

## Criminal Acts of Corruption Procurement of Goods and Services of Local Governments through Electronic Procurement Services (LPSE)

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### Abstract

*The rapid advancement of technology is seen as one of the right and effective methods to increase the transparency of public information access, by implementing an online system for goods/services procurement or known as Electronic Procurement Services (LPSE). But corruption in the goods/services procurement of the local government continues even though the LPSE has been implemented. The purpose of this research is to knowing legal arrangements, forms of irregularities, and to explain the efforts of Government Internal Supervisory Apparatus (APIP) in preventing corruption in the goods and services procurement of the local government carried out through LPSE. The research method used is a qualitative method that is descriptive. The type of juridical research is normative, that is literature study with secondary data types consisting of primary, secondary, tertiary legal materials. The legal arrangements related to the corruption of the public goods/services procurement are regulated in Law No. 31 of 1999 Jo. Law No. 20 of 2001, while the legal arrangements for the public goods/services procurement through LPSE are regulated in Presidential Regulation No. 16 of 2018 Jo. No. 12 of 2021 concerning the Public Procurement Goods/Services. LKPP Regulation as technical guidelines are LKPP Regulation No. 9 of 2018, No. 11 of 2018 Jo. No. 7 of 2020, and No. 14 of 2018. The configuration of irregularities that occur in the public goods/services procurement through LPSE include corruption regulated in Corruption Law, as well as irregularities in the form of administrative irregularities and general crimes, unfair business competition law, and corruption. The efforts of APIP in preventing corruption in the public goods/services procurement is an early warning at every phase of the goods/services procurement and the efforts of LKPP strengthening the Electronic Procurement System (SPSE) by using online-based applications, and law enforcement by firm and fair criminal sanctions to the corruptor in the goods/services procurement in accordance with the applicable corruption law.*

### Keywords

criminal act of corruption;  
goods and services  
procurement; local government;  
electronic procurement services  
(LPSE)



## I. Introduction

One of the goals of the Indonesian people which is clearly stated in paragraph 4 (four) of the Preamble to the 1945 Constitution is to promote public welfare. This state goal can only be realized if the programs prepared by the government can run well and are free from corruption.

Corruption has long been one of the main problems of the Indonesian nation that destroys and undermines all aspects of the lives of the Indonesian people, causing massive negative impacts such as inadequate public services, disruption of the national economy,

injustice, poverty, and so on, resulting in many people being discouraged. cannot enjoy a fair distribution of state wealth. Corruption cannot be tolerated because it undermines economic and political development, with the fact that countries with high levels of corruption, health and education services are of low quality. According to Romli Atmasmita, corruption in Indonesia is classified as an extraordinary crime because it is included in crimes against humanity with the consequences that are very dangerous for human life.

Various efforts have been made to eradicate corruption, but the results are still far from satisfying (Zulyadi, 2020). Both actions (against the law and abuse of authority) are important to distinguish the boundaries of corruption and are also interesting to talk about (Purba and Syahrin, 2019). Corruption is categorized as a White Collar Crime (WCC). The term white-collar crime was researched by Edwin Sutherland, because people who dress neatly with white collars and coats are often identified with people who have positions, so white-collar crimes are crimes committed by people who are considered respectable with high social status in carrying out their positions. This white-collar crime is regulated in Article 3 of Law Number 31 of 1999 concerning the Eradication of the Crime of Corruption, which defines the abuse of authority, opportunity or means because of position or position.

Corruption is not only a problem for the Indonesian people, but also a problem of transnational crime that has an impact on the international community and economy, so that in December 2003 in Merida, Mexico, hundreds of countries signed the United Nations Convention Against Corruption (UNCAC), 2003 or the United Nations Convention Against Corruption. Nations (UN) Anti-Corruption, 2003 which aims to increase international cooperation in eradicating corruption. This UNCAC was later ratified by Indonesia into Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption (UNCAC), 2003 (United Nations Convention Against Corruption, 2003).

One of the areas most prone to corruption is the process of government procurement of goods and services. Procurement of government goods and services is a form of government program implementation to promote public welfare in accordance with the goals of the Indonesian nation as outlined in the Preamble to the 1945 Constitution, the financing of which is borne by the State Revenue and Expenditure Budget (APBN) and the State Revenue and Expenditure Budget. Regional Expenditures (APBD). The process of procuring government goods and services must run effectively, efficiently and free from corruption so that the results can be felt by the people and are useful for the general welfare. But in reality, the process of procuring government goods and services often does not run according to the established mechanism, resulting in criminal acts of corruption that result in state economic losses.

## **II. Review of Literature**

### **History of the Development of the Law of Corruption Crime**

Indonesia has taken steps to establish positive laws to deal with corruption problems and has gone through several periods of changing laws and regulations. The term corruption as a juridical term was only used in 1957, namely with the existence of a Military Ruler Regulation that applies in the Army's territory (Military Regulation No. PRT/PM/06/1957).

The history of the legal regulation of corruption in Indonesia is:

#### **a. Old Order**

##### 1) Provisions in the Criminal Code

In the Criminal Code there are provisions that threaten criminal penalties for those who commit office offenses, especially offenses committed by officials related to corruption, namely embezzlement (Article 415), counterfeiting (Article 416), accepting bribes (Article 418, 419, 420), and unlawfully benefiting oneself (Articles 423, 425, 435)

##### 2) Period of Military Rule Regulation, which consists of

a) Regulation of the Military Authority Number PRT/PM/06/1957 issued by the Military Authority of the Army which applies to the Army's territory.

b) Regulation of the Military Authority Number PRT/PM/08/1957 concerning the establishment of a body, namely Property Owners (PHB) which has the authority to represent the state to sue civilly for persons accused of acts of corruption of a civil nature through the High Court.

c) Military Authority Regulation Number PRT/PM/011/1957 which is the legal basis for the authority possessed by Property Owners (PHB) to confiscate property that is considered the result of other acts of corruption, pending a decision from the High Court

d) Regulation of the Central War Authority of the Army Chief of Staff Number PRT/PEPERPU/031/1958 and its implementing regulations

e) Regulation of the Central War Authority of the Naval Chief of Staff Number PRT/z.1/I/7/1958 dated 17 April 1958

##### 3) The period of Law Number 24/Prp/1960 which is an amendment to Perppu Number 24/1960 which is stated in Law No. 1/1961 concerning Investigation, Prosecution, and Examination of Criminal Acts of Corruption

#### **b. The New Order**

Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption. The formulation of the criminal act of corruption in Law Number 3 of 1971 has progressed compared to the previous laws and regulations, namely:

1) The formulation of a criminal act of corruption with the element "against the law", while the previous regulation was formulated with the element "with or because of committing a crime or violation".

2) The form of a corruption offense is a "formal offense", meaning that a corruption offense in Law Number 3 of 1971 defines in its elements and forms, the real consequences of the act of not being required to complete the offense, while the previous regulations formulated a corruption offense as a material offense.

3) The previous regulation was divided into 3 parts, namely criminal acts of corruption in the form of abuse of authority or position and several articles of position offenses in the Criminal Code, but in Law Number 3 of 1971 also formulated active bribery and passive bribery which were not reported in the shortest time. -in short by the recipient of the gift for the gift

### **III. Research Methods**

According to Peter Mahmud Marzuki, legal research is a know-how activity carried out to solve legal issues that occur, and not just know-about, so it takes the ability to identify legal problems, perform legal reasoning, analyze problems that occur and provide solutions to these problems.

a. Research Specification

The research used in the preparation of this thesis uses a normative juridical approach or library law research. Normative legal research (juridical normative) is legal research conducted by reviewing library materials or secondary data data

b. Data Collection Techniques and Data Collection Tools

The type of data used for normative juridical research is secondary data. This secondary data is obtained from laws and regulations relating to issues, books and materials outside the field of law that are relevant and can be used to complete the data needed in writing this research.

c. Data Analysis

The data analysis method used in this study is qualitative, namely the data obtained in this study are presented and processed qualitatively by analyzing the discussion and elaboration of the research results based on the applicable legal rules.

d. Research Schedule

The research schedule which includes preparation, implementation, guidance and reporting of research results is carried out within 6 (six) months

## **IV. Results and Discussion**

### **4.1 The Role of Government Internal Supervisory Apparatus (APIP) in Supervising the Procurement of Local Government Goods and Services Through Electronic Procurement Services (LPSE)**

Along with the increasingly rapid development of the global world, which is marked by the advancement of science and technology, and also followed by the increasing complexity of government affairs, an effort is needed to achieve the goals of government administration to make the administrative system more accountable to the public and improve the quality of government administration services, so that clear and firm arrangements are needed. In the field of government administration, laws and regulations are needed as a legal and operational basis for the implementation of various government tasks and functions, so that on October 17, 2014 Law Number 30 of 2014 concerning Government Administration was passed. One of the things behind the birth of this government administration law is the fear of government officials in making government decisions and policies, because many government officials are entangled in cases of criminal acts of corruption, in connection with their duties in carrying out their discretion or authority, even though government officials does not enjoy the money or profits from the proceeds of the criminal act of corruption

### **4.2 Division of Authority Between Government Internal Supervisory Apparatus (APIP) and Law Enforcement Apparatus in Conducting Investigations on Abuse of Authority Cases Conducted by Government Officials**

a. Legal Basis for Formation of Government Internal Supervisory Apparatus (APIP)

The legal basis for the establishment of the Government Internal Supervisory Apparatus (APIP) within the central government and regional governments is Government Regulation (PP) Number 60 of 2008 concerning the Government's Internal Control System, which in Article 49 stipulates that the Government Internal Supervisory Apparatus (APIP) consists of Financial and Development Supervision (BPKP), Inspectorate General or other names that functionally carry out internal supervision, Provincial Inspectorate, and Regency/City Inspectorate. Based on Article 48 of Government Regulation (PP) Number 60 of 2008 concerning the Government Internal

Control System, the Government Internal Control Apparatus (APIP) conducts internal supervision through audits, reviews, evaluations, monitoring, and other supervisory activities.

b. Definition of Internal Control/Internal Audit

The government's commitment in realizing good governance requires the government to make improvements to the performance of the administration of government organizations, one of which is with an effective supervision system by increasing the role and function of the Government Internal Supervisory Apparatus (APIP) who conducts internal audits. Initially, internal audit was more of a role as the eyes and ears of management, because management wanted to ensure that all policies that had been set were not implemented in a deviant manner. The orientation of internal audit in the past was more focused on checking the level of compliance with existing regulations (compliance). The role and function of internal audit with the old paradigm as a "watchdog" is starting to be abandoned at this time. Internal Audit has the responsibility to detect any form of irregularities that may occur as early as possible, before there is a worse impact on the organization

c. Authority of the Government Internal Supervision Apparatus (APIP) in Conducting Investigations on Abuse of Authority Cases Conducted by Government Officials

Based on Article 11 of Government Regulation (PP) Number 60 of 2008 concerning the Government Internal Control System and also contained in the 2014 Indonesian Government Internal Audit Standard (SAIPI), an effective Government Internal Audit Apparatus (APIP), must at least have.

#### **4.3 The Authority of the Corruption Court (Tipikor) and the State Administrative Court (PTUN) to Trial Elements of Abusing Authority/Authorities Performed by Government Officials**

Juridically, the Law on the Eradication of Criminal Acts of Corruption does not provide a definition and understanding of "abuse of authority/authority", but the term "abuse of authority" is found in the Law on Government Administration, namely as part of the General Principles of Good Governance (AUPB). ).

The opinion of criminal law experts regarding the meaning of "abusing authority/authority" is not much different from the notion of "abusing authority" in the concept of State Administrative Law. The definition of "abusing authority" is emphasized on the deviation of the purpose of granting the authority.

Article 3 of Law Number 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption is a material offense, so that criminal acts of corruption that occur must result in clear state losses. Actus reus in Article 3 is "abusing the authority, opportunity, or facilities available to him because of his position or position" which results in "financial and economic losses to the state", while the mens rea element is "with the aim of benefiting oneself or another person or corporation. ", which means that the perpetrator really has a goal to benefit himself or another person or corporation. The mens rea element must be proven, because if it is not proven, then the "abuse of authority" committed is not categorized as a crime, but is included in the maladministration acts which are the domain of State Administrative Law (HAN).

The Supreme Court (MA) issued Supreme Court Regulation (Perma) Number 4 of 2015 concerning Guidelines for Proceeding in the Assessment of Elements of Abuse of Authority to resolve differences of opinion regarding the absolute competence of the court in hearing cases of "abuse of authority/authority", with the aim of determining the absolute competence of the court that hears and the legal standing of the applicant in the case of

"abuse of authority/authority". Article 2 of this regulation states that the court has the authority to receive, examine and decide on applications for the assessment of whether or not there is abuse of authority in decisions and/or actions of government officials before the criminal process and after the results of supervision from APIP. This regulation officially states that the Administrative Court can only hear cases of "abuse of authority" if there has not been a criminal process.

Article 2 of the Supreme Court Regulation (Perma) Number 4 of 2015 concerning Guidelines for Proceedings in the Assessment of Elements of Abuse of Authority limits the broader authority of the Administrative Court in hearing cases of "abuse of authority/authority" as stated in Article 21 paragraph (1) of Law Number 30 of 2014 About Government Administration. Whereas in accordance with the principle of *lex superior derogate legi inferior* which states that the law with a higher level takes precedence over the law with a lower level. This is also confirmed in Articles 7 and 8 of Law Number 12 of 2011 concerning the Establishment of Legislations, namely lower laws and regulations may not limit or reduce higher laws and regulations.

## V. Conclusion

Legal arrangements related to corruption in the procurement of local government goods and services through the Electronic Procurement Service (LPSE) are regulated in Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, while the regulation and legal basis for the procurement of goods and services for local government through LPSE is regulated in Presidential Regulation Number 16 of 2018 Jo. Presidential Regulation Number 12 of 2021 concerning the Procurement of Government Goods/Services which functions to regulate procedures/procedures for the implementation of the procurement of goods/services of local governments properly and correctly, as well as technical guidelines for the procurement of goods and services of local governments through LPSE is through LKPP Regulation Number 9 of 2018 Regarding Guidelines for the Implementation of Procurement of Goods/Services Through Providers, LKPP Regulation Number 11 of 2018 Jo. LKPP Regulation Number 7 of 2020 concerning Electronic Catalogs, and LKPP Regulation Number 14 of 2018 concerning Goods/Services Procurement Work Units

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