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Judicial Analysis of Law Enforcement Against Corruption in the Procurement of Goods and Services for Government Interest

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A B S T R A C T

This study aims to Corruption in the procurement of goods and services is one of the most common corruption offences, ranking second only to gratuities/bribes. This is based on the World Bank (World Bank), every year more than 10 billion US dollars or around 85 trillion rupiah of the central government budget, both for routine expenditure and development projects, are spent through the procurement of goods and services. The purpose of this study is to find out the effectiveness of legal regulation of corruption offences in the procurement of goods and services for the benefit of the government and to find out to Overcome Obstacles in Law Enforcement of Corruption in the Procurement of Goods and Services for Government Interests so that Corruption Cases Can Decrease. The method used is a qualitative research method with descriptive analysis through legislative, case and conceptual approaches. The result of this research is that the formulation of minimum criminal punishment in Law Number 20 Year 2021 has shortcomings, namely not formulating sentencing guidelines to apply this minimum criminal punishment and efforts to overcome obstacles in law enforcement of corruption in the Procurement of Goods and Services so that the number of cases of Procurement of Goods and Services in the following year can decrease, including The principle of procurement must be carried out in tandem with enforcing integrity and increasing the professionalism of procurement human resources

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INTRODUCTION

Until now, corruption is one of the serious problems faced by many countries around the world, including Indonesia. This is evidenced by the fact that Indonesia has a corruption perception index score of 34 in 2022, which makes it the 5th most corrupt country in Southeast Asia (PR BPHN 2023) Corruption not only destroys social and economic order, but also erodes public trust in government and political institutions. In the context of Indonesia, corruption has become a very chronic problem because corruption can hinder national development itself, create injustice, and can exacerbate poverty. All parties are not silent and various efforts have been made to fight corruption, but the challenges faced are still enormous, ranging from a permissive culture to weak law enforcement so that corruption still takes place both at the centre and in the regions.

Corruption can also appear in various specifications such as bribery, extortion, abuse of office, embezzlement and can appear in the procurement of goods and services (Adrian Sutedi 2008). It all starts with the perpetrators who commit these criminal offences often utilising their power and position to benefit themselves, ignoring the interests of society. This phenomenon does not only occur in the private sector, but also in the government, exacerbating the interrelated practice of corruption. As a result, corruption not only harms the country financially, but also creates social injustice that impacts the daily lives of the people.

Juniadi Suwartojo revealed that corruption is the act of someone who violates the norms that have been applied by using or abusing power or opportunity through the process of procurement, determination of revenue levies, provision of facilities, or other services. The action is carried out in the activities of receiving or spending money or wealth, storing money or wealth as well as in licensing and other services where the aim is to take personal or group benefits directly or indirectly to the detriment of the interests or finances of the state and society.

In accordance with the provisions in Presidential Regulation (Perpres) Number 12 of 2021 regulating Government Procurement of Goods and Services Article 3 letters a to f, Procurement of Goods and Services must be carried out based on procurement principles practised nationally and internationally, namely the principles of efficiency, effectiveness, fair competition, openness / transparency, non-discrimination, and accountability. However, all of them are not in line with the stipulated provisions and have begun to take advantage of their positions, positions and positions, resulting in the crime of corruption in the Procurement of Goods and Services.

Corruption in the Procurement of Goods and Services is one of the most urgent issues in the context of state financial management and the most prevalent corruption that ranks second only to gratuities/bribes (KPK 2022). The state financial losses caused by corruption in the Procurement of Goods and Services are very large, this is because the funds budgeted for government Procurement of Goods and Services are also very large. According to the World Bank, every year more than USD 10 billion or around IDR 85 trillion of the

central government budget, both for routine expenditure and development projects, is spent through the Procurement process (Kaufmann 2005). In addition, it can be recognised that the specific data received by the Corruption Eradication Commission regarding the number of reports of corruption complaints related to the procurement of goods and services received by the Corruption Eradication Commission can vary (Amiruddin 2010). As an illustration, in previous annual reports, the Corruption Eradication Commission noted that around 30-40% of the total reports received were related to the procurement sector. From 2004-2023, the Corruption Eradication Commission has received more than 339 reports related to Public Procurement cases and 2023 was recorded as the year with the highest number of Public Procurement corruption offences with 63 cases (Humas BPHN 2022).

The end of the procurement process, which has been infiltrated by corrupt practices, not only harms the state financially but also hampers the development of infrastructure and public services. Therefore, in Goods and Services Procurement, various forms of corruption can occur, ranging from bribery, price mark-ups, to unfair tender arrangements which ultimately have a direct impact on the quality of goods and services received by the public. As a result, Procurement of Goods and Services has become an arena prone to corruption because it involves a large allocation of funds and a complex process, especially in regions where decentralisation is not well structured. In many cases, the perpetrators of corruption always take advantage of public ignorance and lack of supervision to commit harmful acts. Uncertainty in the procurement process often makes it difficult to track the flow of budget expenditure and identify unlawful practices. This creates a conducive environment for corrupt actors who continue to operate without feeling threatened by legal consequences.

Based on the foregoing, the regulation of goods and services is a means of creating legal certainty so that the mechanisms and procedures for the Procurement of Goods and Services by spending state money must prioritise the principles of responsible management principles, but in practice it has not gone as expected, the fact shows that the Procurement of Goods and Services is one of the activities that tend to become the land of criminal acts of corruption.

Based on this background, the problem formulation in this study includes knowing the regulation of criminal acts of corruption in the procurement of goods and services in the perspective of criminal law politics, and what is done in overcoming obstacles in law enforcement of criminal acts of corruption in the Procurement of Goods and Services so that the number of cases of Procurement of Goods and Services in the following year can decrease.

THEORETICAL REVIEW

Law Enforcement

Law enforcement refers to the system or group of individuals tasked with upholding and enforcing laws within a society. This includes the prevention, investigation, and punishment of crimes. Law enforcement agencies

work to maintain public order, ensure safety, and protect citizens' rights by ensuring compliance with legal regulations.

Corruption Crime

Corruption crime refers to illegal or unethical acts committed by individuals in positions of power or authority, often for personal gain. These acts typically involve the abuse of entrusted power or influence for financial or other benefits, undermining fairness, justice, and the rule of law.

METHODOLOGY

According to Sugiyono, the definition of a research object is: 'Scientific targets to obtain data with specific purposes and uses about something objective, valid and reliable about something (certain variables)'. In the preparation of this article, what will be the object of research is knowledge and experience. By using this research object, the author wants to know the Criminal Act of Corruption in the Procurement of Goods and Services in the Perspective of Criminal Law Politics and, and criminal sanctions for perpetrators who commit criminal acts of corruption in the procurement of goods and services for the benefit of the government

Legal materials in this research require the existence of several legal materials as materials in conducting this research, which include Primary Legal Materials that are binding and directly related to the problems being analysed, consisting of laws and regulations relating to Corruption Crime Against Procurement of Goods and Services, namely Law Number 20 of 2001 concerning Eradication of Corruption, Presidential Regulation (Perpres) Number 12 of 2021 which regulates the Procurement of Government Goods and Services. Secondary legal materials are legal documents or materials that provide explanations of primary legal materials, these legal materials are also used to help explain and complement primary legal materials, or in this case can be referred to as legal materials that are in accordance with the problem, such as literature books, mass media, both print and electronic, journals, internet, articles, Tertiary legal materials are legal materials that are used as a complement and also function to provide information on primary and secondary legal materials that are not directly related to the subject matter at hand, but are needed to support the completeness and clarity of primary legal materials and secondary legal materials, such as the Big Indonesian Dictionary (KKBI).

The data collection method is a way of working to be able to understand the object that is the target of the science concerned. In this study, the research method used by the author is a qualitative research method. Qualitative research, one of which is a normative research approach whose procedures are investigated with a description of the subject and object in the form of research examining document/library studies using various data such as laws or legal theories, concepts, legal principles and laws and regulations relating to this research. In this case, the author uses several approach methods including the Statute Approach, Case Approach and Conceptual Approach methods.

RESULTS AND DISCUSSION

Regulation of Corruption in the Procurement of Goods and Services in the Perspective of Criminal Law Politics

The increase in corruption cases in the procurement of goods and services in Indonesia from year to year cannot be separated from the weak planning process which is divided into five parts. The first weak point is that in the planning stage, the executor of goods and services procurement identifies wants, not needs. Not infrequently this is due to 'entrustment'. Research from the Ministry of Maritime Affairs and Fisheries shows that there are still officials who do not understand the principles of planning. Next is the problem of work bundling, work bundling should not be based on the nature of the work. The next planning problem is the way procurement is carried out. There are two options for procurement, namely self-management and through providers. The choice of procurement method must be adjusted to the type of goods to be provided. The fourth problem is that there are Goods and Services Procurement officials who carry out procurement before everything is ready. Finally, there are Commitment Maker Officials who are not certified (Itjen KPK 2019).

The preparation process has many weak points that must be considered. Some of the weak points researched by the Ministry of Maritime Affairs and Fisheries are not conducting re-testing, preparing technical specifications only copying from brochures, not understanding in detail, preparing prices not based on market prices, not supported by documentation, and there are indications of mark-ups, not drafting contracts, directly making contracts, Commitment Making Officials do not make implementation plan documents; and the preparation of procurement documents is not comprehensive and technical procurement is not detailed. At the implementation stage, there are still often problems that can become loopholes for corruption. These problems include the Commitment Making Officer not checking the implementation guarantee and down payment guarantee, not holding a contract implementation preparation meeting, not controlling the implementation of the contract, the work is late, not completed, and/or fictitious; and the BA inspection and handover are not in accordance with the condition of the work.

In addition, the political development of state finance law and public procurement in Indonesian history cannot be separated (Jap 2015). Since the first state financial regulation issued by the new order government, namely Presidential Decree Number 33 of 1969 concerning Guidelines for the Implementation of the State Budget for the Fiscal Year 1969/1970 until the collapse of the new order government in mid-1998, the regulation of public procurement of goods/services was still part of the regulation of the implementation of the State Budget. After the New Order government collapsed due to public pressure demanding a reform movement, the idea of improving state financial law continued to emerge. The rampant corruption during the New Order era was caused by weaknesses in state financial management. Therefore, there has been an ongoing push for reforms in state financial governance, including improvements in the management of public procurement.

Following up on various pressures at the beginning of the reform period to eradicate corruption, in 2000 two regulations were issued with concurrent numbers, namely Presidential Decree Number 17 of 2000 concerning the Implementation of the State Budget and Presidential Decree Number 18 of 2000 concerning Guidelines for the Implementation of Goods / Services Procurement of Government Agencies. The issuance of this procurement regulation is the first time the government has issued a regulation that specifically regulates the procurement of goods/services. In its journey, the regulation of state financial management transformed into a package of state financial laws, while the regulation of public procurement is still regulated in the form of presidential decrees or presidential regulations.

In 2003, Law No. 17/2003 on State Finance was enacted, which is still in effect today. Then in the same year, the regulation of goods/services procurement changed with the revocation of Presidential Decree Number 18 of 2000 which was replaced by Presidential Decree Number 80 of 2003. Since then, there have been dozens of changes in public procurement regulations, the latest of which is regulated in Presidential Regulation Number 16 of 2018 and its first amendment Presidential Regulation Number 12 of 2021. Government procurement regulations, apart from being regulated through regulations at the level of government regulations, also regulate technical guidelines regulated by LKPP and ministries. The rapid development of public procurement regulations has not shown good public procurement performance. Corruption is a major problem in the implementation of public procurement in Indonesia. The high level of corruption in this sector has caused the effectiveness and efficiency of government spending to not work as expected. Corruption in public procurement is the largest portion of corruption. In addition, the problems associated with it also still occur today. Delays in the implementation of procurement, poor quality of procurement results and high prices are still the main problems. A new breakthrough is needed to create a more effective legal politics of public procurement to prevent corruption. Improving these regulations must be on the agenda of every leader in Indonesia if it is to become a developed country with prosperous people.

In addition, Law Number 31 Year 1999 formulates several changes in the criminal penalties for perpetrators of corruption crimes, which can also affect the enforcement of corruption crimes in Indonesia. In this law, the death penalty is known as stated in Article 2 paragraph (2) which reads: 'In the event that the criminal offence of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed'. The notion of 'certain circumstances' in this provision is intended as an aggravation for perpetrators of criminal acts of corruption if the criminal act is committed when the state is in a state of danger in accordance with the applicable law, when a national natural disaster occurs, as a repetition of a criminal act of corruption, or when the state is in a state of economic and monetary crisis.

With this death penalty, Law No. 31/1999 is the harshest and most severe law in ASEAN. However, in its development, this explanation was

declared invalid because Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes has formulated a new explanation of the article. The change in criminal punishment in addition to the death penalty is the minimum criminal punishment for both imprisonment and fines. The concept of minimum criminal punishment is a new concept that is not known in the Criminal Code. The formulation of this minimum criminal punishment has shortcomings, namely not formulating sentencing guidelines to apply this minimum criminal punishment. Special laws outside the Criminal Code should make separate rules for its application, because this is a logical consequence of Article 103 of the Criminal Code.

The concept of cumulative formulation system and alternative cumulative formulation system in the criminal punishment of this law is not clear because the concept raises a simple question, namely why the corruption offence in the form of self-enrichment in Article 2 is punishable by cumulative punishment, while the abuse of authority in Article 3 is punishable by alternative cumulative punishment. Whereas these two offences carry the same maximum punishment and the weight/quality of the offence is also the same. In addition, the penalties formulated in the law are also not in line with the violations committed by the position holders, one of which is not in line with Presidential Regulation Number 12 of 2021 concerning Procurement of Goods and Services, which also contains the authority of the perpetrators who can also be involved in the Procurement of Goods and Services such as the adage 'Het Recht Hink Achter De Feiten Aan' which means that the Law Always Limps along with the times. In this case, Law Number 20 of 2021 concerning the Eradication of Corruption must also be in line with Presidential Regulation Number 12 of 2021 concerning the Procurement of Goods and Services considering that over time many new crimes have emerged in the Procurement of Goods and Services where the perpetrators are not alone committing criminal acts.

It can be concluded that the legislators are still not right in formulating criminal sanctions in the crime of corruption, so it is natural that in this era of reform, corruption is still rampant. The uncontrolled development of criminality, which is increasing, can actually be caused by the inappropriate types of sanctions chosen and determined. At least the formulation of punishment in the law that is not appropriate can be a factor in the emergence and development of criminality. Based on the formulation of sanctions contained in this Presidential Regulation, it seems that the drafters of the provisions adhere to the consequentialist theory, which considers that a punishment is the result of behaviour that causes harm, and it is appropriate that the perpetrator is subject to a loss in the form of imposing criminal sanctions. In this view, the prevention of future crimes is the main purpose of punishment. With the sanctions formulated, in which criminal reporting is the final way, it appears that the legislator is of the view that punishment can bring good because it can prevent worse events and thinks that there is no other alternative that is equally good in overcoming this deviation (Wibowo 2015).

According to a source from the Financial Supervisory Agency of the Republic of Indonesia, there is potential in the process of Procurement of Goods and Services, including overpayments, late fees for work not yet received, inappropriate specifications of goods, price overruns, fictitious expenditures or procurements, and work not completed as it should be. Referring to the Law of the Republic of Indonesia Number 31 of 1999 as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Corruption, there are several classifications that can be categorised as corruption, such as, financial losses or the state economy; bribery; embezzlement in office; extortion; fraud; conflict of interest; and gratuities.

The provision contained in Article 2 paragraph (1) of the Corruption Eradication Law states 'Every person who unlawfully commits an act of enriching himself or herself or another person or corporation that may harm the state finances or the state economy ... etc.', while the explanation in the article means 'Unlawfully' includes unlawful acts in the formal and material sense, namely even though the act is not regulated in the legislation, but if the act is considered reprehensible because it is not in accordance with the sense of justice or the norms of social life in society, then the act can be punished. In this provision, the word 'may' before the phrase 'detrimental to the state's finances or economy', indicates that the criminal offence of corruption is a formal offence, i.e. it is sufficient that the elements of the act that have been formulated are fulfilled, rather than arising after the consequences.

Legal regulations are also inseparable from political interventions that often interfere with the law enforcement process against corruption cases. Pressure from certain parties can hinder the investigation and prosecution of corruption offenders. This creates public distrust of the legal system in Indonesia. Poor coordination between law enforcement agencies leads to overlapping authorities and confusion in handling corruption cases. This can slow down the investigation process and reduce the effectiveness of prosecutions. The legal culture in Indonesian society often does not favour consistent application of the law. The view that corruption is normal makes people less concerned about corrupt acts. To change this culture, continuous education and socialisation efforts are needed.

Things Done to Overcome Obstacles in Law Enforcement of Corruption in the Procurement of Goods and Services for Government Interests so that Corruption Cases Can Decrease.

The same data was presented by the Corruption Eradication Commission in 2022 which showed that corruption in the goods and services procurement sector showed higher data than ICW data, where corruption related to the procurement of goods and services handled by the KPK found a very high proportion of 70% of all corruption cases handled by the KPK. If the highest ranking type of corruption case handled by the Corruption Eradication Commission is a bribery case and the second is a goods and services procurement case, then this data shows that cases related to the procurement of goods and services, both direct and indirect, total 70%. This procurement corruption rate is very high because it involves other cases such as bribery that

occur in the procurement of goods and services. Thus, public procurement is the most vulnerable sector for corruption. Corruption in the procurement of goods and services handled by the KPK is not only related to corruption in the direct procurement of goods and services, but also corruption in other cases that are indirectly related to the procurement of goods and services. An example is bribery to organise tenders.

Although the type of case includes bribery, it occurs in the event of procurement of goods and services. This condition is concerning, because corruption in the goods and services procurement sector occurs at all levels, from high-level officials at the level of regional heads and ministers, to implementers of goods and services procurement to intermediaries who usually do not have strategic positions in government. Corruption in the procurement of goods and services is usually carried out by building a conspiracy involving many parties including the owner of the authority, the executor of the procurement of goods and services, the intermediary and the provider of goods / services. Each party will perform their respective roles to smooth out evil intentions. The goal is to benefit from procurement by providing goods/services at a higher value than they should be.

The Research Centre and Expertise Agency (PPBK) of the Secretary General of the House of Representatives stated that corruption in the procurement of goods and services as of September 2021 almost reached 90% of the cases handled by the kpk, prosecutors and police in the regions. corruption in the procurement of goods and services occurs because there is still a lot of lobbying from local government officials so that certain business actors are directed to become Tender winners. The modus operandi is to conspire or arrange a Tender, where the Tender winner has already been determined before the Tender process is carried out. The Regional Head or other high-ranking officials at the Regional Government will intervene or arrange for the goods and services procurement executor to create a scenario to direct certain goods/services providers to become Tender winners. Business actors who are directed, usually have provided corruption down payments as a guarantee that they are committed to providing fees. Furthermore, after the work is completed and payment has been made, the goods/services provider who is the perpetrator will provide an additional fee as a form of kickback.

Conspiracies in the procurement of goods and services can occur both vertically between government officials, procurement actors and business actors who are usually also assisted by intermediaries who come from ordinary people who are trusted by government officials, as well as horizontal conspiracies among business actors who make their own arrangements without involving the Organiser of the procurement of goods and services. Vertical conspiracies are more common, while horizontal conspiracies are increasingly difficult in the era of e-procurement because it is difficult to regulate because the procurement of goods and services is more transparent and open.

The high level of corruption in the goods and services procurement sector is also increasingly vulnerable to a major impact on the decline in the quality of development and public services in Indonesia, considering that goods

and services procurement expenditure and capital expenditure provide a very large proportion of the APBN / APBD in Indonesia. Based on LKPP data, the goods/services expenditure budget for Fiscal Year 2022 that has been entered in the SiRUP application is IDR 1033.3 Trillion from the total 2022 APBN which reaches IDR 2714.2 Trillion or the goods and services procurement expenditure budget that has been displayed in the SiRUP application reaches 38% of the total APBN or around 30% of the proportion of the APBN / APBD. The large budget for the procurement of goods and services makes this sector vulnerable to corruption. The large proportion of the goods and services procurement expenditure budget in the 2022 APBN shows that the role of goods and services procurement governance greatly affects the overall budget performance. This data is also one of the answers to why corruption in the goods and services procurement sector is very high because the budget allocated for goods and services procurement expenditures has a very large proportion in the APBN / APBD. Improving procurement governance, especially in the context of preventing procurement corruption, will not only improve the efficiency of state financial management, but will also help improve the quality of public services and development. Corruption in the procurement sector will have a broad impact on the running of government and people's lives. Procurement corruption can increase the high-cost economy in government projects and the value of benefits compared to the budget will be smaller.

Abuse of authority in the procurement of goods/services can be committed by procurement executors or procurement organisations. The modus operandi is to abuse their authority for the benefit of themselves, others or corporations. Abuse of authority can be carried out by PA / KPA / PKP since the planning and preparation stages of procurement carried out by directing the needs or specifications to certain goods / services or certain Providers. In addition, the general treasurer also often participates by not carrying out his obligations, which include testing and checking whether the materials used are according to market prices or not instead of only issuing a budget when the provider's report is given. Abuse of authority at this stage can also be done in the form of making HPS inflation (markup) and technical requirements that lock in one particular Provider. At the selection or Tender stage, abuse of authority can be carried out by the Selection Working Group by making locking requirements when these requirements are not needed. It can also be done by cancelling an offer without reasons that are justified by regulation.

With such an arrangement, the Selection Working Group can eliminate Tender participants in an unfair manner. This step is intended so that the Tender participants who have been promised can win. Abuse of authority in contract implementation can be carried out by PPK by approving progress, handover or payment that is not in accordance with the provisions. PPK can carry out the payment handover process even though the results of the work do not match the volume, specifications or function of the goods / services as stipulated in the contract. This step is taken so that the money paid later is

greater than the value of the work. This excess will be the difference that will be divided between the conspiring parties.

Abuse of authority in the procurement of goods / services is carried out by the procurement executor by using his authority for something wrong, namely for the benefit of himself, others or corporations by causing state financial losses. The authority should be used to ensure effective and efficient procurement, but instead it is used for corruption. This action causes the state to pay more than it should or pay something that should not be paid. One of the modus operandi is the contract addendum, where officials can arrange changes in specifications and volumes with the aim of corruption. The contract addendum can regulate the increase in volume or specifications, but in reality in the field it is not done. Addendum in this way is only done to increase payment, but not accompanied by additional specifications or volume of work and fictitious addendum is a mode of corruption that is often found in the contract stage. Addendums that are made are not in accordance with field conditions, so the state has to pay more than it should.

According to Indonesia Corruption Watch (ICW), the causes of procurement corruption in Indonesia are weaknesses in legal and institutional aspects, low competence of Procurement Organisers, and low compliance with regulations, monitoring and enforcement. Weaknesses in the legal and institutional framework, low capacity of Procurement Organisers and low compliance are the main causes of rampant procurement corruption. A similar opinion was conveyed by the KPK, which stated that the cause of corruption in public procurement is the intention of individuals to commit corruption, then justified by the environment and occurs due to opportunities caused by weaknesses in regulations and procurement systems (Wibisono 2021).

Efforts need to be made to overcome obstacles in law enforcement of corruption in the Procurement of Goods and Services so that the number of cases of Procurement of Goods and Services in the following year can decrease, including The principle of procurement must be carried out in tandem with upholding integrity and increasing the professionalism of procurement human resources. Integrity is related to upholding honesty and truth in procurement and professionalism is related to the ability, expertise and competence of the Procurement Organiser. The application of good procurement principles, where integrity is the basic capital for anyone involved in procurement in order to ensure that the purpose of procurement is the achievement of government programmes and policies needed by the community and there are no other motives. Integrity is a major issue in procurement, because good procedures and the development of good human resources and procurement institutions have no meaning if the Procurement Organiser does not have integrity. Without integrity, even the best procedures will always be circumvented so that they can be directed towards the interests of certain individuals or interest groups.

In addition, transparency in procurement is very important because it will open up the market more widely, create fair treatment and facilitate supervision. To create transparency in procurement it is necessary to build regulations that require the entire process to be carried out transparently and

provide IT infrastructure that allows transparency to be carried out more easily, all Procurement Executors including Providers and other relevant stakeholders must be accountable for all their actions to the law and the public as taxpayers, as well as fairness, economy and efficiency of procurement which means that every decision must be made fairly and must reflect the principles of economy and efficiency. Finally, the importance of establishing a regulatory model for public procurement of goods/services that can improve efforts to prevent criminal acts of corruption. These policy models include the United Nations Commission on International Trade Law (UNCITRAL), which has adopted many procurement principles in drafting model public procurement regulations, including helping to evaluate and modernise regulations, and the Government Procurement Agreement (GPA), which is a collective agreement on public procurement made by the WTO, in 1996, which contains an agreement containing the principles of anti-discrimination, transparency, and fair criteria and minimum standards for public contracts containing anti-corruption initiatives in public procurement and standardisation related to procurement, tenders, sale of state assets and implementation of subcontractors and involvement of Providers and clear and transparent regulations, regulating the conduct of Procurement Executives and Providers and all related parties, including developing a code of ethics for Procurement Executives.

It is important that procurement regulations must also regulate strict sanctions against violators of obligations. Procurement regulations should not have ambiguous provisions and requirements that can be used as loopholes for corruption. Procurement of goods/services must be built in a way that is as transparent as possible and as competitive as possible. The use of e-Procurement is a step taken to increase transparency and competition (Masudin 2021). Public procurement regulations should strengthen the obligation for K/L/PD to increase transparency by regulating the obligation to conduct procurement electronically. Then, the implementation of a whistleblowing system is an effort to prevent corruption carried out by the person closest to the perpetrator of corruption in the Procurement of Goods and Services. With the implementation of this system, it is hoped that all parties feel supervised and cannot commit violations because they feel that they will be easily reported. On the other hand, the whistleblower will avoid social or personal impacts from his environment because his identity will be kept confidential and protected.

One example of a case in Decision Number 41/Pid. sus-TPK/2024/PN Mdn which supports that there are obstacles in law enforcement of corruption in the procurement of goods and services in resolving and deciding the case will first involve the commitment-making official even though in the case there is a public treasurer who disburses funds without first testing and checking the market price whether it is in accordance with what is offered by the provider because basically the officials who are the executors of the procurement of goods and services must bid to be lower than the market price and ensure the volume and specifications are in accordance with the contract agreed by both parties with the knowledge of the public treasurer and other local government parties so that everything offered can be balanced and achieve mutual benefits.

If the public treasurer was unaware of this and if he or she benefited from the budget, it is certain that the public treasurer participated in the incident and thus violated his or her obligations. In this case, there was also an injustice in which the defendant was proven to have violated Article 3 Jo. Article 18 paragraph (1) letter b of Law of the Republic of Indonesia Number 31 of 1999 concerning the eradication of criminal acts of corruption Jo. Article 55 paragraph (1) to 1 of the Criminal Code, which was only given a prison sentence of 1 year and a fine of Rp.50,000,000.00 (Fifty Million Rupiah) without any replacement costs.

CONCLUSIONS AND RECOMMENDATIONS

Procurement regulation in Indonesia faces challenges due to high levels of corruption, which leads to inefficiency and ineffectiveness in government spending. Law 31/1999 introduced changes in criminal penalties for corruption crimes, including the possibility of imposing the death penalty in certain circumstances. The concept of minimum criminal penalties was introduced in Law No. 20 of 2001, but lacks clear sentencing guidelines for its application. There are inconsistencies in the formulation of criminal penalties for corruption offences, raising questions about fairness and partiality towards offences committed by office holders. Despite reform efforts, corruption is still rampant in Indonesia, indicating that lawmakers have not effectively addressed the issue of criminal sanctions for corruption.

Corruption in public procurement is a major problem in Indonesia, with a high rate of corruption cases handled by the Corruption Eradication Commission. Corruption in the procurement of goods and services involves various parties, including high-ranking officials, procurement executors, intermediaries, and goods/service providers, leading to cost overruns and bribery. Efforts to eradicate corruption in public procurement include implementing transparency, accountability, and integrity in the public procurement process, as well as establishing strict regulations and sanctions against the perpetrators. The high level of corruption in the procurement of goods and services has a significant impact on the quality of development and public services in Indonesia, because the procurement budget is a significant part of the national budget. The large budget allocated for procurement expenditure makes the sector particularly vulnerable to corruption, and efforts are needed to prevent fictitious addendums and ensure fair and transparent procurement processes.

FURTHER STUDY

More research is encouraged to delve deeper into this field, resolving any potential limitations and expanding the breadth of analysis in order to offer deeper insights and broader applications.

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