



AN EFFORTS TO PREVENT CRIME OF CORRUPTION IN REGIONAL GOVERNMENT PROCUREMENT GOODS AND SERVICES THROUGH E PROCUREMENT

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ABSTRACT

Corruption in the procurement of goods and services is included in the three biggest cases handled by the Corruption Eradication Commission (KPK), so that it is one of the areas of intervention in the action plan for preventing corruption. The purpose of this study is to provide empirical evidence regarding the relationship of e-procurement to corruption prevention measures in local governments, namely in Indonesia. the implementation of e-procurement is not related to corruption prevention measures. This study aims to determine the modus operandi of corruption in the procurement of goods and services through e-procurement, the factors of corruption in the procurement of goods and services through e-procurement and strategies for preventing corruption in the procurement of goods and services through e-procurement. In this study using research specifications, namely analytical descriptions describing or describing as well as events stated by respondents in writing or orally, as well as real behavior, which was researched or studied as a whole. One of the efforts to prevent corruption in the Regional Government is through an integrated Corruption Prevention program. This program is the implementation of the duties of the Corruption Eradication Commission (KPK) in coordinating and monitoring efforts to prevent corruption carried out by the Government. In order to eradicate corruption in the procurement of goods and services, criminal sanctions are not sufficiently effective as a deterrent instrument, because the nature of criminal sanctions is the last instrument (ultimum remedium). Which must be accompanied by administrative legal instruments with the core of a control (controlling).

Keywords: Prevention, Corruption, Procurement of Goods and Services, E Procurement.

I. INTRODUCTION

Corruption in Indonesia has so far become one of the causes that impede economic development. A number of countries have begun to seriously consider the dangers of corruption. The criminal act of corruption can not only endanger socio-economic and political development, endanger the stability and security of society, and can undermine democratic values and morality



because gradually this act becomes a behavior that saves problems in overcoming criminal acts of corruption getting more attention than handling corruption. another crime.

The development of criminal acts of corruption is increasing both in terms of quantity and in terms of quality. Therefore, corruption in Indonesia is not an ordinary crime, but an extraordinary crime (extra-ordinary crimes). The criminal penalty policy that has been regulated in the Criminal Code and the Corruption Act has not been fully able to prevent the occurrence of criminal acts of corruption, especially those committed by legislative officials. As stipulated in the Corruption Eradication Law, judges must also impose cumulative fines with imprisonment.

Corruption in the procurement of goods and services is also included in the three biggest cases handled by the Corruption Eradication Commission (KPK), so that it is used as one of the areas of intervention in the action plan for preventing corruption. The purpose of this study is to provide empirical evidence regarding the relationship of e-procurement to corruption prevention measures in local governments, namely in Indonesia. the implementation of e-procurement is not related to corruption prevention measures. This is due to the low average implementation of e-procurement. The central government must have the right mechanism to monitor action plans for preventing corruption, including ensuring that e-procurement is implemented optimally.

So far, the criminal law policy in eradicating corruption has been more directed towards corruption cases, regardless of bribery and gratuity cases, which are more common in Indonesia, without considering state financial losses, level of guilt, impact and profit, range of criminal convictions, aggravating or mitigating circumstances. , criminal imposition and other provisions related to criminal imposition

With the enactment of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, as a substitute for Law number 3 of 1971. The birth of this law is expected to accelerate the growth of people's welfare, with a tackling the evil nature contained in corruption.

In this case the Supreme Court (MA) issued new provisions related to guidelines for criminalizing corruptors, namely Supreme Court Regulation (Perma) Number 1 of 2020 concerning Guidelines for Sentences Article 2 and Article 3 of the Corruption Crime Act. In Supreme Court Regulation No. 1 of 2020 Concerning Guidelines for Criminalizing Corruption Cases Articles 2 and 3 of the Corruption Law where judges are to sentence corruptors to life imprisonment.

The presence of Perma Number 1 of 2020 is expected to prevent disparities, but not all corruption offenses regulated in the Anti-Corruption Law are included in the substance of PERMA. But only limited to corruption offenses regulated in Article 2 and Article 3. The essence of the problem in Perma Number 1 of 2020 is basically a focus on criminal law policies in dealing with criminal acts of corruption. In practice, Perma Number 1 of 2020 makes the freedom of judges in imposing sentences for the sake of justice according to their beliefs are not



independent. So there needs to be a change with the existence of research conducted by researchers in determining criminal law policies against Perma Number 1 of 2020. Thus,

II. LITERATURE REVIEW

The definition of *modus operandi* in the scope of crime is the operation of methods or techniques that are specific to a criminal in carrying out his evil deeds. *Modus operandi* comes from the Latin, meaning procedure or way of moving or doing something. In traditional criminal law, a person is said to be a criminal or perpetrator of a crime if that person has committed a punishable crime in the past. *Modus operandi* is a method of operating techniques used by criminals. The *modus operandi* used by the perpetrator is carried out by well planned and neatly arranged because all the actors have their respective roles and tasks, making it easier for the actors.

E-Procurement is a process of procuring government goods/services whose implementation is carried out electronically and on a web/internet basis by utilizing communication and information technology facilities which include electronic public auctions organized by the Ministry of Finance's Electronic Procurement Services (LPSE), Bureau of BMN Management and Procurement. The purpose of E-Procurement is to create transparency, efficiency and effectiveness as well as accountability in the procurement of goods/services through electronic media between Working Groups and Service Providers. Those that have objectives include reducing physical contact that can pose a risk of KKN both between Providers, and between Providers and PPK/Pokja. Making the process of interaction between users and service providers, as well as the community easier and faster.

Corruption is also a misappropriation or embezzlement of state funds or company as a place where someone works for personal gain or someone else. According to Lubis and Scott, what defines corruption is behavior that benefits self-interest at the expense of others, by government officials who directly violate the legal boundaries of such behavior. Literally corruption is something rotten, evil and destructive. If we talk about corruption, we will indeed find such a reality because corruption involves moral aspects, bad character and circumstances, positions in government agencies or apparatus, abuse of power in positions due to gifts, political economy factors, and the placement of families or groups into work under his authority.

III. RESEARCH METHODS

In this study using research specifications, namely analytical descriptions describing or describing events and events by being stated by respondents in writing or orally, as well as real behavior, which was researched or studied as a whole. Based on the research object which is positive law, the method that will be used is normative juridical, namely studying relevant legal principles and forms in decisions related to the title of this research, research is generally known



as 3 types of data collection tools, namely in the form of studies documents or library materials.

This research is sourced from the Library (Library Research), which is descriptive analysis in nature. Thus, this research is not only aimed at describing legal phenomena or phenomena related to legal certainty in the role of the police in fraud and embezzlement crimes, but is also aimed at analyzing these legal phenomena and then describing them systematically according to with the rules of the author.

To solve a problem so that conclusions can be drawn by utilizing the data that has been collected and then analyzed using qualitative analysis which discusses the results of the research which are described in a comprehensive manner, by trying to see the factors underlying certain programs, cultures and policies, for example the restoration of the principle of -relevant legal principles, theories and norms, doctrines, and articles contained in statutory regulations. As well as the data that has been obtained is sorted to be systematized according to the subject matter and problem formulation. The data were analyzed qualitatively to arrive at a conclusion, so that the main issues studied could be answered in the form of an analyzed narrative through a description of the results and their discussion.

IV. RESEARCH RESULTS

Procurement of goods/services by the government is a form of carrying out the government's duties in realizing national development which is financed using the state budget, in this case the APBN and APBD as well as financing from loans and foreign aid (state and financial institutions). For this reason, the procurement of government goods and services must be carried out effectively and efficiently so that the results can be accounted for both in terms of physical, financial and benefits for the smooth running of government tasks and public services. However, in the implementation of government procurement of goods/services it often does not work according to the goods/services procurement mechanism set by the government. This is proven by the many irregularities and misappropriations in the form of acts of corruption which can cause losses to state finances and or the country's economy. Corruption is a problem that must be resolved so that development can run as expected, so that the people get welfare more quickly, because corruption is an obstacle in the implementation of development and governance. Several regulations and efforts have been made by the government, but corruption is still ongoing, both at the center and in the regions.

Efficient, open and competitive government procurement of goods/services is necessary for the availability of affordable and quality goods/services, so that it will have an impact on improving public services. One of the principles of the rule of law is the principle of legality. The substance of the principle of legality requires that every action is the agency/administrative officer under the law. In relation to the procurement of goods and services from the government, it is hoped that corrupt practices can be eliminated. The reality is that corruption in the procurement of government goods and services has actually increased in the last 4 (four)



decades. The modes and cars it does are increasingly systemic. The perpetrators of corruption are no longer limited to state officials, but have dragged other actors, including business people, employees in various state and government agencies. Apart from that, there are law enforcement officers and political elites. The target is not only the APBN/APBD and a number of other State economic resources such as State-Owned Enterprises (BUMN), but also powers that are positioned to play a synergistic role with perpetrators of corruption. Which is called a bureaucrat who has the power to profit from his business interests.

Procurement of goods and services or in foreign terms is referred to as procurement that arises because of the need for goods or services, for consulting services and other service needs. The term procurement of goods and services or procurement- in this paper is interpreted broadly, including an explanation of the stages of preparation, determination and implementation or administration of tenders for the procurement of goods, scope of work or other services. Vices.

More specifically, it is stated that government procurement of goods/services is an activity of procuring goods/services financed by the APBN/APBD, both carried out on a self-managed basis or by goods/services providers. Procurement of goods is not limited to tangible goods, but also intangible goods. Intangible goods are generally services, for example consulting services. The mode of corruption in the procurement of goods/services electronically is the existence of a Tender Conspiracy Tenders that have the potential to create unfair business competition or impede business competition are Tenders with technical requirements and specifications or brands directed at certain business actors thereby preventing other business actors from participating. Indications of this conspiracy appear at the time of the company's pre-qualification or pre-auction,

- a. Requirements to participate in pre-qualification limit and/or lead to certain business actors.
- b. There is an agreement with certain business actors regarding the specifications, brand, quantity, place and/or delivery time of the goods and services to be tendered or auctioned.
- c. There is an agreement regarding the method, place, and/or time of announcement of the tender/tender.

Indications of collusion at the time of making the requirements to participate in the tender/auction as well as during the preparation of tender/auction documents, among others, include the existence of tender/auction requirements that lead to certain business actors related to goods certification, quality, capacity and time of delivery that must be met. The announcement of the current electronic auction shows that there are a lot of very discriminatory requirements. For example, bidders must fulfill a requirement issued by an agency in the area. This of course results in participants from other regions not being able to participate in the auction. The mode used is to make as many requirements as possible so that bidders do not have time to fulfill them in a short time.



In addition to the pattern of deviations from the modus operandi of corruption in the procurement of goods and services, namely entrepreneurs using the influence of central officials to persuade regional heads to intervene in the procurement process in order to win over certain entrepreneurs/partners and increase the price or contract value and the said entrepreneurs/partners give a sum of money to central officials or area. Entrepreneurs influence regional heads/regional officials to intervene in the procurement process so that certain partners are won in the tender or appointed directly and the price of goods/services is increased (mark-up), then the difference is distributed. The procurement committee makes specifications for goods that lead to certain brands or products in order to win over certain partners and mark-up prices or contract values.

The regional head/regional official instructs his subordinates to be able to disburse and use funds/budgets which are not in accordance with their designation and then to account for these expenditures by using evidence that is not true or fictitious. The regional head/regional official instructs his subordinates to use regional funds/money for the personal interests of his colleagues, or for the personal interests of the regional head/regional official concerned or a particular group, then takes responsibility for these expenditures using fictitious evidence. request fees (paid in advance) to the tender winner before implementing the project. The regional head receives a sum of money from partners by promising to be given a procurement project.

Irregularities in the use of the budget in the goods/services procurement sector leading to Corruption Crimes (TIPIKOR). Among others :

1. Formation of the Tender Committee
2. Company Prequalification
3. Direct Appointment Mechanism
4. Self-Estimated Pricing (HPS)
5. Indications of Mark-Up and Cheating in the Tender Process
6. Participate in further chartering Marwan stated that

Actions that indicate corruption can only be known after the delivery of goods or work has been carried out because it was found that the goods received from the goods/services provider were of low quality, so the goods were damaged quickly and the repairs had problems due to the absence of spare parts or technical personnel and the construction work of the office building was not in accordance with the building budget plan or bestek that has been agreed in the chartering agreement.

Characteristics of government procurement of goods/services and the interaction between the parties in determining the provider of goods/services is transactional. Very high potential for conflict of interest. A high COI has a positive correlation with the potential for corruption. In general, KPK makes efforts to prevent corruption in PBJ by encouraging the following, among others:

- a. Institutional independence and human resources implementing the procurement of



- goods and services
- b. Optimization of the whistleblowing system
- c. Optimization of vendor management system
- d. Standardization of the quality of goods/services and prices
- e. Centralization of procurement of goods and services
- f. Integration of planning and budgeting
- g. Optimizing the role of APIP since program and budget planning to the evaluation/audit of the benefits of goods/services

One of the efforts to prevent corruption in the Regional Government is through an integrated Corruption Prevention program. This program is the implementation of the duties of the Corruption Eradication Commission (KPK) in coordinating and monitoring efforts to prevent corruption carried out by the Regional Government. In carrying out efforts to prevent corruption in the regions, the Corruption Eradication Commission (KPK) collaborates with the Ministry of Home Affairs, the Ministry of State Apparatus Empowerment and Bureaucratic Reform (PAN-RB), the Financial and Development Supervisory Agency (BPKP), and other related ministries/institutions to promote good governance.

The implementation of corruption prevention in the Regional Government is carried out through the following stages:

1. Identification of corruption-prone points both at the central and regional levels;
2. Statement and Signing of Integrated Corruption Eradication Commitment by Regional Heads;
3. Preparation and Determination of Local Government Integrated Corruption Eradication Action Plans; And
4. Monitoring and Evaluation of Achievements of Integrated Corruption Eradication Actions.

V. CONCLUSION

Whereas in order to eradicate corruption in the procurement of goods and services, criminal sanctions are not sufficiently effective as a deterrent instrument, because the nature of criminal sanctions is the final instrument (*ultimum remedium*). Therefore, it must be accompanied by administrative legal instruments that have the core of a control. If during the supervision process an official who commits a violation is found, he may be subject to administrative sanctions such as dismissal from his position, while goods and services providers may be subject to sanctions such as being blacklisted or revocation of business licenses. With the use of these two legal instruments (criminal and administrative), the eradication of corruption in the procurement of goods and services can be more effective.

Procurement of goods and services in government institutions is carried out based on the nature or essence of the procurement of goods and services, namely by complying with the ethics



and norms of the procurement of goods and services that apply, following the principles, methods and processes of procuring goods and services that are standard. Indications of deviations from criminal acts of corruption can be seen from errors in material planning, errors in material procurement, errors in material resource control, and external factors.

While the pattern of corruption in the form of a procurement of goods and services is abuse of authority, bribes committed by providers of goods and services, collusion, whether carried out between officials, or between officials and providers of goods and services, or between providers of goods and services. System improvement or system reform is one of the preventive efforts to realize an organization of procurement of goods and services in government institutions that can run well by prioritizing aspects of transparency.

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