

Arrangement of Procurement of Defense Equipment That Supports The Development of The Defense Industry

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Abstract--*The procurement of defense equipment, in accordance with the mandate of Law Number 16 of 2012 concerning Defense Industry is necessary to consider the capabilities of the defense industry and the confidentiality of the controlled technology. The practice of procuring defense equipment for the benefit of Indonesian National Army by the Ministry of Defense based on Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/Services and Regulation of the Minister of Defense Number 16 of 2019 concerning The Implementation of Procurement of Defense and Security Equipment in the Ministry of Defense and the Indonesian National Army. The fact is that the procurement of defense equipment with security and confidentiality dimensions has not been regulated. Considering that the defense equipment is complex and have their own characteristics that are different from government goods in general, the procurement process needs to pay attention to the security and confidentiality dimensions. Procurement of defense equipment is part of the exempt public information, if it is opened and provided to applicants for public information, it can endanger national defense and security. In the procurement of defense equipment there are state secrets as part of national security which have an important role in safeguarding strategic/tactical information held by a country.*

Keywords- *Defense equipment; procurement; security; confidentiality; defense industry.*

I. INTRODUCTION

In national defense and security efforts carried out through the defense and security system of the people, the entire population requires the availability of defense and security equipment. Defense and security equipment are all means of equipment to support state defense and security and public order. In military life, the main equipment and weapon system is known as part of the defense and security

equipment tool, which is the main equipment tool and its supporters as a weapon system that has the ability to carry out the main tasks of the Indonesian National Army. The main equipment and weapon system has special characteristics, namely having certain technical specifications, being loaded with high technology and complexity which continues to develop along with technological advances. These technological advances affected the military world, causing an important change called Revolution in Military Affairs (RMA).[1]

The procurement of defense equipment is basically the same as the procurement of goods and services in general. Based on its characteristics, the procurement of defense equipment is highly dependent on the role of the government, various forms of policies and regulations.[2] For this reason, the procurement process needs to consider the security and confidentiality dimensions that have not been regulated in the Government's procurement of goods and services regulations. The Indonesian National Armed Forces Headquarters cannot provide the type and number of defense equipment that are purchased annually because the Indonesian National Army implements this policy on the basis of confidentiality. The secrecy of the procurement of defense equipment was also stated by the Minister of Defense Prabowo Subiyanto after holding the first work meeting with Commission I of the People's Representative Council of the Republic of Indonesia. However, the procurement of defense equipment is still carried out through an auction mechanism in accordance with the provisions of the Presidential Regulation concerning Procurement of Government Goods/Services.

Provisions for the procurement of government goods and services in general are regulated in Presidential Regulation Number 16 of 2018

concerning Procurement of Government Goods/Services. In Article 90 of the Presidential Regulation states that the procurement of defense and security equipment is carried out in accordance with the provisions of laws and regulations in the defense industry. In terms of the Presidential Regulation concerning the requirements and procedures for the procurement of defense and security equipment does not yet exist, the procurement shall be carried out in accordance with the provisions of the Presidential Regulation. As for the laws and regulations in the defense industry, one of which Law Number 16 of 2012 concerning Defense Industry.

The provisions of Article 44 paragraph (4) of Law Number 16 of 2012 concerning Defense Industry state that further provisions regarding the terms and procedures for the procurement of defense equipment and security for defense industrial products are carried out by means of a long-term contract regulated by a Presidential Regulation. As a follow-up, Presidential Regulation Number 27 of 2019 concerning Terms and Procedures for the Procurement of Defense and Security Equipment for Defense Industry Products with Long-Term Contracts was issued. The mandate of Article 44 paragraph (4) of Law Number 16 of 2012 was actually in line with the mandate of Article 90 paragraph (2) of Presidential Regulation Number 16 of 2018, that it is necessary to prepare a Presidential Regulation regarding the requirements and procedures for the procurement of defense and security equipment. However, there is disharmony in its implementation, so that Presidential Regulation Number 27 of 2019 concerning Terms and Procedures for the Procurement of Defense Equipment and Security for Defense Industry Products with Long-Term Contracts, it's substance only focuses on discussing how to realize a procurement of defense equipment and security for defense industrial products carried out by long-term contracts, does not contain any other substance in accordance with the mandate of Law Number 16 of 2012 concerning Defense Industry, for example regarding the tender (bidding) mechanism for the procurement of defense equipment with foreign suppliers, the administration the procurement of defense equipment from abroad has not included local aspects of content and offsets, Overseas suppliers who wish to optimally provide content and

offset local values to the defense industry that are able to become local partners to build the defense equipment domestically are not assessed by the procurement administration. The results of the study by the Directorate of Special Procurement Policy and Defense and Security Government Goods/Services Procurement Policy Agency (LKPP) also stated that the problem of procedures and stages of procurement of defense equipment was too complicated and costly, the existing regulations also did not provide clarity regarding the mechanisms for fulfilling domestic content levels, research and development in weapons technology, and offsets in the procurement of defense equipment.[3]

The results of previous research, it was stated that based on the hierarchy of legal norming, the regulation of the procurement of goods and services can be said to be imperfect because the legal instruments for the procurement of new goods and services are at the level of implementing regulations in the form of a Presidential Regulation so that it needs to be regulated through law.[4] For this reason, the authors argue that it is necessary to regulate the procurement of defense equipment that supports the defense industry by considering, first, the existence of special characteristics of defense equipment whose procurement requires different policies and regulations from the procurement of goods in general, second, fulfilling the mandate of Law Number 16 of 2012 concerning the Defense Industry so that the procurement of defense equipment can support the development of the domestic defense industry, third, to fill the legal void at the operational level related to the procurement of defense equipment so that there is legal certainty.

II. PROBLEMS

Based on the description above, the issues that will be discussed in writing this paper are how to procure defense equipment according to current regulations, whether the procurement of defense equipment is part of public information, and how is the analysis based on statutory theory.

III. RESEARCH METHOD

The research method used is normative juridical research method, meaning that law is

conceptualized as norms, rules, principles, or dogmas. Data obtained from literature observations, namely secondary data, which is then compiled, explained and analyzed by providing conclusions. [5]

IV. DISCUSSION

1. Procurement of defense equipment according to current regulations.

Indonesia has been highly dependent on foreign countries in the field of defense technology. As a result, it is very difficult to be able to formulate a definite long-term defense development plan. Dependence on foreign products is very vulnerable to political factors, such as restrictions and embargoes.[6] The lack of independence in the procurement of defense means a weakening the readiness and deterrence of the Indonesian people. Politically, this condition will leave Indonesia vulnerable to political pressure from other countries, which may result in the possibility of being subject to an embargo or restrictions on certain equipment that hinder the construction and maintenance of defense facilities. For this reason, it is necessary to empower the national industry for the development and provision of national defense facilities. Presidential Decree Number 59 of 1983 is the first step in the development of strategic industries, including the defense industry. The Presidential Decree underlies the birth of PT Industri Pesawat Terbang Nasional (which is currently PT Dirgantara Indonesia) which then in charge of the defense industry in the aerospace sector, PT Penataran Angkatan Laut (PAL) which is in charge of the maritime industry, PT Perindustrian Angkatan Darat (Pindad) which is in charge of weapons and ammunition, PT Dahana in charge of explosives, and PT Lembaga Elektronika Nasional (LEN) in charge of electronic equipment and defense communications.

So far these strategic industry has produced a variety of defense equipment products for defense capabilities, but in practice it has not been in line with the procurement of defense equipment for the benefit of the Indonesian National Army. For this reason, the provision of defense equipment that supports the development of the defense industry needs to be implemented. One of the reasons is because defense equipment is all means of equipment to support national defense, especially

the main equipment and weapon system which is complex and has its own characteristics that are different from government goods in general. It is complex in the sense that the procurement of goods / services has high risk, requires high technology, uses specially designed equipment, and / or is difficult to define technically how to meet the needs and objectives of the procurement of goods / services.

In a limited meeting of Kabinet Indonesia Maju on November 22, 2019, the President reminded the Minister of Defense that the procurement of defense equipment was not only project-oriented, but also increased the independence of the domestic defense industry by involving State-Owned Enterprises and the private sector in the production of domestic defense equipment. Thus, dependence on imports of the main equipment and weapon system from abroad can be reduced. The orientation for the procurement of defense equipment must be carried out by means of a strategic partnership to increase the independence and competitiveness of the nation so that it has the ability to produce cooperated the defense equipment.

The procurement of defense equipment which is oriented towards the independence of the domestic defense industry as expected by the President is a mandate Law Number 16 of 2012 concerning the Defense Industry. In the Defense Industry Law it is stated that the Defense Industry is a national industry consisting of state-owned enterprises and private-owned enterprises, either individually or in groups, which are determined by the government to partially or wholly produce defense and security equipment, maintenance services to fulfill strategic interests in the defense and security sector located in the territory of the Republic of Indonesia. Government support for the development of the defense industry is needed. The government's role is to be actively involved in supporting the defense industry through fiscal and non-fiscal policies.[7] Non-fiscal policies vary widely and have a very broad scope, such as laws and regulations that facilitate the pace and movement of the defense industry. Fiscal policy, which is primarily the government budget disbursed for the defense industry through the procurement of defense equipment for the benefit of the Indonesian National Army or other Ministries or Institutions in

an effort to reduce dependence on defense equipment from other countries.

The procurement of defense equipment products from the national defense industry is a form of implementation of Law Number 16 of 2012 concerning Defense Industry. As stated in Article 43 of Law Number 16 of 2012, which states, that Users are required to use domestic defense and security equipment, and are required to carry out maintenance and repair of domestic defense and security equipment. In the case of domestic defense and security equipment cannot be fulfilled by the defense industry, users and the defense industry can propose to the Defense Industry Policy Committee (*KKIP*) to use foreign products by procurement through direct intergovernmental processes or to manufacturers. As for those who are included as users, mentioned in Article 8 of Law Number 16 of 2012, are the Indonesian National Army (*TNI*), the Indonesian National Police (*Polri*), Ministries and / or non-ministerial government agencies, as well as parties who are granted permits in accordance with the provisions, laws and regulations. In fact, the mandate of Law Number 16 of 2012 has not been well realized, partly due to the changing Government policies, limited state expenditure budget and unsupportive implementing regulations. For the development of the defense industry, the policy and mechanism for purchasing Indonesian National Army's defense equipment must prioritize domestic purchases of products that can be made by Indonesian State-Owned Enterprises (*BUMN*). For example, PT Pindad has been able to produce all types of pistols and assault rifles. It also produces armored vehicles, tanks and other tactical combat vehicles. Meanwhile, PT PAL can produce warships up to the types of corvettes and frigates, so that what is purchased is only radar systems and missile systems which PT LEN cannot produce.

The market for defense equipment is basically the same as the market for goods and services in general, namely there are buyers and sellers who work together. The Ministry of Defense together with the authority of the Indonesian National Army have demand for defense equipment and from the supply side there is a defense industry, both domestically and abroad, providing defense equipment. Demand and supply are met in a contract bound by legality in which the buyer agrees to pay a certain amount for a specific product, which will be

delivered at the agreed time. In simple terms, a contract can be described as an agreement between two or more parties which has a certain commercial value. As befits an agreement, in a contract the parties that bind themselves are legal subjects, in this case civil law subjects.[8] Whereas in Article 1 number 44 of Presidential Regulation Number 16 of 2018, it is stated that what is meant by a contract is a written agreement between the Budget User or Budget User Proxy or Commitment Making Officer and the goods / service provider or self-managed implementer. In the context of the procurement of defense equipment, the government (in this case the Commitment Making Officer at the Ministry of Defense or the TNI) will frame a legal relationship with a provider of goods or services in a defense equipment procurement contract or service procurement contract. In other words, the government becomes a party to a contract that cannot position itself higher than the providers of goods and services. This is because in the law of agreement the parties have the same position, as reflected in Article 1338 paragraph (1) B.W., which reads: "all agreements legally made are valid as laws for those who make them". For this reason, efforts to realize the procurement of defense equipment that support the development of the defense industry, apart from being formulated in regulations, can also be implemented in the preparation of procurement contracts.

The implementation of the procurement of defense equipment for the benefit of the Indonesian National Army by the Ministry of Defense is guided by the Minister of Defense Regulation Number 16 of 2019 concerning the Implementation of the Procurement of Defense and Security Equipment in the Ministry of Defense and the Indonesian National Army. In Article 1 point 2 of the Minister of Defense Regulation Number 16 of 2019, it is stated that the procurement of defense equipment is an activity of procuring defense equipment by the Ministry of Defense or the Indonesian National Army which is financed by the State Revenue and Expenditure Budget (*APBN*), which has been in process since the pre-procurement preparation, until the handover of work results. The procurement stages are as follows:

- a. The pre-preparation stage is the initial stage of procurement, where at this stage a document consisting of a procurement reference document and a parallel loan process is

- required. Reference documents for the procurement of defense equipment, including the Budget User directive, planning requirements documents and budgeting documents, a Letter of Determination of Funding Sources for the procurement of defense equipment using the Foreign Loan facility. The parallel loan process documents are documents related to coordination between the Ministry of Defense and the Ministry of Finance regarding sources of procurement financing.
- b. The preparation stage for the implementation of the procurement of defense equipment, including determining the method of selecting providers, compiling procurement documents, compiling an Estimated Own Price (HPS) and determining the amount of the procurement guarantee. The process of selecting providers in this stage is carried out by the selection working group with reference to technical specifications in accordance with the procurement reference or technical specifications that have been evaluated and/or the Budget User/Proxy Budget User directive exists. The method used in selecting providers can be through direct appointment, special selection or direct purchase. Preparation of procurement documents which include selection documents and qualification documents containing procurement information and terms or conditions that must be met by prospective suppliers. In this stage, self-estimated prices are also compiled, namely the estimated price of the defense equipment value that will be procured and determined by the Commitment Making Officer (PPK) as the highest bid limit that can be submitted by the provider. Furthermore, it is determined the amount of procurement guarantee that must be fulfilled by prospective providers as administrative completeness in submitting bids.
 - c. Provider Selection Stage, regulates the mechanism for selecting providers, determination and notification of winners. The provider selection mechanism is carried out by pre-qualifying qualification assessments of the submission of a cover bid containing administrative, technical and price documents, as well as evaluation of bids. Bid evaluation is carried out on the evaluation of administrative documents by stating that bids that meet administrative requirements or do not meet administrative requirements are stipulated in the selection documents. The method of selecting the provider is through direct appointment, special selection or direct purchase according to the provisions and specifications of the defense equipment that will be held. Subsequently, the determination of the provider winner for the procurement of defense equipment by the Budget User or Budget User Proxy in accordance with the provisions and the Commitment Maker Officer notifies the provider.
 - d. The contract preparation and activation stage, in principle, is the same as the general procurement contract, however, if necessary, a more detailed contractual arrangement can be added to the contract clause agreed by both parties. Contract activation is an activity related to the existence of funding support from the Ministry of Finance, in the sense that the contract is declared effective if there is availability of funds from the Ministry of Finance which is ready to pay for the procurement of defense equipment according to the provisions.
 - e. The stage of implementation and delivery of work results, preceded by the implementation of a functional test/acceptance test by the provider and witnessed and evaluated by the functional test/acceptance test Team determined by the Commitment Making Officer. The results of the examination and acceptance of defense equipment are set forth in an official report signed by the inspection team and the recipient and provider which is reported to the Commitment Making Officer. After the work is 100% completed or in accordance with the stages as stated in the contract, the provider submits a request in writing to the Commitment Making Officer for the handover of the work.
- The author considers that the Minister of Defense Regulation Number 16 of 2019 has not regulated the tender mechanism for the procurement of defense equipment with foreign providers,

administration for procurement of defense equipment from abroad which includes local aspects of content and offsets, as well as assessment of procurement administration for foreign providers intending to provide optimal content and offset local value to the defense industry so that the procurement of defense equipment has not been able to support the development of the defense industry. The enactment of the Minister of Defense Regulation Number 16 of 2019 is limited to the Ministry of Defense and the TNI, even though defense industry production must also be used by other users besides the TNI so it is necessary to formulate arrangements for the procurement of defense equipment at the level of a Presidential Regulation which is at the same level as the procurement of goods in general. The Minister of Defense Regulation refers to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services which does not accommodate the dimensions of security or confidentiality so that it can be indicated that the procurement of defense equipment is part of public information.

2. Attempting to procure defense equipment is not part of public information.

In article 2 of Law Number 16 of 2012 states that confidentiality is one of the principles in the implementation of the defense industry. The purpose of "the principle of confidentiality" is that the implementation of the defense industry and the products of defense and security equipment related to the formulation of product design in the process or research and development activities of defense and security equipment technology must not be known by parties outside the defense industry and outside agencies related to the defense industry. In Article 3, it is stated that the implementation of the defense industry aims at realizing the independence of the fulfillment of defense and security equipment, increasing the production capacity of defense and security equipment, including maintenance services to be used in order to build a reliable defense and security force. In line with the mandate of Law Number 16 of 2012, the process of procuring defense equipment needs to consider security and confidentiality issues. In history there was a purchase of Tu-16 Badger fighters for the Republic of Indonesia Air Force from Russia based on the limited capabilities of B-25 fighters, an embargo on

spare parts from America, and to satisfy political ambitions, in 1957 which only a few officials knew. certain because at that time the TNI was facing a rebellion by the Revolutionary Government of the Republic of Indonesia (*PRRI*).

In article 17 of Law Number 14 of 2008 concerning Openness of Public Information, it regulates the types of information that are exempt from the obligation to be disclosed to the public. In the context of information in the field of defense and security, Article 17 letter c stipulates that every public institution is obliged to open access for every applicant for public information to obtain public information, except for public information which, if opened and provided to the applicant for public information, could endanger the defense and security of the state, which is about data regarding the estimated military and defense capabilities of other countries is limited to all actions and/ or indications of the country that could endanger the sovereignty of the Unitary State of the Republic of Indonesia (*NKRI*) and / or data related to military cooperation with other countries agreed in the agreement as secret or very secret. Furthermore, Article 17 letter j states that information may not be disclosed based on law. Meanwhile, the secrecy regulation in the Public Information Disclosure Law has not comprehensively regulated matters related to the parameters for determining and managing state secrets. Thus, in order to bridge the government's need in protecting information which is part of state secrets and the state's obligation to provide protection for human rights in obtaining information, comprehensive arrangements are required in the procurement of defense equipment, as well as to obtain clarity and certainty, the boundaries between which are the public domain and which should be kept secret for the sake of the nation. This affirmation aims to reduce the gray area between public and classified information, which state administrators categorize as very diverse, depending on the perceptions of each state administrator.

It is realized that building good governance requires public participation in government administration through providing access to public information so as to provide benefits for creating clean and efficient governance, preventing practices of corruption, collusion and nepotism, improving the quality of public supervision, and also increasing the

quality of public participation in the process of public policy formulation. Thus it can be said that openness to information can improve the quality of human life. Therefore, in relation to human rights, since 1946 the General Assembly of the United Nations (UN) adopted resolution 59 paragraph (1) which states that freedom of information is a fundamental human right and is a sign of all freedoms that will become the point of concern of the UN.[9] The right to obtain information is guaranteed in Article 28F of The 1945 Constitution of the Unitary State of the Republic of Indonesia, namely that every person has the right to communicate and obtain information to develop their personal and social environment, as well as the right to seek, obtain, possess, store, process and convey information by using all kinds of channels available. However, without the awareness and ability of everyone to use information to improve the quality of life, the guarantee of access to information will not provide concrete, constructive and positive benefits for society. In addition, the implementations of the right to communicate and obtain information must be balanced with the fulfillment of the obligations as stipulated in Article 28J paragraph (2) of The 1945 Constitution of the Unitary State of the Republic of Indonesia, namely that in exercising their rights and freedoms, everyone is obliged to comply with the restrictions stipulated by law to legislate with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and of fulfilling just demands in accordance with considerations of moral, religious values, security and public order in a democratic society. On the basis of information disclosure and human rights related to the security of a country, information related to the procurement of defense equipment needs to be limited and stipulated in laws and regulations as information that is exempted from the obligation to be disclosed to the public.

Arrangements for the procurement of defense equipment which contain dimensions of security and confidentiality to support the defense industry is one form of Indonesian legal politics. As it is said, law politics is the basic policy of state administrators in the field of law that will be, is being and has already been in effect, which originates from the values that apply in society to achieve the aspired state goals.[10] The procurement of defense equipment is part of the implementation of the national defense

strategy in order to build and maintain the national defense posture, so that security and confidentiality must be maintained, both in terms of main components or equipment, as well as information. Therefore, the legal politics of the Indonesian government needs to establish a regulation on the procurement of defense equipment which contains security and confidentiality dimensions to support the defense industry. The security dimension in question is the effort to secure information related to the procurement of defense equipment which, if opened to the public, could endanger the sovereignty of the Unitary State of the Republic of Indonesia. Meanwhile, the dimension of confidentiality in question is that information related to the procurement of defense equipment is only known by certain parties or is not generally known by the public. With this regulation, information regarding the procurement of defense equipment can be said to be information that is exempted from the obligation to be disclosed to the public because it has met the provisions stipulated in Article 17 letter j of Law Number 14 of 2008 concerning Openness of Public Information which states that information is prohibited disclosed under the Law.

3. Analysis based on statutory theory.

The policy of the Ministry of Defense in the procurement of defense equipment is made as much as possible to prioritize domestic production. If it is not possible and must be procured from abroad, efforts will be made to implement Government to Government, joint production, technology transfer, trade returns, offsets, guarantee of freedom of use and guarantee of spare parts, as mandated in Law Number 16 of 2012 concerning Defense Industry. However, this policy needs to be formulated into legislation at the implementation level in the form of a Presidential Regulation, considering that the government procurement regulations are also in the form of a Presidential Regulation.

Juridically, there is a legal vacuum at the operational level in the procurement of defense equipment which is sourced and based on higher norms, namely Law Number 16 of 2012 concerning the Defense Industry. At the level of the Presidential Regulation, the implementation of the procurement of defense equipment that has taken place so far is guided by Presidential Regulation Number 16 of 2018 concerning Government Procurement of

Goods / Services. Article 90 of the Presidential Regulation states that the procurement of defense equipment is carried out in accordance with the provisions of laws and regulations in the defense industry sector. Likewise, Law Number 16 of 2012 Article 44 paragraph (4) states that further provisions regarding the terms and procedures for the procurement of defense equipment for defense industrial products are carried out under long-term contracts regulated by a Presidential Regulation. Thus the mandate is clear that it is necessary to formulate operational regulations at the level of a Presidential Regulation regarding the procurement of defense equipment, not in the form of a Minister of Defense Regulation whose type and hierarchy are under a Presidential Regulation. The types and hierarchies of statutory regulations are stated in Law Number 12 of 2011 concerning the Formation of Legislation, Article 7 paragraph (1), namely that the types and hierarchies of statutory regulations consist of:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Laws / Government Regulations in Lieu of Laws;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regulation; and
- g. Regency / City Regional Regulations.

The Ministerial Regulation is contained in Article 8 paragraph (1) of Law Number 12 of 2011 which is a type of statutory regulation other than those referred to in Article 7 paragraph (1) so that the hierarchy is under the Presidential Regulation. In addition, the regulations for the procurement of defense equipment in the form of a Minister of Defense Regulation are not in accordance with the principles of statutory regulations, namely the hierarchical level principle of statutory regulations as stated in Law Number 12 of 2011, Article 5, namely that in establishing statutory regulations must be carried out based on the principles of good Legislative Formation, which includes clarity of purpose; appropriate forming institutions or officials; suitability between types, hierarchy and content; can be implemented; efficiency and efficiency; clarity of formulation; and openness. The Minister of Defense Regulation can be said to have no binding law except

within the Ministry of Defense and TNI, as stipulated in Law Number 12 of 2011 Article 8 paragraph (2), which states that "Legislation as referred to in paragraph (1) its existence is recognized and has binding legal force as long as it is ordered by the higher laws and regulations or established based on authority".

Based on Stufenbau theory, namely the theory of the legal system put forward by Hans Kelsen and developed by Hans Nawiasky with his theory *Die theorie vom stufenordnung der rechtnormen*, which states, among other things, that a legal norm from a state is always multi-layered and a lower legal norm applies, sourced, and based on higher norms,[11] so to formulate operational regulations related to the procurement of defense equipment must refer to Law Number 16 of 2012 concerning the Defense Industry. The regulation for the procurement of defense equipment at the level of the Presidential Regulation will override Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services in the implementation of the procurement of defense equipment, as the principle of legislation, namely the principle of *lex specialis derogat lex generalis*. Furthermore, these regulations are used as guidelines by users of the defense industry in meeting the needs for defense equipment so that they can support the development of the defense industry.

To realize the mandate of Law Number 16 of 2012 concerning the Defense Industry, it requires synergy and integrity of all defense industry stakeholders, namely users, the defense industry and the government. One of the things that can be done is by arranging defense equipment procurement arrangements as *lex specialist* regulations in general government procurement of goods/services regulations. [12] A regulation in the form of a Presidential Regulation regarding the procurement of defense equipment that support the development of the defense industry are very much needed, because they are mandated, both by Law Number 16 of 2012 concerning Defense Industry and Presidential Regulation Number 16 of 2018 concerning Procurement of Goods / Services by the Government.[13] In order for information on the procurement of defense equipment to be classified as information that is exempt from the obligation to be disclosed to the public, it is necessary to

accommodate the dimensions of security and confidentiality.

In brief, the substance of statutory regulations in the form of a Presidential Regulation concerning the procurement of defense equipment that supports the development of the defense industry includes, among others, first, every stage of the procurement of defense equipment, both material and information, must be kept confidential so that leakage of information that has the potential to pose a threat to national security does not occur, second, the determination of providers through direct appointment of the domestic defense industry, in particular for budget sources supported by pure rupiah and domestic loans, thirdly, issuing a Presidential Regulations for the needs of defense equipment listed in the Minimum Essential Forces (MEF) and obtaining a determination of the source of financing, in order to obtain certainty and performance achievements. that is measurable and there is no change due to a change in officials, fourth, the administration of procurement of defense equipment from abroad must include local aspects of content and offset and be kept confidential, fifth, maintain the confidentiality of the inventory of the types of defense equipment needed by the Indonesian National Army (TNI) and those which can be produced by the domestic defense industry, sixth, gives authority to the Minister of Defense in formulating and regulating the implementation of the procurement of defense equipment that supports the development of the defense industry, seventh, further elaborating on the provisions of Law Number 16 of 2012 concerning Defense Industry, such as the obligations of users of defense industry products, policies related to long-term plans for the need for defense equipment, operational requirements and technical requirements for defense equipment needs, defense industry production permits, direct purchase of defense equipment stipulated by the Government with the approval of the House of Representatives.

V. CONCLUSION

The provisions of Article 90 of Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/Services mandates that the procurement of defense equipment is adjusted to the provisions of the laws in the defense industry. The terms and procedures

are regulated in a presidential regulation. Based on the characteristics of defense equipment, the procurement of defense equipment is highly dependent on the role of the government, various forms of policies and regulations. There is Presidential Regulation Number 27 of 2019 concerning Terms and Procedures for the Procurement of Defense Equipment and Security for Defense Industry Products with Long-Term Contracts, which is a follow-up to Article 44 paragraph (4) of Law Number 16 of 2012 concerning Defense Industry, but the substance is not appropriate with what is expected by Presidential Regulation Number 16 of 2018.

To realize the mandate of Law Number 16 of 2012 concerning Defense Industry, it is necessary to establish regulations related to the procurement of defense equipment that support the development of the defense industry as a *lex specialist* regulation in general Government Goods/Services Procurement regulations. Regulations in the form of a Presidential Regulation concerning the procurement of defense equipment with security and confidentiality dimensions to encourage the development of the defense industry are urgently needed. [14] Procurement of defense equipment that supports the defense industry as much as possible prioritizes domestic production. If it is not possible and must be procured from abroad, efforts will be made to implement it Government to Government, joint production, technology transfer, trade returns, offsets, guarantee of freedom of use and guarantee of spare parts, as mandated in Law Number 16 of 2012 concerning Defense Industry.

Arrangements for the procurement of defense equipment which contain security and confidentiality dimensions to support the defense industry is one form of Indonesian legal politics. The procurement is part of the implementation of the national defense strategy in the framework of building and maintaining the state defense posture, so that security and confidentiality must be maintained, both in terms of the main components or equipment, as well as the information. Therefore, the regulation of the procurement of defense equipment which contains dimensions of security and confidentiality to support the defense industry, the substance of which includes confidentiality of both material and procurement information, determination of providers through direct

appointment for budgets sourced from pure rupiah, issuance of Presidential Regulations for defense equipment. those who have obtained the determination of the source of financing, include local aspects of content and offsets in the administration of procurement of defense equipment from abroad, keep an inventory of the types of defense equipment needed by the TNI and can be produced by the defense industry, authorize the Minister of Defense to formulate and regulate the implementation of the procurement of defense equipment that supports the development of the defense industry in accordance with the mandate of Law Number 16 of 2012 concerning Defense Industry.

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REFERENCES

- [1] Sayidiman Suryohadiprojo, *Si Vis Pacem Para Bellum*, Jakarta: PT. Gramedia Pustaka Utama, 2005.
- [2] Purnomo Yusgiantoro, *Ekonomi Pertahanan, Teori dan Praktek*, Jakarta: PT. Gramedia Pustaka Utama, 2014.
- [3] Directorate of Special Procurement Policy and Defense and Security, “Kajian Pengadaan Alutsista dan Almatsus”, *Journal pengadaan LKPP*, Vo. 3 No. 11, 2013.
- [4] Nur Hadiyati, “Urgensi Pengaturan Pengadaan Barang dan Jasa melalui Undang-Undang”, *Journal Pengadaan LKPP*, Vol. 1 No. 10, 2017.
- [5] Jhony Ibrahim, *Theori dan Metodologi Penelitian Hukum Normatif*, Malang: Banyu Media, 2006.
- [6] Midriem Mirdanies, et al, *Kajian Kebijakan Alutsista Pertahanan dan Keamanan*, Jakarta: LIPI Press, 2013.
- [7] M. I. Iqbal, S. Susanto & M. Sutoro, “Functionalization of E-Court System in Eradicating Judicial Corruption at The Level of Administrative Management”, *Jurnal Dinamika Hukum*, Vol. 19 No. 2, page 370-388, 2019.
- [8] Purwosusilo, *Aspek Hukum Pengadaan Barang dan Jasa*, Jakarta: Prenadamedia Group, 2014.
- [9] Nunuk Febrianingsih, “Keterbukaan Informasi Publik dalam Pemerintahan Terbuka Menuju Tata Pemerintahan yang Baik”, *Journal of Rechtsvinding*, Vol. 1 No. 1, 2012.
- [10] Imam Syaukani and A. Ahsin Thohari, *Dasar-dasar Politik Hukum*, Jakarta: Raja Grafindo, 2004.
- [11] Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, Jakarta: Rajawali Pers, 2017.
- [12] M. Iqbal, “Efektifitas Hukum dan Upaya Menangkal Hoax Sebagai Konsekuesni Negatif Perkembangan Interkasi Manusia”, *Literasi Hukum*, Vol. 3 No. 2, page 1-9, 2019.
- [13] M. Iqbal, “Implementasi Efektifitas Asas Oportunitas di Indonesia Dengan Landasan Kepentingan Umum”, *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan*, Vol. 9 No. 1, page 87-100, 2018.
- [14] Purnomo Yusgiantoro, *Ekonomi Pertahanan, Teori dan Praktek*, Jakarta: PT. Gramedia Pustaka Utama, 2014.