

From Administrative Irregularities to Criminal Acts: Uncovering Corruption in State Procurement Systems

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ABSTRAK

Pengadaan barang dan jasa di sektor publik merupakan fungsi penting yang mendukung operasional lembaga pemerintahan serta pelayanan kepada masyarakat. Namun, proses ini sering kali rentan terhadap praktik korupsi, seperti suap, kolusi, dan penyalahgunaan wewenang. Artikel ini membahas aspek hukum pidana yang terkait dengan pengadaan pemerintah melalui analisis berbagai kasus tindak pidana korupsi di Indonesia. Dengan mengkaji kerangka hukum, termasuk Kitab Undang-Undang Hukum Pidana (KUHP) dan Undang-Undang Nomor 31 Tahun 1999 juncto Undang-Undang Nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi, studi ini mengevaluasi penerapan hukum dalam praktik. Studi kasus menunjukkan berbagai permasalahan yang berulang, seperti penggelembungan anggaran, pengadaan fiktif, dan praktik nepotisme dalam pemberian kontrak. Artikel ini juga menyoroti peran lembaga penegak hukum, khususnya Komisi Pemberantasan Korupsi (KPK), dalam mengusut dan menindak pelanggaran terkait pengadaan. Meskipun telah ada kemajuan dalam upaya pemberantasan korupsi, masih terdapat tantangan dalam konsistensi penegakan hukum, keterbatasan sumber daya, serta intervensi politik. Analisis ini menekankan pentingnya mekanisme pencegahan yang lebih kuat, transparansi yang lebih tinggi, serta peningkatan kapasitas aparaturnya pengadaan untuk meminimalisir pelanggaran hukum. Dengan menelaah kasus-kasus nyata dan hasil hukumnya, studi ini bertujuan memberikan pemahaman yang lebih dalam mengenai hubungan antara hukum pidana dan pengadaan publik, serta mendukung pengembangan strategi anti-korupsi yang lebih efektif di sektor pemerintahan.

Kata Kunci: Tindak Pidana Korupsi; Korupsi Pengadaan Barang dan Jasa; Penegakan Hukum

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ABSTRACT

The procurement of goods and services within the public sector is a crucial function that supports the operation of government institutions and the delivery of public services. However, this process is often vulnerable to corruption, including bribery, collusion, and abuse of authority. This paper examines the criminal law aspects related to government procurement by analyzing various cases of corruption in Indonesia. Through a review of legal frameworks, including the Indonesian Criminal Code (KUHP) and Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption, this study explores how these regulations are applied in practice. Case studies highlight recurring issues such as inflated project costs, fictitious procurement, and favoritism in awarding contracts. The paper also evaluates the role of law enforcement agencies, particularly the Corruption Eradication Commission (KPK), in investigating and prosecuting procurement-related offenses. While significant progress has been made in combating corruption, challenges remain in the consistent application of the law, limited resources, and political interference. This analysis emphasizes the need for stronger preventive mechanisms, greater transparency, and capacity-building among procurement officials to reduce legal violations. By examining real-world cases and their legal outcomes, this study aims to contribute to a better understanding of the intersection between criminal law and public procurement, and to support the development of more effective anti-corruption strategies within the public sector.

A. INTRODUCTION

Indonesia has been actively pursuing development in various fields for some time, one of the government's efforts to increase development in these various fields is reform and acceleration in the government procurement sector of goods and services carried out by various government agencies both at the central and regional levels.¹ As a state of law with a democratic system based on Pancasila and the Constitution of the Republic of Indonesia in 1945, as well as in order to be able to carry out excellent and optimal services to the community (*public service*) in the form of development, both physical and non-physical, in the form of facilities and infrastructure and of course it needs to be supported by the procurement of goods and services both carried out by the private sector and those originating from The government (public body) as consumers/users of goods and services as well as business entities and individuals as providers of goods and services.

Government Procurement of Goods and Services is an activity to "carry out the function" of a public body to obtain goods or services from external parties that are needed cannot be provided or made by themselves internally. The phrase "carrying out functions" refers to the availability of facilities and infrastructure to facilitate the ease of public services in the community or it can also refer to the existence of

¹ Eduard Awang Maha Putra, et al. "Aspek Hukum Administrasi dan Hukum Pidana dalam Pengadaan Barang dan Jasa: Perannya dalam Mewujudkan Pengadaan Barang dan Jasa yang Akuntabel." *Lex Renaissance* 9, no. 1 (2024): 179-202.

infrastructure to support various activities, both economic and social in the community.²

The procurement of government goods and services is a series of activities that are very important to realize national development to improve public services and economic development from the national to regional levels that have been mandated by the 1945 Constitution of the Republic of Indonesia. If based on Presidential Regulation 16/2018 concerning the Procurement of Government Goods/Services in Article 3 paragraph (1) it states that there are 4 (four) classifications of Procurement of Goods/Services including: (i) Procurement related to Goods; (ii) Construction Works; (iii) Construction Services; and (iv) Other Services.³ Almost all fields require the procurement of goods and services such as in the economic sector, where to improve this economy is to build facilities and infrastructure to support the economy which is realized through the government procurement mechanism of goods and services, which is in the form of providing road or bridge facilities to facilitate mobility, market development in various regions in Indonesia, improving telecommunication infrastructure, and so on.

The many development needs in these various fields the government budgets a large amount in the procurement of government goods and services, it is known based on the 2024 General Procurement Plan (RUP), that total government spending in the 2024 Fiscal Year (FY) reaches IDR 1,259.2 trillion or equivalent to 108.41 percent of the total PBJ spending, with the large amount of budget that has been budgeted for the PBJ sector until now the PBJ budget is still vulnerable to occurrence deviations in the use of PBJ spending. In 2023, *Indonesia Corruption Watch* (ICW) noted that as many as 39% of corruption cases are corruption in the PBJ sector. There are 2 (two) categories of cases that are handled by the Corruption Eradication Commission (KPK) and the PBJ Sector is one of the sectors that are included in the high risk.⁴

Table 1. Types of Corruption in State Procurements

Types of Items	2020	2021	2022	2023	2024	2025	Total
Procurement of Goods/ Services/KN	27	30	14	62	68	16	423
Licensing		27	30	14	62	68	16
Gratuities/Bribery	55	65	100	85	63	12	1064
Levies/Extortion	-	-	1	1	16	-	44
Budget Abuse	6	3	-	-	-	-	57
Money Laundering	3	7	5	8	6	-	64
Obstructing the KPK Process	-	1	-	2	1	-	14

² Eka Priska Kombong et al., "Pelayanan Publik dan Kajian Putusan Korupsi Pengadaan Jasa Konstruksi dalam Perspektif Kontrak Jasa Konstruksi," *INTEGRITAS: Jurnal Antikorupsi* 6, no. 2 (2020): 245-262, <https://doi.org/10.32697/integritas.v6i2.665>.

³ Kombong et al.

⁴ Edy Gunawan, and Muhammad Iqbal Mutaqin. "Tantangan dan Strategi Pengembangan Sistem Informasi Kinerja Penyedia dalam Tata Kelola Pengadaan Publik Indonesia." *Jurnal Pengadaan Indonesia* 4, no. 1 (2025): 40-50.

Total	91	108	120	161	154	28	1694
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When divided based on the scale of impact and exposure/influence, corruption can be categorized into three types: first *Pretty Corruption* is small-scale corruption by public officials who interact with the community where this corruption is often found in the midst of poverty and is considered ordinary by the community; second *Great Corruption* is corruption with a large/fantastic value of state losses, billions to trillions of rupiah, this corruption is commonly called snapper class corruption, where this corruption only benefits a few people but sacrifices the community at large; third *Political Corruption* or called political corruption that occurs when a decision-maker abuses his authority such as manipulating policies, procedures, or rules for the benefit of himself or his group.⁵ These advantages can be in the form of wealth, status, or maintaining a position. From the three descriptions in the procurement sector, corruption can almost be found from the central level to the regions, even to the villages, on average corruption cases in the procurement of goods and services occur at the regional level.

In addition, corruption is commonly classified as a white-collar crime, characterized by its distinct legal treatment compared to general criminal offenses. While the underlying offenses may resemble those found in conventional criminal cases, corruption is addressed with specific sentencing provisions and legal procedures that reflect its complexity and societal impact. In Indonesia, corruption is comprehensively regulated under various laws and regulations, including specialized statutes that underscore its unique nature. Additionally, dedicated institutions such as the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, KPK) have been established to combat and prevent corruption systematically. Within this framework, asset recovery plays a critical role, serving not only as a punitive measure but also as a mechanism to restore state losses and deter future misconduct. Effective asset recovery is integral to the broader anti-corruption strategy, ensuring that illicit gains are identified, seized, and returned to the public domain in accordance with applicable legal norms.⁶

Furthermore, Indonesia has long recognized the grave threat posed by corruption to governance, public trust, and national development. In response, the state has undertaken comprehensive efforts to eradicate corruption through the establishment of a robust legal framework. Central to this framework are Law No.

⁵ Maryanto Maryanto. "Pemberantasan Korupsi Sebagai Upaya Penegakan Hukum." *Civis: Jurnal Ilmiah Ilmu Sosial dan Pendidikan* 2, no. 2 (2012).

⁶ Kalimatul Jumroh, and Ade Kosasih. *Pengembalian Aset Negara Dari Pelaku Tindak Pidana Korupsi (Studi Undang-Undang tentang Pemberantasan Korupsi dan United Nation Convention Against Corruption 2003)*. (Bengkulu: CV. Zigie Utama, 2019). See also Ridwan Arifin, Sigit Riyanto, and Akbar Kurnia Putra. "Collaborative Efforts in ASEAN for Global Asset Recovery Frameworks to Combat Corruption in the Digital Era." *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023): 329-343; Ridwan Arifin, Cahya Wulandari, Muliadi Muliadi, Indah Sri Utari, and Tri Imam Munandar. "A Discourse of Justice and Legal Certainty in Stolen Assets Recovery in Indonesia: Analysis of Radbruch's Formula and Friedman's Theory." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 2 (2023): 159-181; Ridwan Arifin, Indah Sri Utari, and Herry Subondo. "Upaya Pengembalian Aset Korupsi Yang Berada di Luar Negeri (Asset Recovery) Dalam Penegakan Hukum Pemberantasan Korupsi Di Indonesia." *IJCLS (Indonesian Journal of Criminal Law Studies)* 1, no. 1 (2017): 105-137.

31 of 1999 concerning the Eradication of Corruption Crimes and its amendment, Law No. 20 of 2001. These legislative instruments explicitly define corruption not merely as a conventional criminal act but as an *extraordinary crime* (*extraordinary crime*), thereby justifying exceptional legal measures in both investigation and prosecution.⁷ The designation underscores the pervasive and systemic nature of corruption in Indonesia, particularly in sectors that involve substantial public resources, such as the procurement of government goods and services.

Within this legal and institutional context, two core issues emerge that merit critical examination. *First* is the aspect of criminal law as it pertains to the procurement of government goods and services. This includes identifying the elements of criminal offenses within procurement processes, clarifying legal responsibilities of actors involved, and interpreting the intersection of administrative irregularities and criminal liability. *Second* is the question of legal enforcement: how the existing legal mechanisms function in practice to deter, detect, and prosecute corrupt activities in government procurement. This involves an assessment of institutional capacity, the role of supervisory and enforcement agencies such as the Corruption Eradication Commission (KPK), and the challenges faced in pursuing accountability amid complex bureaucratic structures. These issues are not only central to legal scholarship but are also vital for ensuring transparency and integrity in the management of public resources.

B. METHOD

Legal research is a scientific activity, by analyzing based on certain methods, systematics, and thinking with the aim of studying a certain legal phenomenon.⁸ The research in this article reveals and analyzes legal rules, legal doctrines, and legal principles that aim to answer legal issues related to criminal aspects in several cases in the procurement of government goods and services, so that the writing of this article uses normative juridical legal research methods. The approach in this study uses 3 approaches, namely from the aspects of laws and regulations (*Statue Approach*), Case Approach, and Conceptual Approach

This research draws upon three categories of legal materials—primary, secondary, and tertiary sources—to provide a comprehensive analysis. The primary legal materials, which form the foundation of the legal arguments in this study, consist of authoritative legal texts and regulations currently in force in Indonesia. These include: Law No. 1 of 1946 concerning the Criminal Code, which serves as the cornerstone of Indonesia's penal system; Law No. 20 of 2001 concerning

⁷ Ridwan Arifin, "Empowering International Cooperation's Role in the Follow of Assets of Corruption's Result." *Indonesian Journal of International Law* 11, no. 3 (2013): 414-422. *See also* Ridwan Arifin, et al. "The Direction of Indonesia's Legal Policy on the ASEAN Mutual Legal Assistance Treaty in Criminal Matters: A Path to Law Reform in Cross-Border Crime Enforcement in Southeast Asia." *Journal of Law and Legal Reform* 5, no. 2 (2024): 749-782; Ridwan Arifin, Rodiyah Rodiyah, and Fitria Puspita. "A comparative analysis of Indonesia's KPK and Hong Kong ICAC in Eradicating Corruption." *Jambe Law Journal* 2, no. 2 (2019): 163-179.

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*. (Jakarta: UI Press, 2008).

Amendments to Law No. 31 of 1999 on the Eradication of Corruption, which delineates the substantive and procedural provisions specific to corruption-related offenses; Law No. 30 of 2014 concerning Government Administration, which regulates the conduct of public administration and its intersection with legal accountability; and Presidential Regulation No. 46 of 2025 concerning the Second Amendment to Presidential Regulation No. 16 of 2018 on the Procurement of Government Goods/Services, which provides the latest regulatory framework governing public procurement processes. These primary sources are crucial for understanding both the normative structure and the practical mechanisms related to criminal law and corruption, particularly in the context of government procurement.

In addition to primary legal sources, this study incorporates secondary legal materials, which provide essential contextual and interpretative insights. Secondary sources include scholarly works such as law books, research articles, and legal journals that delve into issues related to the eradication of corruption and public procurement processes. These sources also encompass papers presented at academic seminars and conferences, as well as a range of other scientific research papers that contribute to a deeper understanding of the legal frameworks under investigation. By integrating these secondary sources, the research ensures a comprehensive examination of the subject, drawing on expert analysis and prevailing legal theories.

Finally, tertiary or non-legal sources are utilized to further enrich the study. These include reference materials such as legal dictionaries, which aid in the precise interpretation of legal terms, and general resources like the *Kamus Besar Bahasa Indonesia* (KBBI), which helps clarify language usage and meaning in a broader cultural and linguistic context. These tertiary sources serve as auxiliary tools, enhancing the clarity and accessibility of legal concepts discussed in the research.

C. ANALYSIS AND DISCUSSION

1. Aspects of Criminal Law in the Procurement of Government Goods and Services

Criminal law, also known as criminal law, plays a role in regulating various forms of crime and all aspects related to it in community life. In the context of procurement of goods and services, actions taken by users and providers that violate the law are the main concern.⁹ Some examples of the application of criminal law in this realm include acts of corruption, bribery, and conspiracy. These actions constitute a violation of the applicable legal provisions.¹⁰ In other words, every violation that occurs in the procurement process from the planning stage to the completion of the

⁹ Abdul Wahid et al., 'The Effects of Decision Number: 15/PUU-XIX/2021 of the Constitutional Court on Indonesia's Money Laundering Law Enforcement', *European Journal of Law and Political Science* 1, no. 5 (2022): 42-47.

¹⁰ Satria Ramadhan, "Tindak Pidana Korupsi Pengadaan Barang Dan Jasa Dalam Hukum Positif Indonesia." *Prosiding Seminar Nasional Ilmu Sosial dan Teknologi (SNISTEK)*. Vol. 6, 2024. See also Yulianingsih, Nisa. "Kebijakan Hukum Pidana dalam Tindak Pidana Korupsi Pengadaan Barang dan Jasa." *Law Reform* 10, no. 1 (2014): 62-74; Aksan, Muhammad, Marwan Mas, and Ruslan Renggong. "Analisis Hukum Pengadaan Barang dan Jasa Terhadap PNS dalam Perspektif Tindak Pidana Korupsi." *Indonesian Journal of Legality of Law* 4, no. 1 (2021): 93-96.

contract indicates non-compliance with the regulations that have been set. As part of public law, criminal law requires the state to actively safeguard and guarantee the rights and interests of both parties, both users and providers of goods and services.

In the process of procurement of goods and services by the government, there are a number of vulnerable points that have the potential to become places where criminal acts occur, especially due to various forms of irregularities that are carried out systematically and individually. One of the most vulnerable stages to legal irregularities is the procurement planning stage, where indications of unhealthy practices such as budget inflating or *mark-up* are often found,¹¹ i.e. the process of unreasonably raising the value of the budget from the actual price with the aim of illegally obtaining personal or group benefits. In addition, there are often procurement that has been directed in such a way as to win over certain parties, without taking into account the principles of fair competition and fairness, which is clearly contrary to the basic principles of transparent and accountable procurement.¹²

Furthermore, there are engineering practices in the preparation of procurement packages, either through breaking into small packages or unnatural unification, with certain objectives such as opening up opportunities for collusion between providers and users, or facilitating corruption and nepotism. All of these actions are clearly a form of abuse of authority that not only violates the norms of criminal law, but also has a direct impact on the efficiency and effectiveness of the use of state finances.¹³

However, vulnerability to criminal acts is not only limited to the planning stage. The advanced stages in the procurement process also contain the potential for legal irregularities, such as in the qualification process of the supplier company, where there is a possibility of data manipulation or non-objective selection to win certain participants.¹⁴ Similarly, at the bid evaluation stage, where the results of the

¹¹ Murdian Murdian. "Criminal Responsibility in the Execution of the Contract for the Procurement of the Government." *Jurnal IUS Kajian Hukum dan Keadilan* 4, no. 1 (2016): 2-26.

¹² Ita Susanti, and Sri Murniati. "Analisis Yuridis Terhadap Aspek Hukum Pengadaan Barang/Jasa Pemerintah Beserta Akibat Hukumnya." *SIGMA-MU* 10, no. 2 (2018): 62-73.

¹³ I. Putu Jati Arsana, *Manajemen Pengadaan Barang Dan Jasa Pemerintah* (Yogyakarta: Deepublish, 2016).

¹⁴ Muhammad Yasin. "Dikritik, Pendekatan Pidana dalam Kasus Pengadaan Barang dan Jasa" <https://www.hukumonline.com/berita/a/dikritik--pendekatan-pidana-dalam-kasus-pengadaan-barang-dan-jasa-lt5f44f7a003575/>. Furthermore, it is emphasized that corruption in state procurement remains a significant challenge in Indonesia despite ongoing legal reforms and anti-corruption efforts. Recent developments indicate a continued focus on enhancing transparency, efficiency, and accountability within the procurement process. The Indonesian government has introduced stricter regulations, such as Presidential Regulation No. 46 of 2025, which aims to refine the framework for public procurement, minimizing opportunities for graft. The Corruption Eradication Commission (KPK) has also intensified its role in investigating and prosecuting procurement-related corruption, leveraging digital tools for monitoring and auditing government contracts. However, challenges persist, including the persistence of patronage networks, weak enforcement, and bureaucratic inefficiencies that often allow corrupt practices to thrive. Efforts like the use of e-procurement systems and improved public sector oversight are gradually improving the landscape, but systemic reform and a cultural shift towards integrity in government procurement remain crucial to achieving meaningful progress in curbing corruption. See also Dewi Yustiarini, and Biemo W. Soemardi. "A review of corruption in public procurement in Indonesia." *IOP Conference Series: Materials Science and Engineering*. Vol. 849. No. 1. IOP Publishing, 2020; Imelda Suardi, et al. "Procurement governance in reducing corruption in the Indonesian public sector: a mixed

evaluation can be manipulated to benefit certain parties. Signing a contract can also be a gap for conspiracy between users and service providers in determining terms and conditions that contain elements that are detrimental to the state.

Furthermore, at the stage of implementing procurement, such as the delivery of goods and services, it is also found that there is a great potential for criminal acts, especially if the goods handed over do not meet the technical specifications that have been determined, have low quality, or even do not comply with the content of the contract. This certainly has the potential to cause financial and functional losses for the state and society as beneficiaries.¹⁵ Apart from the service users, perpetrators from the side of the provider of goods and services are also not spared from the potential to commit criminal acts, including through falsification of documents in the administrative process, or default in the execution of work, namely the inability or inability to fulfill obligations according to the agreement. These two types of violations, in addition to being contrary to contractual norms, also have elements of unlawful acts that can be categorized as criminal acts because they cause material and immaterial losses to the state.

In the implementation of government procurement for goods and services, various legal entities are involved, each with distinct roles, authorities, and responsibilities. These entities may operate independently or collaborate as part of a collective effort to carry out procurement activities. The coordination and interaction among these stakeholders—such as government agencies, procurement committees, contractors, and oversight bodies—are essential to ensuring that procurement processes are efficient, transparent, and in compliance with legal standards. Each legal subject contributes to different stages of procurement, from planning and tendering to contract management and oversight, thus ensuring a balanced distribution of duties and accountability throughout the process.¹⁶ Any action or decision they take in order to carry out the procurement task cannot be separated from the inherent legal consequences, whether in an administrative, civil, or criminal context, depending on the nature and degree of the violation that occurred. In practice, it is not uncommon for the implementation of procurement to raise quite serious legal problems, which ultimately lead the perpetrators to the judicial process to account for their actions before the law. In some cases, legal liability can lead to criminal sanctions in the form of prison sentences served in

method approach." *Cogent Business & Management* 11, no. 1 (2024): 2393744; Satria Unggul Wicaksana Prakasa, "Reduce Corruption in Public Procurement: The Effort Towards Good Governance." *Bestuur* 10, no. 1 (2022): 33-42.

¹⁵ Riski Syandri Pratama, "Layanan Penyelesaian Sengketa Kontrak Pengadaan Barang/Jasa Pemerintah (LPS LKPP) sebagai Alternatif Penyelesaian Sengketa Kontrak Pengadaan Barang/Jasa Pemerintah." *Jurnal Pengadaan Barang Dan Jasa* 2, no. 1 (2023): 1-13.

¹⁶ Sambari Halim Radianto, et al. "Analysis on the implementation of goods/services procurement electronically at District Government Gresik." *International Journal of Advanced Science and Technology* 29, no. 6s (2020): 559-568; Ratih Hendayani, and Putri Aulia Fariha Fauzi. "Analysis of E-Procurement Implementation in Effectiveness Procurement of Goods and Services:(Case Study at PT. Kereta Api Indonesia (PERSERO))." *International Journal of Entrepreneurship and Business Management* 1, no. 2 (2022): 153-169.

correctional institutions if proven to have committed violations that meet the elements of criminal acts.¹⁷

Violations of the law in the procurement process of goods and services can be committed in various forms, either by individuals personally or in the form of unauthorized or collusive cooperation between the parties involved. This collusion is often designed to benefit certain groups illegally, which is clearly contrary to the principles of transparency, accountability, and fair competition in procurement.¹⁸ Given the importance of integrity and compliance with legal provisions in every stage of procurement, the government's procurement system of goods and services is designed and implemented through systematic and structured procedures, starting from the planning stage to the completion of the entire series of activities.

This process is carried out by a number of parties who have positions and responsibilities that have been legally stipulated by laws and regulations, including:

- a. Budget Users (PA), namely officials who have the highest authority in the use of the budget within Ministries, Institutions, or Regional Apparatus Work Units (SKPD), including officials who are equalized in institutions that use budgets from the State Budget and Regional Budget. The PA is responsible for the general procurement policy and the determination of the direction of budget use.
- b. Budget User Power of Attorney (KPA), which is an official delegated by the PA or regional head to carry out part of the PA's authority, especially in terms of budget use and management. KPA plays a role as the technical implementer of budget policies within the framework of procurement of goods and services.
- c. Commitment Making Officials (PPK), which are officials who are given the authority to establish and sign procurement contracts, and are fully responsible for the overall implementation of procurement activities in terms of technical planning, implementation control, and work completion.
- d. Procurement Service Unit (ULP), which is a permanent work unit within Ministries, Institutions, Regional Governments, or other institutions that are assigned to carry out the selection process for suppliers of goods and services. ULPs can operate as stand-alone units or attached to existing work units, depending on the organizational structure of each agency.
- e. Procurement Officers, who are specifically appointed to handle procurement by certain methods such as Direct Procurement, Direct Appointment, or e-Purchasing. Their job is to ensure that the procurement process is in accordance with regulations and the principles of efficiency and effectiveness.
- f. Committee/Work Result Recipient Official, which is an official or team designated by the PA or KPA and is tasked with verifying and receiving work results from goods/service providers. They are responsible for checking the quality and suitability of work results with the established contracts.
- g. The Government Internal Supervision Apparatus (APIP), which functions to carry out internal supervision through various methods such as audits, reviews, evaluations, monitoring, and other supervisory actions on the implementation of

¹⁷ Topo Santoso, *Urgensi Pembinaan Pengadilan Tindak Pidana Korupsi Dalam Mewujudkan Good Governance*. (Jakarta: Badan Pembinaan Hukum Nasional Puslitbang, 2011).

¹⁸ Sovia Hasanah. "Sanksi Bagi Penyedia Barang/Jasa Pemerintah yang Berbuat Curang" <https://www.hukumonline.com/klinik/a/sanksi-bagi-penyedia-barang-jasa-pemerintah-yang-berbuat-curang-lt5a7010a13b55a/> visited on May 9, 2025 at 18.00

the duties and functions of government agencies, including in the procurement process.

- h. Goods and Services Providers, namely parties from outside government agencies in the form of business entities or individuals who offer and provide goods, construction work, consultancy services, or other services according to the needs and provisions in the procurement documents.¹⁹

Based on article 8 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services, the legal subjects / actors of goods / services procurement consist of:

- a. PA
- b. KPA
- c. PPK
- d. Procurement Officer
- e. Selection Working Group
- f. Procurement Agent
- g. PjPHP/PPHP
- h. Swakelola Organiser;
- i. Provider

Furthermore, the provisions in article 8 of PR 16/2018 are amended by deleting the provisions in letter g so that the actors of goods / services procurement consist of:

- a. PA
- b. KPA
- c. PPK
- d. Procurement Officer
- e. Selection Working Group
- f. Procurement Agent
- g. *Deleted*
- h. Self-management Organiser;
- i. Provider

The involvement of many parties with different functions and responsibilities makes the procurement process very complex and vulnerable to violations of the law if it is not carried out with the principles of prudence, professionalism, and high integrity. Therefore, strengthening the supervisory system, improving the competence of human resources, and applying the principles of transparency and accountability are absolutely necessary to minimize the risk of legal irregularities in the process of procuring government goods and services.²⁰

If in the implementation of the procurement of government goods and services it is found that there are elements of error that meet the provisions of the law, both administrative, civil, or criminal, then in principle, the perpetrator or party

¹⁹ Article 1 of Presidential Regulation of the Republic of Indonesia Number 46 of 2025 concerning the Second Amendment to Presidential Regulation Number 16 of 2018 concerning the Procurement of Government Goods/Services.

²⁰ LSP Pengadaan Indonesia "Transparansi dan Akuntabilitas Pengadaan Barang dan Jasa dalam Proyek Pemerintah" <https://lspengadaan.id/transparansi-dan-akuntabilitas-pengadaan-barang-dan-jasa-dalam-proyek-pemerintah/> visited on May 10, 2025 at 15.00

responsible for the error must be held accountable according to the type and level of violation that occurred. The accountability system in the context of procurement of goods and services is designed to ensure legal justice, maintain the integrity of the procurement system, and protect the interests of finance and public services from deviant or detrimental actions. In this case, there are three main types of sanctions that are imposed as a form of accountability for irregularities that occur, both by providers and by budget users.

- a. Administrative sanctions in the form of blacklisting are imposed on suppliers of goods and services that are proven to have committed serious violations of provisions in the procurement process, such as defaults, falsification of documents, or the execution of work that is not in accordance with the contract. Providers subject to these sanctions will be blacklisted for a certain period of time, i.e. for two calendar years. This blacklist contains the identity of the goods/service provider or guarantee issuer who are sanctioned by the Budget User (PA) or Budget User Proxy (KPA). The consequence of this inclusion is that the provider concerned is prohibited from participating in the procurement process of goods/services across all Ministries, Institutions, Local Governments, or Institutions (K/L/D/I) during the sanction period, thus losing the opportunity to obtain contracts from government projects during that period.
- b. Civil liability can also be imposed on suppliers of goods or services that are considered to have harmed the state or government agencies in the implementation of procurement. In this case, the Ministry, Institution, or Regional Government that feels aggrieved has the right to file a civil lawsuit against the provider concerned in court. This lawsuit is brought based on the provisions of applicable civil law, and aims to recover state losses or obtain compensation for contractual breaches, non-compliance with procurement provisions, or the execution of legally defective or defective work. This civil lawsuit process is an important legal means to ensure that losses suffered by the state can be recovered through judicial mechanisms.
- c. Criminal sanctions, as the most serious form of liability, are imposed if the actions of the provider or other parties involved in the procurement have fulfilled the elements of criminal acts as stipulated in *the Criminal Code (KUHP)* or in special provisions, as stated in *Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption*. Criminal sanctions are applied when there is strong evidence that there has been criminal acts such as corruption, bribery, falsification of documents, embezzlement, or collusion in the procurement process. The punishments that can be imposed are imprisonment, fines, and in some certain cases, the revocation of the right to do business or the prohibition of occupying certain positions within a certain time.²¹

The regulation of criminal sanctions in the procurement of government goods and services until now has not been specifically regulated in regulations related to government procurement of goods and services, in this case it is still at the level of

²¹ Sudarsono Sudarsono, "Penerapan Sanksi Daftar Hitam Terhadap Penyedia Barang dan Jasa Pemerintah dalam Pengadaan Barang dan Jasa Pemerintah," *Jurnal Ilmu Hukum, Humaniora dan Politik* 4, no. 3 (2024): 502–11, <https://doi.org/10.38035/jihhp.v4i3.1949>.

presidential regulations, presidential regulations related to the procurement of goods and services have changed twice, which were previously regulated in Presidential Regulation of the Republic of Indonesia Number 16 of 2018 concerning Government Procurement of Goods / Services, then amended through Presidential Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments, and finally amended in Presidential Regulation of the Republic of Indonesia Number 46 of 2025 concerning the Second Amendment to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods / Services, in these three regulations do not contain provisions related to criminal sanctions in the presidential regulation only explains that the Goods and Services Procurement Work Unit (UKPBJ) can report criminally only.

The content of Article 78 paragraph (1) letters a to d of PR 16/2018 UKPBJ can report criminally if the actions of election participants who can be sanctioned in the implementation of the selection of providers if they submit false documents or information, indicated conspiracy with other participants to set the bid price, indicated KKN in the selection of providers, or resign with unclear reasons that cannot be accepted by the procurement official/election working group/election agent. In addition, in Article 80 of PR 16/2018, UKPBJ can report criminally if the actions of election participants who are subject to sanctions in the catalog process include submitting false documents/statements, indicating conspiracy, indicating KKN in the selection of providers, resigning for unacceptable reasons, or resigning or not signing the catalog contract.

The provisions of Presidential Regulation 46/2025 in Article 80 related to the acts or actions of providers in the catalog listing process have been changed where in this regulation UKPBJ now cannot report criminally, but can only be subject to administrative sanctions.

The procurement of government goods and services is not far from corruption, based on the records of the Corruption Eradication Commission (KPK), there are 361 corruption cases involving regional heads in Indonesia. Of these, 343 cases ensnared mayors or regents, while 18 other cases involved governors. In Hall's view cited by Wiralestari, fraud is understood as the presentation of important facts that are systematically arranged but deliberately misused by the perpetrator, to influence and mislead other parties through false information. Widjaja, also in Wiralestari, asserts that fraud is a deliberate act of deception, which includes systematic lying, plagiarism, and theft.²²

Corruption in the procurement of goods and services (PBJ) sector is categorized as a form of transactional corruption. This type of corruption often stems from project planning that is proposed not by the public, but by private parties or corporations. In practice, the government as the party receiving the proposed project will generally approve the implementation of the project with a predetermined budget. Suppose there are irregularities in the planning and budget submission process from the start. In that case, this often opens up opportunities for budget

²² Panca Ipunk Rahadjie, Ma'ruf Hafidz, dan Andika Prawira Buana, "Urgensi Keterbukaan Informasi Publik Data Evaluasi Penyedia Pengadaan Barang/Jasa Pemerintah," *Journal of Lex Generalis (JLS)* 3, no. 3 (2022): 404-17.

mark-ups which can then become an entry point for requests for money by regional heads to businessmen or corporations.

When the government needs goods or services, it has two options: make them itself or buy them from the private sector. This means that the government can choose to procure goods and services independently or through the private sector. However, corruption in this context often occurs in the procurement bidding process, especially involving procurement officials. In this process, unit prices can be inflated by mark-ups, so that the officials concerned benefit personally from the price difference.²³

Various forms of irregularities in the procurement of goods and services (PBJ) process can be categorized as corruption if they meet the elements stipulated in the legislation. One of the most common forms found in the practice of procurement of goods and services is bribery and facilitation payments, including various other forms that are more covert and difficult to detect. The modus operandi and forms of irregularities in corruption offences can appear at every stage of the goods and services procurement process, including:

- a) Identification and determination of needs;
- b) Planning and preparation of procurement documents;
- c) The stage of selecting participants and determining the winner of the auction;
- d) The stage of work implementation;
- e) Stage of handover of work results;
- f) Stage of payment of work results; and
- g) The reporting and inspection or audit stage.

With the enactment of this accountability system that includes administrative, civil, and criminal sanctions, it is hoped that all actors in the procurement of government goods and services, both from internal government elements and from providers, will have high awareness and responsibility for the applicable laws and regulations. This is important not only to ensure compliance with the law, but also to create procurement governance that is clean, efficient, and free from corrupt practices that harm the interests of the state and society at large.

Law enforcement against abuses of authority in the process of procurement of government goods and services must be carried out consistently and comprehensively by upholding the principle of justice without discrimination. The enforcement must be carried out strictly and indiscriminately, and carried out in a sustainable manner in order to be able to create a *deterrent effect* on law violators.²⁴ The main goal of these enforcement measures is to prevent the recurrence of the same unlawful acts, while instilling a strong legal culture among procurement implementers. Thus, there will be a growing collective awareness among stakeholders to firmly reject any form of irregularities in the implementation of state spending programs or the use of the public budget. In the long run, a firm stance against budget abuse will have a positive impact on Indonesia's reputation

²³ Endah Cahyani, "Pencegahan Tindak Pidana Korupsi Pengadaan Barang dan Jasa Pemerintah," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 3, no. 2 (2022): 79-89, <https://doi.org/10.18196/ijclc.v3i2.15527>.

²⁴ Adam Khafi Ferdinand, D. M. Sunarto, and Maya Shafira. "Penegakan Hukum dalam Pengadaan Barang dan Jasa Pemerintah oleh Komisi Pengawas Persaingan Usaha (KPPU) dan Komisi Pemberantasan Korupsi (KPK)." *Cepalo* 4, no. 2 (2020): 111-128.

in the eyes of the world, especially in increasing the trust of other nations and international partners in clean and responsible governance. This is one of the fundamental prerequisites in building a more prosperous, orderly, and law-abiding Indonesia, and is an important foundation for the realization of *good governance* and *clean governance*.

However, in the reality on the ground, the biggest challenge in the implementation of procurement of goods and services often lies in the low understanding and lack of mastery of the procurement committees of the applicable regulations and legal provisions, from the planning stage to the technical implementation. In addition to the competency aspect, cultural factors are also serious obstacles, especially the culture of asking for 'allotments' or informal commission sharing which has been systemically rooted in some procurement practices. This phenomenon makes the procurement process vulnerable to collusion, corruption, and nepotism. To address this problem, decisive action is needed from stakeholders and authorities to provide proportionate sanctions against individuals who are proven to have abused authority for personal or group interests.²⁵ One preventive measure that can be implemented in the early stages of procurement is to tighten administrative requirements, such as requiring providers to attach an anti-bribery certificate or other document demonstrating a commitment to clean business ethics. The goal of this approach is to build a procurement system with integrity, as well as create a new paradigm that is free from deviant practices.²⁶

In the context of law enforcement, the approach to violations in the procurement of goods and services does not always have to lead to criminal proceedings. Criminal law should be used as a last resort, which in legal theory is known as the *ultimum remedium*. This principle states that criminal intervention should be carried out if other resettlement channels such as administrative mechanisms, civil settlement, mediation, or family approaches are ineffective or unable to address the violations of the law that occur. Therefore, the application of criminal law in the context of procurement of goods and services should be carried out with careful and proportionate consideration. Only if the deviation has exceeded the limits of reasonableness and the administrative supervision system fails to prevent it, then criminal law is enforced as a last resort that has coercive force through the sanction of confinement or fines. In this sense, criminal law is not only a tool of retribution, but also an instrument to discipline and direct people's behavior towards compliance with applicable legal norms.

Furthermore, because the procurement of goods and services is a vital instrument in public services and the fulfillment of the needs of the community at large, its implementation must be built on the principles of accountability, efficiency, transparency, and integrity. The role of law in this regard is crucial, not only as a normative tool that regulates formal mechanisms, but also as a strategic

²⁵ Muhammad Ulil Albab, "Analisis Pelaksanaan Pengadaan Barang/Jasa Pemerintah (Studi Pada Unit Layanan Pengadaan Daerah Kementerian Keuangan Provinsi Daerah Istimewa Yogyakarta)," *ABIS: Accounting and Business Information Systems Journal* 5, no. 4 (2020), <https://doi.org/10.22146/abis.v5i4.59262>.

²⁶ Richo Andi Wibowo, *Tata Kelola Pemerintahan Yang Baik Dan Pengadaan Barang Jasa Pemerintah: Pendekatan Perbandingan Hukum*. (Yogyakarta: UGM Press, 2022).

instrument for shaping effective and public interest-oriented public policies. The existence of law in society, as reflected in the classic adage "ubi societas, ibi ius" (where there is a society, there is a law), shows that law is an inseparable element of social life. More than that, the law has a function as a social control, which maintains order in society through behavioral regulation and conflict resolution.

As stated by Roscoe Pound, one of the leading figures in the field of legal philosophy, law functions in two main dimensions: as a tool of *social engineering* and as a tool of control over social behavior. In its role as a tool of social engineering, the law is expected to be able to encourage changes in values and norms in society, including encouraging the formation of governance in the procurement of goods and services that is accountable, professional, and free from deviations. Meanwhile, as a tool of social control, the law has an important role in setting standards of behavior and directing the actions of individuals and groups in a direction that suits the collective interest.²⁷ In the context of procurement of goods and services, the law not only formally regulates procurement procedures, but also forms a collective awareness that procurement is a strategic activity that concerns public responsibility. Therefore, the success of the procurement system is highly determined by the effectiveness of the role of the law in shaping behavior, regulating mechanisms, and enforcing sanctions for perpetrators of irregularities in order to create a system that is fair, transparent, and responsible.

Law enforcement against the abuse of authority in the procurement of goods and services must be carried out fairly without discrimination, firmly, and this process must take place on an ongoing basis, with the aim of creating a deterrent effect that can prevent perpetrators from repeating the same unlawful acts. The birth of awareness to be firm and reject all forms of irregularities in the implementation and use of the budget will have a positive impact in the form of increasing trust from other nations in Indonesia. This is an important condition for realizing a prosperous, orderly, and law-abiding Indonesia, as well as a foundation for good governance and clean governance.²⁸

The low understanding and knowledge of procurement committees regarding the applicable provisions from planning to implementation is also a problem. In addition, the culture of asking for allotments and commission sharing is difficult to eliminate. To overcome this, firmness from stakeholders is needed to impose strict sanctions against individuals who abuse authority for personal gain. Therefore, at the initial stage of the procurement process of goods and services, strict conditions must be set, such as attaching an anti-bribery certificate. The goal is to build a paradigm of procurement of goods and services that is free from corruption, collusion, and nepotism.

In an effort to change these cultures and habits, the application of criminal law is an effective last step (*ultimum remedium*) to create change and provide a deterrent effect, this is because criminal law has sanctions in the form of

²⁷ Fitri Mastuti Nurul Fuadah, Tofik Yanuar Chandra, and Hedwig Adiando Mau. "Penegakan Hukum Terhadap Pejabat Negara Pelaku Tindak Pidana Penyalahgunaan Kewenangan Dalam Pengadaan Barang Dan Jasa Oleh Pemerintah." *Journal of Innovation Research and Knowledge* 4, no. 10 (2025): 7369-7380.

²⁸ Zakky Ustmani, et al. "Kegagalan pemerintah dan sikap pengadilan atas penerapan asas perlakuan yang sama dalam pengadaan barang/jasa." *Mimbar Hukum* 35, no. 1 (2023): 59-83.

imprisonment and fines that can be applied individually or collectively. *Ultimum remedium* is not only a term, but also a legal principle. As one of the principles in Indonesian criminal law that says that criminal law should be used as a last resort for law enforcement, the principle of *ultimum remedium* means "if a case can be resolved through other channels (family, negotiation, mediation, civil, or administrative law)", the other route should be done first. This means that in the procurement of goods and services, the criminal law aspect is the last resort in enforcing cases of corruption, bribery, and conspiracy, if the administrative legal aspect has not been able to be a preventive effort in preventing criminal acts in the procurement of goods and services.²⁹

Therefore, the procurement of goods and services intended for public services and public interests should be built on a procurement paradigm that is accountable and clean from corruption. This is the role of law to be an instrument in creating ideal regulations and policies in the procurement of goods and services.³⁰ The existence of law cannot be separated from society, as expressed in the adage "*ubi societas, ibi ius*" (where there is a society, there is a law). In addition, law plays a role as a means of social control by maintaining order and existing life patterns. Roscoe Pound stated that in general, the function of law can be divided into two, namely as a tool of social engineering of society and as a tool of social control.³¹ The law is expected to influence and change social values in society, including in realizing an accountable procurement paradigm of goods and services. As a tool of social control, law has an important role in setting standards of human behavior and directing such behavior towards a better one, especially in the context of procurement of goods and services that prioritize the public interest

2. Law Enforcement in the Procurement of Government Goods and Services

2.1 Decision Number 4/Pid.Sus-TPK/2021/PN Mnd

a. Merit of the Case

Based on the evidence and documentation presented by both the Public Prosecutor and the Defense Counsel, the following legal facts were established. In 2014, the Market, Hygiene, and Landscaping Office of Talaud Islands Regency allocated a budget for the procurement of street decorative lights in Melonguane City, totaling Rp1,405,000,000 (one billion four hundred five million rupiah). During the execution of this procurement project, an organizational structure was established, comprising several key individuals with specific roles and responsibilities. Drs. Alex Basaen Sahadula, MM, was designated as the Budget User, while Seprianus Mailuas, SH, served as the Commitment Making Officer (PPKom). Tony M. T. Gagola, S.Pd., M.Si., held the position of PPTK, and the PPHP Team was formed with Indra Ailat Gumolung, A.Md.TS, as Chairman, Ruston Mamaghe, SE, as

²⁹ Umar Maksum, M. Makarao, and Fauziah Fauziah. "Optimalisasi Pencegahan Tindak Pidana Korupsi pengadaan Barang Dan Jasa Pemerintah." *Jurnal Hukum Jurisdictie* 5, no. 2 (2023): 177-190.

³⁰ Lati Praja Delmana, "Pengaruh Penerapan Good Governance Dalam E-Purchasing Terhadap Pencegahan Korupsi," *Jurnal Ilmu Pemerintahan Widya Praja* 45, no. 1 (2019): 47-62, <https://doi.org/10.33701/jipwp.v45i1.241>.

³¹ Oksidelfa Yanto, *Negara Hukum: Kepastian, Keadilan Dan Kemanfaatan Hukum (Dalam Sistem Peradilan Pidana Indonesia)*. (Jakarta: Pustaka Reka Cipta, 2020).

Secretary, and Benyamin Takaliuang as a Member. Additionally, Andrias Towoliwu was appointed as the Expenditure Treasurer.

In this case, the facts reveal a series of procedural irregularities and breaches in the procurement process for street decorative lights in Melonguane City, Talaud Islands Regency, in 2014. Drs. Alex Basaen Sahadula, MM, as the Head of the Service, appointed Seprianus Mailuas, SH, as the Commitment Making Officer (PPKom) despite the latter's lack of formal expertise in procurement. Mailuas, in turn, selected the members of the Procurement and Handover (PPHP) Team, namely Indra Ailat Gumolung, Ruston Mamaghe, and Benyamin Takaliuang, as well as appointed two consultancy firms, CV. Freecons and CV. Multi Teknika, both led by the same individual, Alfriady Ivan Sahadula, ST, to support the project.

The legal issue escalates with the formation of a Working Group Team based on a decree issued on August 8, 2014. However, two of its members were inactive due to legal issues or educational commitments, which significantly impacted the team's ability to perform its duties. The procurement process commenced with the publication of a procurement announcement on October 27, 2014, on the LPSE website, attracting 18 registered companies, but only three submitted offers. Following the evaluation, CV. Mega Cipta, owned by Riko Lalu Girot, was selected as the winner, with the contract value set at IDR 1,400,000,000.

Several anomalies occurred in the execution of the project. Although the contract was supposed to be signed by Riko Lalogirot, all procurement-related documents, including contracts and payment disbursements, were signed by Erman bin Muhamad, a staff member of CV. Mega Cipta. Furthermore, the procurement work, scheduled to be completed within 40 days, proceeded without direct engagement from the official company director, Riko Lalogirot, who was notably absent from critical communications and meetings.

Upon further inspection, it became apparent that the street decorative lights provided by CV. Mega Cipta did not conform to the technical specifications outlined in the contract. An expert examination revealed that 33 units of LED Fireworks lamps were not installed as per the agreement and failed to meet essential international safety and quality standards. These lamps, which consumed excessive power and lacked proper certification, posed significant risks.

Additionally, an audit by the North Sulawesi Province BPKP Representative found that the total payments made to CV. Mega Cipta significantly exceeded the actual value of the work performed. The state suffered a loss of IDR 1,127,753,482 due to these discrepancies. The mismanagement of the procurement process, combined with substandard execution and fraudulent documentation, resulted in a substantial financial loss to the state and raised critical concerns regarding accountability, oversight, and transparency in public procurement procedures.

This case highlights multiple levels of legal violations, from the improper appointment of key personnel to the execution of substandard work, and ultimately, the failure to ensure the integrity of public funds. It underscores the importance of stringent regulatory oversight and the necessity of upholding technical standards in public procurement to safeguard the interests of the state and its citizens.

b. Judge's Considerations

The Panel of Judges has thoroughly reviewed the legal facts presented during the trial to determine whether Defendant I, Indra Ailat Gumolung, A.Md.TS, Defendant II, Ruston Mamaghe, S.E., and Defendant III, Benyamin Takaliuang, can be legally and convincingly proven to have committed the criminal acts as charged by the Public Prosecutor, or if they should be acquitted of the charges.

The Defendants were charged under an indictment prepared in a subsidiary manner. In accordance with applicable criminal procedure law, the Panel of Judges first addresses the primary indictment. If the primary charge is proven, the subsidiary charge will not need further consideration. However, if the primary charge is not proven, the Panel will then examine the subsidiary charge.

In the primary indictment, the Defendants were accused of violating Article 2, paragraph (1) jo. Article 18 of Law No. 31 of 1999, as amended by Law No. 20 of 2001 concerning Corruption Eradication, in conjunction with Article 55, paragraph (1), 1 of the Criminal Code. The elements of the indicted article include:

1. Anyone;
2. Unlawfully;
3. Engaging in actions that enrich oneself, others, or a corporation;
4. Resulting in harm to state finances or the national economy;
5. The individual who does, commands, or participates in the act.

The Panel of Judges will now provide its legal considerations regarding each of these elements:

1. *The "Everyone" Element*

The phrase "everyone" in the formulation of the article refers to legal subjects, both individuals and corporations, who have the capacity to bear rights and obligations and can be held accountable for their actions under the law. In this case, Defendants I, II, and III were appointed as the Committee for Receiving Work Results (PPHP) for the procurement of street decorative lights in Melonguane City for the 2014 fiscal year, based on Decree No. 09/SK/PA/DISPASIHTA/II/2014 dated February 3, 2014, issued by the Head of the Market, Hygiene, and Landscaping Office of Talaud Islands Regency. The identity of the Defendants was verified during the trial, and the results showed no errors regarding their legal status. Therefore, the Panel of Judges is satisfied that the Defendants fall within the scope of "every person" in the indictment, fulfilling this element.

2. *The Unlawful Element*

The Panel considers the element of "profit for oneself, others, or the corporation" to be alternatively fulfilled if the Defendant's actions benefited any of these parties, not necessarily all. "Profit" in this context includes both material and non-material benefits, such as psychological advantages, social status, or facilities. The word "*profitable*" is broader than simply "*enriching*" and encompasses a range of benefits, including those beyond material wealth.

Expert testimony from Ir. Hans Tumaliang, M.T., indicates that the street lights procured for the project did not meet the specified technical standards outlined in the planning documents. This non-compliance with the contract was not due to the Defendants' intent but was instead caused by incomplete documentation provided by Seprianus Mailuas, the Commitment Making Officer

(PPKom), combined with time constraints imposed by Drs. Alex Basaen Sahadula, and pressure from the Regent to expedite the disbursement of funds.

In criminal law theory, two key elements are critical to determining criminal liability: the objective element (*actus reus*) and the subjective element (*mens rea*). While *actus reus* pertains to the unlawful act, *mens rea* refers to the intention or awareness of the individual involved. In this case, the Panel of Judges finds that the Defendants did not act with the necessary *mens rea* to intentionally benefit themselves, others, or the corporation. As such, the element of "for the purpose of benefiting" is not fulfilled.

3. *Conclusion on Primary Indictment*

Given that the *mens rea* element is not met, the Defendants cannot be proven to have intentionally engaged in actions to benefit themselves or others. Consequently, the Panel concludes that the Defendants are not guilty of the primary charge under Article 2, paragraph (1) of Law No. 31 of 1999, as amended by Law No. 20 of 2001.

Since the primary charge is not substantiated, the Panel moves to consider the subsidiary charge. However, as the Defendants were not proven to have committed the acts described in the primary charge, the subsidiary charge is also rejected, and the Defendants must be acquitted of all charges.

4. *The Defendants' Role in the Procurement Process*

Although the Defendants were part of the PPHP team and signed the Minutes of Handover of Work Results, the Panel of Judges concludes that they did not abuse their authority. They made reasonable efforts to request clarification from the PPK about the technical specifications and drawings, but were not provided with the necessary information. Additionally, they faced external pressure to complete the work examination due to directives from Drs. Alex Basaen Sahadula, under the instruction of the Regent, to ensure the 100% disbursement of funds. Under these circumstances, the Panel finds that the Defendants' actions cannot be categorized as an abuse of authority or opportunity.

5. *Lack of Joint Criminal Liability*

The Public Prosecutor's assertion that the Defendants jointly committed a criminal act causing state losses is not supported by evidence. The Defendants were not officially informed of their roles in the PPHP until December 22, 2014, and were not provided with the required technical documentation. Despite efforts to request clarification, they were under significant pressure to conduct the examination, which led to suboptimal results. As a result, the Panel finds no conscious cooperation among the Defendants, and thus the charge of joint criminal liability is not proven.

6. *Conclusion and Acquittal*

Based on the considerations above, the Panel of Judges concludes that the Defendants were not proven to have committed the criminal acts as charged. Therefore, the Defendants are acquitted of all charges, and their rights, including dignity and position, should be restored. As the Defendants have not been convicted of a criminal act, Defendant I and Defendant II, who are still in custody, must be released immediately following the reading of the verdict.

All evidence, numbered 1 to 11, will remain attached to the case file. The Public Prosecutor's demand is therefore rejected, and the Defendants are acquitted of all charges.

c. Analysis of the Acquittal and Cost Implications

In this case, the acquittal of the defendants is rooted in the principle established in **Article 191, Paragraph (1) of the Criminal Code** (KUHP), which states: *"If the court is of the opinion that based on the results of the examination at the trial, the guilt of the defendant for the acts charged against him is not legally and convincingly proven, then the defendant is sentenced to acquittal."* This provision affirms that an acquittal may be issued when the prosecution has failed to prove the defendant's guilt beyond a reasonable doubt. Furthermore, it is consistent with the principle of **nullum crimen sine lege** (no crime without law), as enshrined in **Article 1, Paragraph (1) of the Criminal Code**, which dictates that a person can only be punished for actions defined as crimes by existing law prior to the commission of the act.

The court found that the **defendants were not legally and convincingly proven to have committed a criminal act** as charged in the primary and subsidiary indictments. Several critical facts influenced this decision:

1. **Lack of Knowledge and Involvement:** The defendants were informed of their roles as members of the **PPHP (Committee for Receiving Work Results)** only on **December 22, 2014**, leaving them with limited time to carry out their duties. Furthermore, they were pressured by the Regent to ensure the immediate disbursement of funds, which created a challenging working environment. The defendants were instructed to carry out their work despite lacking key documentation—such as the technical specifications and drawings—essential for a thorough examination of the procurement.
2. **Incomplete Documentation and Instructions:** The contract documents provided to the defendants did not include the necessary technical specifications and drawings, hindering their ability to verify the compliance of the decorative lights with the terms of the contract. Despite their attempts to request clarification from the **PPK (Commitment Making Officer)**, their inquiries went unanswered. The PPK instructed them to proceed with the examination, deeming that everything was in accordance with the contract.
3. **Limited Examination Scope:** Due to the time constraints and absence of complete documentation, the defendants' examination of the project was limited to verifying whether the decorative lights were functional—specifically whether they were operational (i.e., whether the lights could be turned on). This limited scope of examination was all the defendants could perform within the given circumstances, leaving them unable to evaluate the technical conformity of the work in a comprehensive manner.

Given these circumstances, the defendants' actions were **not sufficient to fulfill the elements of corruption** under the law. Specifically, the court found that the defendants did not commit, order to commit, or participate in unlawful acts with the intent to enrich themselves, others, or a corporation, which is required by both the primary and subsidiary charges under **Article 2 of Law No. 31/1999**, as amended by **Law No. 20/2001**, concerning the eradication of corruption.

The court determined that the **evidence provided by the Public Prosecutor (JPU)** was insufficient to establish the criminal nature of the defendants' actions. Although the **prosecutor's case** argued that the defendants' conduct constituted an act of corruption, the **lack of complete documentation**, the **defendants' limited knowledge**, and the **absence of a clear criminal intent** meant that the elements of **corruption** (enrichment or benefit) were not proven.

The **insufficient evidence** meant that the required **mens rea** (intent) for the criminal act was absent. In criminal law, the **mens rea** is as important as the **actus reus** (the act itself). Without clear evidence of intent to commit a corrupt act, the defendants could not be convicted. Consequently, the judges issued a **free verdict (Vrijspraak)**, acquitting the defendants of all charges.

Regarding the **cost of the case**, since the **defendants were acquitted, Article 191, Paragraph (1) of the Criminal Code** implies that the state must bear the costs of the trial. This principle is rooted in the idea that an acquittal signifies that the defendants did not commit any criminal act and should not be penalized for the legal proceedings. In this case, the **costs of the legal process**—including court fees, expenses related to evidence collection, expert testimony, and other associated costs—are therefore **charged to the state**, as they were a consequence of the prosecution's failure to substantiate the charges.

Conclusion: Legal and Practical Implications

The **acquittal of the defendants** is a direct result of the **insufficient evidence presented by the Public Prosecutor**, as the legal elements required to establish guilt—particularly the **intent to profit unlawfully**—were not proven. In the context of corruption, which requires both an unlawful act and criminal intent, the **absence of the necessary mens rea** meant the defendants could not be held criminally liable.

From a **practical standpoint**, the ruling underscores the importance of robust evidence, proper documentation, and clear legal frameworks for prosecuting corruption cases. It also highlights the challenges faced by individuals in roles such as the PPHP team, who are often caught between administrative pressures and insufficient resources to fully execute their responsibilities.

Finally, the **state bears the costs of the case**, in line with the principle that a person should not be financially penalized for legal proceedings when they are acquitted of charges. The **acquittal** restores the defendants' rights, dignity, and position, acknowledging that they acted within their duties, despite the constraints they faced.

d. Application of Material Criminal Law

In this section, the authors will evaluate whether the Public Prosecutor appropriately selected the Form of Indictment and the corresponding legal provisions, and assess whether the verdict issued by the judge aligns with the goal of achieving material truth. To do so, the author will first outline the indictment, the demands of the Public Prosecutor, and the verdict delivered in Decision Number 04/Pid.Sus-TPK/2021/PN.Mnd, which pertains to corruption crimes, and is the focus of this analysis.

Primary Indictment: Defendant I, INDRA AILAT GUMOLUNG, A.Md.TS (Chairman of PPHP), Defendant II, RUSTON MAMAGHE, S.E. (Secretary of PPHP), and Defendant

III, BENYAMIN TAKALIUANG (Member of PPHP), as part of the Committee/Recipient of Work Results for the Procurement of Decorative Street Lights in Melonguane City, Talaud Islands Regency, for the 2014 Fiscal Year (based on Decree Number 09/SK/PA/DISPASHITA/II/2014 dated February 3, 2014), committed an unlawful act. At the request of Drs. ALEX BASAEN SAHADULA, MM, the Budget User, they were asked to promptly prepare the Minutes of Handover of Work Results (Number: 012/BAP/PAN-PHP/DISPASHITA/XII/2014 dated December 23, 2014). This was done to facilitate full disbursement of funds without carrying out their duties and obligations as members of the Committee/Official Receiving Work Results (PPHP), as stipulated in Article 18 Paragraph (5) letter a of Presidential Regulation No. 70 of 2012, leading to state losses of Rp. 1,127,753,482. This action violated Article 2 Paragraph (1) jo. Article 18 of Law No. 31 of 1999 concerning the Eradication of Corruption.

Subsidiary Indictment: Defendants INDRA AILAT GUMOLUNG, A.Md.TS, RUSTON MAMAGHE, S.E., and BENYAMIN TAKALIUANG, as members of the Committee/Official Recipient of Work Results, committed unlawful acts that caused state losses amounting to Rp. 1,127,753,482, resulting in enrichment for CV. Mega Cipta, in violation of Article 3 jo. Article 18 of Law No. 31 of 1999, as amended by Law No. 20 of 2001, concerning Amendments to the Law on the Eradication of Corruption, and Article 55 Paragraph (1) 1 of the Criminal Code.

Verdict (Amar Putusan): The court considered Article 191 Paragraph (1) of Law No. 8 of 1981 concerning Criminal Procedure Law, as well as other relevant regulations. The judges issued the following decision:

- The defendants (INDRA AILAT GUMOLUNG, A.MD, TS, RUSTON MAMAGHE, S.E., and BENYAMIN TAKALIUANG) were not legally and convincingly proven guilty of the charges in both the primary and subsidiary indictments.
- They were acquitted of all charges filed by the Public Prosecutor.
- The defendants' rights in terms of ability, position, dignity, and reputation were restored.
- The defendants were ordered to be immediately released from custody upon the reading of the verdict.
- The state was tasked with bearing the case fees.

The verdict was handed down during a Deliberative Session of the Corruption Crimes Court at the Manado District Court on June 11, 2021, and was publicly pronounced on June 14, 2021.

Analysis of the Verdict: Material criminal law consists of norms that define permissible and impermissible actions in society, and violations may result in criminal sanctions. In Indonesia, the Public Prosecutor holds the authority to prosecute criminal cases, as established in Article 13 of the Criminal Code. The prosecutor's role includes preparing an indictment based on the Examination Report (BAP) from the investigator. This indictment must be clear, detailed, and legally sound, as stipulated in Article 143 Paragraph (2) b of the Criminal Procedure Code. The Attorney General's Circular Letter No. SE-004/J.A/11/1993 provides further guidelines for the formulation of the indictment to ensure uniformity in practice.

In this case, the Public Prosecutor appropriately applied Article 2 Paragraph (1) of Law No. 31 of 1999 on the Eradication of Corruption, as amended by Law No. 20

of 2001, for the primary charge. The subsidiary charge was based on Article 3 jo. Article 18 of the same law and Article 55 Paragraph (1) 1 of the Criminal Code.

The indictment, according to the author, met the formal and material requirements outlined in the Criminal Code, clearly identifying the defendants, the location and time of the offense, the elements of the offense, and the actions taken by the defendants. The indictment used a layered approach (primary and subsidiary), which was appropriate in this case, as it allowed the prosecutor to account for multiple potential criminal acts arising from the same events. The inclusion of alternative charges demonstrates foresight and prudence on the part of the Public Prosecutor, given the possibility of varying interpretations of the evidence or facts.

Despite the prosecutor's thorough and appropriate indictment, the evidence presented in the trial failed to meet the legal requirements to prove the defendants' guilt. While the prosecutor applied relevant legal provisions, the evidence presented was insufficient to establish that the defendants had committed the alleged criminal acts of corruption. Therefore, the judges acquitted the defendants, finding that the primary and subsidiary indictments were not substantiated by sufficient evidence.

In light of the above analysis, the authors conclude that the judges' decision was correct and in line with the pursuit of material truth. The Public Prosecutor appropriately selected the legal provisions in the indictment, but the evidence presented at trial failed to meet the burden of proof required for a conviction. As a result, the acquittal of the defendants was both a legally sound and just decision based on the facts and evidence available.

2.2 Decision Number 56/Pid.Sus-TPK/2021/PN Bdg

a. Position Case

In the case of criminal acts related to the procurement of goods in the context of the Covid-19 Pandemic Disaster Emergency Response in West Bandung Regency for the 2020 fiscal year, the defendant Andri Wibawa is alleged to have participated together with Aa Umbara Sutisna who at that time served as the Regent of West Bandung Regency for the period of 2018 to 2023 in the procurement of basic food packages worth a total of IDR 36,202,500,000.00 (thirty-six billion two hundred two million five hundred thousand rupiah). This procurement was carried out through the West Bandung Regency Social Service, where the defendant was used as the executor of the activity by the authorities, with the allegation that there was a personal interest from the state administrator to benefit from the project.

As the regional head, Aa Umbara Sutisna has the authority and responsibility to refocus the budget and ensure the ease of implementation of Covid-19 prevention and control activities, as stipulated in Article 76 of Presidential Regulation Number 16 of 2018 concerning the Procurement of Government Goods/Services, as well as the Circular Letter of the Head of the Government Goods/Services Procurement Policy Institution (LKPP) Number 3 of 2020 concerning the implementation of procurement in the context of handling the Covid-19 pandemic. In the 2020 Fiscal Year APBD, the West Bandung Regency Government allocated Unexpected Expenditure (BTT) of Rp52,151,200,000.00, most of which is planned for the procurement of social assistance in the form of 120,000 packages of staples aimed at people affected by the pandemic.

However, based on the facts of the trial, the social assistance program was not implemented objectively and professionally, but was infiltrated by the personal interests of the Regent of Aa Umbara Sutisna. He appointed the provider of goods/services from his relatives and closest people, including the defendant Andri Wibawa, who has family connections, and other parties such as M. Totoh Gunawan, who is a close friend of the Regent. To facilitate the procurement, Aa Umbara Sutisna ordered Heri Partomo as the Head of the Social Service to appoint Dian Soehartini as the Commitment Making Officer (PPK), then directed the PPK to immediately issue an order letter to two companies, namely CV. Jayakusuma Cipta Mandiri and CV. Satria Jakatamilung, which is allegedly controlled by the defendant.

Four order letters were issued in the context of the procurement of basic necessities with the following details: the first order to CV. Jayakusuma Cipta Mandiri as many as 16,002 packages with a value of IDR 4,800,600,000.00; a second order to the same company for 24,536 packages worth IDR 7,360,800,000.00; third order to CV. Satria Jakatamilung as many as 40,073 packages with a value of IDR 12,021,900,000.00; and the fourth order also to CV. Satria Jakatamilung as many as 40,064 packages with a value of IDR 12,019,200,000.00. Thus, the total food packages held amounted to 120,675 packages, and from these activities, the defendant obtained a personal profit of Rp2,600,000,000.00.

An internal audit by the West Bandung Regency Inspectorate through a Post Audit on the implementation of this procurement found a number of irregularities that were not in accordance with the procurement regulations in emergencies, as stipulated in LKPP Regulation No. 13 of 2018 and LKPP Circular Letter No. 3 of 2020. The audit report has been officially submitted through Report Number 700/373/Ita dated September 30, 2020 to the Regent of Aa Umbara Sutisna, but it has not been followed up by related parties, including by the defendant.

The Public Prosecutor (JPU) then filed a single indictment against the defendant, namely that his actions constituted a criminal act of corruption as stipulated in Article 12 letter i of Law Number 31 of 1999 jo. Law Number 20 of 2001 jo. Article 55 paragraph (1) 1 of the Criminal Code. However, in the trial process, the Panel of Judges considered that the element of "civil servant or state administrator" which is a formal requirement in the application of the article could not be proven because the defendant was a self-employed person and not a state apparatus, so it did not meet the elements as charged in the JPU's single indictment.

On the basis of these legal considerations, the Panel of Judges stated that the prosecutor's indictment was inaccurate and not meticulous, and the elements of the article accused were not legally and convincingly proven in the trial. Therefore, the defendant was declared not guilty of committing the crime of corruption as charged, and was decided to be released from all legal charges, as well as to have his rights restored in his legal status, dignity, and dignity as a citizen.

b. Indictment of the Public Prosecutor

The panel of judges in making the verdict must refer to the indictment, which serves as the basis for proof in accordance with the interests of the defendant. The judge needs to consider several aspects, one of which is juridical considerations. In the examination process, the Public Prosecutor (JPU) must prove the charges against the defendant to be used as a basis for consideration by the judge. For example, in

the prosecutor's indictment Register Number: 56/TUT.01.04/24/08/2021 which is listed in Decision Number 56/Pid.Sus-TPK/2021/PN Bdg, the prosecutor explained the identity of the defendant, the time, and the place of the act he committed (*locus delicti*).

The prosecutor's indictment states that the appointment of the defendant as a provider of goods and services for the social assistance program in West Bandung Regency occurred due to the intervention of the Regent of West Bandung, who is also the defendant's biological father. Based on Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods/Services, the direct appointment of providers of goods and services should be carried out by the Commitment Making Officer (PPK), not by the Regent. This procurement process is also not in accordance with the provisions, because the appointment of PPK should be done first, and supervision by the Regional Head is limited to supervision, not the appointment of providers.

The defendant, who is self-employed, is also known to borrow the names of other companies in the procurement of goods and services without a written agreement, which has the potential to violate the rules in procurement. This can lead to violations of the law, including corruption, because they do not comply with the procedures set out in Presidential Regulation No. 16 of 2018 and LKPP Regulation No. 9 of 2019. However, the judge in Decision Number 56/Pid.Sus-TPK/2021/PN Bdg did not consider this violation.

Regarding the status of the defendant who works as a self-employed person, this is the main consideration of the judge in assessing the indictment using Article 12 letter i of the Corruption Law, which should apply to civil servants or state administrators. In this case, the charges imposed on the defendant are considered inappropriate, because the defendant is not a civil servant, but a self-employed person. This article is more appropriate to be used for civil servants or state administrators, as stipulated in Law No. 31 of 1999 and Law No. 28 of 1999 concerning State Administrators Clean from Corruption, Collusion, and Nepotism.

The prosecutor in his indictment used Article 12 letter i of Law No. 31 of 1999, but the indictment was not in accordance with the status of the defendant. Alternatively, the prosecutor should be able to use Article 2 of Law No. 31 of 1999 which applies to everyone, including defendants with self-employed status. In this case, an alternative indictment can be more effective in handling the case.

The use of Article 12 letter i in this case is considered too narrow, because it only covers civil servants and state administrators, even though the act in question can be done by anyone, including those who are not civil servants. Therefore, the prosecutor should use a broader alternative indictment to ensure that criminal acts can be proven and punished in accordance with the applicable legal provisions.

c. Legal Consequences of Being Acquitted: The Defendant at the Verdict

Decision Number 56/Pid.Sus-TPK/2021/PN Bdg which acquitted the defendant from prosecution based on the inaccuracy of the indictment article by the Public Prosecutor has obtained permanent legal force. The efforts made by the Public Prosecutor to achieve justice that is believed to have not been achieved can lead to legal steps on appeal. However, this can be ineffective if it is based on the principle *ne bis in idem*, which means that a person cannot be tried or prosecuted again in the

same case after a decision that has permanent legal force. This principle is stated in Article 76 of the Criminal Code concerning the elimination of the authority to prosecute and carry out criminal offences.

In general, the principle *ne bis in idem* is applied to provide legal certainty, respect the human rights of the defendant, and maintain the dignity and credibility of the judge who decides the case. Therefore, it is very important for the Public Prosecutor to be careful in drafting the indictment so that similar legal events do not occur.

One of the main obstacles in dealing with corruption crimes is the inability of the Public Prosecutor to prove and convince the judge through existing evidence. This obstacle is even greater if the perpetrator of corruption has the ingenuity to hide his actions. This leads to difficulties in imposing punishments on corrupt perpetrators. These obstacles also affect the effectiveness of law enforcement in corruption crimes.

Sukarton Marmosudjono, former Attorney General of the Republic of Indonesia, revealed that there are several obstacles that make it difficult to uncover corruption cases, including:

1. Corrupt perpetrators have certain abilities and social status.
2. Perpetrators tend to have intelligence, authority, and the opportunity to commit corruption.
3. A complicated *modus operandi* carried out by educated and authoritative individuals.
4. Corruption is often covered up for long periods of time, making it difficult to find evidence and recoup state losses.
5. Witnesses and expert witnesses are often less cooperative.
6. The perpetrator deliberately complicated the investigation process.

These obstacles have an impact on the ability of the Public Prosecutor to prove a case. The Public Prosecutor needs to be more careful in drafting the indictment so that the articles used are in accordance with the acts committed by the perpetrator. This is very important to avoid unwanted legal consequences, such as in the case of the verdict Number 56/Pid.Sus-TPK/2021/PN Bdg which caused the defendant to be released.

The negative impact of the defendant's acquittal includes:

1. Similar cases have emerged that are difficult to reveal because the perpetrators use systematic and hidden methods. The more complex the corruption case, the more difficult it is to resolve, especially if it involves many parties and the process of procurement of goods/services.
2. There will be no return of corrupted state money, even though the funds can be used to help the community, especially in the midst of the Covid-19 pandemic.
3. The potential for KKN practices in the government to increase, because corrupt perpetrators may feel that the practice can provide benefits even though it violates the law.
4. There will be a decrease in public trust in law enforcement officials if corrupt perpetrators do not receive appropriate punishment. This incident can cause public disappointment, especially considering the defendant's actions were carried out when the community was facing difficulties due to the pandemic.

In this case, it is important for the Panel of Judges to make a decision based on a clear indictment and in accordance with the provisions of the law. Errors in the

preparation of charges can lead to an independent verdict, which is contrary to the principles of justice that should be upheld.

C. CONCLUSION

Criminal law plays an important role in regulating the procurement process of government goods and services, addressing serious issues such as corruption, bribery, and collusion. These criminal acts can occur at various stages, from planning to contract completion, often involving abuse of authority or manipulation for personal gain. Ensuring the integrity of the procurement process is crucial, as legal irregularities—whether in the selection of service providers, contract signing, or execution—can undermine public trust and harm state interests. The law must therefore provide a framework to hold individuals or entities accountable for any violations, imposing appropriate sanctions based on the severity of the misconduct.

To prevent legal violations in procurement, it is essential to strengthen oversight mechanisms, enhance the competence of involved personnel, and ensure transparency and accountability. Criminal sanctions should serve as a last resort, applied only when the elements of a criminal act are clearly met. However, administrative and civil sanctions must be consistently enforced for any breaches, such as blacklisting or restitution for state losses. Preventive measures—like tighter administrative controls and stricter regulations—can further reduce the risks of corruption and ensure a fair, efficient procurement process.

Ultimately, law enforcement in procurement should be fair, consistent, and proportionate, maintaining justice without discrimination. The application of criminal law must be balanced with preventive actions to address abuses of power early. By strengthening legal frameworks and enforcing them effectively, the law not only regulates behavior but also promotes values of transparency, accountability, and integrity, helping shape public policy that fosters ethical governance in the procurement process.

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