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Analysis of Decisions Determining the Imposition of Black List SanctiONS (Study of Decision 80/G/2022/PTUN.MKS)

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Abstract: This research aims to determine and analyze the validity of Decision Number: 27/KPTS/Cb29.5/2022 through Decision Number 80/G/2022/PTUN.MKS regarding the imposition of blacklist sanctions in the procurement of goods and services . This research uses normative legal research methods. The use of normative research methods in this research effort is based on the suitability of theory with the research methods required by the author. The results obtained are presented descriptively. The object of the dispute issued by LKPP is proven to contain a juridical defect in the substantive aspect, therefore, because the State Administrative Decree issued by a State Administrative Body or Official must not contain a juridical defect from the element of statutory regulations either from the sub-aspects of authority, formal procedural , or substantial, if it contains a juridical flaw in one aspect, then the State Administrative Decree must be declared null and void, so that there is sufficient legal grounds for the Panel of Judges to grant the Plaintiff's claim.

Keyword: Decision, PTUN, Black List.

INTRODUCTION

The characteristic which is then emphasized in article 1 paragraph (3) of the Constitution of the Unitary State of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) is that Indonesia is a rule of law state. This provision means that this country is a democratic rule of law state based on Pancasila and the 1945 Constitution, upholding high level of human rights, and guarantees that all citizens have equal status under the law and government and are obliged to uphold the law and government properly. (Hartanti, 2007)

The implication of the affirmation of the rule of law is that all the administration of state life must be based on law, including on issues which relates to the procurement of goods and services organized by the government through tenders or direct appointment as an effort to meet the needs of the people to achieve community welfare which is the national goal.

One of the aims of establishing the Unitary State of the Republic of Indonesia is to advance general welfare. Good financial management is one form of effort to achieve this goal. The state revenue and expenditure budget as a form of state economic management is

determined annually by law and implemented openly and responsibly for the greatest prosperity of the people. State/Regional Expenditure Budget, procurement of goods/services has quite a large portion. In practice, the procurement of goods/services in Indonesia also has the largest part of criminal acts of corruption.

Currently, one form of development carried out by the government is by procuring government goods/services. This is because government procurement of goods/services positively impacts developing the nation's economy and improving public services. The government has an obligation in organizing national life to provide the needs of the people, both in the form of goods, services and infrastructure development to realize general welfare and create good governance. Goods/services are needed to guarantee growth and routine operational needs, such as raw materials, auxiliary materials (*supplies*), spare parts, finished goods and capital goods (*capital*) . (Procurement, 2011)

Procurement of goods and services or in foreign terms referred to as *procurement* arises because there is a need for a good or service, starting from pencils, bed sheets, aspirin for hospital needs, fuel for government vehicles, rejuvenation of car and truck fleets, school and hospital equipment , war equipment for military agencies, light or heavy equipment for housing, construction, for consulting services and other service needs (such as building power stations or toll roads or hiring consultant services in the fields of engineering, finance, law or other consulting functions).[1]

The implementation of procurement of goods and services by the government refers to provisions, one of which is Presidential Regulation No. 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, from now on referred to as "Presidential Decree 12/2021". Regulations in statutory regulations are needed to fulfill legal requirements in the procurement of government goods/services. Not all procurement of goods and/or services refers to Presidential Regulations, only procurement of goods and/or services whose financing is either partly or wholly from APBN funds or investment procurement within Bank Indonesia whose financing is either partly or completely borne by the APBN/APBD and procurement goods/services whose financing is partially or wholly sourced from domestic and/or foreign loans and/or grants. (My Made Princess, 2022)

Providers as one of the procurement actors as regulated in Article 8 of Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/Services , hereinafter referred to as (Presidential Decree 12/2021), significantly influence/determine the results/output / target of a procurement, both in terms of quality, quantity, time and location. Therefore, comprehensive development is needed to improve the goods/services provided over time.

Procurement of government goods and services is a procurement activity of goods/services where the implementation of the work is planned, carried out and/or supervised by K/L/D/I as the person responsible for the budget, other government agencies, and/or community groups. In carrying out activities such as training, courses, upgrading, seminars, workshops or counseling, all activities are carried out in a self-managed manner and are in accordance with the definition of self-management itself. The committee comes from K/L/D/I, planning is carried out by themselves, and supervision is also done by themselves.

Guidance for Government Goods/Services Procurement Business Actors (from now on referred to as Business Actors) is not only carried out by the Government Goods/Services Procurement Policy Institute (LKPP), but also needs to be carried out by Ministries/Institutions/Regional Governments by their respective duties and authorities. Apart

[1] Implementation of JDIH BPK Perw Central Java, *Procurement of Government Goods/Services After the Enactment of Presidential Decree No. 16 of 2018*, Legal Journal, 2018

from that, in guiding Business Actors, collaboration is also required with the business world, business actor associations, professional associations/organizations, universities and other relevant policy makers to achieve an increase in competency and ability in carrying out activities/businesses for Business Actors. Forms of guidance to Business Actors include providing capacity building, providing support to improve capabilities, performance assessments as evaluation and feedback to Business Actors, as well as the imposition of Black List Sanctions [2].

The basic principles in the process of procuring government goods and services are to create efficiency, effectiveness, transparency, openness, healthy and fair competition and accountability. [3]Moreover, currently government procurement of goods/services uses electronic procurement services (*e-procurement*), namely services that facilitate the implementation of electronic procurement of government goods/services using information technology management.[4]

To realize competitiveness and create a healthy business climate, targeted Business Actor Development is needed. One form of Business Actor Development is the imposition of Black List Sanctions. Black List Sanctions are sanctions given to election participants/Providers in the form of a ban on participating in the Procurement of Goods/Services in all Ministries/Institutions/Regional Apparatus within a certain period. The aim of imposing Black List Sanctions is not merely to punish Business Actors for their lousy behavior/performance, but on the one hand it will also encourage Business Actors to behave/perform well.[5]

The need for order is an essential (*fundamental*) requirement for an orderly human society (Kusumaatmadja, 2006) . In administering state life, the government is required to promote general welfare with social justice for all Indonesian people. To realize this, the government must provide the people's needs in various forms in the form of goods, services and infrastructure development. Apart from that, the government, in administering government, also needs goods and services, for it requires procurement of goods and services. However, in the context of the work and functioning of state organs run by state administration officials, they cannot be separated from legal regulations, including procuring goods and services. (Amiruddin, 2012)

That by the provisions of Article 91 paragraph (1) letters v and letter w of Presidential Decree 12/2021 , the Government Goods/Services Procurement Policy Institute is mandated to establish Institutional Regulations Concerning Black List Sanctions, which serve as guidelines for Ministries/Institutions/Regional Governments in determining List Sanctions black to selection participants/suppliers in the procurement of goods/services. Therefore, providers of government goods/services are obliged to comply with the relevant laws and regulations and contracts made by users procuring goods/services, failure of the provider to fulfill the achievements in the agreement can be subject to blacklisting sanctions.

The imposition of a blacklist on election participants/providers is an implementation of State administrative law which is coercive because of the orders, obligations or prohibitions contained in the State Administrative Law. The imposition of a blacklist is a long process, starting from the fact that a violation/deviant act has occurred, proposing a blacklist, examining and recommending APIP to determining and appearing on the national blacklist. The critical point of this mechanism lies at the initiation stage of the proposal by the PA/KPA/PPK/Procurement Official/Selection Working Group/Procurement Agent, to

[2] Appendix I Regulation of the Government Goods/Services Procurement Policy Agency Number 4 of 2021 concerning Development of Government Goods/Services Procurement Business Actors
[3] Article 6 , Presidential Decree no. 16 of 2018 .
[4] Article 1 number 21, Presidential Decree no. 16 of 2018 .
[5] Appendix I I Regulation of the Government Goods/Services Procurement Policy Agency Number 4 of 2021 concerning Development of Government Goods/Services Procurement Business Actors

respond to the fact that there are incidents of acts committed by election participants/providers which can be categorized and fulfill the elements as deviant acts/violating norms. Positive law is based on the quality of valid and convincing evidence (authentic, factual and accountable).[6]

Based on the announcement on the LKPP portal, PT Gunakarya Nusantara has been *blacklisted* with a Violation List by Determination Decree No. 27/kpts/Cb29.5/2022 in accordance with LKPP Regulation no. 4 of 2021 Attachment II number 3.1 letter a , election participants submit false/incorrect documents or information to fulfill the requirements specified in the election document , at the PUPR Ministry's Settlement Infrastructure Implementation Center II, Sulawesi Province.[7] The *blacklist* period is valid from 7 June 2022 to 7 June 2024, so that in the Ciujung River Estuary Management package, Ciujung District. Attack ; Banten; Regency. Attack; 0.6 Km and even though there is no impact, or it is included in the category at the time of the auction or has not been contracted, it must be canceled on the 0.6 package within the BBWS Satker PJSA Cidanau Ciujung Cidurian environment.[8]

METHOD

This research is legal research , which according to F. Sugeng Istanto is research that is applied or explicitly applied to legal science.[9] Morris L. Cohen said that *legal research is finding the law governing activities in human society.* (Mahmud Marzuki, 2013) The author decided to use normative legal research methods to research and write a discussion of this paper as a legal research method , based on the suitability of theory with the research methods required by the author.

RESULTS AND DISCUSSION

Applicability of the Decision to Determine the Imposition of Black List Sanctions in the Procurement of Goods and Services

Legal validity According to B. Arief Shidarta, it is divided into 3 (three) forms, the first form is social validity or factual validity, namely regarding the effectiveness of legal rules; second is juridical enforceability, that a legal rule is formed by applicable legal laws by an authorized body, and does not substantially conflict with other legal regulations (significantly higher ones); and finally is normative validity, what is at issue is the quality (or legitimacy) of the law. If one (or more) of the three moments does not exist, then the validity of the law disappears. (Sidharta, 2007)

If a legal rule only applies juridically, then it is very likely that the rule is a dead rule (*dode regel*), if it only applies sociologically (in the sense of the theory of power), then the government becomes a coercive rule (*dwangmaatregel*), and if it only applies philosophically , then perhaps the legal code is only an aspired law (*ius constituendum*). (Soekanto & Abdullah, 1980)

Sanctions within the scope of government procurement of goods/services are varied in nature, for actors procuring goods/services from the government, the types of sanctions that can be imposed include demands for compensation, administrative sanctions, and even criminal sanctions, depending on the type of violation committed. (Susanti & Murniati, 2018)

[6] https://msyarif.id/sanksi-register-black-dalam-pengadaan-barang-jasa-government/ accessed on 26 February 2023

[7] https://harapanrakyatonline.com/project-bbwsc3-banten-sarat-kebesaran-kini-bisnis-telah-di *blacklist* / accessed on 26 February 2023

[8] *Ibid*

[9] Iswanto, F. Sugeng, *Legal Research* , CV.ganda, Yogyakarta, 2007. P.29.

The nature of the responsibility is not organ responsibility but personal/positional responsibility.[10]

In terms of selecting providers of goods/construction work/other services, the Commitment Making Officer (PKK) and the Selection Working Group/Procurement Officials carry out the selection method by the provisions regulated in Article 38 paragraph (1) of Presidential Decree 12/2021, from now on referred to. Based on these provisions, the selection methods that can be used include:

1. *E-purchasing*
2. Direct Procurement
3. Direct appointment
4. Fast Tender
5. *Tender.*

Each selection method can be implemented if the following conditions are met. First, *E-purchasing* is carried out for goods/construction work/other services [11]that are listed in electronic catalogs or online shops[12]. Second, direct procurement is carried out for goods/construction work/other services with a maximum value of IDR 200,000,000.00 (two hundred million rupiah)[13]. Third, direct procurement is carried out for goods/construction work/other services in certain agencies. [14]Fourth, tenders are quickly carried out if business actors or prospective providers of goods/services have been qualified in the Provider Performance Information System for procurement where: the specifications and volume of work can be determined in detail; or it is possible to mention the brand [15]. Five, tenders are held if you cannot use the *E-purchasing* , Direct Procurement, Direct Appointment and Fast Tender selection methods[16]

The basic principle in procuring government goods and services is to realize efficiency, effectiveness, transparency, openness, healthy and fair competition and accountability. [17]Moreover, currently government procurement of goods/services uses electronic procurement services (*e-procurement*), which facilitate the implementation of electronic procurement of government goods/services using information technology management. [18]Based on this policy, all processes for procuring government goods/services must be done electronically or through the official websites of ministries or central/regional government institutions.

Organizing unhealthy procurement of goods and/or services has an impact in the form of losses that will be borne by the community, one of which is the low quality of services received from the government. (Sutedi, 2012) The government also experienced losses in the form of work programs being unable to run as planned. Apart from that, losses occur due to price manipulation in tenders for development activities and the procurement of goods and services originating from funds from the State Revenue and Expenditure Budget (APBN) and/or Regional Revenue and Expenditure Budget (APBD). (Munawir & Hasibuan, 2017) Any act of submitting false/incorrect documents or information to fulfill the requirements specified in the Selection Document in the implementation of procurement of government goods/services in Article 78 paragraph (5) letter a of Presidential Decree 12/2021 will be

[10] *Ibid*
[11] Article 1 number 32 Presidential Decree no. 12 of 2021
[12] Article 38 paragraph (2) Presidential Decree no. 12 of 2021.
[13] Article 38 paragraph (3) Presidential Decree no. 12 of 2021
[14] The criteria for "Certain Circumstances" in Direct Appointment can be observed in the provisions of Article 38 paragraph (5) of Presidential Decree no. 12 of 2021
[15] Article 38 paragraph (6) Presidential Decree no. 12 of 2021
[16] Article 38 paragraph (7) Presidential Decree no. 12 of 2021.
[17] Presidential Decree No. 16 of 2018, Ps. 6.
[18] Presidential Decree No. 16 of 2018, Ps. 1 number 21.

subject to sanctions in the form of sanctions disqualification from the election, sanctions for disbursement of bid guarantees, and blacklisting for 2 (two) years. Blacklisting sanctions are given to election participants/providers if:[19]

1. election participants submit false/incorrect documents or information to fulfill the requirements specified in the Election Document;
2. election participants are indicated to have conspired with other participants to fix the bid price;
3. election participants are shown to have committed Corruption, Collusion and/or Nepotism (KKN) in selecting Providers;
4. election participants who withdraw for reasons that are unacceptable to the Procurement Officer/Election Working Group/Procurement Agent;
5. election participants who started or did not sign a catalog contract;
6. the election winner who has received the Letter of Appointment as Provider of Goods and Services (SPPBJ) resigns before signing the Contract for reasons that cannot be accepted by the Commitment Making Officer (PPK);
7. Providers who do not carry out the contract, do not complete the work, or terminate the contract unilaterally by the PPK due to the fault of the Goods/Services Provider; or
8. The provider does not carry out its obligations during the maintenance period properly

The imposition of blacklist sanctions for actions as referred to in letters a, b, c and d above is determined by the PA/KPA on the proposal of the Election Working Group/Procurement Official/Procurement Agent. [20]Meanwhile, the actions as intended in number 3.1 letters f, g and h can be determined by the PA/KPA based on the recommendation of the PPK or the PA/KPA which doubles as the PPK. [21]Then, the actions in the catalog process referred to in letters a to e above are determined by the Ministry/Institution/Regional Government based on the proposal of the Selection Working Group/Procurement Agent.[22]

The stages in determining blacklist sanctions include: (a) proposal; (b) notification; (c) objection; (d) request for recommendations; (e) examination of proposals; and (f) determination. [23]The blacklisting sanction imposed on the company's head office also applies to all branch/representative offices of the company as well as the Blacklisting Sanction imposed on the company's branch/representative offices also applies to other branch/representative offices and the company's head office, Blacklisting Sanctions imposed on the company parent company does not apply to subsidiaries. And the Blacklist sanctions imposed on subsidiaries do not apply to the parent company. [24]Display of national blacklist sanctions by PA/KPA on the national blacklist by attaching a Decree on Determination of Blacklist Sanctions as referred to in number 4.3.6 along with complete supporting documents, no later than 5 (five) working days from the date the Decree was stipulated. [25]Based on this explanation, it can be seen that LKPP is developing a national blacklist application on the national electronic procurement portal both in terms of broadcasting and reducing blacklist sanction viewing.

In LKPP regulation no. 4 of 2021 concerning the Development of Government Goods/Services Procurement Business Actors, hereinafter referred to as LKPP Regulation 4/2021, regulates the postponement and cancellation of blacklist sanctions *but* must be based on a Court Decision which will have to go through a process that takes a lot of time, where in

[19] LKPP Regulation No. 4 of 2021 Appendix II number 3.1.
[20] *Ibid* . Appendix II number 4.2 letter a
[21] *Ibid* ., Appendix II number 4.2 letter b
[22] *Ibid* ., Appendix II number 4.2 letter c
[23] *Ibid* ., Appendix II number 4.3
[24] *Ibid* ., Appendix II number 3.4.
[25] *Ibid* ., Appendix II number 4.3.7

As long as the court decision has not been issued, the blacklist sanctions will still apply. The settings are as follows:[26]

1. The postponement of Black List Sanctions is based on a court decision granting a delay of the Decree Determining Black List Sanctions.
2. Based on the court decision, the PA/KPA or Ministry/Institution/Regional Government issues a Decree on Suspension of Black List Sanctions no later than 5 (five) working days after the court decision is received.
3. The PA/KPA or Ministry/Institution/Regional Government delivers a Decree to Postpone Blacklist Sanctions to election participants/Providers who are subject to Blacklist Sanctions on the same day as the Decree to Postpone Blacklist Sanctions is issued.
4. During the postponement period, the Decree Determining Black List Sanctions is not valid.
5. In the event that after the postponement period as intended in letter d there is a court decision with permanent legal force declaring the Decree Determining Black List Sanctions to be cancelled, the PA/KPA or Ministry/Institution/Regional Government issues a Decree Cancelling Black List Sanctions.
6. If after the postponement period as referred to in letter d there is a court decision with permanent legal force stating that the Decree Determining Black List Sanctions is valid, the PA/KPA or Ministry/Institution/Regional Government issues an amendment to the Decree Determining Black List Sanctions to adjust the validity period of Sanctions Black list.
7. The validity period of the Black List Sanctions for Amendments to the Decree Determining the Black List Sanctions as referred to in letter f is calculated based on the total validity period of the Black List Sanctions minus the length of the Black List Sanctions that have been implemented.
8. If there is an adjustment to the validity period of the blacklist sanctions as referred to in letter f, the PA/KPA or Ministry/Institution/Regional Government shall re-display the Blacklist Sanctions on the National Black List via the National Procurement Portal with the validity period by the Amendment to the Decree Determining List Sanctions Black.
9. The format for the Decree on Suspension of Black List Sanctions and the Format for Changes to the Decree on Determination of Black List Sanctions are listed in Section VIII.

In Cancellation of Black List Sanctions in the form of;[27]

1. Cancellation of Black List Sanctions is based on a court decision with permanent legal force.
2. Based on court decisions that have legal force, PA/KPA or Ministries/Institutions/Regional Governments still issue a Decree on Cancellation of Black List Sanctions no later than 5 (five) working days after the court decision is received.
3. The PA/KPA or Ministry/Institution/Regional Government delivers a Decree on Cancellation of Black List Sanctions to election participants/Providers who are subject to Black List Sanctions and/or PPK/Election Working Group/Procurement Officials on the same day as the Decree on Cancellation of Black List Sanctions is issued .
4. The format for the Decree on Cancellation of Black List Sanctions is listed in Section VIII.

The Decree Determination of Black List Sanctions by PA/KPA or Ministry/Institution/Regional Government remains valid from the date of determination, even if:[28]

[26] LKPP Regulation No. 4 of 2021 Appendix II number 5.1
[27] LKPP Regulation No. 4 of 2021 Appendix II number 5.2
[28] LKPP Regulation No. 4 of 2021 Appendix II in the other provisions section letter a

1. Submission of the proposal to determine Black List Sanctions from the PPK/Election Working Group/Procurement Official/Procurement Agent to the PA/KPA exceeds 3 (three) working days after the Audit Minutes are signed;
2. Submission of the proposal to determine Black List Sanctions in the catalog process from the Election Working Group to the Ministry/Institution/Regional Government within (three) working days after the Audit Minutes are signed;
3. Submission of a copy/copy of the letter of proposal for determining Black List Sanctions from the PPK/Election Working Group/Procurement Officer/Procurement Agent to election participants/Providers on a day that is not the same as the time of submission of the proposal for determining Black List Sanctions;
4. Submission of a letter of notification of the proposed determination of Black List Sanctions from the PA/KPA which doubles as PPK to election participants/Providers within 3 (three) working days after the Audit Minutes are signed or other documents/evidence are obtained;
5. Submission of objections accompanied by supporting evidence exceeds 5 (five) working days after a copy of the letter of proposal to determine Black List Sanctions is received by the election participant/Provider;
6. Submission of a recommendation request letter from the PA/KPA or Ministry/Institution/Regional Government to the relevant APIP based on the proposal for the determination of Black List Sanctions and/or objections accompanied by supporting evidence within 5 (five) working days from the time the proposal is received and/or the objection letter is received;
7. Submission of recommendations on audit results and/or clarification from APIP to PA/KPA or Ministries/Institutions/Regional Governments exceeds 10 (ten) working days from the receipt of the recommendation request letter and/or objection letter;
8. Issuance of a Decree on Determination of Black List Sanctions by PA/KPA or Ministry/Institution/Regional Government based on the proposed determination of Black List Sanctions as intended in number 4.3.1 and APIP recommendations as intended in number 4.3.5 beyond 5 (five) working days from the recommendation accepted by PA/KPA or Ministry/Institution/Regional Government;
9. Submission of the Decree Determining Black List Sanctions from the PA/KPA or Ministry/Institution/Regional Government to election participants/Providers and/or individuals subject to Black List Sanctions and/or PPK/Election Working Group/Procurement Official/Procurement Agent not on the same day with the time the Decision Letter is stipulated;
10. The display of Black List Sanctions is carried out by attaching a Decree on Determination of Black List Sanctions as referred to in number 4.3.6 along with complete supporting documents within 5 (five) working days from the date the Decree is stipulated;
11. Issuance of a Decree on Postponement of Black List Sanctions by PA/KPA or Ministry/Institution/Regional Government based on a court decision beyond 5 (five) working days after the court decision is received;
12. Issuance of a Decree on Cancellation of Black List Sanctions by PA/KPA or Ministry/Institution/Regional Government based on a court decision beyond 5 (five) working days after the court decision is received;
13. Reducing the Black List Sanctions display from the National Black List via the National Procurement Portal by PA/KPA or Ministries/Institutions/Regional Governments based on postponement by attaching a Decree on Postponement of Black List Sanctions and a court decision granting a delay of the Decree on Determination of Black List Sanctions as referred to in number 5.1 exceeds 5 (five) working days since the court decision was received; or

14. Reduction of Black List Sanctions displays from the National Black List via the National Procurement Portal by PA/KPA or Ministries/Institutions/Regional Governments on the basis of cancellation by attaching a Decree on Cancellation of Black List Sanctions and a court decision with permanent legal force as intended in number 5.2 beyond 5 (five) working days after the court decision is received.

Procedures for determining Black List Sanctions and displaying and downgrading Black List Sanctions on the National Black List, which are carried out electronically, refer to the National Procurement Portal user manual. If all or part of the procedures for determining Black List Sanctions are carried out electronically, the documents issued have the same legal force as those given in writing.

The imposition of sanctions in the scope of procurement of goods/services should also not be separated from these principles, especially regarding justice. The imposition of blacklist sanctions is a grave matter for providers because of the large impact on the continuity of their business. Therefore the imposition of these sanctions should not *be* carried out haphazardly and should only be assessed based on the loss of one party in terminating the contract. The principle of fairness in the procurement of government goods/services only applies to providers about the selection of participants. Fair principles here are intended to provide equal treatment for all prospective providers of goods/services and do not aim to provide benefits to certain parties, in any way or for any reason. For the application of sanctions, the principles in procuring goods/services do not become the basis for imposing sanctions so that the two parties, namely the government and the provider, do not have the same position, especially in the imposition of blacklist *sanctions* . (Swanjaya & Apryani, 2022)

Validity of Decision Number: 27/KPTS/Cb29.5/2022 Regarding the Imposition of Black List Sanctions in the Procurement of Goods and Services

The various violations that tender selection participants have committed have caused losses to the implementation of the selection of goods/services providers. These losses include non-implementation of the principles and objectives of Procurement of Goods/Services. For this reason, to stop violations from occurring and manifest the consequences of these violations, it is necessary to have an instrument capable of enforcing administrative law. (Prabandani & SH, 2020)

Blacklist sanctions are not a simple procedure to impose sanctions and tend to cause greater losses to the provider if the provider's violation is unintentional and not regulated in the contract compared to the government . Even though there is a mechanism for postponing and canceling blacklist sanctions that have been held in the LKPP regulations, this does not guarantee that providers who have already been included in the national blacklist sanctions can restore their image.

Ministries/Institutions/Regional Governments that have seen the names of providers who have been blacklisted are likely to consider these providers in the future because their records have been on the national blacklist.

Blacklist sanctions in the scope of procurement of goods/services greatly influence the attitude of providers, there is concern about not getting work tendered by service users, causing service providers to "willingly" accept contracts made by service users, even when the tender process takes place, usually the service provider reluctant to ask about sensitive but essential things, such as availability of funds, contents of contracts, smooth payment, service providers are afraid that they will be blacklisted (Rengkung, 2017)

The blacklisting sanction in Article 78 paragraph (5) letters a and b of Presidential Decree 12/2021, means that tender selection participants who commit violations cannot return to participate in the selection of goods/services providers in Ministries/Institutions/

Regional Apparatus within a certain period. Based on the period, the imposition of blacklist sanctions is divided into two types.

Blacklisting sanction for 2 years (Article 78 paragraph (5) letter a Presidential Decree 12/2021). This sanction is imposed on tender selection participants who commit violations:

1. submit false/incorrect documents or information to fulfill the requirements specified in the Election Document;
2. indicated to be conspiring with other participants to fix the offering price;
3. indicated to have committed corruption, collusion and/or nepotism in the selection of Providers;

Decree (SK) Determination Number: 27/KPTS/Cb29.5/2022 dated 06 June 2022 concerning the Decision to Determine the Imposition of Black List Sanctions on PT Guna Karya Nusantara issued by the Work Unit Budget User Authority (KPA Satker) for the Implementation of Settlement Infrastructure Region II South Sulawesi Province BPPW South Sulawesi, where PT GUNAKARYA NUSANTARA, located at Jalan Suryalaya West Sharon Raya No. 5 Grand Sharon RT.005 RW.011, Cipamokolan Village, Rancasari District, Bandung City, Job Main Director of PT. Gunakarya Nusantara based on the Deed of PT Meeting Decision Statement. GUNAKARYA NUSANTARA Number 05 March 2022 made before Tahmid Tirtapradja, SH Notary in Bandung City, with receipt of Notification of Changes to PT Company Data .

Looking at the procedural and substantive aspects of the issuance of Decree (SK) Determination Number: 27/KPTS/Cb29.5/2022 based on LKPP Regulation No. 4 of 2021 Attachment II number 3.1 letter a , that in article 8 paragraph (2) of the Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration , from now on referred to as the "government administration Law" confirms that Government Agencies and/or Officials in using the Authority must based on: a. Legislation; and b. AUPB .

Based on evidence data in the form of recommendations from the Inspectorate General of the Ministry of Public Works and Public Housing as the Government Internal Supervisory Apparatus (APIP) of the Ministry of Public Works and Public Housing in its letter Number PW 0202-lj/576 dated 24 May 2022, regarding Recommendations for the Proposed Imposition of Black List Sanctions to Provider PT. Gunakarya Nusantara, it is stated, in essence, that the election participants are on behalf of PT. Gunakarya Nusantara was proven to have committed acts/actions subject to blacklisting sanctions, namely submitting incorrect information/information to fulfill the requirements specified in the Election Document, in the form of denying the statement that its participation did not cause a conflict with the interests of the parties involved .

Referring to the provisions in number 3.1 of Appendix II letter a of LKPP Regulation 4/2021, it is stated that Election Participants/Providers are subject to Black List Sanctions if Election Participants submit false/incorrect documents or information to fulfill the requirements specified in the Election Document, further related to the procedures The method for determining Black List Sanctions has been regulated in the provisions of numbers 4.3 and 4.3.6 letter c of Appendix II to LKPP Regulation 4/2021 which states;

Determination of Black List Sanctions is carried out through the following stages: proposal; announcement; object; request for recommendations; examination of proposals; and determination.

In the event that there is a court decision which has legal force and still determines that election participants, providers and/or individuals are proven to have committed conspiracy/corruption collusion, and/or nepotism/falsification related to the Procurement of Goods/Services and/or being subject to a sanction of prohibition from participating in the Procurement of Goods/Services, the PA/KPA or Ministry/Institution/Regional Government issues a Black List Sanction by the court decision

The description of the legal facts is linked to the provisions described above, Imposition of Black List Sanctions on PT Providers. Gunakarya Nusantara because the same management has been found in the name of Brother Tamrin Sitinjak, ST as Director II both at PT. Gunakarya Nusantara and PT. Delima Agung Utama, both of whom are tender participants for the Sengkang Tempe Market construction work package, Wajo Regency, South Sulawesi Province, cannot be interpreted as meaning that the Election Participants have violated the provisions in number 3.1 letter a, Appendix II of LKPP Regulation 4/2021.

If the provisions in number 3.1 letter a, Appendix II of LKPP Regulation 4/2021 will be applied to PT. Gunakarya Nusantara, you must also pay attention to the number 4.3.6 letter c provisions. Attachment II to LKPP Regulation 4/2021 which reads: "*In the event that there is a court decision which has permanent legal force deciding that election participants, providers and/or individuals are proven to have committed conspiracy/corruption, collusion, and/or nepotism/forgery related to the procurement of goods/services and/or are subject to sanctions prohibited from participating in the procurement of goods/services then PA/KPA or Ministries/Institutions/Regional Governments issue Black List Sanctions in accordance with the court decision"*

Based on these regulations, we did not find any evidence in the form of a court decision with permanent legal force which decided that the Plaintiff was proven to have committed fraud related to the Procurement of Goods/Services, therefore it can be seen that in the actions of LKPP which issued a blacklisting decision to PT. Gunakarya Nusantara has contravened statutory regulations, especially numbers 3.1 and number 4.3 of Appendix II to the Government Goods/Services Procurement Policy Institute Regulation Number 4 of 2021 concerning the Development of Government Goods/Services Procurement Business Actors .

Apart from Therefore, we must also consider whether or not LKPP actions are contrary to the General Principles of Good Government as intended in the explanation of Article 53 paragraph 2 letter b of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the Judiciary. State Administration in the form of "The State Administrative Decision that is being sued is contrary to the general principles of good governance.""

One of the universally adopted principles of law and justice which states that "no one should benefit from deviations and violations committed by himself and no one should be harmed by deviations and violations committed by others" (*nullus/nemo commodum capere potest de injuria sua propria*). (Firmanto, 2022) Thus, none of the participants in the selection of providers of goods/services in a process of selection of providers of goods/services may benefit or suffer losses in the selection of providers of goods/services due to violations of administrative law and the principles of justice in holding an election of providers of goods. /service .

Based on this, apart from being contrary to the regulations mentioned above, the publication of the object of the dispute is also contrary to the General Principles of Good Governance, especially the Principle of Accuracy as intended in the explanation of Article 53 paragraph 2 letter b of Law Number 9 of 2004 concerning Amendments to Laws. Number 5 of 1986 concerning State Administrative Courts . Because the decision issued by LKPP has been seen to contain juridical defects in the substantive aspect from the aspect of statutory regulations, whether from the sub-aspects of authority, formal procedural or substantial, if it contains a juridical defect in one of the aspects, then the State Administrative Decree must be declared null and void, so that there is sufficient legal grounds to see that the decision issued by LKPP is invalid.

Based on the facts described above, it is known that the reason LKPP published the dispute object was because PT. Guna Karya Nusantara when participating in the tender for the Sengkang Tempe Market Construction work package, Wajo Regency based on the results of an Audit with a Specific Purpose with the results as outlined in the Letter from the Inspectorate General of the Ministry of PUPR to the Director General of Human Settlements

and the Directorate General of Construction Development Number PW0101-lj/1076, dated 14 September 2021 as well as recommendations from the Inspectorate General of the Ministry of Public Works and Public Housing as the Government Internal Supervisory Apparatus (APIP) of the Ministry of Public Works and Public Housing in its letter Number PW 0202-lj/576 dated 24 May 2022, regarding Recommendations for the Proposed Imposition of Black List Sanctions on Providers PT. Gunakarya Nusantara has found the same management in the name of Brother Tamrin Sitinjak, ST as Director II both at PT. Gunakarya Nusantara and PT. Delima Agung Utama and both of them are tender participants in the work package for the construction of Sengkang Tempe Market, Wajo Regency, South Sulawesi Province.

Based on the discovery of the same management in the name of Brother Tamrin Sitinjak, ST as Director II both at PT. Gunakarya Nusantara and PT. Delima Agung Utama and both of them are tender participants for the work package for the construction of Sengkang Tempe Market, Wajo Regency, South Sulawesi Province, so this is not in accordance with Selection Document No. BP2JK/Pokja-PPW2/F/07, dated 19 June 2020 CHAPTER. VIII Qualification Evaluation Procedures in point 8, which regulates the Statement of Not being included in the Black List, whose participation does not give rise to a conflict of interest of related parties, is not under court supervision, is not bankrupt, whose business activities are not being stopped and/or who is acting for and on behalf of the Business Entity is not currently undergoing criminal sanctions, and the management/employees do not have ASN status, unless the person concerned takes leave outside the state's responsibility .

Based on the above, it can be seen that the object of the problem is a state administrative dispute given the State Administrative Court in its authority to adjudicate, that the provisions of Article 47 of Law of the Republic of Indonesia no. 5 of 1986 concerning the State Administrative Court Jo. Law no. 9 of 2004 concerning Amendments to Law no. 5 of 1986 concerning the State Administrative Court Jo. Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning the State Administrative Court states "The State Administrative Court has the duty and authority to examine, decide and resolve State Administrative disputes .

Based on the object of the KTUN dispute has fulfilled the requirements as a State Administrative Decree as regulated in Article 1 number (9) of Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning State Administrative Courts jo. Article 87 Law no. 30 of 2014 concerning Government Administration, namely as follows: Provisions of Article 1 number (9) of Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning State Administrative Courts states: "State Administrative Decision is a written decision issued by a state administrative agency or official containing state administrative legal actions based on applicable laws and regulations, which are concrete, individual and final, which give rise to legal consequences for a person or entity civil law" .

Provision Chapter 87 Law no. 30 of 2014 concerning Government Administration states: "With the enactment of this Law, the State Administrative Decree as intended in Law no. 5 of 1986 concerning State Administrative Courts as amended by Law no. 9 of 2004 and Law no. 51 of 2009 must be interpreted as:

1. Written determination that also includes factual actions;
2. Decisions of State Administrative Bodies and/or Officials in the executive, legislative, judicial and other state administration environments;
3. Based on statutory provisions and AAUPB;
4. Finally, in a broader sense;
5. Decisions that have the potential to give rise to legal consequences; and/or;
6. Decisions that apply to Community Citizens.

Furthermore, the provisions of Article 1 number 7 of Law no. 30 of 2014 concerning Government Administration states: "Government Administrative Decisions, which are also called State Administrative Decisions or State Administrative Decisions, from now on referred to as Decisions, are written decisions issued by Government Agencies and/or Officials in the administration of government."

That in connection with the norms of the provisions of the article above, the object of the KTUN dispute in this case is a written determination because it is stated in the form of a Decree (SK) Determination Number: 27/KPTS/Cb29.5/2022 dated 06 June 2022 concerning the Decision to Determine the Imposition of Black List Sanctions on PT Guna Karya Nusantara whose contents are precise, it is clear who issued it, namely Power of Work Unit Budget User (KPA Satker) Implementation of Settlement Infrastructure Region II South Sulawesi Province BPPW South Sulawesi and it is clear who it is aimed at, namely PT Guna Karya Nusantara . Next is the object of the KTUN dispute is the decision of the Agency and/or State Administrative Officials in the executive environment, namely the decision issued by the Work Unit Budget User Authority (KPA Satker) for the Implementation of Settlement Infrastructure Region II, South Sulawesi Province, BPPW South Sulawesi , as a State Administrative Officer who carries out government affairs in the fields of Public Works and Public Housing. Apart from that, the decision is the object of the KTUN dispute based on the provisions regulated in statutory regulations and AAUPB, especially rules in the field of Public Works and Public Housing which are public, are final because they do not require further decisions to be implemented, giving rise to legal consequences in the form of the Plaintiff being included in the Black List and National Black List so that they cannot participate in government goods/services procurement activities and construction work tenders within a certain period, and the decision on the object of the KTUN dispute applies to the party whose name is listed in the decision letter .

That with Thus it is clear and can be concluded the object of the KTUN dispute in this case has fulfilled the provisions of Article 1 number (9) and number (10) of Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning State Administrative Courts jo. Article 1 number 7 and Article 87 of Law no. 30 of 2014 concerning Government Administration, and therefore the Makassar State Administrative Court has the authority to accept, examine and decide *a quo cases*

A lawsuit is a submission submitted by a plaintiff to the competent Chief Justice, which contains a claim for rights which contains a dispute and is also the basis for examining a case and proving the truth of a request. A lawsuit contains a disagreement or conflict that the court must resolve and decide. In the context of Procurement of Goods/Services, the parties agreeing can take civil legal action if a dispute occurs in implementing the contract. This is understood as one of the principles in the agreement, namely the principle of *pacta sunt servanda*. This principle states that an agreement is binding on the parties who make it, just like the law. The judge or other party in this case must respect the contract's substance and not intervene in the sense of the agreement that the parties have made. (Fahruddin, 2023)

Based on the above, the validity of LKPP Decision 27/KPTS/Cb29.5/2022 can be seen in Decision 80/G/2022/PTUN.MKS declared the object of a dispute over State Administrative Decisions in the form of Decree (SK) null and void.) Determination Number: 27/KPTS/Cb29.5/2022 Date 06 June 2022 concerning the Determination of Black List Sanctions for PT Guna Karya Nusantara, which was issued by the budget user authority (KPA) of the settlement infrastructure implementation work unit for Region II, South Sulawesi Province, Settlement Infrastructure Hall. South Sulawesi region, directorate general of creative works, ministry of public works and public housing, and requires LKPP to revoke the object of a dispute over state administrative decisions in the form of Decree (SK) Determination Number: 27/KPTS/Cb29.5/2022 dated 06 June 2022 Regarding the Determination of Black List Sanctions for PT Guna Karya Nusantara, issued by the budget

user authority (KPA) of the work unit for implementing residential infrastructure in Region II of South Sulawesi Province, South Sulawesi Regional Settlement Infrastructure Center, Directorate General of Human Settlements, Ministry of Public Works and Public Housing.

CONCLUSION

The Goods/Services Procurement Policy Institute, in implementing the procurement of goods/services, prioritizes the principles of healthy, transparent, open business competition and fair treatment for all parties. The LKPP should regulate provisions regarding the clarification period for the cancellation of blacklisted sanctions as well as provisions regarding the qualifications for the names of companies included in the blacklist in the process of procuring goods/services. The object of the dispute issued by LKPP is proven to contain a juridical defect in the substantive aspect; therefore, because the State Administrative Decree issued by a State Administrative Body or Official must not have a juridical defect from the element of statutory regulations either the sub-aspects of authority, formal procedural, or substantial, if it includes a juridical defect in one aspect, then the State Administrative Decree must be declared null and void so that there is sufficient legal grounds for the Panel of Judges to grant the Plaintiff's claim.

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