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ENHANCING THE LEGAL FRAMEWORK FOR SUSTAINABLE PUBLIC PROCUREMENT: A COMPREHENSIVE SUSTAINABLE DEVELOPMENT PLAN FOR INDONESIA

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ABSTRACT

The concept of “sustainable public procurement” has emerged worldwide. It instructs governments to prioritize sustainability throughout the procurement process in the economic, social, and environmental aspects. Such a concept is significant as the government has an enormous purchasing power to stimulate the market. Nonetheless, past empirical research indicates that in the context of Indonesia, the country has not addressed several vital issues on sustainable public procurement despite the worsening environmental degradation. There have been no specific guidelines and capacity-building system established for government officers. Therefore, this paper aims to discuss this problem from the perspective of law and suggest the necessary improvements in the legal framework, utilizing

normative legal research methods focusing on the applicable laws. Through a comparative approach, using statutes and conceptual frameworks, this study examines the Indonesian current legal instruments governing sustainable public procurement. Several other countries will be used as exemplars of best practices. This research finds that the legal framework of sustainable public procurement in Indonesia is relatively inadequate compared to other countries, particularly regarding guidelines for implementation and institutional cooperation. In addition to its Presidential Regulation Number 12 of 2021, Indonesia should strengthen the planning, monitoring, and enforcement mechanisms through strategic overarching plans and further regulations to foster the effective implementation of a system of sustainable public procurement.

Keywords: Sustainable public procurement, sustainable development, procurement of goods and services.

INTRODUCTION

The procurement of goods and services constitutes a routine activity carried out by the government every year. As a part of the implementation of a national development strategy and promoting social welfare, public procurement is instrumental for government officials in further fulfilling the needs of the community by providing public services (Hartlapp, 2020). Due to the huge purchasing power of the government in procuring goods and services, this activity has a significant effect on the economic, social, and environmental conditions. Public procurement stimulates and even steers the market to, among others, continuously innovate, increase resource efficiency, and promote a global low-carbon economy (European Commission, 2010; Halonen, 2021).

The process of procuring goods and services involves many elements, ranging from human resources to natural resources (Alkadry et al., 2019). Such involvements consequently have an impact on the social, economic and environment sectors. Therefore, the procurement process of goods and services as the realization of capital expenditure must be conducted efficiently and is beneficial for social welfare. Observing the developing countries in Africa, such as Nigeria, Ghana, Malawi, and Kenya, the quality of the procurement process with

regard to a country's human resources, environment, and economy, is a determinant key to achieving successful infrastructure development (Kinyanjui, 2010). Moreover, procurement processes have a direct impact on altering the delicate equilibrium of the ecosystem, which may contribute to habitat destruction and worsening climate change (Tomossy & Alam, 2017).

As such, the procurement process should be in line with the idea of sustainable development to protect all of the sectors involved. In this matter, sustainable development refers to the fulfillment of the current needs, which also takes into account the needs of future generations based on the following three important aspects: environmental, social, and economic (Brundtland, 1987). The term "sustainability" itself has been interpreted in various ways, from the philosophical viewpoint regarding intergenerational relationships to the multidimensional management of business activities in the context of corporations (Gelderman et al., 2017). Thus, the essence of sustainability is balancing all aspects, which focuses on the protection of the environment comprehensively, considering that the ecosystem is the basis for all living creatures, including human beings (Sjåfjell & Wiesbrock, 2017). In line with the Sustainable Development Goals (SDGs), sustainable procurement is an effort to improve the welfare, social and economic development of society and prioritize environmental quality. SDGs targets, especially number 12, are needed for the procurement sector, especially in terms of construction procurement (Opoku, 2022).

Through this vein, the notion of "sustainable public procurement" arises. Sustainable public procurement is a process whereby entities are able to conduct the procurement process in a way that generates benefits for themselves, as well as for the society and economy, whilst minimizing damage to the environment (United Nations Environment Programme, n.d.). As such, there are three elements to be taken into account by the government in the procurement processes, starting from the contract drafting processes until the evaluation phase, and these are economic, social, and environmental in nature (Brammer & Walker, 2011). Due to its advantages, this concept has been an ongoing worldwide tendency (Fischer, 2010; Qiao & Wang, 2011). The advantages of sustainable public procurement impact the three leading sectors which are essential for people's welfare, namely infrastructure fulfillment, improved social order, improved economy and environmental sustainability.

Nonetheless, improvements are necessary to be made in the public procurement processes in Indonesia. This is considering that there are still issues related to the implementation of sustainable public procurement (Tomossy & Alam, 2017). One of the problems is the absence or incomplete regulation and guidelines for the governmental organs to plan, operate, manage, and evaluate the procurement; such absence can render the procurement process to be in contradiction of the principles of sustainability. This situation is worsened due to the lack of procurement management skills during the implementation, as well as the low commitment of the authorities, starting from ministries, institutions, and regional governments (Sadikin, 2008). Another problem that has arisen is the high price of goods and services that are environmental-friendly compared to conventional products. Therefore, further study is important in the context of sustainable public procurement to compare the legal framework of sustainable public procurement in Indonesia and other countries, as well as the application of principles in the procurement process in Indonesia. This is important as procurement practices in a sustainable manner would not only benefit the current generations, but also the succeeding generations by minimizing the economic, social, and environmental issues.

METHODOLOGY

The methodology used in this paper is the normative legal research method. This method emphasizes a process of finding legal rules, principles, and doctrines to address the legal issues at hand (Marzuki, 2001). Under the typology of legal research proposed by Hutchinson (2018), this research falls under the scope of reform-oriented research as it evaluates the adequacy of the existing rules while recommending changes to the relevant legislations and regulations.

The present study uses the statutory, conceptual, and comparative approaches (Marzuki, 2005). The statutory approach is used to analyze the form and substance of the laws relating to sustainable public procurement, specifically the legislations and regulations as the primary legal materials. Further, the conceptual approach is utilized to explore the doctrines or principles regarding public procurement and sustainable public procurement. Apart from that, the comparative approach was also used in order to provide the legal comparison with

other countries regarding the formulation of the legal issues that will be analyzed in this article. In addition, implemented policies that have become good practices in other countries have also become input for development.

RESULTS

General Concepts and Legal Frameworks of Sustainable Public Procurement

As a comprehensive concept, the components of sustainable public procurement should be taken into account by the government from the contract drafting phase. It is noteworthy that public contracts are divided into two types, namely procurement contracts and non-procurement contracts (Simamora, 2005). The distinction is based on the purpose of contract drafting and the budget aspect. Non-procurement contracts aim to offer services to the public. Thus, these contracts are generally income-generating contracts. In contrast, procurement contracts are the agreements that aim to buy or procure goods and services as public expenditure, hence, are 'consumptive' in nature. This infers that procurement contracts incur a payment burden.

Due to its association with the expenditure which has a large influence on the economy, public procurement is a vital function of the government. Consequently, it shall be utilized to achieve economic, social, and environmental goals (Ochieng et al., 2016). In this regard, contracts made by the government have different characteristics from private contracts in general, where involvement of the government in commercial transaction activities causes the applicability of two different legal regimes, namely public law (administrative law and criminal law) and private law (civil law). As such, the government contract has a hybrid character (Simamora, 2005). The hybrid public contract character has some consequences; however, general rules regarding contracts are still subject to the rules of private law.

Public contracts bind the government and other parties, which are the providers of goods or services in terms of procurement contracts and private parties in terms of non-procurement contracts. An agreement formed by the government creates the rights and obligations that are attached to each party. By the existence of an agreement, there

also exists the right to claim from one another. Therefore, liability in contractual relationships arises when there is one contractor who neglects his contractual obligations. If one party does not carry out the contractual obligations, then the said party is liable in accordance with what it has agreed. The government, as one of the parties is also responsible for the contract that has been consented to. This implies that the immunity to the government as a party in a public contract does not apply, meaning that the government is not immune to civil lawsuits.

In the contracts, sustainable public procurement may be referred to in other terms, as several works of the literature have also mentioned, among others: “green supply, green purchasing strategies, green purchasing, and supply policies, environmental purchasing, environmental supply chain management, green supply chains, green value chains, green supply chain management, and environmental supplier performance” (Walker & Philips, 2009). Public procurement generally, on the other hand, is defined as the obtainment of goods and services by the government or institutions in public sectors (Uyarra & Flanagan, 2010). These contracts, despite the existence of the freedom of contract, are subject to the limitations and guidance provided within a legal framework pertinent to the relevant subject matter, including legislations and regulations governing sustainable public procurement.

The Legal Framework of Sustainable Public Procurement in Indonesia

Generally, provisions regarding public procurement in Indonesia are regulated in the Presidential Regulation Number 16 of 2018 concerning Public Procurement on Goods and Services, which was further amended by the Presidential Regulation Number 12 of 2021 (hereinafter, “Indonesian Presidential Regulation on Public Procurement”). Regulations regarding the Procurement of Goods and Services have undergone several changes. Regarding sustainable public procurement, previous regulations have not received special attention. To support sustainable procurement, the role of a Goods and Services Procurement policy institutions is needed. This institution was formed through the Presidential Regulation Number 106 of 2007 concerning the National Public Procurement Agency (hereinafter Presidential Regulation on NPPA). This regulation has undergone

changes as stated in the Presidential Regulation Number 93 of 2022 concerning the second change above the National Public Procurement Agency.

This institution is in charge of finding innovations to be implemented into a policy that will be the reference for the entire procurement process in Indonesia. Among the various innovations of the NPPA are e-purchasing, e-catalogue, and e-tendering which are mandated under Article 106 of the Indonesian Presidential Regulation on Public Procurement. This optimization of the electronic system is beneficial as it fosters the transparency, effectivity, and efficiency of the procurement process while reducing the usage of paper and preventing corruption (Adjei-Bamfo et al., 2019). Such innovations are in line with one of the main focuses of the NPPA, which is to implement the concept of sustainable public procurement in the public procurement processes.

Public procurement encompasses the activities of acquiring goods, constructing buildings, consulting, and other services according to Article 3 of the Indonesian Presidential Regulation on Public Procurement. Particularly, Article 1 of the Indonesian Presidential Regulation on Public Procurement defines sustainable public procurement as the procurement of goods/services aimed at achieving economic benefits and reducing the adverse impact on the environment in its entire life-cycle. The said economic benefits are not only for the government, including the ministries, public institutions, and local government, but such benefits are also targeted for the society as a whole. Further, Article 68 (1) of the Indonesian Presidential Regulation on Public Procurement prescribes that the goods/services shall be procured with due regard to the sustainable aspects, consisting of economic, social, and environmental elements. This Article 68 (1) governs that the cost of manufacturing, producing, and maintaining goods or services throughout their life-cycle is referred to as the economic element. Meanwhile, the social component is pertinent to the effort of strengthening small companies and local communities, ensuring fair working conditions, and paying attention to labor equality and diversity. Furthermore, the environmental component encompasses the methods used throughout the procurement processes to limit the adverse consequences of the procurement on health, the quality of air, soil, and water, along with the natural resource usage in line with statutory provisions. Article 68 (3) of the said regulation

specifies that the sustainable public procurement mechanism starts from the planning and budgeting of the goods/services, preparation of technical specifications, contract drafting, and the compilation of necessary documents.

Historically, these provisions to some extent are different from the ones in the previous regulation. Presidential Regulation Number 54 of 2010 concerning the Public Procurement on Goods and Services, as the predecessor of the Indonesian Presidential Regulation on Public Procurement, does not govern sustainable public procurement, specifically in one article. Nonetheless, this previous legal regime regulates the concept of eco-friendly, which is not governed by the current Indonesian Presidential Regulation on Public Procurement. This concept is regulated in Article 105, stating that the eco-friendly concept can be applied by giving specific requirements indicating careful environmental preservation and protection while also considering its value for money, specifically on its efficiency and effectivity.

In the current legal regime, such matter is governed under Governmental Regulation, a regulation which is hierarchically higher than the Presidential Regulation. Article 37 of Governmental Regulation Number 46 of 2017 concerning the Environmental Economic Instruments, which prescribes that the government shall procure goods and services that have acquired eco-friendly labels and have been included in the list of eco-friendly goods made by the Ministry of Environment and Forestry. However, provisions related to the environmental aspect of sustainable public procurement only revolve around the utilization of ecolabel products.

With regard to the economic and social element, the Indonesian Presidential Regulation on Public Procurement has, along with its predecessor, governed several key points, such as the obligation to procure goods and services which are produced domestically if possible. Chapter VIII of the Indonesian Presidential Regulation on Public Procurement even further regulates that the government shall support small and micro enterprises by allocating possible projects to be partnered with the said enterprises.

Sustainable public procurement in Indonesia also has standardization as a reference for development, namely the Indonesian National

Standard ISO 20400:2017. It is an identical adoption of the ISO 20400:2017 Sustainable Procurement-Guidance Standard. The principles of sustainable procurement outlined in ISO 20400:2017, among others, are accountability, transparency, ethical behavior, integration, and continuous improvement. Furthermore, the said standard also prescribes a full and fair opportunity to all parties along with respecting the interests of all stakeholders. The government as the implementing agency is also required to respect the rule of law and human rights and analyze all costs of the procurement by weighing its impacts. The application of this standard by the government will increase its value, indicating that the government pays attention to the environmental aspects in a sustainable manner, and will be instrumental when taken into account in building relevant policy frameworks (Wirahadikusumah et al., 2020).

To take a step back in capturing the bigger picture of the Indonesian legal framework, Indonesia promulgated a specific regulation governing sustainable development goals in 2017. Presidential Regulation Number 59 of 2017 concerning the Implementation of Sustainable Development Goals (hereinafter, “Presidential Regulation on the Implementation of SDGs”) essentially regulates how the government, along with all entities in the society, apply the values of Sustainable Development Goals (hereinafter, “SDGs”). To achieve the SDGs, this regulation has led to the formation of a National Coordinating Team that consists of a Steering Committee, Executing Team, Working Group, and Team of Experts. The Steering Committee is led by the President and involves many ministries, while the Executing Team backed up by the Working Group is led by the Ministry of National Planning and Development.

Furthermore, this regulation has tasked the Ministry of National Planning and Development to form a national roadmap and National Action Plan of SDGs. The Ministry’s main task is to create a roadmap containing ideas that are narrated as a guide for actions in order to realize the SDGs related to infrastructure provision. It also has the obligation to coordinate the monitoring, evaluation, and reporting process of the SDGs nationally and regionally along with coordinating the funding of the programs. It is also worth noting that the Ministry has the power to regulate the tasks and the working mechanism of the Executing Team, Working Group, and Team of Experts. In this regard, see the Appendix which will show that the NPPA is one of

the executing agencies related to the sustainable consumption and production group. This indicates that the Presidential Regulation on the Implementation of SDGs necessitates the coordination between the Ministry of National Planning and Development with the NPPA.

To implement this presidential regulation, the Ministry has enacted the Regulation of the Ministry of National Planning and Development, Number 7 of 2018 concerning the Coordination, Planning, Monitoring, Evaluation, and Reporting of the Implementation of SDGs (hereinafter, “Regulation of the Ministry of National Planning and Development on the Implementation of SDGs”). Nevertheless, this regulation does not further regulate how the NPPA shall coordinate with the Ministry of National Planning and Development. With regard to public procurement, this regulation only states normatively that *“the implementation of sustainable consumption and production in Indonesia encompasses ... the existence of ecolabel criteria for certification of eco-friendly products and the eco-friendly public procurement ...”*

The Legal Framework of Sustainable Public Procurement in the European Union Countries

In the European Union (hereinafter, “EU”), the framework of sustainable public procurement can be divided into its legal framework and policy framework. With regard to the legal framework, in exercising its power as the supranational body, the EU has issued two directives concerning public procurement in general. One was the Directive 2014/24/EU of The European Parliament and The Council of 26 February 2014 on Public Procurement and Repealing Directive 2004/18/EC, and the other was the Directive 2014/25 EU of The European Parliament and The Council of 26 February 2014 on Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors and Repealing Directive 2004/17/EC. Each of these directives has integrated the notion of sustainable public procurement to protect the environment and combat climate change. For instance, the directives require the government to calculate the life-cycle cost of every available option for tender participants.

There are also provisions and annexes of the directives dealing with the detailed technical specifications needed for the procurement. These should provide the necessary guidelines for the member states.

Furthermore, these directives also allow the inclusion of ecolabel as the criteria for the government to choose the providers. Through these frameworks, it is predicted that there will be significant innovation, despite the complexity (Czamezki, 2019). Regarding the policy framework, the European Commission as an organ under the EU published a Communication in 2008, titled “Public procurement for a better environment.” The Commission has the authority to establish common criteria for sustainable public procurement and to monitor the implementation of the strategy by assessing the progress and the impact of the procurement (Czarnezki²⁰¹⁹).

One of the European Union countries that has echoed and regulated sustainable procurement is France. There are several specific general strategies that guide the French government in conducting sustainable public procurement, such as the National Sustainable Development Strategy and the National Action Plan for Sustainable Public Procurement. This plan encourages the government as the purchaser to include clauses supporting social and environmental protection in the contracts. Moreover, the National Action Plan for Sustainable Public Procurement specifies provisions in the contract that take into account environmental interests, including detailed specifications of the goods or services. There are other laws that are related to sustainable public procurement, such as the Environmental Charter 2004 and Law Number 2009-967 concerning the Establishment of the Grenelle for the Environment. These laws prohibit corporations that have been sentenced due to human rights abuses to make a contract with the government.

In the execution and implementation process of a sustainable public procurement strategy, the Union of Public Purchasing Groups is a body authorized to purchase goods and services and then sell them to the government according to the French Public Procurement Code. In addition, there are several ministries involved, *inter alia*, the Ministry of Economy and Finance; the Ministry of Environment, Energy and Maritime Affairs; and the Ministry of Social and Health. There is an inter-ministerial commission that meets every two months to discuss the progress of sustainable public procurement implementation. Each working group of the inter-ministerial commission is coordinated by the State Procurement Direction, which is a body under the control or command of the Prime Minister and the Ministry of Economy and Finance. All of the implementations are reported annually.

Furthermore, similar to France, almost all European countries, including the Netherlands, also have a National Action Plan for Sustainable Public Procurement that guides governments as the procuring party to apply the principles of sustainable development. In the Netherlands, there is the Sustainable Procurement Manifesto 2016, which was firstly signed by the State Secretary for Infrastructure and the Environment, the Minister for Housing and the Central Government Sector, the Minister for Foreign Trade and Development, the Minister for Economic Affairs, and the Minister for Social Affairs and Employment. This manifesto shows that the respective authorities have commitments to abide by and execute the principle of sustainability in each procurement process concretely. The government has also established an official website that can be accessed publicly. It consists of the environmental criteria for each of the sectors, such as energy, buildings, and transportation. Public and private institutions in the Netherlands also have to take into account the international standards, such as the ISO 20400 which provides guidance in designing and implementing the strategy of sustainable public procurement (Hasanbeigi, 2019).

The Legal Framework of Sustainable Public Procurement in Japan

Japan is also one of the countries that, since the late 1980s, has prioritized sustainable public procurement, through soft laws like UNCITRAL Model Law on Procurement of Goods, Construction, and Services (Government of Japan, 2015). A regulation on green procurement was passed in 2001 which obligates all government agencies to develop and implement a green procurement policy (Government of Japan, 2006). Sustainable Public Procurement is regulated in several acts, such as the Act Number 100 of 2020 concerning the Promotion of Procurement of Eco-Friendly Goods and Services by the State and Other Entities which was further amended by the Act Number 119 of 2003. This legislation primarily regulates how the government must procure goods and services which will not harm the ecosystem. Further, the Act Number 56 of 2007 concerning the Promotion of Contracts of National Governments and Other Entities, which Show Consideration for Reduction of Emissions of Greenhouse Gases governs the green contracting requirements for electric power, energy, and building designs. There are also policies in Japan encompassing the issue of sustainable public procurement,

such as the Basic Policy for the Promotion of Procurement of Eco-Friendly Goods and Services 2019, which governs requirements in the procurement of certain goods, among others on paper recycling and vehicle emissions (Shibuya, 2023).

The body that leads the implementation of sustainable public procurement provisions is the Ministry of Environment, which cooperates with other ministries to design legislation to be forwarded to the legislative body. In addition, in order to create laws and regulations regarding sustainable procurement, the Ministry of Environment and other related ministries, coordinate with each other. Based on the *Basic Policy for the Promotion of Procurement of Eco-Friendly Goods and Services, of 2019*, the Ministry of Environment drafts Basic Policies in accordance with the results of consultations with other ministries that will include their targets. The Basic Policies will be reviewed by an advisory committee based on public response, including entrepreneurs. Each ministry is instructed to make procurement provisions involving sustainable public procurement according to their targets, and report the results of their implementation every year. There are differences in the application about the provisions. Existing provisions are compulsory to be conducted by the central government and its administrative bodies. Meanwhile, these regulations are voluntary for local governments and their administrative bodies.

The Legal Framework of Sustainable Public Procurement in the United States

The United States regulates sustainable public procurement mainly through Executive Orders. One of them is Executive Order 13693 concerning the Planning for Federal Sustainability in the Next Decade 2015. This order governs sustainable procurement and other comprehensive federal government efforts, which requires every new contract to contain requirements supporting sustainability; for instance, the existence of recycled content, usage of bio-based ingredients, and fulfillment of the energy-efficient or water-efficient standards, as well as non-toxic standard (Dimand, 2022).

The leading agency for sustainable public procurement implementation is the White House Council on Environmental Quality and the Office of Management and Budget. In addition, there are also several bodies that assist in making regulations and help designate products that

meet sustainability criteria, for instance, the Ministry of Agriculture, the Department of Energy, and the Environmental Protection Agency. Each agency must make an annual plan called the Strategic Sustainability Performance Plan and must provide details about its progress and targets. The execution of sustainable public procurement provisions in each agency is reviewed and assessed by the President's Office of Management and Budget.

The Legal Framework of Sustainable Public Procurement in Brazil

In Brazil, the local government in Sao Paulo has implemented a policy on public procurement which uses technology. Further, in 2011, the Brazilian government formed a permanent working group to coordinate the implementation of sustainable public procurement. There are also national policies regarding public procurement, among others are the National Policy on Climate Change and National Policy on Solid Residues which take into account the impact of the public procurement on environmental degradation and, therefore, require the government to procure goods and services by using technology and acquire recycled and recyclable products. Instruction Number 1 of 2010 also governs procurement, especially regarding energy efficiency, usage of renewable energy, and waste management. This instrument also requires the government to consider water consumption and biodegradability in purchasing goods and services.

At the level of the federal government, there are also legal instruments related to sustainable public procurement. One of these is Sao Paulo Decree Number 41,629 which prohibits the federal government from purchasing goods that may deplete the ozone. Furthermore, there exists Law Number 10,761 which prohibits public schools from providing foods for students that are genetically modified. In addition, Decree Number 48,138 obligates the government to reduce water consumption and measure progress.

The Proposed Transformation of the Indonesian Legal Framework on Sustainable Public Procurement

Having examined the current legal framework for sustainable public procurement in Indonesia and other countries, several inadequacies should be addressed. Firstly, is regarding the comprehensiveness of

regulations along with its secondary instruments. Clear and sufficiently detailed regulations regarding sustainable public procurement are essential to building a strong fundamental for the implementation of this concept (Grandia et al., 2015).

To date, Indonesia has not enacted a regulation which specifically governs sustainable public procurement. As explained above, Indonesia has had an “umbrella” regulation for the implementation of SDGs and also a regulation regarding public procurement. Although these regulations have recognized the application of sustainability throughout the procurement process, such provisions are rather conceptual, instead of being implementable. In this sense, there has not been any regulation or other soft law instruments concretely guiding the government in implementing sustainable public procurement. Particularly on the environmental aspect, the regulations only focus on the utilization of ecolabel products. Therefore, it is of paramount importance for the Indonesian government to design a regulation under the existing ones as a guideline.

The guideline to implement the concept of sustainable public procurement can be in the form of a National Action Plan. While Indonesia has made a National Action Plan on the Implementation of SDGs, the plan has not covered the issue of sustainable public procurement at all. By having this plan, the government can design the direction of the development and break down executable steps to implement sustainable public procurement for each governmental body. Similar to the National Action Plan in the EU countries, this document can be instrumental in providing the macro strategies. One of the matters to be elaborated in the plan is the planning of the formulation of a task force and strategies to harmonize the steps taken by the central and local governments. Moreover, such a plan can also set out the benchmarking and capacity building system for the government officers in managing the procurement process, while abiding by the concept of sustainable public procurement. Such capacity building and training systems are crucial to ensure the quality of public procurement (Nurmandi & Kim, 2015).

These large-scale strategies can further be governed under the Regulation of the NPPA, Decree of the NPPA, and guidebook. As a governmental agency focusing on public procurement, the NPPA has a vital role to ensure the compliance of the procurement process to the concept of sustainable public procurement. Although the NPPA

has been vested with the authority to formulate strategies and legal instruments on public procurement by Article 3 of the Presidential Regulation on the NPPA, this body has not issued instruments specifically guiding the government to integrate sustainable public procurement in their procurement process. Through these instruments, the NPPA is able to govern detailed and practical issues concerning sustainability in public procurement; for instance, the steps needed to be taken by government officers to avoid greenwash, which has also been discussed by the EU in its handbook for public procurement. Another matter to be guided through this type of instrument is the calculation of the life-cycle cost of the products to be procured. This is crucial as the environmental aspect in sustainable public procurement does not only deal with the utilization of ecolabel products, but also all considerations which may affect the environment must be taken into account by the government. In a form of regulation, the NPPA should also strengthen the private certification system to ensure the compliance of the government as the procurer (D'Hollander & Marx, 2014). Moreover, governing these assessment criteria would increase the transparency of the procurement process.

Another practical yet essential element that can be adopted by the NPPA is the provision of guidance to draft procurement contracts which promote sustainability. As elaborated above, the procurement contract as a hybrid between private and public law shall consider private and public interests. To ensure the implementation of sustainable public procurement, guidelines for the procurement contract drafting are beneficial. As has been implemented in other countries, the guidelines may set forth the necessary technical standards, such as the life-cycle cost and the usage of bio-based ingredients, along with other clauses ensuring the absence of human rights abuses and other criteria.

In addition to the strengthening of the normative aspect, the monitoring and enforcement of sustainability throughout the procurement process in Indonesia should be improved. This is pivotal to effectively overseeing how each governmental body sustainably procures goods and services. Currently, the Ministry of National Planning and Development has a huge role in coordinating the implementation of SDGs. Nonetheless, the NPPA and the Ministry of National Planning and Development do not have a clear coordination system despite the mandate given by the Presidential Regulation on the Implementation of SDGs. In this regard, there are two alternatives to improve this coordinating system to monitor and enforce sustainable public procurement.

The first alternative is to amend the Regulation of the Ministry of National Planning and Development on the Implementation of SDGs. As this regulation has established the National Coordinating Team for the implementation of SDGs, the amendment of the said regulation can include the NPPA as one of the actors in implementing SDGs, especially in the section of sustainable consumption, as has been mandated by the Presidential Regulation on the Implementation of SDGs. As such, the task of the National Coordinating Team would encompass all aspects of the SDGs. Second, the monitoring and enforcement mechanism can be delegated to a task force or working group. This specific group can involve the NPPA and the Ministry of National Planning and Development to coordinate and primarily be in charge of the implementation of sustainable public procurement. Nonetheless, the formation of a new task force or working group in Indonesia usually requires the promulgation of a new primary legislation, which would possibly take a certain amount of time.

In this matter, the National Coordinating Team or the new task force would be the main entity to coordinate with other governmental bodies to further ensure compliance and the development of the concrete steps abiding by the concept of sustainable public procurement. By having such a specific body dealing with sustainable public procurement, as has also been done by other countries, a further transformation of legal and policy framework would be more concentrated and effective. In addition, by having a specific body to deal with sustainable public procurement can increase the efficiency and effectiveness of the government procurement process to get quality goods and services.

The Benefits of Sustainable Public Procurement for the Government Procurement System of Goods and Services in Indonesia

The concept of sustainable procurement has recently acquired a high degree of salience in public policy internationally (Brammer & Walker, 2011). Sustainable development can be attained by replacing and renewing conventional procurement systems. Some of the benefits obtained by the implementation of sustainable procurement of goods/services are financial efficiency, help in achieving social goals, reduce greenhouse gas emissions, drive innovation, demonstrate political commitment, increase supply chain competitiveness, and fulfill

other environmental goals. Financial efficiency can be realized by simplifying the costs required in the procurement of goods or services. The use of green products can minimize long-term damage; therefore, this action can reduce the cost of maintenance, both in the procurement of goods and in the field of construction. The implementation of sustainable public procurement can be beneficial in that it helps to reduce greenhouse gas emissions. CO₂ can be reduced by choosing energy-efficient construction and transportation and choosing goods and services that produce a lower carbon footprint in the cycle of use of the goods/services. Air and water quality, the use of natural resources, waste, and other matters related to the environment are affected by the expenditure undertaken.

With the implementation of sustainable public procurement, there will be improvements on these matters both locally and globally. As is well-known, social and environmental goals can be included at different stages in the procurement process. First, non-economic objectives can be taken into account when defining eligibility criteria for participating in a tendering process. Contracting authorities have the choice to refuse to consider bids from a tenderer that fails to satisfy the certain minimum standards of financial, technical/professional, or social capacity, for example, compliance with basic labor standards. Second, environmental and social criteria, such as the renewable origin of materials can be integrated into the description of the subject or the technical specification of a contract. Third, contracting authorities can define environmental and social factors as contract award criteria, which will be taken into account and weighed in addition to the offered price. Lastly, social and environmental factors can play a role at the performance stage, where suppliers can be obligated to follow certain environmental or social standards as a contractual performance obligation (Brammer & Walker, 2011).

It is noteworthy that Indonesia is a member of the Sustainable Public Procurement Task Force which is part of the Marrakesh Process managed by the United Nations Department of Economic and Social Affairs and the United Nations Environment Programme. Several things have been done in relation to the environmental aspect as a part of sustainable public procurement. Since 2017, there have been some innovations by the Ministry of Public Works and Public Housing of the Republic of Indonesia, including that concerning plastic waste. Plastic waste is non-organic waste that is difficult to decompose

by microorganisms and is not easily destroyed over a period of 450-1000 years; this is certainly polluting the sustainability of the existing environmental ecosystem. At present, road construction is a regular activity in the infrastructure framework that is the focus of the Indonesian government. Therefore, one of the innovations being undertaken is the use of asphalt plastic as has been practiced in India and Sweden. Moreover, by utilizing plastic waste for asphalt roads, Indonesia has exercised waste management by turning it into a source of electrical energy. Nonetheless, these steps are sectoral without sufficient overarching regulation. Apart from that, currently, the Goods and Services Procurement Policy Institute has provided an electronic catalogue filter feature for environmentally friendly display product labels.

The Indonesian Construction Agenda Document 2030 states that Indonesian construction must be oriented not to cause environmental damage and to be a pioneer in environmental improvement and enhancement. According to the theory of punishment, the best form of deterrence can be achieved by setting fines as high as possible and reducing the level of expensive monitoring; this is suitable for the implementation regarding violations (Kadir, 2021). Efforts that must be made in order to achieve sustainable construction are, for example, reusing existing buildings, designing construction that will reduce the waste it causes, applying lean construction, using construction by minimizing energy consumption, using buildings by minimizing energy consumption, reducing pollution, considering environmental aspects from the material procurement stage up to the construction stage, using water wisely, and considering the impact of the sustainable construction process as one aspect of improving work (Adhi, 2023).

CONCLUSION

The implementation of sustainable public procurement in Indonesia brings a number of advantages such as reducing the adverse environmental impacts of government procurement actions, using shared resources more efficiently, stimulating local and global markets to innovate and produce friendly environmental products, and affirming the government's commitment to achieving sustainable development. To encourage the development of sustainable public procurement in Indonesia, the Indonesian government should take

several steps to enhance the current legal framework. Firstly, more detailed and implementable regulations or guidelines are necessary to be enacted. Such instruments can be in the form of a National Action Plan and the legal products of the NPPA, such as regulations, decrees, and guidebooks. Through these instruments, the vital subject matter of sustainable public procurement can be addressed, for instance, regarding the capacity building mechanism and the suggested contractual clauses. Secondly, the government, through the NPPA, is expected to provide a comprehensive understanding and monitoring of sustainable concepts in every government procurement process of goods and services. The monitoring and enforcement can be conducted through the National Coordinating Team or a task force to oversee and ensure the compliance of other governmental authorities throughout the procurement process. Such comprehensive advocacy and monitoring are very necessary to be carried out for all governmental bodies, procurement planners, as well as law enforcement officials, and the wider community. This is in considering that the integration related to procurement regulations with the principle of sustainable procurement must continue. Therefore, the involvement of all parties is the main key to the success of sustainable procurement, which is realized both in the pre-procurement and post-procurement process. Japan is one of the countries that has successfully implemented sustainable public procurement. Their good practices in public procurement can be followed by other countries. Besides that, in terms of procurement contract, it is necessary to add several specific clauses regarding sanctions for those who violate matters relating to sustainable public procurement.

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REFERENCES

- Adhi, A. B., & Muslim, F. (2023). Development of stakeholder engagement strategies to improve sustainable construction implementation based on lean construction principles in Indonesia. *Sustainability*, 15, 6053. <https://doi.org/10.3390/su15076053>, 1

- Adjei-Bamfo, P., Maloreh-Nyamekye, T., & Ahenkan, A. (2019). The role of e-government in sustainable public procurement in developing countries: A systematic literature review. *Resources, Conservation and Recycling*, 142, 189-203.
- Alkadry, M. G., Trammell, E., & Dimand, A. (2019). The power of public procurement: Social equity and sustainability as externalities and as deliberate policy tools. *International Journal of Procurement Management*, 12(3), 336-362.
- Brammer, S., & Walker, H. (2011). Sustainable procurement in the public sector: An international comparative study. *International Journal of Operations and Production Management*, 31, 452-476.
- Brundtland, G. (Ed.). (1987). *Our common future: The world commission on environment and development*. Oxford University Press.
- Czamezki, J. J. (2019, December). *Green public procurement: Legal instruments for promoting environmental interests in the United States and European Union*. Dissertation, Uppsala University. DiVA-Portal.
- D'Hollander, D., & Marx, A. (2014). Strengthening private certification systems through public regulation: The case of sustainable public procurement. *Sustainability Accounting, Management and Policy Journal*, 5(1), 2-21.
- Dimand, A-M., & Shaoming, C. (2022). Bottom up innovation adoption of green public procurement in the United States. Taylor & Francis Group. <https://doi.org/10.1080/03003930.2022.2161523>, 3
- European Commission. (2010), *Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth*. <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52010DC2020>
- Fischer, E. A. (2010). *Overview and issues for congress*. Congressional Research Service.
- Gelderman, C. J., Semeijn, J., & Vluggen, R. (2017). Development of sustainability in public sector procurement. *Public Money & Management*, 37, 435-442.
- Government of Japan. (2006). *Basic policy on promoting green purchasing*. www.env.go.jp/en/laws/policy/green/2.pdf
- Government of Japan. (2015). *Introduction to green purchasing legislation in Japan*. Ministry of the environment. https://www.env.go.jp/policy/hozen/green/kokusai_platform/2015report/handbook_eng.pdf

- Grandia, J., Steijn, B., & Kuipers, B. (2015). It is not easy being green: Increasing sustainable public procurement behaviour. *Innovation: The European Journal of Social Science Research*, 28(3), 243-260.
- Halonen, K. M. (2021). Is public procurement fit for reaching sustainability goals? A law and economics approach to green public procurement. *Maastricht Journal of European and Comparative Law*, 28(4), 535-555.
- Hartlapp, M. (2020). Measuring and comparing the regulatory welfare State: Social objectives in Public Procurement. *The ANNALS of the American Academy of Political and Social Science*, 691, 68-83.
- Hasanbeigi, A., & Becque, R. (2019). *Curbing Carbon from Consumption: The role of Green Public Procurement*. San Francisco CA., Springer.
- Hutchinson, T. C. M. (2018). *Researching and Writing in Law* (4th ed.). Lawbook Company.
- Czarnecki, J. (2019). *Green Public Procurement, Legal Instruments for Promoting Environmental Interest in the United States and European Union*. Uppsala Universiteit.
- Kadir, M. N., & Muhamad, S. (2021). Perceived effectiveness of punishments for forest offences. *UUM Journal of Legal Studies*, 12(2), 47.
- Kinyanjui, P. (2010). Procurement challenges in Kenya. *Journal of Procurement*, 13, 65-85.
- Marzuki, P. M. (2001). Penelitian Hukum. *Yuridika*, 16, 505-527.
- Marzuki, P. M. (2005). *Penelitian Hukum*. Prenada Media.
- Nurmandi, A., & Kim, S. (2015). Making e-procurement work in a decentralised procurement system: A comparison of three Indonesian cities. *International Journal of Public Sector Management*, 28(3), 198-220.
- Ochieng, M. M., Oginda, M., & Oteki, E. B. (2016). Analysis of sustainable procurement practises and the extent of integration in Lake Victoria South Water Services Board, Kenya. *IOSR Journal of Business and Management*, 18, 109-115.
- Opoku, A. (2022). Sustainable procurement in construction and the realisation of the Sustainable Development Goal (SDG) 12, *Journal of Cleaner Production*, 376, 9.
- Qiao, Y., & Wang, C. (2011). Issues and challenges in implementing China's green public program. *Journal of Environmental Protection*, 8, 1034-1045.

- Sadikin, S. R. (2008, August 28-30). Public procurement sustainability in Indonesia: Environmental, social or economic tradeoffs. *3rd International Public Procurement Conference Proceedings*, The Netherlands, pp. 597-616.
- Shibuya, K. (2023). *A study on corporate social responsibility impact analysis and design for environment* (Unpublished doctoral dissertation), Keio University.
- Simamora, Y. S. (2005). *Prinsip hukum kontrak dalam pengadaan barang dan jasa oleh pemerintah*. Dissertation, Universitas Airlangga. Repository Unair.
- Sjåfjell, B., & Wiesbrock, A. (Eds.). (2017). *Sustainable Public Procurement Under EU Law: New Perspective on the State as Stakeholder*. Cambridge University Press.
- Tomossy, G., & Alam, S. (2017). Shifting Public Procurement towards sustainability: A comparative case study of Indonesia and Australia. *Australian Journal of Asian Law*, 18(2), 185-198.
- Uyarra, E., & Flanagan, K. (2010). Understanding the innovation impacts of public procurement. *European Planning Studies*, 18, 123-143.
- United Nations Environment Programme. (n.d.). *Sustainable Public Procurement*. <https://www.unenvironment.org/fr/node/1549#:~:text=UNEP%20action%20at%20the%20global%20level&text=The%20One%20Planet%20Programme%20on,the%20SDG%20target%20on%20SPP>.
- Walker, H., & Philips, W. (2009). Sustainable procurement: Emerging Issues. *International Journal Procurement Management*, 2, 41-61.
- Wirahadikusumah, R., Abduh, M., & Messah, Y. (2020). Framework for sustainable procurement – Identifying elements for construction works. *Applied Mechanics and Materials*, 897, 245-249.