

## **DISPUTE SETTLEMENT BETWEEN THE ACTIVITY EXECUTION TEAM AND THE GOODS PROVIDER REGARDING THE USE OF VILLAGE FUNDS**

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**Abstract:** According to Law Number 6 of 2014 concerning Villages, villages have a strategic and vital role in development which is carried out using the development budget in the form of Village Fund Allocation (ADD). Villages can self-manage the use of village funds by procuring goods and services. Procurement of goods or services using village funds often experiences problems because the providers do not hand over the product to the activity execution team. This situation happens even though the provider has received a down payment for purchasing goods the village needs. As a result, development in the village is constrained. This condition gave rise to disputes between the activity execution team and the appointed goods or service provider, which may be reported to the authority. Disputes between the activity execution team and the provider in procuring goods and services using village funds are settled through administrative and civil law because the act is a default. The settlement is carried out through discussions to achieve consensus. If it fails, the settlement is carried out through discussions led by the village head. If it fails again, the procurement contract resolution service will conduct the settlement. The final way of settlement is by filing a lawsuit in court, not through criminal law.

**Keywords:** Dispute Settlement, Goods Provider Law, Village Funds, Law Enforcement, Lawsuit In Court

**Abstrak:** Undang-Undang Nomor 6 Tahun 2014 tentang Desa, menempatkan desa mempunyai peran strategis dan penting dalam pembangunan, melalui anggaran pembangunan secara dalam bentuk Alokasi Dana Desa (ADD). Desa dalam melaksanakan swakelola penggunaan Dana Desa dapat melakukan pengadaan barang dan jasa. Pelaksanaan pengadaan barang/jasa yang dilakukan dengan menggunakan dana desa yang melibatkan penyedia barang/jasa sering mengalami permasalahan yang disebabkan penyedia barang/jasa tidak menyerahkan barang yang dibutuhkan oleh desa kepada Tim Pelaksana Kegiatan (TPK). Sementara penyedia barang/jasa sudah menerima dana dalam bentuk panjar, untuk kebutuhan pembelian barang yang dibutuhkan oleh desa, sehingga pelaksanaan pembangunan di desa menjadi terkendala. Kondisi ini menimbulkan perselisihan antara Tim Pelaksana Kegiatan (TPK) di Desa dengan pihak penyedia barang/jasa yang sudah ditunjuk, bahkan sampai membuat laporan ke penegak hukum. Penyelesaian perselisihan antara Tim Pelaksana Kegiatan (TPK) dengan Penyedia dalam pengadaan barang dan jasa yang menggunakan dana desa dilakukan melalui hukum administrasi dan hukum perdata karena perbuatan tersebut adalah wanprestasi. Sehingga penyelesaian sengketa yang terjadi antara penyedia dan TPK dilakukan

melalui musyawarah untuk mencapai mufakat. Apabila tidak berhasil, maka penyelesaian perselisihan dilakukan melalui musyawarah yang dipimpin oleh Kepala Desa. Apabila tidak berhasil juga maka penyelesaian perselisihan tersebut dapat dilakukan melalui Layanan Penyelesaian Sengketa Kontrak Pengadaan dan jalan terakhir penyelesaian tersebut dengan cara mengajukan gugatan ke pengadilan. Jadi bukan melalui jalur hukum pidana. Kata Kunci: Penyelesaian Sengketa, Hukum Penyedia Barang, Dana Desa, Penegakan Hukum, Gugatan Di Pengadilan

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## Introduction

Granting maximum regional autonomy means giving authority and flexibility to the regions to manage and utilize resources optimally. The main objective of regional autonomy is to improve public service and the regional economy. The current government system enables the village to have a strategic and vital role in assisting local governments in governance and development.<sup>1</sup> Village development aims to improve the quality of human resources and create a climate that encourages community initiatives and self-help.<sup>2</sup> Law Number 6 of 2014 concerning Villages states that the purpose of village development is to improve community welfare and the quality of human life, as well as reduce poverty by fulfilling basic needs, building village facilities and infrastructure, developing the local economy, and sustainably utilizing natural and environmental resources. According to Heru, villages' functions and authorities are strengthened to encourage achieving the goals while providing financial resources as capital for village development.<sup>3</sup>

The government policies for empowering village communities and developing villages are implemented using a specific development fund from the regional budget, i.e., the Village Fund Allocation (ADD).<sup>4</sup> ADD is a financial relation between the regency and village governments. According to Dies Nurhayati, ADD is sourced from the central and regional government fiscal balance funds received by the regency or city government and given to the village government. This situation is a fulfillment of village rights to carry out its autonomy so that it develops following the growth of the village, based on diversity, participation, original autonomy, democratization, and community empowerment, increases the role of the village government in providing services and efforts to improve community welfare and accelerate development and growth of strategic areas.<sup>5</sup>

ADD aims to overcome poverty and reduce gaps, improve planning and budgeting for village development, empower the community, and increase village infrastructure development. It also increases the practice of religious and socio-cultural values to realize social improvement involving villagers, including the poor.<sup>6</sup> The use of village funds for village

1 Zuliyah S, 'Strategi Pemberdayaan Masyarakat Desa Dalam Menunjang Pembangunan Daerah' (2010) 1 Journal of Rural and Development, p. 152; Sulaiman, 'Mereposisi Cara Pandang Hukum Negara Terhadap Hukum Adat Di Indonesia' (2017) Volume 2 Petita : Jurnal Kajian Ilmu Hukum dan Syariah.

2 Ariadi A, 'Perencanaan Pembangunan Desa' (2019) 2 Meraja Journal 137.

3 Heru Wibowo, 'Dampak Alokasi Dana Desa Bagi Pembangunan Daerah Dan Kesejahteraan Masyarakat' (2019) 1 Jurnal Anggaran dan Keuangan Negara Indonesia (AKURASI) 165.

4 Alfian Mujiwardhani, Heru Wibowo and Iman Tri Mulya, 'DAMPAK ALOKASI DANA DESA BAGI PEMBANGUNAN DAERAH DAN KESEJAHTERAAN MASYARAKAT' (2019) 1 Jurnal Anggaran dan Keuangan Negara Indonesia (AKURASI) 164 <<https://anggaran.e-journal.id/akurasi/article/view/52>>.

5 Dies Nurhayati, 'Efektivitas Pengelolaan Alokasi Dana Desa Dalam Upaya Meningkatkan Pembangunan Dan Pemberdaya Masyarakat' (2017) 1 Jurnal Pendidikan Ekonomi, Kewirausahaan, Bisnis dan Manajemen (JPEKBM), p. 7.

6 <<https://dipb.kemenkeu.go.id/kppn/bukittinggi/id/data-publikasi/artikel/2951-dana-desa-pengertian,-sumber-dana,-penyaluran-dana,-dan-prioritasnya.html>> accessed 30 November 2022.

infrastructure development must follow the procedures set by the government because the village fund is a state budget.<sup>7</sup> The village must self-manage programs and activities funded by village funds following the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 21 of 2020 concerning the General Guideline for Village Development and Community Empowerment. Self-managing village funds can be conducted by procuring goods and services as per legislation regarding the procurement of goods and services in the village. Suppose the village cannot self-manage the procurement, either partially or entirely, it can be carried out by providers of goods or services that support self-management activities.<sup>8</sup>

Procurement of goods or services using village funds often experiences problems because providers do not hand over the product to the activity execution team as the party responsible for using the village budget. It happens even though the provider has received the purchase fund. As a result, the village development is constrained. This condition triggers a dispute between the activity execution team and the appointed provider. Some disputes are even reported to the authority because the provider did not purchase the agreed goods, misusing the village budget. Based on the principle of village fund management, an inseparable part of village financial management in the regional budget, all activities financed by village funds are planned, carried out, and evaluated publicly by involving the entire village community. All activities must be accounted for administratively, technically, and legally.<sup>9</sup> Based on the description above, the problem is resolving disputes related to using village funds between the activity execution team and the provider of goods and services.

### Village Development

A village is a community organization formed based on local culture. The developing culture encourages society to agree to form a state.<sup>10</sup> A village is a legal community unit with border territory authorized to regulate and manage government affairs and local community interests based on community initiatives, rights of origin, and traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia.<sup>11</sup> The village is the first and primary entity to realize social welfare for all, as aspired by the Indonesian Constitution. The village has autonomy based on the rights of origin and a government equipped with territory and wealth. A village has an original arrangement following its customs; therefore, the Indonesian state respects the position of the village.<sup>12</sup>

Recognition of villages within the Indonesian state government refers to Article 18 paragraph (7) of the 1945 Constitution of the Republic of Indonesia (after amendment), which confirms that “the composition and procedures for the administration of regional government are regulated in the Law”. Village autonomy is a political and economic power that is solid and culturally dignified, a local foundation of national development.

7 Irmanasyah Irmanasyah, Sri Mustafa and Rahmad Hamid, 'Efektivitas Kebijakan Dana Desa Terhadap Pembangunan Infrastruktur' (2021) 4 Jesya (Jurnal Ekonomi dan Ekonomi Syariah) <<https://stiealwashliyahsibolga.ac.id/jurnal/index.php/jesya/article/view/479>>, p. 1091.

8 Muksin Muksin Yasman Sandung, Arianti A Ogotan, 'Tinjauan Hukum Terhadap Pelaksanaan Tugas Pokok Tim Pengelola/Pelaksana Kegiatan (TPK) Dalam Pengadaan Barang/Jasa Desa Di Desa Binotik Kecamatan Mantoh Kabupaten Banggai' (2018) 2 Jurnal Yustisiabel, p. 188.

9 Irmanasyah, Mustafa and Hamid (n 7).

10 Muhamad Erwin, *Filsafat Hukum, Refleksi Kritis Terhadap Hukum Dan Hukum Indonesia* (Raja Grafindo Persada 2013), p. 394; Azmi, 'Sekularisme Hukum Dalam Frame Timur Dan Barat' (2017) 2 Petita : Jurnal Kajian Ilmu Hukum dan Syariah.

11 Undang-Undang Republik Indonesia Nomor 6 Tahun 2014 tentang Desa Bab I Pasal 1 Ayat (1).

12 Achmad Dian, *Pedoman Umum Penyelenggaraan Pemerintahan Desa Jilid 1, Landasan Hukum Dan Kelembagaan Pemerintahan Desa* (Bee Media Pustaka 2014), p. 225.

Recognition of village autonomy is a tribute to the Unitary State of the Republic of Indonesia, where the Indonesian state was formed due to a joint commitment based on the history and equality of fate to unite itself in the framework of the Indonesian state, not because of aggression to the region and village. Recognizing an independent village government within the government system in Indonesia is inseparable from the national government. Recognition and respect mean no intervention and coercion on the existing village organizational arrangements, social institutions, and cultural wisdom; however, efforts exist to integrate, support, and strengthen existing institutions. Law Number 6 of 2014 concerning Villages is a form of social consolidation to embrace village autonomy into national law. Autonomous authority is community members' original authority to maintain and safeguard vital interests consciously. Based on Article 19 of the Village Law, village authorities include:

1. Authority based on origin rights;
2. Village-scale local authority;
3. Authorities assigned by the government, provincial government, and regency or city government.

The village is the central point of Indonesia's national development. Development is a process of change in an area; in this case, it concerns a thorough societal development. The development requires economic growth followed by changes in economic structure, from agriculture to industry or services, as well as institutional changes through regulations or reforms. The concept of development is usually embedded in change studies, i.e., in this context, development is defined as a form of planned change. Every person or group expects a change toward a better or perfect form; a plan is required to realize this hope. The planned development is perceived as a more rational and orderly effort for communities that have yet to develop or have just started developing.<sup>13</sup> According to Jakob Oetama, development is an effort to improve community welfare, where the development includes elements of heroism, conflict, frustration, romance, and profound humanism. According to Sadono Sukirno, development is a conscious and planned change process to improve people's welfare. Aprillia stated that development is a valuable change toward a social and economic system that is decided as the will of a nation.<sup>14</sup>

Regarding development, people are expected to participate, socialize, and work together towards better changes. However, the government still needs help with problems such as development gaps between villages and cities. The government's strategy to overcome this issue is to carry out village-focused development since the village is a government that has direct contact with the community. Therefore, development can be balanced and harmonious between cities and villages. The basis for the interpretation of people-centered development is the assumption that humans are the main target and the most strategic resource; therefore, development also includes planned efforts to increase human capabilities and potential and direct their interests to participate in the decision-making process.<sup>15</sup> According to Bintoro Tjokroamidjojo, development is an effort to change and develop from a particular social condition towards a condition that is considered better (more desirable). The planned development is considered a more rational and orderly effort to develop an underdeveloped society.<sup>16</sup>

13 Rahman Mulyawan, *Pemberdayaan Masyarakat Dalam Pembangunan* (Alfabeta 2016), p. 133.

14 Theresia, *Pembangunan Berbasis Masyarakat* (Alfabeta 2014), p. 44.

15 Ventje Kasenda Heppy Sondak, Michael Mantiri, 'Kebijakan Pemerintah Desa Dalam Pembangunan Infrastruktur Di Desa Tondei Kec. Motoling Barat Kabupaten Minahasa Selatan' (2021) 1 Jurnal Governance, p. 5.

16 Suryono Sakti Hadiwijoyo dan Fahim Diah Anisa, *Perencanaan Pembangunan Daerah* (Raja Grafindo



Village development, with its various problems, is a development that touches common interests; therefore, the village is the central point of Indonesia's national development. Village development cannot be carried out by one party alone; instead, it must coordinate with other parties, i.e., the government and society. The realization of village development in accordance with expectations should focus on several approaches with unique characteristics: the identity of village development itself.<sup>17</sup> The characteristics of village development are as follows:

1. Comprehensive and multi-sectoral, covering aspects of welfare and security with an integrated implementation mechanism and system between various government and community activities.
2. A combination of sectoral and regional targets with the essential needs of society.
3. Equitable development of villages, including villages in the urban village area.
4. Following the pattern with the national and regional development, covering the rural and urban areas and medium and small regional development areas.
5. Mobilize community participation, initiative, and mutual cooperation, and dynamize personality elements with up-to-date technology.

Village development must include various aspects to meet expectations. Development must cover various aspects of life, involving all components, including the community and the government. It also must be direct and continuous to meet current and future needs. In general, village development has two main aspects, namely:<sup>18</sup>

- a. Development of the physical aspect, i.e., the main object is the physical aspect (facilities, infrastructure, and people), such as village roads, houses, settlements, bridges, dams, irrigation, places of worship, education, and many more. This physical development is hereinafter referred to as village development.
- b. The development regarding the aspects of human empowerment, i.e., the main object is the improvement of abilities and skills. Apart from that, the development empowers people as citizens through education and training, fostering businesses, health, spirituality, and many more. The development of this aspect is hereinafter referred to as village community empowerment.

According to Supanto, there are two perspectives in studying village development.

1. Village development is viewed as a natural process based on the community's potential and capabilities.
2. Village development is an interaction between the capacity of village communities and external encouragement to accelerate development. According to this view, the village must be developed based on its potential.<sup>19</sup>

Article 78 of Law Number 6 of 2014 explains that village development aims to improve community welfare and the quality of human life, as well as reduce poverty by fulfilling basic needs, building village facilities and infrastructure, developing the local economy, and sustainably utilizing natural resources and the environment. In the third part, it is explained

Persada 2019), p. 63; Anang Dony Irawan, 'Nationalism In A State Based On Pancasila' (2020) 5 *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* <<http://petita.ar-raniry.ac.id/index.php/petita/article/view/85>>.

17 S Johan, 'Peran Kepala Desa Dalam Meningkatkan Pembangunan Fisik Di Desa Long Nawang Kecamatan Kayan Hulu Kabupaten Malinau' (2015) 3 *Ejournal Ilmu Pemerintahan*, p. 879.

18 Rahardjo Adisasmita, *Pembangunan Pedesaan* (Graha Ilmu 2013), p. 17.

19 F Supanto, 'Model Pembangunan Ekonomi Desa Berbasis Agro Wisata sebagai Penyangga Ekonomi Kawasan Taman Nasional Bromo Tengger Semeru: Studi Pada Desa Ngadas Kecamatan Poncokusumo Kabupaten Malang', *Prosiding Seminar Nasional FEB UNEJ* (UNEJ 2016), p. 508.

that village development must prioritize togetherness, kinship, and mutual cooperation in order to create peace and social justice.<sup>20</sup> The purpose of the village fund is community development and empowerment. Therefore, the two main priorities for sourcing village funds from the state and regional budgets are development and empowerment. The priority is physical development and village community empowerment; hence, it encourages village independence to fulfill their needs and be free from poverty.<sup>21</sup>

Prior to the reform era, village development policies tended to be centralized or known as top-down development programs. This approach shows that village development is a government initiative (central or regional). Village development in the pre-reform era was known as village community development and village development. The facilitators provided financial assistance, mentoring and supervision. This concept was known as the bottom-up development agenda. During the 2015-2019 period, rural development aims to strengthen villages and their communities, as well as establish development pockets to encourage sustainable rural development with social, economic, and ecological resilience, and encourage village-urban linkages.<sup>22</sup>

### Using Village Fund for Development

ADD is a fiscal balance fund received by the regency or city through the regency or city budget after being deducted from the special allocation budget. The village budget is the village government's annual financial plan. ADD is a form of a financial relationship between the regency and village governments. An understanding of the village government's authority is required to formulate an appropriate financial relationship. The fund must be used and allocated accordingly, following applicable laws and regulations. According to Government Regulation Number 43 of 2014, the village fund is intended for villages and sourced from the state budget. The fund is transferred through the regency or city budget for governance, village development, community development, and community empowerment.

The village fund is a central government program with positive goals for village development. This program aims to overcome all problems related to the underdevelopment of village life by building facilities to assist the community's daily activities. However, the village fund then faces complex problems regarding the distribution technique.<sup>23</sup> ADD is assistance from the central government distributed to each regency or city for village needs aiming to carry out and promote village development. ADD is direct financial assistance from the central government allocated to village governments. The fund is used to improve community service facilities. Administrative management is carried out and accounted for by users of the fund.<sup>24</sup>

The purpose of the village fund are as follows:

1. improving public service in the village,

- 20 Rifka Linda Singal, 'Partisipasi Masyarakat Dalam Pembangunan Desa' [2014] Jurnal Pembangunan Desa, p. 2.
- 21 R Yamulia Hulu and Hamdani Harahap Muhammad Arif Nasutian, 'Pengelolaan Dana Desa Dalam Pemberdayaan Masyarakat Desa' (2019) 10 JUPIIS: JURNAL PENDIDIKAN ILMU-ILMU SOSIAL, p. 148.
- 22 Olivia Gumolung, Johny Lumolos and Donald Monintja, 'Inovasi Kepala Desa Dalam Meningkatkan Partisipasi Masyarakat Pada Pembangunan Desa (Studi Di Desa Alo Utara Kecamatan Rainis Kabupaten Kepulauan Talaud)' (2019) 3 Jurnal Eksekutif, p. 33.
- 23 Indra Pahlevi, 'Dana Desa Dan Permasalahannya' (2016) 7 Jurnal Hukum, p. 17.
- 24 Fernando Victory Tambuwun, 'Analisis Transparansi Dan Akuntabilitas Otonomi Desa Dalam Pengelolaan Dan Pertanggungjawaban Alokasi Dana Desa Di Desa Kauneran Satu Kecamatan Sonder Kabupaten Minahasa' (2018) 13 Jurnal Riset Akuntansi Going Concern, p. 76.

2. eradicating poverty,
3. advancing village autonomy
4. overcoming development gaps, and
5. strengthening the village community, which is the subject of development.<sup>25</sup>

Moeljono and Kusumo argued that ADD is a fund sourced from the state budget through the regency or city budget. The fund aims to equalize financial capacity between villages and fund village needs in the context of administering government, development, and community services.<sup>26</sup> According to Rahman and Novitasari, ADD is part of the village budget component intended for village development with priority use for development and community empowerment.<sup>27</sup> Village fund use must fulfill the following six principles:

1. Justice  
Prioritizing the rights and interests of all village residents without discrimination.
2. Priority Needs  
Prioritizing the village interests that are urgent, more needed, and directly related to the interests of most of the community.
3. Village Authority  
Prioritizing the authority of origin rights and village-scale local authority.
4. Participatory  
Prioritizing community initiatives and creativity.
5. Self-Management and Village Resource-Based  
Prioritizing independence by utilizing village natural resources. In addition, prioritizing the energy, thoughts, and skills of residents, as well as local wisdom.
6. Village Typology

Taking into account the circumstances and the geographical, sociological, anthropological, economic, and ecological characteristics of the village, as well as changes or developments and village progress.<sup>28</sup> The village fund is a central government program with positive goals for village development. This program aims to overcome all problems related to the underdevelopment of village life by building facilities to assist the community's daily activities.<sup>29</sup> The use of village funds to build infrastructures must follow the government's procedures because village funds originate from the state budget. Programs and activities funded by the village fund must be self-managed by the village following the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 21 of 2020 concerning the General Guidelines for Village Development and Empowerment of Village Communities. The self-management of village funds can be in the form of procurement of goods and services following the laws and regulations concerning the procurement of goods and services in villages. However, suppose the procurement cannot be carried out in part or whole under self-management. In that case, it can be carried out by providers capable of supporting self-management activities.

25 Darmawan, *Pengadaan Barang/Jasa Di Desa* (Riugha Edu Pustaka 2021), p. 1.

26 Moeljono Moeljono and Willyanto Kartiko Kusumo, 'EFEKTIVITAS PENGELOLAAN ALOKASI DANA DESA (Studi Kasus Pada Desa Tegal Arum Kecamatan Mranggen Kabupaten Demak)' (2019) 17 Solusi <<https://journals.usm.ac.id/index.php/solusi/article/view/1629>>, p. 65.

27 Amni Zarkasyi Rahman and Diyah Novitasari, 'KEBIJAKAN PEMBANGUNAN DESA MELALUI PEMBANGUNAN INFRASTRUKTUR TRANSPORTASI DALAM UPAYA PEMERATAAN PEMBANGUNAN DI DESA PLESUNGAN KECAATAN KAPAS KABUPATEN BOJONEGORO' (2018) 3 GEMA PUBLICA 85 <<https://ejournal.undip.ac.id/index.php/gp/article/view/21292>>, p. 89.

28 Darmawan (n 25), p. 3.

29 Indra Pahlevi (n 23), p. 17.

Procuring goods and services in the village involves several parties, including the village head, Head of Section/Head of Affairs, activity execution team, community, and provider. The activity execution team conducts self-management by utilizing facilities, infrastructure, equipment, and materials registered or controlled by the village. Suppose the self-management activity requires facilities, equipment, and materials not owned or controlled by the village. In that case, the activity execution team carries out the procurement of goods and services through providers. The self-managed procurement of goods and services is carried out by the activity execution team. The team, who carries out self-managed procurement, comprises elements from the village government and social institutions. The following are the activity execution team's tasks related to procurement:

- a. carrying out self-management;
- b. preparing auction documents;
- c. announcing and carrying out auctions for procurement through providers;
- d. selecting and determining the provider;
- e. examining and reporting the procurement results to the Head of Section/Head of Affairs;
- f. announcing the procurement result.<sup>30</sup>

The activity execution team's duties must be explained in a decree based on the procurement package and the period of work completion. The team may employ experts or technical personnel from civil servants or the private sector to assist with their duties. However, they are prohibited from entering into an agreement or signing a letter of agreement with providers if no budget is available or the cost exceeds the activity ceiling set out in the village budget. The activity execution team can receive compensation following the Regent's regulations, adjusted with the existing budget. The activity execution team carries out its duty related to the procurement of goods and services through several steps as follows:

#### *Preparation*

At this stage, the activity execution team prepares a work schedule, plans for human resources, material and equipment requirements, work plan drawings (for construction work), technical specifications (if required), and estimated costs (budget plan). Procurement through providers is carried out as follows:

- a. based on the procurement preparation document prepared by the Head of Section/Head of Affairs
- b. to fulfil the needs of goods and services to support self-management or activities, including procurement, that cannot be self-managed.

#### *Execution*

Self-management is carried out according to the plan created during the preparation stage. Procurement of goods and services through providers is carried out by negotiation to obtain a lower price through bidding. A bid request is a procurement method by buying or paying directly with a request for a written offer to at least two providers made by the activity execution team. The team prepares requests for bids in writing for at least two providers. Bid requests are accompanied by technical requirement documents (terms of reference, details of goods or services, volumes, technical specifications, work plan drawings (if required), time of execution), and business validation statement forms. The activity execution team invites providers of goods and services in the village, preferably

30 Pasal 11 ayat (5) Peraturan LKPP Nomor 12 Tahun 2019 tentang Pedoman penyusunan Tata Cara Pengadaan Barang/Jasa di Desa.



those who own business validation statements and can provide experts and equipment needed to carry out the task (for construction work).<sup>31</sup>

Goods and service providers are business entities or individuals who provide goods and services.<sup>32</sup> Procurement of goods and services through providers is intended to meet the village's needs and support self-management. Providers deemed capable of procuring goods and services must have a business location, except for carpenters, masons, and other professionals. For construction work, the provider must be able to provide the experts and equipment needed to carry out the work. The provider submits a bid letter to the activity execution team for evaluation. The provider's offer is approved if it meets the technical and price requirements. If only a single provider exists in the village, a bid request can be made to that one provider. The Record of Negotiation Results outlines the outcome of price negotiations (bargaining). The transaction is stated as proof of purchase or an agreement letter between the Head of Section/Head of Affairs as the budget officer and the provider. Direct procurement of goods and services, namely direct purchase, is also possible. This method is carried out by buying or paying directly to a single provider, by the Head of Section, Head of Affairs, or the activity execution team, without a written request for a bid. Procurement of goods directly does not need to be conducted in writing. However, the Record of Negotiation Results must outline the outcome of price negotiations (bargaining). Meanwhile, the transaction is stated as proof of purchase or an agreement letter between the Head of Section/Head of Affairs as the budget officer and the provider.

#### *Payment*

After receiving the goods or services, the activity executor team submits a payment request note to the village head, a statement of expenditure responsibility, and proof of transaction. Payments are made by the village treasurer when complete and valid transaction evidence supports expenditures. The transaction evidence must be verified (completeness, accuracy of calculations, and availability of funds) by the village secretary and approved by the village head.

- a. The payment for the procurement of goods or services on a self-managed basis or through providers is made under the condition that every expenditure incurred on the village budget must be supported by complete, valid, and verified evidence by the village secretary.
- b. Based on article 27 of the Regulation of the Minister of Home Affairs Number 113 of 2014 concerning Village Financial Management, proposals to fund activities submitted by the activity executor team must be accompanied by a budget plan verified by the village secretary and approved by the village head.<sup>33</sup>

#### *Reporting*

Based on the agreement, the result is handed over to the activity executor team after the task is complete. The activity executor team reports the procurement progress to the village head. After the procurement is 100% complete (the final target has been achieved), the activity executor team hands over the procurement outcome to the village head. The handover is documented via the Record of Transfer of Procurement Outcome.

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31 Darmawan (n 25), p. 16.

32 Pasal 1 angka 15 Peraturan LKPP Nomor 12 Tahun 2019 tentang Pedoman penyusunan Tata Cara Pengadaan Barang/Jasa di Desa. (n 30).

33 Darmawan (n 25), p. 22.

### **Dispute Settlement between the Activity Executor Team and Goods or Service Providers Regarding the Use of Village Funds**

Procuring goods and services for village development is a complex activity involving several parties. Village procurement is related to using state funds in village budgets, even though it can be completed with a payment request note. Sometimes the activity executor team gives a down payment to the provider, and sometimes the provider does not deliver the goods on time, which can hinder village development. Disputes between the activity executor team and providers must be immediately resolved because they can halt development.

Based on juridical provisions, case resolution can refer to the Regulation of the National Public Procurement Agency Number 12 of 2019 concerning the Guideline for Preparation of Procedures for Village Goods and Service Procurement. This regulation elaborates on how to manage village funds and how to solve problems related to the procurement of goods. According to the regulation, disputes related to the procurement of goods and services in villages are resolved through administrative channels as stipulated in Article 14 as follows:

- (1) In the event of a dispute between the parties in a procurement process, the parties initially resolve the dispute through discussions to reach a consensus.
- (2) In the event that the settlement of the dispute, as referred to in paragraph (1), does not reach a consensus, then the settlement is carried out through discussions led by the village head.
- (3) In the event that the settlement of the dispute, as referred to in paragraphs (1) and (2) fails, the settlement can be conducted through the procurement contract resolution service or the court as per the legislation.

The settlement of government procurement contract disputes is regulated more specifically in the Regulation of National Public Procurement Agency Number 18 of 2018 concerning the Settlement of Government Goods and Service Procurement Contract Disputes using the government procurement resolution service or LKPP. Article 3 paragraph (1) of the regulation states that the scope of the resolution service includes:

- a. Mediation;
- b. Conciliation; and
- c. Arbitration.

Thus, dispute settlement related to procuring goods and services using village funds is carried out through administrative and civil law, not criminal law. Based on the dispute resolution methods stipulated by Presidential Regulation Number 54 of 2010, the institutions authorized to handle disputes over the procurement of government goods and services are arbitration institutions, alternative dispute resolution institutions, and courts. Presidential Regulation Number 16 of 2018 has become the legal basis for government procurement of goods and services until now. According to the regulation, disputes can be settled using contract-related dispute resolution services, arbitration, and the court pathway.

The settlement of government procurement contract disputes is regulated more specifically in the Regulation of National Public Procurement Agency Number 18 of 2018 concerning the Settlement of Government Goods and Service Procurement Contract Disputes using the government procurement resolution service or LKPP. Article 3 paragraph (1) of the regulation states that the scope of the resolution service for goods and service procurement

contract disputes includes:

- a. Mediation;
- b. Conciliation; and
- c. Arbitration.

These provisions are further emphasized in Article 7, which states that the procurement contract resolution service resolves disputes through:

- a. Mediation;
- b. Conciliation; and
- c. Arbitration.

Thus, dispute settlement in procuring goods and services using village funds is done through administrative and civil law, not criminal law. It happens because the dispute between the provider and the activity execution team is regarded as civil law. Hence, the action is categorized as a default, not fraud or embezzlement.

The forms of default are:

1. Promising something but not executing;
2. Keeping promises but late;
3. Keeping promises but dissimilar to the agreement;
4. Conducting something prohibited in the agreement.

Disputes between providers and the activity execution team are settled through discussions to reach a consensus. If it fails, the dispute is resolved through discussions led by the village head. The dispute is resolved through the procurement contract resolution service if it fails. The final solution is to file a lawsuit in court.

### **Conclusion**

Settlement of disputes between the activity execution team and the providers in procuring goods and services using village funds is done through administrative and civil law because the act is a default. The disputes are settled through discussions to reach a consensus. If it fails, the settlement is carried out through discussions led by the village head. The dispute is resolved through the procurement contract resolution service if it fails. The final settlement is by filing a lawsuit in court, not through criminal law.

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