses funded by the State Budget/Regional Budget whose processes have been carried out since the identification of needs until the handover of work results.

Article 1 point 27 states:

Business Actors are every individual or business entity, in the form of both legal entity and non- legal entity, established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, both alone and together, through agreements to carry out business activities in various economic fields.

Article 1 point 28 states:

PBJP, hereinafter referred to as Provider, is a Business Actor that provides goods/services based on a contract.

Article 1 point 29 states:

Goods are any objects both tangible and intangible, movable or immovable, which can be traded, used, or utilized by users of the goods.

While the objectives and policies, principles, and ethics in the PBJ are regulated in article 4, article 5, article 6 and article 7 of Presidential Regulation Number 16 of 2018 as follows:

Article 4 states:

The objectives of PBJ are:

produce the right goods/services from every money spent, measured in terms of quality, amount, time, cost, location and provider;

increase the use of domestic products;

enhance the participation of Micro, Small Business and Medium Enterprises;

enhance the role of national business actors;

support the implementation of research and utilization of goods/services resulting from research;

increase the participation of creative industries;

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encourage economic equality; and  
encourage sustainable procurement.

Article 5 states:

PBJ's policies include:

improve the quality of PBJ planning;  
implement PBJ that is more transparent, open and competitive;  
strengthen PBJ's institutional and human resource capacity;  
developing the PBJ e-marketplace;  
use information and communication technologies well as electronic transactions;  
encourage the use of domestic goods / services and the Indonesian National Standard (SNI);  
provide opportunities for Micro, Small and Medium Enterprises;  
encourage the implementation of research and creative industries; and  
implement Sustainable Procurement.

Article 6 states:

PBJ applies the following principles: (a) efficient; (b) effective; (c) transparent; (d) open; (e) compete; (f) fair; and (g) accountable.

Article 7 states:

PBJ ethics are as follows:

All parties involved in PBJ adhere to the following ethics:

carry out tasks in an orderly manner accompanied by a sense of responsibility to achieve the goals, smoothness, and accuracy of PBJ objectives;

work professionally, independently, and maintain confidentiality of information that is by their nature must be kept confidential to prevent PBJ deviations;

not influence each other directly or indirectly which results in unfair business competition;

accept and be responsible for all decisions made in accordance with the written agreement of the parties concerned;

avoid and prevent conflicting interests of related parties, both directly and indirectly, which results in unfair business competition in the PBJ;

avoid and prevent waste and leakage of state finances;

avoid and prevent abuse of authority and / or collusion; and

do not accept, not offer, or do not promise to give or receive gifts, rewards, commissions, rebates, and anything from or to anyone known or reasonably suspected of being related to PBJ.

Conflicting interests of related parties as referred to in paragraph (1) letter 'e' in case:

The Board of Directors, the Board of Commissioners, or core personnel in a business entity concurrently serving as a board of Directors, Board of Commissioners, or core personnel in other business entities that participate in the same Tender / Selection;

consultant planner / supervisor in Construction Work acts as executor of the planned / supervised construction work except in the implementation of integrated work procurement;

construction management consultants act as planning consultants;

administrator / manager of the cooperative and concurrently as PPK / Election Working Group / Procurement Officer in the implementation of the PBJ in the Ministry / Institution / Regional Apparatus;

PPK / Working group Election / Procurement Officer either directly or indirectly controls or runs the business entity of the Provider; and / or

several business entities that participate in the same Tender / Selection which are controlled directly or indirectly by the same party and / or share ownership of more than 50% (fifty percent) controlled by the same shareholder

### Contract Form of PBJP

The preparation of contract documents between the user and the service provider refers to the text of the contract contained in the proposal request document and other documents such as the minutes of opening bids, business documents, minutes of evaluation, minutes of clarification and negotiations, minutes of the determination of prospective providers, and appointment decisions service provider. The forms of contracts and advances are regulated in Article 28 and Article 29 of Presidential Regulation Number 16 of 2018 as follows:

Article 28 states:

The form of the contract consists of:

proof of purchase / payment;

receipts;

Work Order (SPK);

agreement letter; and

mail order

Proof of purchase / payment as referred to in paragraph (1) letter 'a' is used for other PBJ with a maximum value of IDR 10,000,000.00 (ten million Indonesian rupiah).

Receipts as referred to in paragraph (1) letter 'b' are used for other PBJs with a maximum value of IDR 50,000,000.00 (fifty million Indonesian rupiah).

SPK as referred to in paragraph (1) letter 'c' is used for Procurement of Consultancy Services with a maximum value of IDR 100,000,000.00 (one hundred million Indonesian rupiah), other PBJ with a value of at least above IDR 50,000,000 (fifty million Indonesian rupiah) up to a maximum value of IDR.200,000,000.00 (two hundred million Indonesian rupiah), and Procurement of Construction Work with a maximum value of IDR 200,000,000.00 (two hundred million Indonesian rupiah).

The agreement referred to in paragraph (1) letter 'd' is used for the Procurement of Goods/ Other Construction/Other Services with a value of at least above IDR.200,000,000.00 (two hundred million Indonesian rupiah) and for the Procurement of Consultancy Services with a value of at least above IDR

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100,000,000 (one hundred million Indonesian rupiah).

The order as referred to in paragraph (1) letter 'e' is used for PBJ through e-purchasing or purchasing through online stores.

Further provisions regarding the form of contract as referred to in paragraph (1) and supporting documents of the Contract shall be regulated in a ministerial regulation which carries out government affairs in the field of state finance and / or minister who carries out affairs in the field of domestic government.

Article 29 states:

Advances can be given in preparation for carrying out the work.

Advances as referred to in paragraph (1) are granted with the following conditions:

a maximum of 30% (thirty percent) of the contract value for small businesses;

a maximum of 20% (twenty percent) of the contract value for non-small businesses and Consultancy Service Providers; or

a maximum of 15% (fifteen percent) of the contract value for Multi-Year Contracts.

Provision of advance payment is stated in the draft contract contained in the Bidding Document.

## General Description

PT.Adhi Karya (Persero) Tbk is a publicly traded company engaged in the construction field based in Jakarta, Indonesia. The company was founded on March 11, 1960. The head office of PT. Adhi Karya is located at Jl. Raya Pasar Minggu, South Jakarta (Source: [https://id.wikipedia.org/wiki/Adhi Karya](https://id.wikipedia.org/wiki/Adhi_Karya), accessed on December 3, 2019). To achieve the company's goals, PT.Adhi Karya has a vision and mission. Its vision is to become an innovative and superior cultured corporation for sustainable growth. Its mission is to build superior, professional, trustful and entrepreneurial people, develop a reputable construction, engineering, property, industrial and investment business; develop product and process innovations to provide solutions and impact for stakeholders; run an organization with good corporate governance; run a management system that ensures the achievement of objectives, quality, safety, health and work environment; and develop information and communication technology as a means of decision making and corporate risk management. Besides that, PT.Adhi Karya is also determined to develop its business lines into five lines namely Construction, EPC, Property, Real Estate and Infrastructure Investment, and PT.Adhi Karya also has 5 subsidiaries, namely: Adhi Persada Beton (APB), Adhi Persada Gedung (APG), Adhi Persada Properti (APP), Adhi Commuter Properti (ACP) and Dumai Tirta Persada.

## Provisions for PBJ-BUMN PT.Adhi Karya (Persero) Tbk.

As an illustration in this study, we will describe the results of research on the implementation of government projects including PBJP conducted by PT.Adhi Karya according to the provisions

stipulated in BUMN Ministerial Regulation PER-15/MBU/2012 concerning amendments to BUMN Ministerial Regulation No. PER-05/MBU/2008 concerning General Guidelines for Implementing PBJ-BUMN. Article 12 states "The enactment of this Regulation of the Minister of State-Owned Enterprises for BUMN in the form of Open Corporation is confirmed in the RUPS of each of the Open Companies or by adopting it directly in the Board of Directors Regulation".

Based on the above regulations, in carrying out business activities, PT. Adhi Karya sets PBJ Guidelines that are enforced in the company environment that are set by the board of Directors of PT. Adhi Karya. These guidelines are known as Decree of the Board of Directors (hereinafter abbreviated as SKD). Until now the guidelines relating to the latest PBJ rules within PT. Adhi Karya and is still in effect are SKD

Number 014-6 / 2018/208, dated March 14, 2019. Basic Principles in the PBJ applicable to PT. Adhi Karya in accordance with SKD are efficient, effective, competitive, transparent, fair and reasonable, and accountable. The authorized party signed the PBJ contract of PT. Adhi Karya is:

General Manager of the Operations Department authorized by the President Director in the form of a Notary Letter of authority;

Project Director and or Project Manager who gets the Assignment Letter from the General Manager of the Operational Department;

The director is in charge of the BUMN business chosen by the RUPS and the Ministry.

### The concept of PBJ at PT.Adhi Karya (Persero) Tbk.

Referring to SKD Number 014-6/2019/058 dated March 14, 2019 concerning Guidelines for PBJ in the PT. Adhi Karya (Persero) Tbk, the SKD regulates the following matters:

Rules for the partner list selection process;

PBJ process coordination flow, starting from the procurement request to the payment process;

Limitation of signing of procurement contract;

PBJ mechanism rules: direct appointment, direct election, and framework contract.

Preparation of a Letter of Agreement of chartering a job or PBJ within PT. Adhi Karya must ensure the following clarity:

Scope of work;

Work time schedule according to the plan that has been set;

Inclusion of technical criteria and / or expertise needed;

Technical documents required specifically for the procurement of construction services include:

Technical Specifications of the Work which include: a) Technical Specifications are truly in accordance with the needs of the user / owner of the project; b) Does not lead to certain brands / products; c) Maximizing the use of domestic production; d) Maximizing the use of the Indonesian National Standard (SNI).

Inclusion of kinds, types, capacity and minimum number of main equipment needed in the implementation of the work;

Provider requirements and/or expert qualifications as well as the number of personnel employed that does not lead to a particular provider;

Inclusion of material requirements used in the execution of work;

Working drawings must be complete and clear;

Inclusion of desired product performance criteria;

Inclusion of measurement procedures.

### Accountability of the Parties in the Contract

To PT.Adhi Karya, the authority to sign PBJ Contracts is divided into 4: Project Contracts/ POs, Departmental Contracts/POs, Head Office Contracts/POs, and Contracts/POs based on Framework

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Contracts. The 4 types of PBJ contracts are as follows:

Project Contract / PO:

Is a Contract / PO made by the Project Procurement Manager / Procurement Project, reviewed by the Deputy Project Director / Project Engineering Manager, then signed by the Project Director / Project Manager.

Contract/PO Department:

Are Departmental Contracts/POs made by the SCM Bureau, examined by the SCM Bureau Manager and the Contract and Risk Bureau Manager, then signed by the General Manager.

Contracts/PO Headquarters:

Is a Head Office Contract / PO made by the Head Office SCM Bureau, examined by the Head Office SCM Bureau Manager and then signed by the General Manager of Corporate Strategy IT (CSIT) PT. Adhi Karya (Persero) Tbk.

Contract/PO Based on Framework Contract:

Is a contract/PO made based on the ADHI Framework Contract with one of the other companies where the contract is made for a certain period of time with a binding price and volume in accordance with the agreement set forth in the contract. The contract/PO was made by the Central Office SCM Bureau based on a request from the Operations Department and was then signed by two (2) Directors of PT. Adhi Karya (Persero) Tbk.

Accountability of the giver and receiver of authority in the PBJ Contract/PO carried out within the BUMN PT. Adhi Karya (Persero) Tbk is as follows:

Managing Director of PT. Adhi Karya (Persero) Tbk. is responsible for the authority granted by the Ministry of BUMN and RUPS;

GM is responsible for the authority given by the President Director as stated in the notarial deed in the form of a letter of authority of the Board of Directors;

PD and PM are responsible for the authority given by GM in accordance with the Letter of Duty given by GM.

## Provisions on PBJ Contracts according to PT. Adhi Karya

### Risks in implementing PBJ

Risks in the implementation of the PBJ agreement in general will be the responsibility of PT. Adhi Karya (Persero) Tbk. In determining risk assignment due to destruction or damage to goods the implementation of work by providing material or only carrying out work without providing material, also distinguished whether the destruction of the goods occurred before or after the handover of work. The contractor who does the work and provides the material, if then the work is destroyed before the handover of the work, then the risk lies with the contractor. This means the contractor must work again with new material. However, if the assignor has neglected the inspection and approved of the work, then the risk is transferred to the assignor (Article 1650 of the Civil Code).

## Delegation of Authority in the Signing of PBJ

Related to the delegation of authority from the Board of Directors to appoint one or more employees to carry out certain legal actions in accordance with the contents of a warrant signed by the Board of Directors. The provisions in the delegation of authority are regulated in article 103 of Law Number 40 of

2007 concerning Limited Liability Companies which states "the board of directors can give written authorization to 1 (one) or more employees of the Company or to others for and on behalf of the Company to take legal actions certain as described in the letter of authority". In the explanation of article 103 of the Company Law it is stated that what is meant by "authority" is a special authority for certain acts as stated in the letter of authority.

Based on the aforementioned provisions, each employee has the right to be appointed by the Board of Directors to perform special tasks as stated in the letter of authority issued by the Board of Directors. However, in terms of administrative law the issuance of a letter of authority certainly has a time limit as desired by the grantor. Legal problems will occur if the letter of authority is not carefully prepared and does not consider the validity period of the letter of authority. For example: in the case of a letter of authority to sign a PBJ contract, the expiration of the letter of authority issued must be in line with the completion of the PBJ or after 100% of the PBJ results are submitted.

Based on the provisions of the Company Law, the one who should act on behalf of PT. Adhi Karya (Persero) Tbk to sign all contracts / agreements with other parties is the General Manager (as the recipient of the authority of the Board of Directors) contained in the Notarial Deed, Project Manager/Project Director. If the General Manager (Recipient authority of the Board of Directors) delegates the authority given by the Board of Directors to the Project Manager/Project Director by issuing a "Letter of Assignment", then the assignment letter received by the Project Manager/Project Director is "Legal Defect" because it does not have legal standing in carrying out legal actions. If this assignment letter is used to sign a contract/agreement with the parties, then all contracts/agreements made by the Project Manager/Project Director are "Legal Defect" and violate the provisions stipulated in Article 103 of Company Law No. 40/2007.

The terms of the agreement are regulated in article 1320 of the Civil Code which states "there are four (4) legal conditions that must be fulfilled in the agreement, namely; agreement of the parties; ability of the parties; the object of the agreement; and halal reasons ". If an agreement does not meet the conditions as specified in article 1320 of the Civil Code, then the agreement is declared "legally defective" (article 1321 of the Civil Code) and a lawful agreement is null and void by law. Based on this provision the contract/agreement signed by the Project Manager/Project Director is "Void by Law".

If an agreement is declared void by law resulting in the loss of the parties to the agreement, the subject matter of the cancellation of this agreement, in this case Project Manager/Project Director, is alleged to have acted unlawfully and can be claimed to have committed fraud as listed in Article 378 of the Criminal Code which states that "any person who intends to profit against himself or others by lawless use of false name or dignity, by deception, or a series of lies, to move another person to give something to, or to give or borrow debt abatement, is threatened with fraudulent imprisonment of up to 4 years".

With regard to the cancellation of an agreement implemented by the Project Director / Project Manager which is given a letter of assignment by the General Manager, it will be the responsibility of the General Manager of PT. Adhi Karya (Persero) Tbk as the recipient of written authorization from the Board of Directors. This is in accordance with the Legal Certainty Theory (Mahfud MD, 2006: 63). Notaries in carrying out their duties must be guided by normative norms to the rule of law relating to all actions to be taken and then poured in a deed.

### Violations in PBJP by PT. Adhi Karya (Persero) Tbk.

In the application of legislation related to PBJP activities, the guideline that must be obeyed in the case of delegation of authority is UUPM Number 40 of 2007 concerning Limited Liability Companies. In terms of assigning tasks and responsibilities, the procedures for carrying out PBJP contracts are regulated in Presidential Regulation Number 16 of 2018 concerning PBJP with the following provisions:

UUPM Number 40 of 2007

Article 103 states:

The Board of Directors may authorize one (1) or more employees of the Company to or on behalf of the Company perform certain legal acts as described in the warrant. Later on in Article 103 of the Restricted Persons Act it is stated that "authority" is a special authority for certain acts as stated in the authority.

### Presidential Regulation Number 16 Year 2018

Article 52 states:

Implementation of the Contract consists of:

Determination of Letter of Appointment of Goods / Services Provider (SPPBJ);

Contract Signing;

Provision of advances;

Payment of work performance;

Change of Contract;

Price adjustment;

End of Contract or Expiry of a Contract;

Termination of Contract;

Handover of Work Results; and / or

Handling Force Majeure.

PPK is prohibited from entering into an agreement or signing a contract with the provider in the event that there is no available budget or there is insufficient available budget which can result in exceeding the available budget limit for activities financed by the APBN / APBD.

Article 53 states:

Payment of work performance is given to the provider after deducting installments for the down payment, retention and penalties.

Retention as referred to in paragraph (1) of 5% (five percent) is used as a Guarantee for Maintenance of Construction Work or Guarantee for Maintenance of Other Services that require maintenance period.

In the event that the Provider submits a part of the work to the subcontractor, the request for payment must be accompanied by proof of payment to the subcontractor in accordance with the realization of the work.

Payment of work performance can be given in the form of:

monthly payment;

payment based on the stage of completion of the work / terminology; or

payment at once after completion of work.

Payment can be made before the performance of work for the Procurement of Goods/ Services, because by nature the payment is made before the goods / services are received, after the Provider submits a guarantee for payment to be made.

Payment can be made for equipment and / or materials that have not been installed that are part of the results of the work that is in the work location and has been included in the Contract. Provisions regarding payment before work performance as referred to in paragraph (5) are made in accordance with statutory provisions.

## Conclusion

Provisions in PBJP have been regulated in Article 52 and Article 53 of Presidential Regulation Number 16 of 2018 concerning PBJP. As long as they do not violate the provisions contained in these articles, the PBJP process is considered to be in accordance with the applicable provisions. BUMN PT.Adhi Karya (Persero) Tbk still has to follow the provisions stipulated in the presidential regulation because of the status of PT. Adhi Karya (Persero) Tbk is a company. The implementation of contracts/agreements in PBJ with other parties (government or private) in PT.Adhi Karya (Persero) Tbk is not carried out based on Directors Decree Number SKD Number 014-6/2018/208 dated March 14, 2019 concerning delegated authority by the Board of Directors to the General Manager in PBJ, but the authority given by the Board of Directors has been delegated again to the Project Manager/Project Director based on the Letter of Duty from the General Manager. Based on the provisions of UUPT Number 40 of 2007, one who should act on behalf of PT. Adhi Karya (Persero) Tbk to sign all contracts/agreements with other parties is the General Manager (as an authorized member of the Board of Directors) contained in a Notarial Deed, and the General Manager (authorized) does not have a "legal standing" to redistribute the power he has received to employees including the Project Manager/Project Director (Article 103 of Company Act Number 40 of 2007).

If the General Manager (as an authorized member of the Board of Directors) re-assigns the authority granted by the Board of Directors to the Project Manager/Project Director, then the authority received by the Project Manager/Project Director is "Legal Defect" because they do not have legal standing to carry out legal actions and if This letter of authority is used to sign contracts/agreements with the parties, then all contracts/agreements made by the Project Manager/Project Director are "Legal Defect" and violate the provisions stipulated in Article 103 of Company Law Number 40/2007. Liability for unlawful acts carried out by the General Manager includes violations of professional ethics. However, the signing of the agreement made by the Project Manager/ Project Director has the potential to violate Article 1320 of the Civil Code which states "there are 4 legal conditions that must be fulfilled in the agreement, namely; agreement of the parties; ability of the parties; the object of the agreement; and halal causes ". If an agreement does not meet the requirements set out in article 1320 of the Civil Code, the agreement is declared a "legal defect" (article 1321 of the Civil Code). A legally flawed agreement is null and void. If the agreement which is declared null and void is already detrimental to the parties bound in the agreement, then the subject of the cancellation of the agreement, in this case the Project Manager / Project Director, is declared to have committed an unlawful act and can be prosecuted for committing fraud as stated in article 378 of the Criminal Code. The article states "anyone with the intention to benefit oneself or others unlawfully by using a false name or false dignity, with deception, or a series of lies, moves others to hand over something or to give debt or write off receivables, is threatened for fraud with a maximum imprisonment of 4 years".

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