



## Corruption in the procurement of goods and services: Law enforcement

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### Abstract

The problem that most often occurs in a state of law is the rise of humanitarian crimes, one of which is corruption. In the midst of national development efforts in various fields, public aspirations to eradicate corruption and other forms of irregularities are increasing because, in reality, corruption has caused enormous state losses, which have an impact on the emergence of crises in various fields. One of the most vulnerable points for corruption is in the goods and services procurement sector. The procurement of goods and services is an activity of the government in terms of procuring goods and services to meet the needs of the community in connection with its function as a public servant. The research used by the author is normative juridical research. The procedure for collecting legal materials is carried out by conducting library research on legal materials, namely primary, secondary, and tertiary legal materials. Then the legal materials that have been obtained are analyzed qualitatively. The results obtained are based on the arrangements in Presidential Decree Number 18 of 2000, which was amended by Presidential Decree Number 80 of 2003 concerning Guidelines for Government Procurement of Goods and Services. These two regulations are seen as lacking nuance in an effort to prevent criminal acts of corruption, which, based on data from many parties, are thought to have a great opportunity for leakage of state finances, both contained in the APBN and APBD. This occurs at the pre-tender procurement stage, the procurement tender process stage, and the delivery of goods stage.

**Keywords:** Corruption, procurement of goods and services, law enforcement

### Introduction

According to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a state of law. In order to fulfill the needs of the populace and advance public welfare, which is a stated national goal in the Preamble of the 1945 Constitution of the Republic of Indonesia, it is implied by the ideals of the rule of law that the entire administration of state life must be based on the law, including with regard to the procurement of goods and services organized by the government through tenders or direct appointment.

Humans, of course, have various interests and needs. In order to fulfill their needs and interests, humans behave and act. So that their attitudes and actions do not harm the interests and rights of others, the law provides signs in the form of limits to behavior in order to achieve and fulfill their interests.

A manifestation of how the state is carrying out its obligations and performing its roles in providing public services using funds from the State Budget (APBN) or the Regional Budget (APBD) is the organization of procurement of goods and services.

The most common problem in a state of law is the rise of crimes against humanity, one of which is corruption. In the midst of national development efforts in various fields, public aspirations to eradicate corruption and other forms of irregularities are increasing because, in reality, the existence of corrupt acts has caused enormous state losses.

In many places of the world, corruption has traditionally drawn more attention than other crimes, which makes sense considering the harm it does.<sup>[1]</sup> The issue of corruption is one that needs to be taken seriously because it threatens

social stability and security, imperils political and socioeconomic advancement, and undermines morals and democratic principles. The fact that defendants in corruption trials are often found not guilty or that defendants who receive insufficient punishment for their crimes do not receive any penalty at all illustrates how difficult it is to eradicate corruption. This severely impedes the development of the nation.<sup>[2]</sup>

According to Sumarwani, corruption hotspots include the following areas:

1. Development projects that concern the interests of the community or people, especially those related to the implementation of land acquisition and labor-intensive.
2. Development projects for the public interest, such as transmigration land preparation, distribution of presidential instruction funds, clean water projects, electricity, and so on;
3. Procurement of goods and services, where goods are much lower than the standard;
4. The distribution of credit, both banking liquidity credit and investment credit, working capital credit, export credit, import credit, and so on;
5. State financial revenues, especially those related to the collection of taxes, levies, exemptions from import duties, PBB, VAT, and so on;
6. The field of licensing or providing services to the community, for example: SIUPP, STNK, SIM, and so on;
7. Civil service, such as the acceptance and appointment of new employees and so on.<sup>[3]</sup>

One of the corruption hotspots is in the goods and services procurement sector. The procurement of goods and services is an activity of the government in terms of procuring goods and services to meet the needs of the community in connection with its function as a public servant. Procurement of goods and services is very important for the government, so the President issued Presidential Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services with the consideration that efficient, open, and competitive Government Procurement of Goods and Services is needed for the availability of affordable and quality Goods and Services, so that it will have an impact on improving public services.

The Presidential Regulation acknowledges a number of steps that must be taken in order to purchase goods and services. Ironically, abnormalities frequently arise during all of these steps, leading to widespread corruption in the goods and services procurement sector. Efforts to achieve and/or secure development results are not only determined by the availability of adequate laws and regulations but must also be accompanied by consistent law enforcement for the sake of upholding the rule of law in Indonesia, as mandated in the Decree of the People's Consultative Assembly of the Republic of Indonesia No. IV / MPR / 1999 Chapter IV Sub A Point 3, among others "Enforce the law consistently to better ensure legal certainty, justice and courage, the rule of law, and respect for human rights".

The Republic of Indonesia's administration has entered a period of bureaucratic reform over the past ten years, and is now required to adhere to the fundamentals of good governance, including transparency, participation, accountability, and the absence of corruption, collusion, and nepotism.

Regulations must be in place to control how government purchases goods and services so that the fundamentals of good governance are followed and issues with the implementation of government procurement of goods and services are minimized.

According to article 1 of the Presidential Regulation, the process of procuring goods and services by ministries, institutions, regional apparatus work units, and other institutions begins with the planning of needs and ends with the completion of all procuring activities. A variety of techniques, including the auction method, direct selection method, direct appointment method, self-management method, selection method with competition, and others, may be implemented <sup>[4]</sup> according to Presidential Regulation Number 12 of 2021.

The requirements, obligations, responsibilities, and powers of public procurement bodies are likewise completely regulated by the Presidential Regulation. In order to have logical repercussions for the executor of the acquisition of goods or services, which is required and conforms with all legal and regulatory requirements. The acquisition of products and services is carried out in large part by the procurement organization. Without a procurement organization, which serves as the executor of the entire procurement process, it is impossible to buy products and services.

The problem examined in this writing is how the law enforces corruption in the field of procurement of goods and services. And the purpose of this research is to examine and

discuss the law enforcement of corruption in the field of the procurement of goods and services.

### **Method Research**

The research method used in this research is normative juridical research, with a statutory approach and a conceptual approach. Legal materials are in the form of primary legal materials, namely laws and regulations; secondary legal materials, namely journals and dictionaries; and tertiary legal materials, namely legal dictionaries. Then the legal material is obtained through literature study and analyzed using qualitative methods.

### **Result and Discussion of The Research**

#### **Law Enforcement and Authority (Penegakan Hukum dan Kewenangan)**

The process of attempting to uphold or carry out the legal norms as a guide to behavior in traffic or legal relations in the lives of society and the state is known as law enforcement. In a broad sense, every legal subject in every legal connection is involved in the law enforcement process. Anyone who upholds normative rules or acts in accordance with the applicable legal rules' norms is doing so in a way that upholds or enforces the rule of law. Law enforcement is only narrowly defined in terms of the topic as the actions taken by specific law enforcement personnel to guarantee and ensure that the rule of law functions as it should.

When considering law enforcement, one must look at it from the perspective of the law that governs the area; in this context, the phrase "law enforcement" can have both wide and specific definitions. In a wide sense, law enforcement also encompasses the socially ingrained ideas of justice as well as those found in formal norms. However, a limited definition of law enforcement simply includes the application of formal, written regulations.

The goal of law enforcement is to increase social order and legal certainty. This is accomplished, among other things, by organizing the roles, responsibilities, and powers of the institutions charged with upholding the law in accordance with the proportions of their various responsibilities and based on an effective system of cooperation and support for the desired outcomes.<sup>[5]</sup>

According to Black's Law Dictionary, law enforcement diartikan sebagai the act of putting something such as a law into effect; the execution of law; the carrying out of a mandate or command.<sup>[6]</sup>

Law enforcement, both by the legal subjects involved and by law enforcement officials who are formally assigned duties and authorities by law to ensure the proper operation of legal norms that apply in the life of society and the state, is more or less an effort made to make the law, both in a narrow formal sense and in a broad material sense, a guide to behavior in every legal action.<sup>[7]</sup>

In Indonesia, law enforcement personnel such as police, prosecutors, judges, and attorneys are responsible for upholding the law. These law enforcement officials are responsible for ensuring that the community abides by the law, working to keep the law in operation, and regulating society to create a better society. Indonesia's government is built on law, not force, hence.

There are several factors contributing to law enforcement problems: the first is the quality factor of law enforcers professionally; the second is the weak insight of thought for law enforcers in understanding the law itself; the third is the

lack of skills to work to meet the needs of the law; the fourth is low work motivation; the fifth is the damage to the morality of law enforcement personnel who make the law unenforceable; the sixth is the low level of legal education; the need for improvement of legal education from an early age; and the seventh is the very few human resource development programs among law enforcement organizations to improve their ability in legal science.<sup>[8]</sup>

In public law, there is a slight distinction between authority (authority, gezag) and what is referred to as formal power, power that derives from being conferred by statute or the legislature.<sup>[9]</sup> Competence, on the other hand, solely pertains to a specific "onderdeel" (portion) of authority. Competence or jurisdiction are two terms that often refer to authority in the realm of trial or judicial power.<sup>[10]</sup>

Authority consists of at least three components, namely: influence, legal basis, and legal conformity. The influence component is intended, meaning that the use of authority aims to control the behavior of legal subjects; the legal basis component is intended, meaning that the authority must be based on clear law; and the legal conformity component requires that the authority have clear standards (for general authority) and specific standards (for certain types of authority).

Authority, sometimes known as formal power, is derived from legislation or the executive or administrative authority of the legislature. The power that derives from the authority conferred by a law or the legislature, from the executive or administrative power, is also known as formal power. The undisputed power of a particular set of individuals or over a particular area of government or government operations is known as authority. Whereas authority is only concerned with a portion of the authority.<sup>[11]</sup> Delegation of authority by delegation is the transfer of government authority from one government organ to another that transmits all of the delegate's authority. The delegate is now totally accountable. The ability to issue orders and demand obedience is defined as authority.<sup>[12]</sup>

### Public Procurement Concept

The process by which an organization obtains goods and services to meet its internal and/or external demands is known as procurement. As a result, practically all organizations, whether in the for-profit, non-profit, or government sectors, perform procurement processes to satisfy the needs of carrying out their different activities. However, there are disparities in the procurement process across different organizations, such as funding sources, how to find providers, service interests, and so on. While the fundamental purpose of the procurement processes in the three businesses is to purchase goods and services at the best value (getting value).

To improve the efficiency and effectiveness of the use of state funds spent through the procurement of government goods and services, efforts must be made to create openness, transparency, accountability, and the principle of fair competition in the procurement of government goods and services financed by the APBN and APBD, so that affordable and high-quality goods and services are obtained and can be accounted for in terms of both physical and financial benefits. In this regard, the purpose of this Presidential Regulation on Government purchase of Goods and Services is to establish simple, clear, and

comprehensive regulatory rules for the purchase of goods and services in accordance with good governance.

Public procurement activities from the perspective of Indonesian Law:

- a. Government procurement of goods and services has a strategic meaning in protection and preference for domestic business actors;
- b. Government procurement of goods and services is a significant sector in economic growth efforts;
- c. A government procurement system that is able to apply the principles of good governance will encourage the efficiency and effectiveness of public spending as well as condition the behavior of the 3 pillars of government, private sector and society in the implementation of Good Governance;
- d. That the scope of government procurement of goods and services covers various sectors in various aspects of national development.<sup>[13]</sup>

Goods/Services Procurement in the government sector, commonly known as Government Goods/Services Procurement, or abbreviated as PBJP, is the procurement of goods/services by Ministries/Institutions/Regional Apparatus (KLPD) financed by the APBN/APBD whose process from the identification of needs, up to the handover of work results, has an important role in the implementation of national development to improve public services and the development of the national and regional economy. The Presidential Regulation on Government Procurement of Goods and Services is intended to increase favoritism toward national industries and small businesses, as well as to foster creative industries, innovation, and national independence by prioritizing the use of domestic strategic industries.

The overall policy of Public Procurement strives to harmonize Public Procurement legislation with policies in other sectors. The following are the policy actions that the government must take in public procurement as outlined in this Presidential Regulation on Public Procurement:

- a. Increasing the use of domestic production of goods and services, which aims to expand employment opportunities and the domestic industrial base in order to increase economic resilience and national competitiveness;
- b. The independence of the defense industry, the main weapon system equipment industry (Alutsista), and the domestic special material equipment industry (Almatsus);
- c. Increasing the participation of microenterprises, Small Enterprises, small cooperatives, and community groups in the Procurement of goods and services;
- d. Attention to aspects of wise utilization of natural resources and preservation of environmental functions to ensure the implementation of sustainable development;
- e. Increased use of information technology and electronic transactions;
- f. Simplification of provisions and procedures to accelerate the decision-making process in goods and services procurement;
- g. Increased professionalism, independence, and responsibility of the parties involved in the planning and process of goods and services procurement;
- h. Increased state revenue through the taxation sector;

- i. Growing the role of national businesses;
- j. The development of innovative creative industries, culture and research results of domestic laboratories or educational institutions;
- k. Utilizing domestic research and development facilities/ infrastructure;
- l. Implementation of Goods/Services Procurement within the territory of the Unitary State of the Republic of Indonesia, including at the Representative Office of the Republic of Indonesia; and
- m. Publicly announcing the plan and implementation of Goods/Services Procurement in each Ministry/Institution/Local Government Work Unit/other Institutions to the public at large.

### Corruption in Goods and Services Law Enforcement

The term corruption is used to describe a corrupt state or conduct, as well as financial dishonesty. Corruption can also be defined as behavior that does not comply to the principle of "maintaining distance," which means that personal or family relationships play a part in economic decision-making, whether done by individuals in the private sector or governmental officials. Corruption will emerge if this principle of maintaining distance is disregarded and decisions are made based on personal or family relationships.<sup>[14]</sup>

In general, the term corruption has been used to refer to a wide range of illegitimate and criminal behaviors for personal or group benefit that qualify as unlawful acts of enrichment of oneself, others, or legal entities (now broadened with the term corporation). However, recent developments have underlined that corruption is the abuse of power or a public position for personal, other, or corporate advantage.

Corruption has now become a worrisome occurrence in Indonesia, with an increasingly systematic quality in all levels of government agencies. According to World Bank data from 2000, the percentage of leakage in the government procurement process ranged from 10% to 50%. With this figure, government procurement is the leading contributor to state financial leakage. This suggests that corrupt practices in government procurement are the most widespread and widespread.

Law enforcement efforts in handling cases of corruption in the procurement of goods and services have been regulated in Presidential Decree Number 18 of 2000, last amended by Presidential Decree Number 80 of 2003 concerning Guidelines for Government Procurement of Goods and Services. However, these two regulations are seen as not providing strong nuance in an effort to prevent corruption. As a result of irregularities in the procurement of government goods and services, it has become the scope of authority of the Business Competition Supervisory Commission (KPPU) and the Corruption Eradication Commission (KPK). The relationship between these two institutions is to handle cases of bid rigging and corruption in the procurement of government goods and services.

The Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Anti Monopoly Law) established KPPU as an independent entity. As a unique organ, KPPU has a dual responsibility: in addition to its obligation to establish order in business competition, KPPU also contributes to the development and upkeep of an environment that is favorable to business

rivalry. KPPU is tasked for upholding the law, particularly the legislation pertaining to commercial competition. The Anti Monopoly Law's Articles 36 and 47 restrict this authority. Investigations into claims of unfair business competition may be carried out by KPPU.

At KPPU, there are numerous stages in the process of a case that can be classified as follows:

- a. The stage of collecting alleged breaches (reports or initiatives);
- b. The stage of investigation;
- c. The stage of preliminary examination;
- d. The stage of further examination; and
- e. The stage of decision making and execution.

KPPU also has guidelines spelled out in the Regulation of the Business Competition Supervisory Commission Number 2 of 2010 (Perkom No.2/2010) on Guidelines for Article 22 of the Anti-Monopoly Law on Prohibition of Conspiracy in Tenders (Article 22 Guidelines) for tender conspiracy cases. Likewise with the KPK institution, which is a state institution that has the function and authority to eradicate and prevent corruption in Indonesia. KPK was formed in accordance with the mandate contained in Article 43 paragraph (1) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption.

The KPK must follow five criteria when carrying out its duties: clarity in implementing guidelines, transparency, accountability, prioritizing the public interest, and proportionality. KPK bears a great deal of responsibility to the larger community and is required to submit open, thorough, and timely reports to the Executive (in this case, the President), Legislative (in this case, the DPR), and BPK.<sup>[15]</sup>

KPK is authorized to conduct prevention and eradication (investigation, investigation and prosecution) of corruption crimes. KPK is also authorized to coordinate and supervise with other corruption law enforcement agencies/institutions as well as to implement judges' stipulations and court decisions that have obtained permanent legal force.

When the KPK conducts an investigation based on information/reports received or known directly by the investigator/investigator. In addition, KPK investigations can also be carried out with a police report or from the minutes of the examination. There are 2 (two) types of investigations known in case handling at the KPK, namely Open Investigations and Closed Investigations (such as wiretapping and sting operations).

At the investigation stage, it is carried out to determine the existence of acts of corruption committed by a person or corporation with sufficient evidence to fulfill the requirements of the perpetrator as stipulated in Article 11 of the KPK Law. Then, at the investigation stage, the KPK will conduct an examination of the evidentiary requirements based on criminal procedure law, conduct evidence against the suspect, carry out forced efforts (arrest, detention, confiscation, and search), combine several cases (if necessary), and report and follow up if there is a money laundering crime (TPPU).

KPK investigators can also request assistance from other agencies involving the Supreme Audit Agency (BPK) or the Supervisory and Development Agency (BPKP) to calculate the amount of state losses caused by the perpetrator's actions.<sup>[16]</sup>

KPK investigators may also seek assistance from other government agencies, such as the Supreme Audit Agency (BPK) or the Financial and Development Supervisory Agency (BPKP), in calculating the amount of state damages caused by the perpetrator's conduct.

### Conclusion

That the development of corruption regulation in the field of procurement of goods and services in the perspective of criminal law and administrative law is divided into 3 and must reflect good and clean governance (Good Governance and Clean Government) are all aspects related to control and supervision of the power of the government in carrying out its functions through formal and informal institutions, through the principles of accountability and efficient resource management, and realizing it with good and impartial (independent) actions and regulations, and ensuring economic and social interactions between related parties (stakeholders) in a fair, transparent, professional and accountable manner.

Suggestions that can be given are that the form of supervision from the government is still lacking and there are certain individuals who are trying to seek personal and group benefits, this has an impact on the implementation of sustainable development, this requires good and clean governance in terms of procurement of goods and services so that in the process of implementation and also the application of strict sanctions against individuals or groups who are trying to commit corruption crimes.

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