

## MODUS OPERANDI OF CORRUPTION IN GOVERNMENT PROCUREMENT OF GOODS AND SERVICES AND ITS COUNTERMEASURES

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### *Abstract*

*In the course of national development efforts in various fields, corruption actually causes great losses for the nation, so that the public's desire to eradicate corruption and other forms of deviation is increasing. Procurement of Goods and Services (PBJ) is one of the sectors that contributes the most to corruption cases in Indonesia. The results of the study show that the modus operandi of corruption in government procurement of goods and services such as (markup) planning costs, short announcement periods, work or goods that do not meet specifications. Meanwhile, efforts to overcome corruption in government procurement of goods and services include using a competition system, opening wide access to needs, and looking at the legal track record, and Work Results.*

**Keywords:** *criminal acts; corruption; procurement; goods and services*

### **I. INTRODUCTION**

Amid national development efforts in various fields, the aspirations of the community to eradicate corruption and other forms of deviation are increasing, because in reality corruption has caused enormous state losses. For this reason, efforts to prevent and eradicate corruption need to be further improved and intensified while still upholding human rights and the interests of the community.<sup>1</sup>

It seems that the efforts to eradicate corruption that are increasingly intensified have not shown any prominent indications in that direction, in fact, many parties accuse that

in this era of reform, corruption is actually getting worse. We must admit that the problems of corruption, collusion, and nepotism cannot rely on laws and regulations alone. Through various opinions in the mass media, it turns out that many also admit that corruption cannot be completely eradicated. Therefore, some say that corruption has become part of the culture.<sup>2</sup>

Thus, the problem of corruption can be overcome through improvements in the social, economic, and cultural sectors. Generally experienced by people whose economic conditions are not favorable, mental, administrative, and management crises that

<sup>1</sup> Evi Hartanti, 2007, *Tindak Pidana Korupsi*, Sinar Grafika, Jakarta, hlm. 2

<sup>2</sup> Chaeruddin, dkk., 2008, *Strategi Pencegahan dan Penegakan Hukum Tindak Pidana Korupsi*, Refika Aditama, Bandung, hlm. 6

can result in complicated procedures. Likewise with technological advances that result in increased demand for consumer goods, so that in that condition it forces them to deviate from their duties, namely unlawfully taking state money.<sup>3</sup>

In reality, there is a feeling of dissatisfaction from the public towards court decisions for perpetrators of corruption, so inevitably the court and its apparatus must conduct an introspection and recapitulation of the level or quality of professionalism in handling corruption cases. Procurement of Goods and Services (PBJ) is one of the sectors that contributes the most to corruption cases in Indonesia. No less than 277 cases or 21 percent of corruption in the PBJ sector have been handled by the Corruption Eradication Commission (KPK) from 2004 to 2022.<sup>4</sup>

The regulation of Procurement of Goods/Services (PBJ) into a Presidential Regulation (Perpres) is part of the government's efforts to uphold openness, transparency, accountability, and healthy competition. In order to achieve clean government administration supported by effective, efficient, and accountable financial management, the Perpres PBJ has been amended several times, this is intended to adjust the Perpres PBJ to government

developments. In addition, the amendment to the Perpres PBJ is also to fill the legal vacuum on several strategic points that have not been previously regulated, thus becoming a loophole for criminal acts of corruption.<sup>5</sup>

Procurement of goods and services that have an important role in the implementation of development as a step to improve public services and the economy, so in order to realize this, procurement of goods and services must be carried out by fulfilling the principles of efficiency, effectiveness, transparency, openness, competition, fairness, and accountability. However, in its implementation there are various obstacles, especially in the potential for corruption. According to Kaufmann, procurement of goods and services is an activity that is considered most vulnerable to corruption, and this happens everywhere in the world.<sup>6</sup>

Based on the description of the appeal law above, as well as the position of the researcher himself as a government procurement staff, the researcher is interested in conducting research, the results of which will be presented in the form of a thesis with the title: "Modus Operandi Corruption Crime In Government Procurement Of Goods And Services And Their Coping Process".

<sup>3</sup> Ibid., hlm. 7

<sup>4</sup> *Jurnal Ilmiah CIVIS* Volume II (No 2 Juli 2012). Maryanto. (2012). Pemberantasan Korupsi Sebagai Upaya Penegakan Hukum. diakses tanggal 22 Januari 2024, pukul 17.24 WIB.

<sup>5</sup>

<https://www.bpkp.go.id/sulut/berita/read/15080/380/Pe>

rpres-Pengadaan-BarangJasa-Di-Tengah-Raung-Korupsi.bpkp- diakses tanggal 22 Januari 2024, pukul 17.24 WIB.

<sup>6</sup>M. R. Kurniawan, and P. Pujiyono, "Modus Operandi Korupsi Pengadaan Barang Dan Jasa Pemerintah Oleh PNS," *LAW REFORM*, vol. 14, no. 1, pp.

## II. RESEARCH METHODOLOGY

This research is a form of empirical method research. Empirical research is based on primary data (results of research in the field). According to Soerjono Soekanto and Sri Mamuji, empirical legal research is a field research approach whose nature is to study and observe what happens in the field, and the application of regulations in practice in society. To support this empirical study, a normative study was also carried out using a legal approach by exploring the laws and regulations related to land registration in Indonesia.<sup>7</sup>

## III. DISCUSSION AND RESULTS

### 3.1 Modus Operandi of Corruption in Government Procurement of Goods and Services

Corruption in the procurement of goods and services is a serious problem in Indonesia. Based on data from the Corruption Eradication Commission (KPK) for the 2004-2023 period, there were 339 corruption cases related to the procurement of goods and services. Almost 90 percent of corruption cases in court involved goods and services. Corruption cases handled by the KPK on gratification and bribery, when examined further, are closely related to goods and services. Although procurement has used electronic platforms, such as e-Catalog, there

are still modes of corruption committed. Some modes that often occur include:

1. Repeat Purchase: Repeat purchases occur through the same vendor, without involving other vendors.
2. Price Markup: The Commitment Making Officer (PPK) and vendor agree in uploading goods to the e-Catalog so that prices can be manipulated.
3. Data Access: As a preventive measure, the KPK has asked the Government Goods/Services Procurement Policy Agency (LKPP) and the Financial and Development Supervisory Agency (BPKP) to provide access to procurement data through an electronic catalog.<sup>8</sup>

At the procurement stage, the mode of corruption carried out by the commitment-making officials and budget users in all cases studied is related to the method of selecting goods/service providers. The selection of goods and service providers can in principle be carried out using direct appointment methods or public auction methods. The mode of corruption at the procurement stage carried out by the Commitment-Making Officials (PPKom) and/or Budget Users (PA) is by changing the public auction method to a direct appointment method.

<sup>7</sup> Depri Liber Sonata, 'Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum', *Fiat Justisia Jurnal Ilmu Hukum*, 8.1 (2014).

<sup>8</sup><https://www.medcom.id/nasional/hukum/yNL1gV9b-kpk-90-kasus-korupsi-terkait-pengadaan-barang-dan-jasa>, diakses tanggal 5 Juni 2024.

Eradicating corruption requires strict supervision of state administration and components of society that use state finances, such as business entities that act as contractors/partners and so on, as long as they carry out business activities using state finances.

Cases that occur, for example, involve government procurement, in this case if there is direct appointment, price mark-ups, then the parties that will be examined by the supervisory bodies are the agencies and the business entities.<sup>9</sup>

The legal aspect that works in the first and second stages is administrative law, in the third and fourth stages is the civil law aspect. While the criminal law aspect works in all stages. The criminal law aspect (corruption) will work if in each stage there are elements of unlawful acts, abuse of authority, bribery, and gratification in the procurement of goods and services.<sup>10</sup>

The pattern of deviations at each stage of procurement can be described as follows:

1. Cost markup in the procurement plan, especially in terms of costs. This symptom can be detected from unrealistic unit prices and inflation of the APBN/APBD amount.

2. The procurement plan is directed at the interests of a particular product or provider of goods and services. The technical specifications and criteria are directed at a particular product and provider of goods and services (which is impossible for other providers of goods and services).
3. Unrealistic planning, especially in terms of implementation time. The implementation time is determined to be very short so that certain companies can carry out the work because they have prepared themselves in advance. This can happen by bribing the committee so that they can obtain tender and work information earlier than other participants.
4. The committee works in a closed manner, is dishonest, and appears to be controlled by certain parties.
5. The Self-Estimated Price (HPS) is covered up even though the HPS is not confidential.
6. The basic price is not standard.

Furthermore, at the contract stage, ICW identified 7 patterns of PBJ misappropriation consisting of mark-up or resale; mark-down and exchange of state assets or services; proxy or flag sale; unequal prices; kickbacks and

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<sup>9</sup> La Sina, (2008). Dampak dan Upaya Pemberantasan Serta pengawasan Korupsi Di Indonesia. *Jurnal Hukum Pro Justitia*, Volume 26 (No 1, Januari 2018), hlm.4, diakses tanggal 5 Juni 2024.

<sup>10</sup> Fazzan. (2015). Korupsi di Indonesia dalam Prespektif Hukum Pidana Islam. *Jurnal Ilmiah ISLAM FUTURA* Vol 14 (No 2 Februari 2015), diakses tanggal 5 Juni 2024.

commissions; contract changes without addendums; and changes to specifications after selection.

In contrast to the implementation, has 5 patterns ranging from fictitious projects; abandoned/failed/non-specification projects; default; and illegal subcontracts; to extortion and extortion. Finally, in terms of evaluation, there are patterns of misappropriation in the form of auditor bribery and audit arrangements; eliminating findings or evidence; easing sentences; handover before completion; and fictitious minutes or reports. The Director of Investigation for the KPK for the September 2020-December 2021 Period, Setyo Budiyo, said that corruption in the procurement of goods and services was detected starting from the planning, and implementation, to the supervision stage. Setyo Budiyo, who is currently the NTT Police Chief, explained that at the planning or preparation stage for the procurement of goods and services, there were several patterns of deviation.<sup>11</sup>

First, the cost markup of the procurement plan.

Second, procurement is directed to the interests of certain products or providers of goods and services.

Third, unrealistic planning, especially related to the implementation time.

Fourth, the committee works in secret, and dishonestly, and can even be controlled by

certain parties. Fifth, the estimated price itself (HPS) in the goods and services procurement plan is covered up. Sixth, the base price is not adjusted to existing standards.

Seventh, the technical specifications are directed to certain products. Then the eighth, the auction documents are not adjusted to existing standards, and the ninth, the auction documents are incomplete.

Then at the procurement process stage, according to Setyo Budiyo, the pattern of deviations that lead to corruption can be seen from 11 things. First, the announcement period for the procurement process of goods and services is short. Second, the announcement is incomplete and confusing. Third, the distribution of tender documents appears flawed. Fourth, information is limited by the committee so that only certain groups receive complete information. Fifth, the explanation of the project (aanwijzing) is changed to a question and answer session. Sixth, there are attempts to prevent the submission of tender documents by certain individuals so that certain participants are late in submitting their tender documents. Furthermore, the seventh, document replacement is carried out by inserting revisions into the initial document. In addition, the eighth action is that the committee works behind closed doors. Ninth, the announcement of the tender winner is only made to certain groups. Tenth, not all objections are responded to. Then finally, the

<sup>11</sup>

<https://www.antaraneews.com/berita/2630261/Pengadaa>

n barang dan jasa ladang subur korupsi - ANTARA News, diakses tanggal 8 Juni 2024

determination letter is deliberately delayed in its issuance.

Setyo Budiyanto explained several patterns of deviations that occurred in the stages of drafting and signing contracts for the procurement of goods and services. First, the signing of the contract was not accompanied by supporting documents and the second was the delay in handling the contract.

There were also deviations in the stages of contract implementation, delivery of goods, and services, namely work or goods that did not match specifications and work that had not been completed but had been handed over.

Continuing to the supervision stage, collusion between the project implementer and its supervisor is one form of deviation. In addition, what is very clear is the act of bribery of the project supervisor. There were also deviations in the form of project supervisor reports that did not match the results of his work. In the final stage, namely financial reporting and audits, the KPK often found dishonest reporting and passed evidence of incorrect accounting.<sup>12</sup>

1. at the planning stage, such as cost inflation (markup); unrealistic planning; the committee working in secret, dishonestly, and being controlled by certain parties; the estimated price itself (HPS) is covered up; incomplete auction documents.

2. at the procurement process stage, including the announcement period for the procurement process is very short; the announcement is incomplete and confusing; information is limited by the committee so that only certain groups receive complete information; the committee works in secret.

3. at the stage of preparing and signing the contract for procurement of goods and services, including the signing of the contract is not accompanied by supporting documents and there is a delay in handling the contract. d). Deviations at the contract implementation stage, including, namely, work or goods that do not match specifications and work that has not been completed, but has been handed over. In addition, there is bribery of the project supervisor, deviations in the form of a project supervisor's report that does not match the results of his work.

### **3.2 Efforts to Combat Criminal Acts of Corruption in Government Procurement of Goods and Services**

As an act that is very detrimental to the country's finances and economy, criminal acts of corruption can hinder the growth and sustainability of national development that demands high efficiency. One sector that is prone to corruption is in the procurement of

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<sup>12</sup> Ibid.

goods and services sector. As stated in the theoretical framework, the use of criminal policy as a way to overcome this crime is what was put forward by G. Peter Hoefnagels.<sup>13</sup>

More clearly, Hoefnagels first put forward several definitions of criminal policy. Criminal policy according to Hoefnagels has several definitions, including:

1. Criminal policy is the science of crime prevention
2. Criminal policy is the rational organization of the social reaction to crime
3. Criminal policy is also manifest as science and as application
4. The criminal policy is a rational total of the responses to crime
5. Criminal policy is a policy of designating human behavior as a crime<sup>14</sup>.

The various patterns of deviation above can be prevented through administrative law enforcement. The keyword for administrative law enforcement in corruption in the procurement of goods and services is supervision. This means that if during the supervision process, an official is found to have committed a violation, administrative sanctions such as dismissal from office can be imposed, while providers of goods and

services can be imposed sanctions such as being blacklisted or having their business licenses revoked.<sup>15</sup>

Digitalization is carried out by LKPP as an effort to prevent corruption in the procurement of goods and services through an e-marketplace, namely an electronic market to meet the needs of government goods and services. Through this e-marketplace, it is hoped that errors or irregularities in the procurement process of goods and services can be minimized.<sup>16</sup>

Of the various prevention efforts, no less important is of course the commitment of the government and all related parties to prioritize honesty in the procurement process of goods and services for the sake of producing products that have maximum utility for all Indonesian citizens. To avoid abuse of authority by the government, a supervisory role is needed in eradicating corruption. Supervision can play the following roles:

1. Minimizing opportunities for corruption to occur, this effort is more preventive in nature.
2. Helping to expose corruption cases through audits followed by follow-up, this effort is more directed at repressive action.<sup>17</sup>

<sup>15</sup> Arsyad, H.J. (2013). *Korupsi dalam Perspektif HAN (Hukum Administrasi Negara)*. Jakarta : Sinar Grafika.

<sup>16</sup> Ibid.

<sup>17</sup> Effendy, M. (2013). *Korupsi dan Strategy Nasional*. Jakarta : Referensi (GP Press Group), hlm.4

<sup>13</sup> G. Peter Hoefnagels, *The Other Side of Criminology, An Inversion of The Concept of Crime*, Kluwer Deventer, Holland: 1973. p. 42 dikutip dari Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, PT.Citra Aditya Bakti, Jakarta, 1996, hlm. 14.

<sup>14</sup> Ibid.

Based on the description above, it can be concluded that in efforts to overcome corruption in government procurement of goods and services, there are at least 3 things that can be done. First, open procurement data in more detail and completely. Although most procurement has been done electronically, the data that can be accessed by the public is still limited. Even if data is available, sometimes the information presented is incomplete. In addition, currently, the available data is only up to the stage of determining the winner. While data on procurement implementation is not available. Second, build awareness and increase community capacity in terms of procurement of goods and services. Third, with a community that is aware and has the capacity, the government can encourage community involvement in monitoring procurement. The monitoring carried out can help the work of law enforcement and regional inspectorates in terms of supervision of procurement.

#### IV. CONCLUSION

Based on the research results, the following conclusions can be drawn:

1. The modus operandi of corruption in government procurement of goods and services includes: a). at the planning stage, such as: cost inflation (mark up); unrealistic planning; the committee works in secret, dishonestly, and is controlled by certain parties; the estimated price itself (HPS) is covered

up; the auction documents are incomplete. b). at the procurement process stage, including the announcement period for the procurement process is very short; the announcement is incomplete and confusing; the committee limits information so that only certain groups receive complete information; the committee works in secret. c). at the stage of preparing and signing the contract for the procurement of goods and services, including the signing of the contract is not accompanied by supporting documents and there is a delay in handling the contract. d). Deviations at the contract implementation stage, including, namely, work or goods that do not match specifications and work that has not been completed, but has been handed over. In addition, there is bribery of the project supervisor, deviations in the form of a project supervisor's report that does not match the results of his work.

2. Efforts to overcome corruption in government procurement of goods and services, there are at least 3 things that can be done. Namely: First, open procurement data in more detail and completely. Although most procurement has been done electronically, the data that can be accessed by the public is still limited.

Even if data is available, sometimes the information presented is incomplete. In addition, currently, the available data is only up to the stage of determining the winner. While data on procurement implementation is not available. Second, build awareness and increase community capacity in terms of procurement of goods and services. Third, with a community that is aware and has the capacity, the government can encourage community involvement in monitoring procurement.

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