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Public Procurement & Government Contracts

Indonesia

Makarim & Taira S

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Law and Practice

Contributed by Makarim & Taira S

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Makarim & Taira S is a business law firm based in Jakarta, Indonesia which was founded in 1980. Currently, the firm has more than 60 lawyers. We assist clients from the early stages of procurement until the signing of the contract, on both the government's and the contractor's side. Makarim & Taira S's lawyers are well versed in all aspects of public procurement law, as well as the standard procedures and forms of contract used for public procurement. This includes vast knowledge on construction practices and an in-depth understanding of anti-competition law (particularly tender collusion), which are essential for assisting clients with public procurement in Indonesia.

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1. General

1.1 Basic Statutes Governing Public Procurement

In general, public procurement is regulated under the following:

- Presidential Regulation No. 54 of 2010 on the Procurement of Goods and Services as amended by Presidential Regulation No. 4 of 2015 ("**PR 54/2010**"). The Government of Indonesia recently issued Presidential Regulation No. 16 of 2018 on Government Procurement of Goods and Services ("**PR 16/2018**"), which has replaced PR 54/2010; and
- the Head of the Agency for Government Procurement of Goods or Services Regulation No. 14 of 2012 on Technical Guidance for PR 54/2010 ("**LKPP 14/2012**") (hereinafter collectively referred to as the "**General Procurement Regulations**").

Please note that, as PR 16/2018 has only just been issued, further details of several provisions will be provided in a Head of the Agency for Government Procurement of Goods or Services ("**LKPP**") regulation, which should be issued within 90 days of the issuance of PR 16/2018. Consequently, this commentary will be subject to the implementing regulation to be issued by the Head of LKPP.

In addition to the above General Procurement Regulations, each government institution may have its own more detailed internal procurement policy or procedure, and may have additional requirements to those under the General Procurement Regulations. This commentary is based strictly on the General Procurement Regulations; the internal procurement policy of each government institution is not taken into account.

Although PR 54/2010 still applies to public procurement projects that are prepared and implemented before July 2018, the commentary herein is based mainly on PR 16/2018.

According to the type of goods/service provider, PR 16/2018 classifies two types of procurement:

- self-procurement (procurement of goods and services from another government institution, community organisation or community group); and
- third party procurement (procurement of goods and services from a third party goods/service provider).

The process for self-procurement is generally simpler and more straightforward than third party procurement. Because of this, and considering the limitations, this commentary will focus on third party procurement; self-procurement will not be discussed.

1.2 Regulations Governing Cost Reimbursement and Pricing Issues

In general, cost reimbursement and pricing issues for government contracts are governed by the General Procurement Regulations. These Regulations provide the general guidelines for public procurement, but each government institution may also have its own internal procurement policy that provides more detailed requirements for its procurement.

Cost reimbursement is explained further in **3.2 Government Pay Relative to Actual Costs** below, and the pricing issues are discussed in **2.2 Negotiating Tenders** below.

1.3 Public Sector Procurement Procedures

The general procedures for procurement are provided in PR 16/2018. **However, according to Article 91 of PR 16/2018, further details of the procurement procedures will be provided in the relevant implementing regulations to be issued within 90 days of the issuance of PR 16/2018.**

For the procurement of goods, construction work and other services, the applicable procurement types are as follows:

- E-purchasing – this type of procurement is possible when the required goods or services are already available in the electronic catalog.
- Direct procurement – this type of procurement is for goods or services with a maximum value of IDR200 million, and is conducted by:
  - (a) a direct purchase or payment to the goods or services provider for the procurement of goods or other services using evidence of payment or a receipt; or
  - (b) a request for a proposal that includes the clarification and price and technical negotiation for direct procurement (using a work order).
- Direct appointment – the procurement method of directly appointing one provider. A direct appointment is only allowed in the following situations:
  - (a) if the work is suddenly required for a conference for an international commitment that will be attended by the President or Vice President;
  - (b) for goods or services that are secret in nature and for the interest of the state;
  - (c) for a building's construction which is one construction system and one liability for the building failure;
  - (d) for work or services that can only be performed by one provider;
  - (e) for the procurement of seeds for the sustainability of the food supply;
  - (f) for work related to a public facility for a lower income community;
  - (g) for work that can only be performed by one holder of the registered copyright or a party that has obtained permission from the holder of the copyright; or
  - (h) for goods, construction work or other services that have been declared a failure after the re-tender.

In a direct procurement, one goods or services provider is invited to join technical and price negotiations.

- Express Tender (*Tender Cepat*) – this is conducted in the event that:
  - (a) work specifications and volume are already known in detail; and
  - (b) the tender participant is already qualified under the vendor management system (*sistem informasi kinerja penyedia*).

In general, an express tender is conducted with the following procedure:

- (a) the bidder is already qualified in the vendor management system (*sitem informasi kinerja penyedia*);
- (b) the bidder only submits a price proposal;
- (c) a price proposal evaluation is conducted using the application; and
- (d) the determination of the winner is based on the lowest price proposal.

- Tender – this method is used if the related work or services cannot be procured using any other method.

Under PR 18/2016, the procedure for a tender is as follows:

- (a) qualification - there are two types of qualification, ie prequalification and post-qualification. Prequalification is for the procurement of goods, construction work or other services which are complex in nature. Otherwise, the post-qualification method can be used;
- (b) announcement and/or invitation;
- (c) registration and collecting the selection document (*dokumen pemilihan*);
- (d) aanwijzing (explanation);
- (e) submission of bid documents - threebid documents can be submitted: one-file submission, two-file submission, and two-stage submission. The one-file submission is used in the event that the bid will be evaluated using the Lowest Price method, as explained in **2.2 Negotiating Tenders**. The two-ile submission is used if the evaluation of the technical aspect of the bid (contained in the 1st file) is required before opening price proposal (contained in the 2nd file). The two-stage submission is used if the technical specifications cannot be determined yet, if several alternative technologies or designs are available for the work, if there may be a change to the technical specifications following the submission of bid proposals by the bidders, and/or if a technical adjustment is required;
- (f) evaluation of the bid document – please see **2.2 Negotiating Tenders** on the bid document evaluation method;
- (g) determination and announcement of the tender winner; and
- (h) objections (for the procurement of construction work in particular, there is also an appeal for an objection (*sanggahan banding*)).

For the procurement of consultancy services, the applicable procurement types are as follows:

- selection is used for consultancy services with a value of more than IDR100 million. The procedure for procurement through selection is the same as for a Tender for goods, construction work or other services, as described above;

- direct procurement is used for consultancy services with a value of up to IDR100 million. The procedure for a direct procurement for goods, construction work or other services also applies to direct procurement for consultancy services;

- a direct appointment for consultancy services is only allowed in the following situations:

  (a) if the consultancy services can only be provided by one provider;
  (b) if the consultancy services can only be provided by one holder of the registered copyright or a party that has obtained permission from the holder of the copyright;
  (c) for consultancy services in the legal field (legal consultant, advocate, etc); or
  (d) a repeat order to the same consultancy services provider.

The procedure for a direct appointment for goods, construction work or other services also applies to a direct appointment for consultancy services.

1.4 Common Types of Procurement Procedures

As a general rule, unless allowed otherwise, the procurement of goods and services requires a Tender or Selection, as described above. However, as explained in **1.3 Public Sector Procurement Procedures**, the type of procurement will be determined during the preparation for the procurement, taking into consideration the type of goods/services to be procured, the value of the work, etc.

1.5 Eligibility to Bid for Public Sector Opportunities

Under Article 17 of PR 16/2018, a tender participant must have the qualifications required under the prevailing laws and regulations. It could be suggested that the intention of PR 16/2018 is not to generalise the requirements or qualifications for tender participants but rather to provide additional requirements applicable in each sector. The qualifications and requirements for tender participants tend to vary from one business sector to another.

In addition to the above, specifically for an international tender, a foreign entity hthat provides goods or construction work must establish a co-operation with a local entity in the form of a consortium, sub-contract or other form of co-operation.

1.6 Compliance and Ethics Rules

Article 7 of PR 16/2018 imposes the following ethical requirements on the parties that participate in procurement (including contractors):

- to perform their tasks in an orderly manner, with a sense of responsibility to achieve the target;
- to work in a professional and independent manner, and keep the procurement documents confidential;
- to not influence another party (directly or indirectly) in a way that may result in unfair competition;
- to be liable for every decision made under the written agreement between the parties;
- to avoid and prevent any conflict of interest among related parties;
- to avoid and prevent any waste of state assets;
- to avoid and prevent the misuse of authority and/or collusion; and
- to not receive, offer or promise to give or receive a gift, reward or commission, in any form.

In addition to the above, contractors also usually need to sign an integrity pact (*pakta integritasi*), under which they undertake to not engage in collusion, corruption and nepotism practices in the procurement of goods or services.

1.7 Disappointed Bidders

In general, the public procurement rules allow a disappointed bidder to challenge a procurement award during the objection period. According to LKPP 14/2012, the challenge can be submitted individually or together with another participant, if it is found that:

- the procurement procedure has not been complied with;
- there is possibility of unfair competition; and/or
- authority has been misused by the relevant authorities.

The participant who submits the appeal must also submit an appeal challenge bond of 1% of the total owner's estimate.

In addition to the above, if an objection submitted during the objection period is rejected, the disappointed bidder may also challenge the procurement award through the following:

Supervisory Commission on Business Competition

The Supervisory Commission on Business Competition (*Komisi Pengawas Persaingan Usaha* or the " **KPPU** ") supervises the enforcement of the Indonesian Anti-Monopoly Law (Law No. 5 of 1999 on the Prohibition against Monopolistic Practices and Unfair Business Competition) and presently has nine members. The KPPU evaluates agreements,

business activities and the presence or abuse of a dominant position which may lead to a monopoly or unfair business competition, provides suggestions for government policies, publishes guidelines and other notes related to the Anti-Monopoly Law, and regularly reports on its work.

The procedure for case handling by the KPPU is provided in the Anti-Monopoly Law and KPPU Regulation No. 1 of 2010 on the Procedure for Handling Cases. A case is usually created based on a report from a party complaining about a possible violation of the Anti-Monopoly Law, or on the KPPU's own initiative. A case based on a complaint consists of the following phases: submission of the report, clarification, an investigation, documentation, KPPU panel proceedings and finally the KPPU panel's decision. If the complainant's report is accompanied by a claim for compensation, the phases consist of submission of the report, clarification, KPPU panel proceedings, and finally the KPPU panel's decision. The proceedings may comprise a Preliminary Examination and a Follow-Up Examination. The KPPU Council must decide whether a violation of the Anti-Monopoly Law has occurred based on the evidence obtained from the examinations and investigation within 30 business days of completion of the Follow-Up Examination. The decision must be read out in a session declared open to the public, and conveyed immediately to the reported party.

Administrative Court
If the object of the dispute is a decision issued by the government (eg, a decision on the winner of a procurement tender), the dispute must be resolved in the relevant Administrative Court (Pengadilan Tata Usaha Negara) under Law No. 5 of 1986 as lastly amended by Law No. 51 of 2009 on Administrative Courts ("**Administrative Courts Law**").

Under the Administrative Courts Law, the object of a dispute over which the administrative courts have jurisdiction can be a state administrative decision (*beschikking*), defined as a written decision issued by a state administration agency/official on a state administration legal action under the applicable laws, that is concrete, individual and final in character, and has legal consequences for a person or a civil legal entity (eg, a permit/decision on the winner of a procurement tender).

Any person or civil legal entity that believes that its interests have been harmed by a state administrative decision can submit a complaint to the relevant administrative court. In order to simplify the examination of a dispute, once a dispute has been registered with the court's registry, staff members of the registrar's office will compose a summary of the dispute before submitting it in formal form to the Chief Justice of the Court. When assessing the formal requirements for a complaint, the registrar or registrar's staff may provide notes about the complaint, which are then submitted to the Court's Chief Justice to be followed up by the dismissal procedure.

Upon completion of the administrative assessment, the Chief Justice will follow the dismissal procedure to determine whether or not the complaint is eligible for court proceedings.

Preliminary hearings are then held before the main hearings of the complaint begin, in order to provide the parties an opportunity to clarify any obscure claims. The objective of a preliminary hearing is to develop a complete case. All proceedings during the preliminary hearings are dependent upon the wisdom and prudence of the Head of the Panel of Judges. In the preliminary hearings, the claimant must complete his/her claims, and/or the defendant must provide information about the disputed state administrative decision. These hearings do not always have to be held separately.

After the preliminary hearings, the main hearings begin. In general, the procedure is the same as for civil proceedings, excluding mandatory mediation.

Like those in District Courts, trials in Administrative Courts (also considered courts of first instance) should be concluded within five months of the lawsuit being registered, but can take longer in practice.

1.8 Handling Disputes
To date, there are no special rules or regulations on handling disputes with government customers in addition to Presidential Regulation No. 16 of 2018 on the Procurement of Goods and Services, as explained in **1.1 Basic Statutes Governing Public Procurement**, above.

2. Contract Award Process

2.1 Tender Procedures for Soliciting Offers
The General Procurement Regulations provide a formal process for soliciting proposals from potential government contractors.

Under PR 16/2018, the process of soliciting proposals is as follows:

- **procurement planning stage** – during this stage, the government identifies the goods and services to be procured, the needs for the procurement, and the budget. The planning stage consists of the preparation and formulation of the (i) technical specifications/terms of reference; (ii) cost estimate; (iii) work package; (iv) supporting costs; and (v) consolidation of the goods and services into one package so that they can all be procured in one procurement;

- **announcement of the general plan to procure the goods or services –** once the budget has been determined, the relevant government institution announces the Procurement of Goods/Services General Plan through the Procurement Information System General Plan;
- **procurement preparation stage –** the preparation stage includes the determination of the (i) owner's estimate; (ii) draft contract; (iii) technical specifications/terms of reference; (iv) amount of any advance payment, advance payment bond, performance bond, or warranty period bond; (v) warranty period; (vi) price adjustment; and (viii) selection of the procurement method, including the determination of whether the procurement will use the pre-qualification or the post-qualification method.

Following the procurement preparation stage, the government proceeds with the procurement process (eg, qualification and announcement of the procurement). Please also see **1.3 Public Sector Procurement Procedures** for the complete procurement process.

2.2 Negotiating Tenders

Generally speaking, the regulation does not allow for price negotiation, except for procurement using a direct appointment, direct procurement and for the procurement of consultancy services. However, under LKPP 14/2012, it is possible for a public tender to have negotiations of the price, provided that fewer than three tender participants submit a price proposal.

Under LKPP 14/2012, the price negotiations must be based on the owner's estimate, and the total price negotiated cannot be above the total owner's estimate. However, if all the price proposals are above the owner's estimate, price negotiations will be conducted with the tender participant who submits the lowest price; if an agreement cannot be reached, then the negotiations will continue with the tender participant who has submitted the second lowest price; and if an agreement cannot be reached with any tender participant, the tender will be deemed to have failed.

Please note that, in the evaluation of the proposal or bid document (*dokumen penawaran*), the determination of the winner is not exclusively based on the lowest price; it may also be based on other factors, such as the quality or the combination of price and quality, depending on the goods/services to be procured. For the purpose of determining the examination method of the proposal or bid document, PR 16/2018 differentiates between two categories – ie, procurement of (i) goods, construction work or other services, and (ii) consultancy services, which are explained further below:

- For the procurement of goods, construction work or other services, the examination method for the proposal or bidding document is as follows:
  - (a) Lowest price (*harga terendah*) – a method of evaluating procurement based on the lowest price proposal made by the tender participant who has the technical qualifications.
  - (b) Score system (*sistem nilai*) – a method of evaluating procurement based on the highest score, whereby the government scores the elements set out in the tender document (eg, price and technical criteria).

The examination of bids under the score system is used for procurement that is highly influenced by technical quality, so that the technical advantage needs to be considered equally with the price.

  - (a) Cost assessment during the economic life system (*sitem penilaian biaya selama umur ekonomis*) – a method of evaluating procurement based on a combination of the economic life of the goods offered, the price, the operating cost, maintenance cost, and the residual value within the specified operating period.

- As for consultancy work, the proposal or bid document examination method is as follows:
  - (a) Quality-based examination method (*metode evaluasi berdasarkan kualitias*) – a method of evaluating bids based on the best quality of the technical bids, continued by a technical and cost clarification and negotiations.
  - (b) Quality and cost-based examination method (*metode evaluasi berdasarkan kualitas dan biaya*) – a method of evaluating bids based on the best combined value of the corrected technical and cost bids, continued by a technical and cost clarification and negotiations.
  - (c) Budget ceiling-based evaluation method (*metode evaluasi berdasarkan pagu anggaran*) – a method of evaluating bids based on the best quality technical bids made by participants whose corrected cost bids are lower than or equal to the budget ceiling, continued by a technical and cost clarification and negotiations.
  - (d) Lowest cost evaluation method (*metode evaluasi berdasarkan biaya terendah*) – a method of evaluating consulting services based on the lowest corrected cost bid made by a consultant whose technical bid score exceeds the threshold for the specified technical qualifications, continued by a technical and cost clarification and negotiations.

In order to determine whether or not the price is reasonable, the government must establish an owner's estimate (*harga perkiraan sendiri*) as the price benchmark for the selection, during the procurement preparation stage.

Under PR 16/2018, the owner's estimate is used as: (i) the threshold for deciding whether or not the price proposed

by a bidder is reasonable; (ii) the highest price proposed by a bidder; and (iii) the basis for determining the amount of the performance bond for the offer valued at less than 80% of the owner's estimate.

In general, no specific government (or project owner) audit will be conducted of a price submitted by a tender participant. However, under LKPP 14/2012, a reasonable price evaluation (*evaluasi kewajaran harga*) may be conducted in the following situations:

- to clarify an arithmetic correction;
- to clarify if the offered domestic component is different from the estimate made by the project owner; and
- to clarify the requested reasonable price if the price proposal is below 80% of the owner's estimate. This is if the related tender participant is declared the winner, and the bidder must increase the value of its performance bond to 5% of the owner's estimate.

2.3 Accounting Standards

The General Procurement Regulations do not include a specific regulation on the accounting standards to use for the preparation of price proposals. A requirement to comply with certain accounting standards during the preparation of the bid proposal may be included in the tender documents on a case-by-case basis.

2.4 Verification of Tenders

The General Procurement Regulations do not include a specific certification requirement. The requirement to provide certification in support of the price offered may be included in the tender documents on a case-by-case basis.

2.5 Accounting and/or Estimating Systems Subject to Prescribed Standards/Requirements

For the list of the relevant regulations, please see **1.1 Basic Statutes Governing Public Procurement**, above.

For the particular accounting standards that apply to offerors, please see **2.3 Accounting Standards**, above.

2.6 Accounting and/or Estimating Systems Subject to Audit or Inspection Requirements

Generally, under Article 76 (3) of PR 16/2018 and Head of Finance and Development Supervisory Body Regulation No. PER-362/K/D4/2012, the government internal auditor (*aparat pengawas intern pemerintah*) is responsible for supervising every selection process at any stage (from the planning stage until the completion of the contract) for public procurement through an audit (probity audit), review, evaluation, overview and/or a whistle-blowing system.

In addition to the above, if a crime is alleged (such as corruption or fraud), the documents of a tender participant may be inspected by the relevant authority (eg, the Corruption Eradication Commission, District Attorney, or Police Force).

3. Post-Award

3.1 General Process and Terms and Conditions for Payment to the Contractor

Under Article 5 of PR 16/2018, the payment to the contractor under the contract can be a monthly payment, milestone payments, or a payment at the end of the contract's performance.

PR 16/2018 also allows payment to be made prior to the contract's performance as an advance payment, provided that the goods/service rendered provide the government with security for the payment made. An advance payment can be given to the goods or services provider, with the following conditions:

- for a small business, the maximum advance payment that can be given is 30% of the value of the contract;
- for a non-small business, the maximum advance payment that can be given is 20% of the value of the contract; and
- for a multi-year contract, an advance payment of 20% of the first-year contract or 15% of the value of the contract can be given.

Further, under Ministry of Finance Regulation No. 170/PMK.05/2010 on the Settlement of Payments using the State Budget, when issuing an invoice to the government, the contractor must base the invoice on the following:

- the Contract/Work Order;
- the minutes of work progress;
- completion of the Work Certificate or Transfer Certificate; and
- other proof of completion of the work that may otherwise be required.

The applicable regulations governing contractor payments are the General Procurement Regulations and Ministry of Finance Regulation No. 170/PMK.05/2010 on the Settlement of Payments Using the State Budget.

3.2 Government Pay Relative to Actual Costs

UnderLKPP 14/2012, payment for actual costs is only recognised for the procurement of consultancy services. However, in practice, the payment for actual costs may be determined further under the procurement documents; therefore, this kind of payment is possible for other types of procurement (ie, goods, construction and other services). This has been confirmed by LKPP officials. The actual costs that the government will pay are directly reimbursable costs for non-

personnel, consisting of travel costs, licensing costs, communication costs, and other out-of-pocket expenses.

The reimbursement of the above direct costs is subject to clarification of the following:

- conformity to the work plan;
- the activity volume and type of spending; and
- the unit cost compared to the market price.

For the list of relevant regulations, please see **1.1 Basic Statutes Governing Public Procurement**, above.

3.3 Rules Governing How Contractors Must Accumulate, Record and Report Costs

The General Procurement Regulations contain no specific provision on how the contractor must accumulate, record and report its costs.

However, if it is related to maintaining good governance with regard to the internal documents of the contractor, Law No. 8 of 1997 on Company Documents states that a company is required to have and keep such records as its annual balance sheet, profit and loss record, account number, daily transaction journal and every record of the rights and obligations of the company. Given this, contractors must maintain good records of their annual balance sheet, profit and loss record, account number, daily transaction journal and all records of their rights and obligations.

The provision on how contractors must accumulate, record and report their costs to the government when performing a contract may be regulated further under the implementing contract between the government and the contractor.

3.4 Purchasing Goods or Services from a Foreign Contractor

Please refer to **3.3 Rules Governing How Contractors Must Accumulate, Record and Report Costs** regarding the prescribed rules and/or procedures governing how contractors must accumulate, record and report costs.

3.5 Rules That Apply to a Foreign Subcontractor's Accounting and Pricing

Please refer to **3.3 Rules Governing How Contractors Must Accumulate, Record and Report Costs** regarding the prescribed rules and/or procedures governing how contractors must accumulate, record and report costs.

3.6 Access to a Contractor's Records

In general, the General Procurement Regulations contain no express provision that gives the government the general right to access a contractor's records. However, this requirement is usually included in the tender document and/or the contract so that if the Finance and Development Supervisory Body (*Badan Pengawas Keuangan dan Pembangunan* – "**BPKP**") conducts an audit, the government will have the right to request the document requested by the BPKP from the contractor.

For the list of relevant regulations, please see **1.1 Basic Statutes Governing Public Procurement** above.

3.7 Audit Rights

In general, an audit may be conducted by the BPKP on anything related to state finances, including the negotiation of fixed price contracts and/or cost-reimbursement contracts.

BPKP is an internal government supervisory office under the supervision of and directly responsible to the President. Its duty is to attend to government matters in the supervision of state/regional finances as well as national development. In general, its audit function covers the planning, execution and accountability of state/regional expenses and national development and/or other activities whose financing is entirely or partly covered by the state/regional budget and/or a subsidy (including entities with the central government and/or regional government's financial interests or other interests and the accountability of the financing of state/regional finances).

The government's audit rights do not differ according to contract type, but BPKP's investigative audit is conducted upon request, either from BPKP itself as a follow up to the result of any operational audit conducted by BPKP, from a recommendation or suggestion from the public, from a court or investigator (ie, the Police or District Attorney), or from the relevant government agency.

There is no exact provision on when the government (or in this case BPKP) may perform an audit, so an audit may be conducted during or post-award.

The prevailing regulation does not impose a time limit or suggest how long an investigative audit should take. It generally takes around three months for the BPKP to finally issue a recommendation or the result of the audit, but this depends on their findings.

The applicable regulations are Presidential Regulation No. 192 of 2014 on BPKP, and BPKP Regulation No. 17 of 2017 on Guidelines on Management in the Field of Investigative Audits.

3.8 Recovering Costs

The contract between the government and the contractor usually includes a provision that allows the government to impose a fine on the contractor or require the contractor to pay back to the government any cost paid by the government which cannot be reimbursed.

Please also note that inclusion of costs that are not reimbursable by the government may, to a certain extent, be considered an act of corruption (causing the state to suffer a loss) under Articles 2 and 3 of the Anti-Corruption Law (Law No. 31 of 1999 as lastly amended by Law No. 20 of 2001). Under those Articles, the convicted may be sentenced to up to 20 years in prison and fined up to IDR1 billion.

The regulation is silent on any time limitation on the government's ability to assert a claim against the contractor to recover any "unallowable" costs, so it is subject to the agreement between the parties. However, if it is not agreed under the contract, the time limit under the Indonesian Civil Code for a civil claim is 30 years.

4. Review Procedures

4.1 Resolving Disagreements Between the Government and a Contractor

In principle, under Article 85 of PR 16/2018, any dispute between the parties that occurred during the performance of the procurement of a government goods/services contract may be resolved through Contract Dispute Settlement Services (*Layanan Penyelesaian Sengketa Kontrak*), arbitration or the courts, in accordance with the prevailing legislation.

Contract Dispute Settlement Services will be provided by LKPP and will be regulated further under an LKPP regulation. Note that, as PR 16/2018 was only issued on 22 March 2018, to date the implementing regulation of the PR 16/2018 (including on the dispute settlement forum). According to Article 91 of this Regulation, the LKPP Regulation on this dispute settlement forum will be issued within 90 days of PR 16/2018 (ie, 90 days after 22 March 2018).

Contract Dispute Settlement Services by LKPP

Pending the issuance of the LKPP's Regulation, the exact procedure for the settlement of disputes through the LKPP remains unclear.

District Court

Please note that, in practice, if no forum for dispute settlement (ie, arbitration or the Contract Dispute Settlement Services or other district court) has been chosen under the contract between the government and the service/goods provider, the dispute will be settled in the district court with jurisdiction over the defendant's domicile.

If the dispute is submitted to the Indonesian courts, the Indonesian civil case procedure is as follows:

- the plaintiff registers the lawsuit with the District Court's clerk's office;
- the court then serves the defendant a summons to appear in court for the first hearing;
- in the first hearing, the judge orders the parties to select a mediator to resolve the dispute through mandatory mediation. If mediation fails to resolve the dispute, the mediator returns the dispute to the judge for the court to rule on;

the defendant is then ordered to submit a response to the plaintiff's claim, after studying which the plaintiff can submit a rejoinder; the defendant can then respond to the rejoinder in a counterplea;

- upon completion of these stages, the judge orders the plaintiff to submit its evidence, potentially including witnesses who can support the grounds on which the claim is based; the defendant can then rebut the plaintiff's claims with written evidence and/or the testimony of witnesses;
- both parties then submit their closing arguments; submitting a closing argument is not mandatory but, in practice, the parties do usually submit one; and
- finally, the court hands down and reads out its ruling.

A Supreme Court Circular Letter of 2014 requires trials in courts of first instance to be concluded within five months of the lawsuit being registered, but in practice civil court proceedings (in the court of first instance) often take longer.

Arbitration Tribunal

Theoretically, the Indonesian courts should dismiss any dispute that has been agreed to be settled through arbitration (Article 3 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution – "**Arbitration Law**").

If disputes have been agreed to be settled through arbitration, the procedure is generally similar to the above, excluding mandatory mediation. Under the Arbitration Law, in addition to complying with the requirements under the contract between the government and the provider of the goods/services (eg, serving a notice of the dispute, etc), the party initiating the dispute must first notify the other party by registered mail, telegram, telex, facsimile or e-mail that the dispute will be settled through arbitration (Article 8 (1) of the Arbitration Law). Arbitration should be concluded within 180 days of the arbitration tribunal being established; however, if necessary, this can be extended by agreement between the disputing parties (Article 48 (1) and (2) of the Arbitration Law).

Indonesia is a contracting state to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Under the Arbitration Law, international arbitration awards will be recognised if they satisfy the requirements under the Arbitration Law, which defines them as awards handed down by an arbitration institution or in-

dividual arbitrator(s) outside the jurisdiction of the Republic of Indonesia.

The procedure for the enforcement of an international arbitration award under the Indonesian Arbitration Law is divided into three stages: registration of the award, recognition of the award, and enforcement of the award.

Registration of the Award
The award must be registered by the Arbitrator or its proxy with the Central Jakarta District Court ("**CJDC**"). At the registration stage, several documents must be submitted to the CJDC, including the original or an authenticated copy of the Award and its official Bahasa Indonesia translation (translated by a sworn translator), and the original or an authenticated copy of the arbitration agreement and its official Bahasa Indonesia translation.

Recognition of the Award
Once the award has been registered, the party wishing to enforce the award can apply for an *exequatur*/foreclosure decree (an enforcement order). If this application is granted, the *exequatur* decree or enforcement order will serve as an award, having permanent legal force and will therefore be final and binding.

After receiving the application for the recognition of the award and its supporting documents, the Chairman of the CJDC will decide whether the award satisfies the following requirements:

- the award was rendered by an arbitrator or arbitration panel in a country which is bound to the Republic of Indonesia under a bilateral or multilateral treaty on the recognition and enforcement of international arbitration awards;
- the award falls within the scope of Indonesian commercial law, ie, banking, finance, investment, industry or intellectual property rights; and
- the award is not contrary to public order.

If the award does not satisfy the above requirements, the Chairman of the CJDC will refuse to recognise and enforce it (*non-exequatur*).

Enforcement of the Award
If the losing party does not comply with the award voluntarily, the winning party can apply for an *Aanmaning* decree, under which the Chairman of CJDC will order the losing party to appear before the Chairman to be warned to comply with the award within eight days of the date of *Aanmaning*.

If the losing party fails to comply with the *Aanmaning* or does not appear before the CJDC after being summonsed properly, the winning party can then submit an application for an executorial attachment decree along with a list of the losing party's assets to be attached. If accepted, the Chairman of the CJDC will issue a decree/order to seize/attach the losing party's assets (Executorial Order).

Once the assets have been seized/attached, the Court will issue a decree ordering their sale at public auction or through a party appointed by the Chairman of the CJDC. The proceeds from the auction will then be transferred to the winning party.

In addition to arbitration, several alternative methods of dispute resolution are recognised under the Arbitration Law, including mediation, consultation, negotiation, conciliation and an expert's opinion. However, in practice, except for arbitration and mandatory mediation (in the courts), the other alternative methods of dispute resolution are rarely used in Indonesia.

4.2 Agencies, Courts and/or Organisations Permitted to Resolve Disputes

The Indonesian courts are authorised to settle a dispute if no arbitration forum or other alternative dispute resolution forum has been agreed to. The dispute must be submitted to the district court with jurisdiction over the defendant's domicile, unless clearly agreed otherwise by the parties. For instance, if the provider of the goods/services is domiciled in South Jakarta, the government must file a lawsuit in the South Jakarta District Court.

Besides the courts, the Indonesian National Arbitration Board/Badan Arbitrase Nasional Indonesia (BANI) is the major arbitration institution in Indonesia agreed to for dispute resolution by almost all business actors in Indonesia, including for disputes with the Indonesian government or state-owned enterprises. Several other arbitration institutions also exist in Indonesia: Badan Arbitrase Pasar Modal Indonesia (BAPMI), Badan Arbitrase Syariah Nasional Indonesia (BASYARNAS), Badan Arbitrase dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia (BADAPSKI) and Badan Arbitrase & Mediasi Perusahaan Penjaminan Indonesia (BAMPPI).

Another new alternative being introduced by the issuance of PR 16/2018 is the Contract Dispute Settlement Services. However, as the exact procedure for the settlement of disputes through the LKPP remains unclear, the binding effect of any decisions issued by this institution is also unclear.

Note that, in most government procurement contracts, a domestic arbitration institution (in this case, BANI) is the most preferred forum to settle any dispute arising out of the contract.

Under the BANI Rules dated 1 January 2018, the arbitration process should be concluded within 180 days of the

arbitration tribunal being established. If necessary, this can be extended by agreement between the disputing parties. In this case, the dispute is deemed to be very complicated. Under his discretion, the tribunal may extend the period of arbitration through written notice to the disputing parties. The number of tribunal member depends on disputing parties' agreement (one, three or more members is allowed).

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5. Miscellaneous

5.1 Other Unique Aspects

As far as is known, there are no other issues related to the accounting aspect, or cost and pricing issues. However, these issues may be covered by the LKPP regulation that is expected to be issued within 90 days of PR 16/2018 becoming effective, or regulated under the procurement regulations of the particular sectors.