Research Article

Reformulation of Criminal Law Policy in Combating Corruption in Government Procurement of Goods and Services

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Abstract.
Corruption in government procurement of goods and services is a form of abuse of power that is very detrimental to state finances and hinders national development. This sector is vulnerable to corruption because it involves a large budget, and has a transactional relationship between public officials and the private sector. This study aims to analyze the gaps in corruption in the procurement of goods and services and to formulate ideal policies in the future. The method used is normative legal research with a legislative, case, historical, and conceptual approach. The results of the study show that corruption in procurement not only occurs at the implementation stage but also during the planning and selection process of providers. The forms of corruption include abuse of authority, collusion, bribery, and structured and systematic tender engineering. The Corruption Law has not been fully able to reach the structural dimensions of these corrupt practices, and there is even a disparity in sanctions between private actors and state officials. Therefore, it is necessary to reform the articles in the Corruption Law to make them fairer and more proportional. In addition, strengthening the integrated e-procurement system based on digital transparency must be part of a preventive policy to close the gaps in manipulation in public procurement.

Keywords: corruption, goods and services, procurement

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Published: 3 November 2025

Publishing services provided by Knowledge E

Selection and Peer-review under the responsibility of the 8th Legal International Conference and Studies Conference Committee.

1. Introduction

The Republic of Indonesia is a country of law according to the contents of the 1945 Constitution in Article 1 paragraph (3). Law can be interpreted as a collection of regulations or rules that are general and normative, general because they apply to everyone and normative because they determine what should be done. One embodiment of the concept of a country of law is the implementation of government that is based on law and free from criminal acts of corruption. Corruption is not something new in Indonesia. The existence of material law on the eradication of corruption that has been around for so long, shows that the practice of corruption in Indonesia has existed for years, even

though many people still take the risk of committing criminal acts of corruption because there is an opportunity to do the crime (Cahyani, 2017).

Corruption is a problem that greatly hinders development in Indonesia, one of the areas of corruption that is very tempting for budget user officials is the procurement of goods and services sector. Corruption in the procurement of goods and services is included in transactional corruption, because there is an agreement between the budget user and a third party in a hidden agreement (kick back) (Lubis, 2017).

Procurement of government goods and services as referred to in Article 1 point 1 of Presidential Regulation Number 12 of 2021 concerning Amendments to Regulation Number 16 of 2018 concerning Procurement of Government Goods/Services states that Procurement of Government Goods/Services, hereinafter referred to as Procurement of Goods/Services, is an activity of Procurement of Goods/Services by the Ministry of Institutions/Regional Apparatus which is funded by the APBN/APBD, the process of which starts from identifying needs, until the handover of work results (Yudhi Christiawan Samuel, 2022).

In order to ensure the implementation of the government procurement process, the government has stipulated Presidential Regulation Number 157 of 2014 concerning the Government Procurement Policy Agency (LKPP). LKPP as a non-ministerial government agency that is directly under and responsible to the President has a strategic position in the national procurement system. The role of LKPP is not only related to the formation of regulations and technical supervision of procurement, but also contributes directly to the investment climate and stability of the national economy. With the existence of this institution, procurement governance that was previously scattered and non-standardized becomes more systematic and centralized, which will ultimately increase public and investor trust in the integrity of state institutions.

The success of the procurement system is not solely determined by the existence of normative institutions, but also by the quality of the implementation of the rules and the moral strength of its law enforcers. The role of institutions or legal instruments in enforcing all provisions of the procurement law must be carried out with high commitment, integrity, and courage in taking the risk of law enforcement. Without moral courage and adequate professional capacity, these institutions will find it difficult to carry out their mandate optimally. In the context of procurement of goods and services, supervision and law enforcement are not only administrative in nature, but also have a criminal dimension, especially if deviations are found that result in state financial losses.

Misuse of state finances that occurs in procurement activities is essentially an unlawful act as regulated in Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The law firmly states that any act by an individual or legal entity that enriches themselves, others, or a corporation, directly or indirectly, and harms the state's finances or economy is a form of criminal corruption. In many cases, corruption in procurement does not occur openly, but rather through a systematic manipulative process, such as tender engineering, collusion in determining the winner, to price inflation (mark-ups) that obscure state losses (Satria Ramadhan, 2024).

The procurement of goods and services itself is a mechanism that should be implemented by prioritizing basic principles such as transparency, efficiency, healthy competition, and fairness. This activity is essentially an effort by the user to realize the goods or services needed through a series of established procedures, with the hope of producing the best agreement in terms of quality, time, and cost. Compliance with these principles is the main foundation in creating a procurement system that is integrated and free from deviations. If all parties involved comply with procurement ethics and norms, a climate of trust and effective use of the state budget will be created.

However, in practice, the implementation of government procurement of goods and services still often deviates from these ideal principles. The various deviations that occur not only weaken the quality of goods/services received by the government, but also have a direct impact on the occurrence of significant state financial losses. These forms of deviation, if they meet the elements of a crime as referred to in the Corruption Law, will be categorized as criminal acts of corruption. Therefore, it is important for the state to improve the concept and legal policies that regulate criminal acts of corruption in the context of procurement. This improvement must include reformulation of articles related to procurement in the Corruption Law, strengthening the role of supervisory and law enforcement institutions, and increasing the capacity of human resources involved in the procurement process. The purpose of these updates and improvements is none other than to create legal justice that can provide a deterrent effect on perpetrators, while at the same time providing protection for state financial interests and public interests.

The purpose of this study is to analyze the gaps in corruption in the procurement of goods and services and the ideal policy for the procurement of goods and services in the future.

2. Methods

The research method used is normative legal research, normative legal is a research that studies and analyzes laws and regulations related to the issues being raised. The approach used in this research is the statute approach by examining several laws and regulations related to the legal issues being handled, the case approach by examining cases related to the issues being faced, the historical approach by examining the background of what is being studied and the development of regulations regarding the issues being faced, the conceptual approach departs from the views and doctrines that develop in legal science (Juita, 2016).

3. Results and Discussion

3.1. Corruption Loopholes in Procurement of Goods and Services

Government procurement of goods and services is a government spending mechanism that plays an important role in the utilization of the state budget. Procurement of goods and services involves a lot of money, every year according to the Goods and Services Policy Institute (LKPP) around 40 (forty) percent of the APBN and APBD. The arrangements made in the process of implementing the procurement of goods and services are solely aimed at ensuring that the procurement of goods and services can run efficiently, openly, competitively and affordably so that the output is achieved in the form of quality goods and services in improving public services (Bareta, 2018).

Normatively, Article 1 number 1 of Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services states that the definition of Procurement of Goods and Services is the activity of Procurement of Goods and Services by ministries / Institutions / regional apparatuses funded by the APBN / APBD, the process of which starts from identifying needs, to the handover of work results. Procurement of goods and services is also not only limited to the selection of project partners with the purchasing department (Purchasing) or official agreements between the two parties, but includes the entire process from the beginning of planning, preparation, licensing, determining the winner of the tender to the implementation stage and administrative process in the procurement of goods, work or services such as technical consulting services, financial consulting services, legal consulting services or other services (Fahruddin, 2023).

There are several legal aspects in the procurement of goods and services by the government, namely: First, the administrative legal aspect, which is related to the auction procurement mechanism or selection of goods/services; Second, the civil legal aspect which is related to the implementation of the procurement of goods and services by the auctioneer/selection which is stated in the work contract/goods/services procurement agreement; Third, the criminal legal aspect, namely if in the procurement of goods/services there has been a criminal act of corruption either committed by state officials or bribery/gratification committed by business actors who want to gain profit/enrich themselves or others.

Presidential Regulation Number 12 of 2021 in conjunction with Presidential Regulation Number 16 of 2018 generally determines that the three legal aspects are included in government procurement of goods and services, but in reality, the implementation of procurement of goods and services also contains criminal law aspects related to the responsibility of corporations as legal entities and/or their administrators in the event of a criminal act. This is considering that in the procurement of goods/services process, most of the auction/selection participants for business actors are in the form of legal entities, Limited Liability Companies, CVs, Firms and others. Then the question is how can Perma No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations comprehensively accommodate the legal consequences of procurement of goods/services that can harm the interests of the wider community.

There are many incidents that can be an indication of possible corruption at the supplier selection stage to determine the winner in the procurement process of goods and services. For example, the contract is not awarded to the supplier with the lowest bid price, is awarded to an inexperienced supplier, the contract specifications are designed to attract a single supplier, or the specifications are changed so that the auction must be repeated from the beginning. However, none of the above incidents can be confirmed as a criminal act of corruption, so that the perpetrators can be arrested immediately, for example. However, if these incidents occur frequently, this indicates that the procurement process of goods and services is likely to be inefficient (Indrawan, 2020).

At the contract implementation stage, there are a number of indicators that correlate with corruption and inefficiency. There is an unexpected increase in the price of the contract, for example the price increase is not caused by inflation or changes in specifications. Then, there are significant or significant changes to the contract specifications, the sole supplier contract is extended, the decision regarding the winner is canceled,

the goods or services do not meet the provisions in the contract, and the production or delivery of goods or services exceeds the schedule in the contract. Costs that are much higher than national or international price standards can also indicate the possibility of corruption.

Referring to the deviation patterns above, it can be identified that the corruption patterns in the procurement of goods and services are (a) abuse of authority, (b) bribery carried out by providers of goods and services, (c) collusion, whether carried out between officials, or between officials and providers of goods and services, or between providers of goods and services. The criminal law aspect in the procurement of goods/services process will be applied if there has been a criminal violation committed by the user of goods/services or the provider of goods/services in the procurement process of goods/services.

3.2. Ideal Procurement Policy for Goods and Services in the Future

Corruption is the abuse of power for personal gain. Corruption is understood as an act involving the diversion of public resources by public officials for the benefit of individuals, usually to enrich themselves or certain groups. This perception places corruption as an unlawful act that occurs in the public sector, and therefore the solutions offered are technical in nature, such as reducing the monopoly of power, increasing transparency, and bureaucratic accountability. However, this purely technocratic approach is not necessarily effective in addressing the root causes of corruption in depth (Johanes Danang Widoyoko, 2016).

Corruption cannot actually be reduced to merely deviant individual behavior or just a matter of a lack of a supervisory system. More than that, corruption is part of a structural and systemic contestation of power. The act of controlling public resources by certain parties is not always motivated by the desire to become rich alone, but also to maintain and expand dominance in the economic, social, and political spheres. In this context, corruption becomes part of a strategy to maintain the status quo by groups that have access to and control over state power. Therefore, eradicating corruption requires an approach that not only emphasizes legal and administrative aspects, but also touches on the political dimension and power structure that support corrupt practices (Mudji Sutrisno, 2005).

Law Number 31 of 1999 junto Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (UU Tipikor) is the main legal basis for taking action against

corruption in Indonesia, including corruption in the procurement of goods and services. The Tipikor Law regulates various forms of criminal acts of corruption, including bribery, embezzlement in office, extortion, fraudulent acts, conflicts of interest in procurement, illegal gratification, to acts of enriching oneself/others that harm state finances. In the context of procurement, law enforcement officers generally apply articles of the Tipikor Law to ensnare perpetrators of corruption, for example articles concerning bribery of procurement officials and articles concerning state financial losses (Articles 2 and 3 of the Tipikor Law) for markup or collusion practices in tenders. The application of these articles has enabled the prosecution of many procurement corruption cases, including major cases such as the e-KTP project, procurement of heavy equipment for state-owned enterprises, to the procurement of social assistance, where perpetrators from the government and private partners were charged with criminal charges.

There are issues in the formulation of the Corruption Law norms that create disparities in sanctions and obstacles to enforcement in the procurement realm. Articles 2 and 3 of the Corruption Law both regulate acts of enriching oneself/others that harm state finances, but Article 2 is intended for “every person” (including private individuals) with a minimum threat of 4 years in prison, while Article 3 is specifically intended for perpetrators who are civil servants/state administrators with a lower minimum threat (1 year in prison). This disparity is considered irrational because public officials who abuse their authority should be punished more severely than ordinary citizens. In the practice of prosecuting corruption in procurement, Article 2 is often used to ensnare private partners who collude in mark-ups, while commitment-making officials or auction committees are charged with Article 3. The difference in criminal penalties can create injustice and reduce the deterrent effect for the main perpetrators from the government. Therefore, experts propose a reformulation of the norm by combining Articles 2 and 3 into one integrated crime, and ensuring that state officials involved in corruption do not benefit from lighter sanctions. It is hoped that this harmonization of norms will increase legal certainty and criminal proportionality, so that law enforcement on procurement corruption can be fairer and more effective.

The construction of ideal norms also demands a balance between a repressive approach (criminal law enforcement) and a preventive approach within the framework of legislation. This means that regulations in the procurement sector must be designed to be able to prevent opportunities for corruption from the start while also facilitating action if violations occur. For example, regulations requiring transparency and accountability in every stage of procurement need to be emphasized. Currently, there is a

Presidential Regulation on Government Procurement of Goods/Services that requires e-procurement, but ideal legal norms should integrate these regulations with the anti-corruption regime.

An ideal anti-corruption law would require that any procurement process above a certain value must use an integrated e-procurement platform, and violation of this obligation could result in severe administrative sanctions or even criminal penalties if the purpose is to hide corruption. In other words, future legal norms should bridge criminal regulations with procedural procurement rules to close the gap for manipulation. The use of information technology as an anti-bribery tool should also be mandatory; for example, a real-time monitoring system and an open database of government contracts should be mandated by law. Research shows that the use of digital technologies (such as e-tender platforms and public reporting) significantly reduces the risk of corruption by increasing transparency and reducing the manual discretion of officials. Therefore, the legal framework needs to encourage this digital innovation, for example by including a provision requiring government agencies to integrate their procurement data into a single national portal that is publicly accessible. Such a regulation would strengthen prevention and early detection: the public and the press could monitor, while algorithms could detect irregularities such as unusual repeat bidder patterns, deliberately conditioned bids, etc.

4. Conclusion

Corruption in government procurement of goods and services is a serious threat to the integrity of the state budget and public trust in government, which is rooted not only in weak technical supervision, but also in a power structure that is full of interests. The ideal policy for procurement of goods and services in the future must be built on a legal framework that not only emphasizes technical and administrative aspects, but also seriously addresses the structural, systemic, and political dimensions of corrupt practices that have been inherent in the public procurement process. Reformulating norms in the Corruption Law, especially the unification of Articles 2 and 3, is important to eliminate disparities in sanctions that are counterproductive to justice and deterrent effects. In addition, a preventive approach needs to be strengthened through the mandatory use of an integrated e-procurement system and the use of information technology as a tool for transparency and early detection of irregularities. Regulations that support data transparency, public supervision, and strengthening the role of algorithms in analyzing

irregularities in the procurement process will be the main pillars in realizing a clean, efficient, and corruption-resistant procurement system in the future.

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