

State Financial Losses Due to Corruption in Goods and Service Procurement Systems by the Government

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Abstract— Government goods/services procurement regulations have the character of administrative law. Many court decisions related to corruption in the government goods/ service procurement sector. The government sector of goods/ services procurement cannot be linked to corruption. The purpose of this study is to examine the court decision on corruption in deciding cases of corruption in the sector of government procurement of goods/ services. Is it appropriate that the cases are positioned as *ultimum remedium*, not as *preum remedium*. This paper uses a legal research method, using a case study approach. The results of the study show that a total of 47 cases conducted by the study, there were a number of cases of goods/ services procurement which were clumsily classified by law enforcement as acts of corruption, classifying as one of state financial losses. The criteria for corruption in the procurement of government goods/ services, is not the fault of the procurement process and not the poor implementation of the contract. Corruption in the procurement of government goods/ services includes: bribery/ gratification, mark-up of market prices, fictitious, collusion with the flow of funds to unauthorized persons, fraud and forgery.

Keywords— *corruption, procurement of government goods/ services*

I. INTRODUCTION

Regarding the misuse of public funds by government officials, the negative connotation is not surprising if it is easily aimed at the practice of procurement of government goods / services [1]–[3]. It must be admitted that the public service sector is very vulnerable to corruption in the government goods and services procurement (PBJP-*Pengadaan Barang dan Jasa Pemerintah*) process. There are quite a lot of court decisions related to corruption in the procurement of goods/ services of the government, both in the District Court, the High Court and the Supreme Court. Ideally in PBJP, if there is no corruption in it, procurement officials or actors will feel safe without intimidation of "anxiety" dealing with "legal issues". But in practice, sometimes talk differently.

Through this paper as a step or endeavor to participate in combating corruption, especially in the procurement of government goods/ services which is a joint commitment, but still see accuracy in handling corruption, where criminal law is still positioned as *ultimum remedium*, not as *preum remedium*. The implementation of a good and correct state administration system is expected to be the target of all parties [4],[5]. This is in line with the general recommendations of the National Legal Development Planning in the Field of Criminal Law and the Criminal System (Political Law and Criminal Law), that make administrative sanctions effective and prevent the use of criminal sanctions for violations in administrative law [6] and

if they want to use the threat of criminal sanctions against violations Administrative law needs to be strictly selected by prioritizing the principle of subsidiarity and the principle of selection so that criminal sanctions are used proportionally and as the ultimate or ultimate sanction (*ultimum remedium*) [7], [8].

Based on the background that illustrates the ideal conditions and practices of whether or not there is a criminal act of corruption in the procurement of government goods/ services, the main issues in this paper are first, how criminal (legal) sanctions are in the procurement of government goods/ services, and second, what kind of decision corruption cases related to procurement of government goods/ services in terms of procurement.

II. RESEARCH METHOD

The method concerns the problem of how to work that is a way to be able to understand the objects that are the target of the relevant science. This research is a basic tool in the development of science, this is because the research aims to reveal the truth systematically, methodologically, and consistently [9]–[11]. This paper is the result of case study research by examining, analyzing, comparing and or analyzing in order to obtain a clear picture of the accuracy in deciding cases of corruption. By taking 47 sample cases of corruption cases court decisions relating to procurement of government goods / services downloaded from the Supreme Court's

Decision Directory of the Republic of Indonesia sourced from the official website <https://putusan.mahkamahagung.go.id>. regardless of whether the decision already has permanent legal force or not.

From 47 samples of corruption cases related to the procurement of government goods / services, the number of decisions can be seen in Table I.

TABLE I. AMOUNT OF DECISIONS ON COURT OF CASE TIPIKOR

No	Court Level	Amount
1	Verdict of the District Court (PN- <i>Pengadilan Negeri</i>)	20
2	Verdict of the High Court (PT- <i>Pengadilan Tinggi</i>)	12
3	Verdict of Supreme Court (MA- <i>Mahkamah Agung</i>)	15
Total		47

Verdict of Corruption Court in accordance with table 1 can be seen that there are administrative errors/ violations of the contract provisions, the value of state financial losses, violations of Article PBJP Regulations and violations of Article Corruption Acts as in Table II.

TABLE II. DECISION THAT HAS AN ADMINISTRATIVE ERROR OF CONTRACT TERMS, VALUE OF COUNTRY FINANCIAL DAMAGES, BREACHES

No	Verdict
1	Verdict of PT GORONTALO Nomor 01/PID.SUS/2013/PT. GTLO Tahun 2013
2	Verdict of PT MALUKU UTARA No.7/PID.TIPIKOR/2013/PT.MALUT Thn 2013
3	Verdict of PT SURABAYA Nomor 50/PID.SUS/2012/PT.SBY Ttn 2012
4	Verdict of PN SURABAYA Nomor 11/Pid.Sus/TPK/2015/PN.Sby.
5	Verdict of PN Serang Nomor 31/Pid.Sus-TPK/2015/PN.Srg.
6	Verdict of PN Serang Nomor 32/Pid.Sus-TPK/2015/PN.Srg.
7	Verdict of PN Jakarta Pusat Nomor 75/Pid.Sus/TPK/2013/PN. Jkt. Pst.
8	Verdict of PT Makasar Nomor 5/PID.SUS.KOR/2015/PT.MKS. & Putusan MA Nomor 390 K/PID.SUS/2017
9	Verdict of PN Makasar Nomor 55/Pid.Sus-TPK/2013/PN Mks.
10	Verdict of PT Maluku Utara Nomor 08/PID.SUS-TPK/2015/PT.TTE.
11	Verdict of MA Nomor 2203 K/PID.SUS/2016
12	Verdict of MA Nomor 2528K/PID.SUS/2017
13	Verdict of PN Semarang Nomor 166/Pid.Sus/2013/PN.Tipikor.Smg.
14	Verdict of PN Denpasar Nomor 21/Pid.Sus.TPK /2015/PN.Dps
15	Verdict of PN Serang Nomor 11/Pid.Sus-TPK/2016/PN.Srg.
16	Verdict of PN Banda Aceh Nomor 32/Pid.Sus-TPK/2014/PN Bna.

17	Verdict of PN Medan Nomor 15/Pid.Sus.TPK/2018/PNMdn
18	Verdict of MA Nomor 1607 K/PID.SUS/2016
19	Verdict of MA Nomor 2543 K/PID.SUS/2013
20	Verdict of MA Nomor 406 K/Pid.Sus/2016
21	Verdict of PN Surabaya Nomor 99/PID-SUS/TPK/2014/PN Sby.
22	Verdict of MA Nomor 2010 K/Pid.Sus/2017
23	Verdict of MA Nomor 6 PK/PID.SUS/2017
24	Verdict of PT Semarang Nomor 28/Pid.Sus/2013/PT.TPK.Smg.
25	Verdict of PT Jayapura Nomor 21/Pid.Sus-TPK/2015/PT JAP
26	Verdict of PN Bandung Nomor 03/ Pid.Sus/TPK/2012/PN.Bdg.
27	Verdict of PN Ternate Nomor 38/ Pid.Sus/TPK/2015/PN.Tte.
28	Verdict of PN Gorontalo Nomor 7/ Pid.Sus-TPK/2018/PN Gto
29	Verdict of PT Jakarta Nomor 64 PID/TPK/2014/PT.DKI
30	Verdict of PT Banda Aceh Nomor 16/PID-TIPIKOR / 2014/PT-BNA & Verdict of MA Nomor 1891 K/Pid.Sus/2014
31	Verdict of PN Palembang Nomor 35/Pid.Sus-TPK/2014/PN.Plg
32	Verdict of PT Medan Nomor 21/PID.SUS.TPK/2015/PT.MDN. & Verdict of MA Nomor 1111 K / PID.SUS / 2016
33	Verdict of PN Palangkaraya Nomor 19/Pid.Sus-TPK/2016/PN Plk & Verdict of MA Nomor 2584 K/PID.SUS/2016
34	Verdict of MA Nomor 1908 K/PID.SUS/2016
35	Verdict of MA Nomor 849 K/PID.SUS/2018
36	Verdict of PN Manado Nomor 30/Pid.Sus-TPK/2014/PN.Mnd. & Verdict of MA Nomor 1497K / Pid.Sus / 2015
37	Verdict of PN Makasar Nomor 08/Pid.Sus/2013/PN.Mks. Verdict PT Makasar Nomor 12/PID.SUS.KOR/2014/PT.MKS & Verdict of MA Nomor 2531 K/ Pid.Sus / 2015
38	Verdict of PT Banda Aceh Nomor 25/PID.TIPIKOR/2014/PT-BNA
39	Verdict of PN Banda Aceh Nomor 45/Pid.Sus-TPK/2018/PNBna
40	Verdict of PN Semarang Nomor 60/Pid.Sus-TPK/2018/PNSmg.

From Table I it can be seen that several decisions have been appealed or even reached an appeal level of 43 defendants. Corruption court decisions are divided into 2 work activities carried out namely before and in 2010 and after 2010 as seen in table III.

TABLE III. NUMBER OF WORK ACTIVITIES BASED ON PROCUREMENT

No	Work Package	Amount
1.	Before and in 2010	12
2.	After 2010	28
Total		40

III. RESULT AND DISCUSSION

According to the regulations for the procurement of goods/ services, procurement packages carried out up to 2010 refer to the provisions of Presidential Decree No. 80 of 2003 concerning Guidelines for the Implementation of Government Goods/ Services Procurement and amendments. The era before 2010 was usually called the "Kepres 80 era". Whereas the procurement package carried out after 2010 has used Perpres No. 54 of 2010 concerning Procurement of Government Goods/ Services. The era of procurement of government goods/ services can be seen in Figure 1.

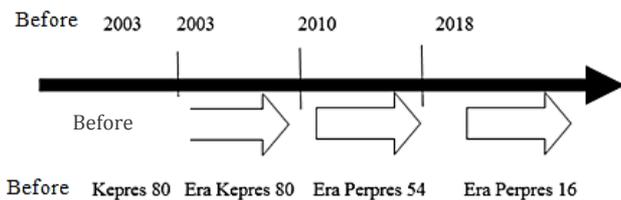


Figure 1. Era of government procurement of goods/ services

The court year is divided into 2, namely before and until 2014 and after 2014 can be seen as Table IV.

TABLE IV. COURT YEAR

No	Work Package	Amount
1.	Before and in 2014	20
2.	After 2014	27

With the enactment of Law Number 30 Year 2014 concerning Government Administration, it has developments in determining the direction of state financial losses. Article 20 of Law Number 30 Year 2014 concerning Government Administration explains that supervision of the prohibition on the abuse of authority is carried out by the government internal control apparatus. The results of the supervision of the government internal control apparatus in the form of: a. no error, b. there are administrative errors; or c. there are administrative errors that cause state financial losses. If the results of the supervision of the government internal apparatus in the form of administrative errors are carried out in the form of administrative improvements in accordance with the provisions of the legislation. If the results of the supervision of the government internal apparatus in the form of an administrative error that causes a loss of state finances are carried out the return of the losses of the state finances no later than 10 (ten) working days from the date of deciding and publishing the results of the supervision.

In practice, by looking at administrative court decisions which are administrative in nature where there is an abuse of authority that causes losses to the state finances, it is still subject to corruption. The Corruption Defendants in

general consisted of 2 types, namely: (1) procurement actors were 29 people, (2) non-procurement actors were 14 people.

Whereas procurement actors consist of personnel who have positions or are included in the structure of goods/ services procurement. Non-procurement actors consist of: (1). person / party of K/L/D/I-PD or (2). people/ parties outside K/L/D/I-PD. The number of articles of the Corruption Act violated can be seen as in Table V.

TABLE V. TOTAL ARTICLE OF THE TIPIKOR LAW BREACHED

No	Article Corruption Act violated	Amount	Percentage
1.	Article (2)	10	20 %
2.	Article (3)	39	76 %
3.	Article (7)	2	4 %
Total		51	100 %

Broadly speaking, there are 2 (two) criteria of good deeds that are procurement actors or not procurement actors that have implications for corruption, namely:

- Whether or not there is (administrative error/ breach of contract provisions, value of state financial loss, violation of Article PBJP Regulations) and there is corruption.
- Whether or not there is (administrative error/ breach of contract provisions, value of state financial loss, violation of Article PBJP Regulation).

TABLE VI. FORM OF ADMINISTRATION ERRORS

1.	Not having authority but carrying out administrative activities	Administration in accordance with procedures/ provisions of procurement regulations. example; PPTK has agreed to approve the HPS proposal that was made correctly (Perpres 80/2003 era)
		Administration does not comply with procedures/ provisions of procurement regulations or is erroneous. example; the selection process was not carried out by the Procurement Committee, PPTK gave approval of the results of the calculation of work added/ change order (era Perpres 80/2003)
2.	Have authority and carry out administrative activities	Administration does not comply with procedures/ provisions of procurement regulations or is erroneous. example; PBJP committee does not conduct the selection process according to procedures, amendments are made as a basis for termination of the contract and made after the handover of the work.
3.	Having authority but not carrying out administrative activities	Administration does not exist. Changes to the initial drawings/ designs, but no CCO or contract changes, provide the opportunity for providers to continue work without an addendum

TABLE VII. ERROR / VIOLATION OF CONTRACT TERMS

1.	Not regulated in the contract	Agree to conditions/ work. example; agree to subcontracts not specified in the contract
2.	Arranged in the contract	Do not carry out the authority and obligations under the contract. example; work volume items that are installed do not match, work results that do not meet specifications, etc.
		Perform provisions/ work that is prohibited in the contract. example; transfer main work (subcontracting)

From the decision of the court the criteria included in the Corruption and its presence or absence (administrative error / violation of contract provisions, value of state financial losses, violation of Article PBJP Regulations) can be seen in table VIII.

TABLE VIII. FORM OF ADMINISTRATION ERRORS

No	Criteria	Amount	Percentage
1.	Corruption	17	43%
2.	Presence or absence (administrative errors / breach of contract provisions, value of state financial losses, violation of Article PBJP Regulations)	23	58%
Total		40	

Table VIII criteria included in corruption and the presence or absence (administrative errors/ breach of contract provisions, value of state financial losses, violations of Article PBJP Regulations).

Looking at the sample of court decisions, there are a number of cases of corruption, as follows:

- a. Tendency to give more severe punishment if the case is appealed or appealed. Some Supreme Court level decisions are more severe when compared with PN or PT level decisions.
- b. Some decisions are acknowledged that there is still corruption in the procurement of goods / services, which is due to mark up/ fictitious/ collusion / counterfeiting carried out by the procurement actors and not the procurement actors.
- c. Violations of the provisions for the procurement of goods/ services are included in the formulation of acts against the law, so that procedural errors in the procurement of government goods/ services are very easy to be "assessed" first to enter into corruption.
- d. Some decisions due to the presence or absence (administrative errors/ breach of contract provisions, the value of state financial losses, violations of the PBJP regulation article) are considered corruption.

According to Anggara [12] that administrative and civil error in some cases of goods/ services procurement has

been clumsily classified by law enforcers as corrupt acts detrimental to state finances. For this reason, it is necessary to understand the consequences of governmental procurement of goods/ services. There are 3 actions of the organizer; a. administrative/ civil error, b. state losses, c acts of corruption.

Corruption criteria in the procurement of government goods/ services are seen not to be a mistake in the procurement process, not the poor implementation of contracts, but bribery/ gratification, mark-up of market prices, fictitious, collusion with funds flowing to unauthorized parties, fraud and forgery. Lecturer in Law on State Budget and Public Finance, Faculty of Law, University of Indonesia, Dian Puji Simatupang said that a policy maker as a product of state administration cannot be convicted even though the policy is wrong on the grounds a policy maker is adhered to with attributive authority. As many as 70 percent of legal cases that occur concerning public policy are dwelling in nature, wrong. Only 30 percent are purely criminal.

Whereas in any event or legal event, it does not preclude the possibility of various kinds of legal regulations attached to the legal event, and the preferred settlement is the fundamentals of the party or its subject matter, so that if the subject matter is a civil case then the civil law must be prioritized and expert of Indonesian Lawyers in essence it explains that in principle not all losses to the State are criminal acts and not all criminal acts that harm the country's finances are categorized as criminal acts of corruption. According to the principle of differences in Default & Fraud Crime (Bedrog). Defaults & Fraud Crime (Bedrog) can be reported criminal if elements of the form are fulfilled if the agreement has been made using a false name, false dignity, guile or a series of lies. In PBJP if there is a pure default then enter the realm of civil law. If there is a default in the PBJP that meets the element of fraud then it can enter the criminal domain. Pure defaults that cause state losses or not, of course, do not necessarily enter the corruption criteria, when they do not meet the element of corruption.

IV. CONCLUSION

Government procurement of goods/ services from 2003 to 2018 have the character of Administrative Penal Law. Some cases of goods/ services procurement have been oddly classified by law enforcement as corrupt acts. Corruption criteria in the procurement of government goods/ services are seen not to be a mistake in the procurement process, not the poor implementation of contracts, but bribery / gratification, mark-up of market prices, fictitious, collusion with funds flowing to unauthorized parties, fraud and forgery. Not all losses to the State are criminal acts and not all criminal actions that harm the country's finances are categorized as criminal acts of corruption. Some decisions due to the presence or absence (administrative errors/ breach of contract provisions, the value of state financial losses, violations of the PBJP regulation article) are considered corruption. What often happens is that there is a misunderstanding or there is still a polemic in the practice of the decision of a criminal act of corruption due to acts of holding in the procurement of government goods/ services, namely administrative/ civil error, state loss and corruption. Therefore the need for an

understanding of the consequences of acts of organizing in the procurement of government goods/ services, in order to determine the criteria for corruption must be clear. For this reason, it is necessary to understand the consequences of governmental procurement of goods/ services.

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