

Cancellation Of Government Procurement Of Goods/Services In Administrative Legal Aspects And Implication In Ptun

Anneke Catlynne Gunawan¹; Chaterine Grace Gunadi²; Jason Indrakusuma³; Theodore Francisco Emmanuel Sutanto⁴

Faculty of Law, Pelita harapan University, Indonesia.

Jalan M.H. Thamrin Boulevard No.1100, Klp. Dua, Kec. Klp. Dua, Tangerang Regency, Banten 15811

E-mail: (chatgracegun@gmail.com, jasonindrakusuma@gmail.com,
Theodoref247@gmail.com, catlynnegunawan1510@gmail.com)

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Abstract

Procurement is an activity that involves various parties in an auction or tender process to get the best offer in terms of price, quality, and efficiency. One of the problems that often arise in public procurement tenders is the unilateral cancellation of tenders by authorized officials, which has an impact on losses for bidders. This research aims to analyze the administrative law aspects in the cancellation of government procurement of goods/services and its implications in the State Administrative Court (PTUN). Using a secondary qualitative research method, this research relies on data from journals, articles, and relevant regulations. One of the cases studied is the Jakarta Administrative Court Decision No. 191/G/2019/PTUN-JKT relating to the cancellation of the auction of the DKI Jakarta Electronic Paid Road System (SJBE/ERP) project. The results showed that the cancellation of the auction carried out by the Procurement Committee did not fulfill legal procedures and the aggrieved party could challenge the decision letter to cancel the auction at the PTUN. This study recommends the importance of transparency, accountability, and the application of principles in the public procurement process to avoid injustice to the public.

Keywords: Administrative Remedies, Tender, Cancellation, PTUN, Procurement of Goods/Services

A. Introduction

Procurement of goods and services is the procurement of goods and services financed by the state budget/regional budget, whether carried out by self-management or by providers of goods and services. Procurement of goods and services is essentially an effort by the user to obtain or realize the goods and services they need, using certain methods and processes to reach an agreement on specifications, prices, time, and other agreements. The procurement of goods and services is carried out based on a binding contract between the government, which in this case is represented by the Ministry, Institution, or Regional

Apparatus as the Budget User, and companies, both state-owned and private or individuals, as Providers of goods and services.

The procurement of Government Goods/Services in Indonesia is regulated in Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018: This regulation is a revision of Presidential Regulation 16/2018, which is adjusted to the needs and dynamics of government goods/services procurement. In addition, there is Presidential Regulation Number 93 of 2022 concerning the Government Goods/Services Procurement Policy Institute (LKPP), the Government Goods/Services Procurement Policy Institute, hereinafter referred to as LKPP, is a government agency that is under and accountable to the President. The role and function of LKPP is as a government agency responsible for developing and formulating strategies and policies in the field of government procurement, including the procurement of business entities in the context of government cooperation with business entities.

The process of procuring goods and services usually goes through an auction process or is commonly called a *tender*. In the business and government world, a *tender* is one of the main mechanisms for procuring certain goods, services, or work to get the best deals in terms of price, quality, and efficiency. *Tendering* plays an important role in the procurement of goods and services, especially to ensure that the government gets the best value for controlling costs, improving efficiency, and ensuring quality. The process of procuring goods and services must also involve several related parties, so there is a need for ethics, norms, and principles of procurement of goods and services to be used as a basis for determining policies for the procurement of goods and services (Adrian Sutedi, 2010: 3). In the government procurement process, there are two main methods for assessing supplier qualifications, namely post-qualification and pre-qualification. Pre-qualification is the process of assessing the competence and business capabilities as well as the fulfillment of certain other requirements of the supplier before submitting a bid, while post-qualification is the process of assessing the competence and business capabilities as well as the fulfillment of certain other requirements of the supplier after submitting the bid.

One of the problems that often arises in goods/services procurement tenders is the unilateral cancellation of goods/services procurement by the authorized official which ultimately results in losses for the auction participants because the participants have spent the costs and efforts to participate in the tender process and if the cancellation occurs without clear and objective reasons. One example is the case of Jakarta State Administrative Court Decision No. 191/G/2019/PTUN-JKT, which is an example of a case of auction cancellation in a legal dispute. This case originated from PT. Bali Towerindo Sentra Tbk, which is engaged in the telecommunications tower infrastructure sector. In the early stages of planning and procurement for the ERP project, PT. Bali Towerindo Sentra TBK through the Smart ERP Consortium participated in a *tender* for the procurement of goods/services for the Jakarta Electronic Toll Road System (SJBE/ERP) project. The Smart ERP Consortium had prepared the request for proposal document and incurred huge costs to participate in the auction by building facilities to fulfill the request for proposal document process, but at

the prequalification stage, the DKI Jakarta Provincial Goods/Services Procurement Committee issued a decree unilaterally canceling the auction for the construction of the Smart ERP Consortium's electronic toll road system. The decision letter issued by the Defendant (Jakarta Provincial Electronic Toll Road System Development Goods/Services Procurement Committee) was in the form of an Auction Cancellation based solely on the legal opinion (*legal opinion*) of the State Attorney without providing a technical evaluation of the bid.

This study aims to analyze the legal authority of officials or procurement committees in canceling the Electronic Toll Road System (SJBE/ERP) project auction, the cancellation of government procurement in the aspects of administrative law and procurement, and the implications for dispute resolution in the Jakarta state administrative court. Therefore, this article explores the following research questions; What are the administrative law aspects of the cancellation of government procurement and the authority of administrative officials to cancel procurement? What are the legal implications for resolving disputes over the cancellation of procurement in the Jakarta state administrative court?

B. Research Methods

This study uses secondary qualitative methods, relying on data from journals, articles, and regulations relevant to the research topic. A systematic analysis of the available legal materials is conducted through the method of legal interpretation to understand and examine the normative aspects related to the issues under study.

C. Results and Discussion

1. Cancellation of Government Goods/Services Procurement in the Perspective of Administrative Law and Authority of Administrative Officials in Canceling Procurement

Principles of administrative law in the procurement of goods/services

The procurement of goods and services is essentially an effort by the user to obtain or realize the desired goods and services using certain methods and processes in order to reach an agreement on price, time, and other matters. In order for the essence of the procurement of goods and services to be carried out as well as possible, both parties, namely the user and the provider, must always adhere to the principles of the procurement process. Based on this description and understanding, it can be stated that the philosophy of procurement of goods and services is an effort to obtain the desired goods and services based on logical and systematic reasoning (*the system of thought*) and following applicable norms and ethics based on good procurement methods and processes. The procurement of goods and services must be carried out based on internationally practiced procurement principles, namely transparency, accountability, efficiency, and fair competition.

1. Transparency, which means transparency in the procurement of goods and services is the provision of complete information about the rules of the game for the implementation of the procurement of goods and services to all prospective

- providers of goods and services who are interested and to the community.
2. Accountability, which means accountability in the procurement of goods and services is the responsibility for the implementation of the procurement of goods and services to the relevant parties and the community based on ethics, norms, and provisions of the applicable laws and regulations.
 3. Efficient, the principle of efficiency in the procurement of goods and services means using available resources to obtain goods and services in the quantity and quality expected and obtained in an optimal amount of time.
 4. Fair Competition, the principle of healthy competition, is characterized by the participation of a sufficient number of goods/services providers because there are no restrictions on interested candidates. This can be achieved by improving the procedure for disseminating auction information announcements to the public, making it easier for prospective bidders to access information, not allowing any restrictions on operations, not allowing any market segmentation, and simplifying qualification assessments.

The cancellation of the Jakarta Electronic Toll Road System (SJBE/ERP) project procurement, which was based solely on the legal opinion (*legal opinion*) of the State Prosecutor, raises questions regarding the application of the principles of procurement of goods and services. If the cancellation is made without a thorough analysis of the ongoing procurement stages, there is the potential for a violation of the principles of accountability and transparency. In addition, if the auction participant has prepared the entire procurement process until it has reached the prequalification stage and then canceled without clear basis other than the legal opinion of the state prosecutor, this may also be contrary to the principles of efficiency and effectiveness, as it has the potential to cause waste of resources that have been spent by the Smart ERP Consortium as the auction participant. In terms of fair competition and fairness, cancellation without strong technical or administrative reasons can impact public confidence in the procurement system itself. Therefore, the cancellation decision should not only consider the legal opinion, but also a comprehensive review based on the applicable procurement rules to ensure that it still meets the established basic principles.

2. Authorized official in the cancellation of government procurement

The procurement of the Jakarta Electronic Toll Road System (SJBE/ERP), which is based on the Decree of the Head of the Electronic Toll Road System Management Unit Number 6 of 2016, is carried out by the Regional Public Service Agency (BLUD) of the Jakarta Provincial Transportation and Vocational Office. The status of BLUD gives special authority to the management unit to make procurement rules outside of generally applicable Presidential Regulations (Perpres). In the procurement process, there are specific conditions that can cause failure or cancellation, both at the prequalification and auction stages. Prequalification can fail if no participant submits a qualification document, does not produce a qualified business entity, or the rebuttal is declared correct. Meanwhile, the auction can fail if no participant submits a bid document, does not produce a winner, evidence of unfair competition is found, or the

rebuttal is declared correct. The Working Group (Pokja) has the authority to cancel the auction if a violation of the rules or regulatory non-compliance is found, and can consider input from related parties. The authorized official in the cancellation of this procurement is the Head of the Goods/Services Procurement Committee (PBJ) for the SJBE Development of the DKI Jakarta Provincial Transportation Agency.

3. Administrative Legal Remedies

Goods/services providers who suffer losses due to a cancellation decree in the prequalification process of a *tender*, there are several legal remedies that can be pursued to obtain justice and restoration of rights. The steps that can be taken are in accordance with Article 75 of Law Number 30 of 2014 concerning Government Administration, members of the public who are harmed by a decision or action of a government official can file an administrative appeal. This appeal consists of:

- a. Objection: The goods/services provider can submit an objection letter to the procurement committee or the official who issued the auction cancellation decision. For example, in the case of the cancellation of auction ID 33620127, the provider submitted an objection letter to the DKI Jakarta Provincial Electronic Toll Road System Development Goods/Services Procurement Committee.
- b. Administrative Appeal: If the objection does not receive a satisfactory response, the provider can appeal to the superior of the official concerned, such as the Governor or the Head of the relevant Office. For example, after lodging an objection, the provider lodged an administrative appeal to the Governor of DKI Jakarta and the Head of the DKI Jakarta Transportation Office.

If the administrative efforts do not yield the expected results, the provider can file a lawsuit with the State Administrative Court. This lawsuit is aimed at overturning the decision to cancel the auction that is considered detrimental. Based on Supreme Court Regulation No. 6 of 2018, providers who have taken administrative action have the right to file a lawsuit with the State Administrative Court. In this case, PT Bali Towerindo Sentra Tbk can sue the auction committee at the Jakarta State Administrative Court in the hope that the court will revoke the auction cancellation decree and allow the consortium to re-enter the auction process.

2. Legal Implications in Dispute Resolution for Cancellation of Government Goods/Services Procurement at the State Administrative Court

a. Criteria for state administrative decisions that can be challenged at the State Administrative Court

In a state administrative dispute, a person or civil legal entity who feels that his interests have been harmed by a state administrative decision can file a written lawsuit to the competent court containing a demand that the disputed object be declared invalid or illegal, with or without a demand for compensation and/or rehabilitation. In accordance with the provisions of Article 1 point 4 of the State Administrative Court Law, only individuals or civil legal entities that have the status of legal subjects can file a lawsuit in the state administrative court to challenge a state administrative decision. State administrative agencies or officials cannot file

a lawsuit in the state administrative court to challenge the state administrative decision. Furthermore, only civil persons or legal entities whose interests are affected by the legal consequences of the state administrative decision issued and therefore feel aggrieved are allowed to challenge the state administrative decision. The lawsuit filed is required in writing, because the lawsuit will be the basis for the court and the parties during the examination. In contrast to a lawsuit in a civil court, what can be sued in a State Administrative Court is limited to one main claim, which is a claim that a State Administrative Decision that has harmed the plaintiff's interests be declared invalid. The only additional claims allowed are claims for compensation, and in staffing disputes only other additional claims in the form of rehabilitation claims are allowed.

According to Prof. Drs. C.S.T. Kansil, S.H. in his book *Hukum Acara Peradilan Tata Usaha Negara* (Law of State Administrative Court Proceedings), the reasons that can be used in a lawsuit as referred to in paragraph (1) of Article 53 are:

1. The State Administrative Decision being challenged is contrary to the applicable laws and regulations;
2. The State Administrative Agency or Official, at the time of issuing the decision as referred to in paragraph (1), has used the authority for purposes other than those for which the authority was granted;
3. The State Administrative Agency or Official, at the time of issuing or not issuing the decision as referred to in paragraph (1), after considering all the interests involved in the decision, did not reach a decision on whether or not to make the decision.

In Article 1 Number 9 of Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning State Administrative Court, the definition of a State Administrative Court Decision is a written determination issued by a state administrative agency or official containing a state administrative legal action based on applicable laws and regulations, which is concrete, individual, and final, which has legal consequences for a person or civil legal entity. Referring to the criteria for State Administrative Decisions (KTUN), namely that KTUN must be in written form, in this case the Auction Cancellation Decree is not considered a written determination because it was sent by the DKI Jakarta Province Electronic Toll Road System Development Goods/Services Procurement Committee via electronic mail (*email*) but is still classified as a State Administrative Decision because it constitutes a factual action as regulated in Article 87 point (a) of Law No. 30 of 2014. Second, the decree must be issued by an authorized State Administrative body or official, as in this case, namely the DKI Jakarta Provincial Electronic Toll Road System Development Goods/Services Procurement Committee. Third, the KTUN must contain clear provisions regarding the rights and obligations of the parties involved, as seen in the example of the auction cancellation case with Auction ID 33620127 for the electronic toll road system

construction project.

In addition, the KTUN must also contain State Administrative legal actions that are based on applicable laws and regulations and originate from state administrative law provisions. The decision must be binding and have legal consequences, both in the form of rights and obligations for the affected parties. In the example case, the issued KTUN affects the Smart ERP Consortium and other companies in the consortium, which are affected by the decision to cancel the auction. Therefore, if the decision letter is deemed detrimental, the Smart ERP Consortium as the goods/services procurement provider can file a lawsuit in the State Administrative Court to demand the cancellation of the decision letter to cancel the procurement of the electronic toll road system construction project.

D. Conclusions and Recommendation

This study reveals that unilateral cancellation in government procurement is a systemic problem that often violates the principles of procurement in administrative law. The case of the cancellation of the tender for the Jakarta Electronic Toll Road System (SJBE/ERP) project, which was decided in Jakarta State Administrative Court Decision No. 191/G/2019/PTUN-JKT, shows several fundamental weaknesses. First, the cancellation was made without a comprehensive technical evaluation basis, but only relied on the *legal opinion* of the State Attorney. Second, the cancellation process did not fulfill the basic principles of government goods/services procurement such as transparency, accountability, and fair competition as regulated in Presidential Regulation 12/2021. Third, this unilateral cancellation causes significant material and immaterial losses for tender participants who have invested large resources in tender preparation. If this cancellation often occurs in the procurement of other government goods and services, it can result in a lack of interest in company participation in government tenders.

From an administrative law perspective, this kind of cancellation can be categorized as maladministration because it does not fulfill the elements of a good administrative decision according to Law No. 30/2014 concerning Government Administration. The legal implications of this dispute result in tender participants having to take a long and costly litigation route in the State Administrative Court (PTUN) to obtain justice. The State Administrative Court's decision in this case is important because it emphasizes that the decision to cancel a tender must be based on objective considerations and clear procedures, not just subjective considerations of officials. This law is designed to create a fairer procurement system by balancing the interests of the government as a buyer and legal protection for tender participants.

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