

**ABSTRACT****PRINCIPLES OF CONTRACT LAW  
IN GOVERNMENT PROCUREMENT****Yohanes Sogar Simamora**

Contractualization is a kind of government activity in modern state. Using this instrument, government enters into contractual relations with business organizations with private entities whether for buying or selling goods and services. The contracts created were commercial in character. Perceived from budget point-of-view, there are two types of contracts, procurement and non-procurement contract. The main purpose of this legal research is to analyze principles of contract law in government procurement in Indonesia. Freedom of contract, good faith, transparency and proportionality will be the main principles in analyzing government procurement contract. The legal materials of this research are Presidential Decree number 80 of 2003 and the prior decrees, other Indonesian legislation, Indonesian Civil Code and court decisions as well. In addition, the principles and rules of government contract in international agreements, model laws and directives are also referred to.

Pursuant to Article 23 of the 1945 Indonesian Constitution, principles of transparency and accountability must be applied in government procurement contracts. These principles were also adopted in Presidential Decree number 80 of 2003 but there are some constraints in its implementation because the underlying principles are not fully laid down in the decree. Provisions prescribed in the decree do not specify further contractual aspects including requirements of competency and liability of the contracting officer.

The principles and rules concerning formation and performance of the government procurement contract are basically, the same as private contract unless requirement of competence of contracting officer as an agent of government. Pursuant to the principles of contract law, performance carried out by the parties to the contract depends on the substance or clauses of the contract. However, there are some weaknesses in procuring goods and services especially in the performance phase because of the absence of standardization in the construction of the contract such as in Indian or US, in which the conditions of contract were already established, and even more there is no government contract act in Indonesia yet.

**Keywords :** contractualization, goods and services, commercial contract, government procurement contract, transparency and accountability