

## THE RELEVANCES OF JUSTICE VALUE TO LEGAL PROTECTION FOR GOODS AND SERVICE PROVIDERS IN CORRUPTION CASES

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### **Abstract**

The pace of infrastructure development in Indonesia is increasing rapidly, this is a form of the government's commitment to improving people's welfare. The pace of infrastructure development in reality often has problems, including failure to build. The absence of criminal provisions in Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods and Services has resulted in the blurring of the boundaries of the criminal and civil realms as well as administrative law in setting sanctions for providers of goods and services deemed negligent. This is often seen in cases of corruption in the procurement of goods and services, which often attracts service providers to become one of the perpetrators of criminal acts. This situation is clearly wrong, because not all acts of service and goods providers can be said to be related to the occurrence of corruption in the procurement of goods and services. This study aims to further analyze the legal protection for service and goods providers in cases of corruption in the procurement of goods and services. The method in this writing is normative. Based on the existing studies, it can be seen that the implementation of criminal sanctions for corruption in the procurement of goods for infrastructure development has not been based on the legal politics of procurement of goods, so that the criminal sanctions are still unclear, because the issue of procurement of goods should not be directly subject to criminal sanctions as an *ultimum remedium*, considering the procurement of goods regulated by administrative law not criminal law, while criminal threats are only as a last resort when violations in the realm of procurement of goods in infrastructure development are not controlled.

**Keywords:** *Corruption; Goods; Justice; Protection; Procurement; Services.*

### **A. INTRODUCTION**

Indonesia is a state of law, this has the consequence that all actions of every party must be based on applicable law. This view is to ensure the realization of an ideal state order based on respect and protection of human rights.<sup>1</sup> In the implementation of national life, the government is required to promote general welfare with social justice for all Indonesian people. Hence, the government is obliged to provide the people's needs in various forms in the form of goods, services, and infrastructure development. On the other hand, the government also needs these goods and services in carrying out

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1 Rizki Bagus Prasetyo, Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat & Perlindungan HAM, *Jurnal Ilmiah Kebijakan Hukum*, Vol. 5 No. 2, 2021, page.327-328

government activities. Meeting the needs of goods and services is an important part in the administration of government.<sup>2</sup> As a state based on Pancasila law as well as a developed country, Indonesia has the obligation to carry out the legal system. In the same time, Indonesia ensures the realization of equitable development, so that procurement of goods for infrastructure development is oriented towards centric development and must also be able to ensure the law through the procurement mechanism can also be realized.<sup>3</sup>

It is clear that the procurement of goods for infrastructure development cannot be separated from the related legal regulations. The emergence of a legal system and a system of increasingly stringent procurement mechanisms is basically due to the high level of corruption in the procurement of goods for infrastructure development in this country. The electronic mass media [nasinal.kontan.co.id](http://nasinal.kontan.co.id) noted that in 2017 there was a state loss of 1.5 trillion Rupiah due to corruption in the procurement of goods for infrastructure development.<sup>4</sup>

Then in 2019 the number of corruption cases in the procurement of goods for infrastructure development was 174 cases with a total of 389 perpetrators with a total loss of Rp. 957, 34 Billion Rupiah.<sup>5</sup> This clearly shows that the line of procurement of goods and services related to infrastructure development in this country is a very strategic line for perpetrators of corruption in carrying out their crimes. The politics of criminal law on corruption in the procurement of goods for infrastructure development has a pending position. This is the basis that the criminal law politics of corruption in the procurement of goods for infrastructure development needs to be tightened again. It can be seen together that the regulation related to criminal sanctions against perpetrators of corruption in the procurement of goods in infrastructure development still has many loopholes and has a fairly high summarily. This view can be seen in the criminal regulation of procurement of goods related to infrastructure development in Act No. 1 of 2004 Regarding State Treasury. Article 62 and Article 64 do not explain the type of crime in the matter of the procurement of goods and services, the explanation of this law also does not clearly explain the types of criminal sanctions that are threatened. In addition to Act No. 1 of 2004, then in this law it is also not clearly formulated what is meant by the crime of procuring goods and services, the ambiguity of criminal arrangements is also seen in the related implementing regulations.<sup>6</sup>

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2 Sogar Simamora, *Hukum Kontrak, Kontrak Pengadaan Barang & Jasa Pemerintah di Indonesia*, Wins & Partners Law Firm & LbJ, Surabaya. 2013, page. 1.

3 Bobi Aswandi & Kholis Roisah, Negara Hukum & Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (HAM), *Jurnal Pembangunan Hukum Indonesia*, Volume 1 Nomor 1, Tahun 2019, page. 131

4 [nasinal.kontan.co.id](http://nasinal.kontan.co.id), Accessed on pada 12 Desember 2020.

5 <https://antikorupsi.org/sites/default/files/dokumen>. Accessed on pada 12 Desember 2020.

6 Galuh Ais Zakiyah & Arpangi, *Tinjauan Yuridis Terhadap Putusan Hakim Pengadilan Negeri Demak Nomor 64/Pdt.G/2018/PN Dmk Dalam Sengketa Lelang Pembangunan Gedung Sanggar Pramuka Di Kabupaten Demak*, Prosiding KONFERENSI ILMIAH MAHASISWA UNISSULA (KIMU) 4 Universitas Islam Sultan Agung Semarang, 28 October 2020, page. 705.

This can be seen in the form of the absence of clear provisions for criminal sanctions against perpetrators of corruption in the procurement of goods for infrastructure development in Article 78, Article 79, and Article 80 of Presidential Regulation Number 12 of 2021 concerning the First Amendment to Presidential Regulation Number 16 of 2018 concerning Procurement of Goods/Government Services. So that most cases of procurement of goods and services are often subject to the provisions of the corruption eradication law. This clearly results in injustice to the community, especially the parties involved in cases of procurement of goods and services related to infrastructure development. Considering that the second party as a service provider often becomes a victim of punishment even though they have followed the existing mechanism.

## **B. RESEARCH METHODS**

The approach used in this paper was a normative approach in which the studies carried out are related to the crime of regulations and legal norms. According to Johnny Ibrahim, normative legal research is a scientific research procedure to find the truth based on scientific logic from the normative side. The normative side here is not limited to laws and regulations. As stated by Peter Mahmud, legal research is normative research, but not only positivist law research. Norms are not only interpreted as positive laws, namely rules made by politicians who have a higher position as stated by John Austin or rules made by rulers as stated by Hans Kelsen<sup>7</sup>.

## **C. RESULT AND DISCUSSION**

### **1. The Relevances of Justice Value to Legal Protection for Goods and Service Providers in Corruption Cases**

Relying on the principle of *ultimum remedium*, the pattern of eradicating corruption with only criminal sanctions that has been applied so far is not effective because it does not stop corruption. Punishing the perpetrators is only to stop the corrupt acts committed by the convicted person. Corruption by other persons continues. Although punishing perpetrators with severe criminal sanctions and even up to the death penalty as stipulated in Article 2 paragraph (2) of Act No. 31 of 1999 as amended by Act No. 20 of 2001, it will not be effective in preventing corruption. The Corruption Eradication Commission (KPK) is an institution specifically formed to eradicate corruption, but it has not been able to stop the rate of corruption. The problem is that its eradication only prioritizes the criminal aspect, namely punishment. From the theoretical point of view of the scare/deterrent effect, it is true that severe punishment can slow down the rate of corruption, but it cannot stop corruption. The implication of prioritizing and relying on the pattern of eradicating corruption with criminal law makes officials reluctant to become officials in the procurement of goods and services both as PPK

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<sup>7</sup> I Gusti Ketut Ariawan, Metode Penelitian Hukum Normatif, *Jurnal Hukum Kertha Widya*, Vol.1 No.1, 2013, page. 23-24

and Procurement Service Units (ULP)/Procurement Committees. The implication of this is in the absorption of the National/Regional Budget. This has an impact on development delays due to obstacles in the process of procuring goods and services. This obstacle is caused by a dilemma in the implementation of sentencing which is sometimes not on target.

This is because there are many loopholes for the parties to commit corruption or as a means of bringing down political opponents to power or as a means of killing the character of an official. The fact that cases of procurement of goods often become someone's tool in power politics can be seen from the fact that after the birth of a strict supervision system for procurement of goods for infrastructure development involving the Corruption Eradication Commission in this country, some officials are reluctant to become Commitment Making Officials or PPK.<sup>8</sup>

Handling cases of irregularities in the procurement of goods and services should begin with identifying and classifying whether the deviation is included in the realm of administrative law or civil law or criminal law<sup>9</sup>. This identification and classification step is important to know which legal rules (*rechtsregel*) will be applied to in-concreto cases. Characteristics of corruption cannot be equated with other conventional crimes. Corruption is always labeled as a white-collar crime because its actions are always dynamic in its modus operandi from all sides so that it is said to be an invisible crime which is very difficult to detect. Therefore, the pattern of eradication cannot only be carried out by punishing severe punishment or the death penalty, criminal punishment is only an *ultimum remedium*.<sup>10</sup>

The problems as explained above are also contrary to progressive legal thinking which requires real efforts to change quickly, make fundamental reversals in legal theory and practice, and make various breakthroughs. The liberation is based on the principle that the law is for humans and not the other way around and the law does not exist for itself, but for something broader, namely for human dignity, happiness, welfare, and human glory.<sup>11</sup>

The understanding as stated by Satjipto Rahardjo means that progressive law is a series of radical actions, by changing the legal system (including changing legal regulations if necessary) so that the law is more useful, especially in raising self-esteem and ensuring human happiness and welfare. In simpler terms, progressive law is a law that makes liberation, both in the way of thinking and acting within the law,

8 Vita Mahardhika, Pertanggungjawaban Pidana Pejabat Pembuat Komitmen Sebagai Upaya Pencegahan Korupsi Pengadaan Barang/Jasa Pemerintah, *Jurnal Hukum Samudera Keadilan*, Vol. 16, No. 1, page. 148

9 Chuasanga A., Ong Argo Victoria., Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol.2 No.1, 2019

10 *Loc. cit.*

11 Satjipto Rahardjo, *Ilmu Hukum; Pencarian, Pembebasan & Pencerahan*, Muhammadiyah Press University, Surakarta, 2004, page. 43.

so that it is able to let the law flow only to complete its task of serving humans and humanity. Therefore, there is no engineering or partiality in enforcing the law, since the law aims to create justice and prosperity for all people.

Satjipto Rahardjo tries to highlight the above conditions into the situation of the social sciences, including law, although it is not as dramatic as in physics, but basically there has been a phenomenal change in the laws that are formulated in sentences from simple to complex and from one fragmented boxes into a single unit. This is what he calls a holistic view of science (law). This holistic view provides a visionary awareness that something in a certain order has parts that are interrelated either with other parts or with the whole. So it is clear that the legal politics of procurement of goods related to the enforcement of corruption cases currently does not reflect the values of justice and humanity and can be a tool to realize political goals, so that laws aimed at realizing justice and human happiness cannot be realized.

## **2. The Weaknesses in Implementation of Corruption Crimes Procurement of Goods for Current Infrastructure Development**

### **a. Weaknesses of Legal Regulation**

In its development, the criminal provisions for procurement of goods in Act No. 1 of 2004 concerning State Treasury are regulated in:

#### Article 62

2) If in the examination of state/regional losses as referred to in paragraph (1) a criminal element is found, the State Audit Board will follow up in accordance with the applicable laws and regulations.

#### Article 64

1) The treasurer, non-treasurer civil servant, and other officials who have been assigned to the state/region may be subject to administrative sanctions and/or criminal sanctions.

2) The criminal verdict does not exempt from the claim for compensation.

In the two provisions above, it is clear that Act No. 1 of 2004 concerning State Treasury does not clearly regulate the criminal elements of procurement of goods as a special crime and also does not clearly regulate the types of crimes that can be imposed. In addition to Act No. 1 of 2004 concerning the State Treasury, regarding sanctions related to the procurement of goods and services in the development of government infrastructure, Article 78 paragraphs (3) and (4) of Presidential Regulation Number 12 of 2021 concerning *Pertasa* Amendments to Presidential Regulation Number 16 of 2018 concerning the Procurement of Goods/Services which reads:

Presidential Regulation Number 12 of 2021 concerning Government Procurement of Goods and Services Article 78 paragraph (3) and paragraph (4):

- (3) In the case of Provider:
- 1) does not carry out the Contract, does not complete the work, or does not carry out obligations during the maintenance period;
  - 2) cause building failure;
  - 3) submit a Collateral that cannot be disbursed;
  - 4) make an error in calculating the amount/volume of work results based on the audit results;
  - 5) deliver goods/services whose quality is not in accordance with the Contract based on the audit results; or
  - 6) late in completing the work in accordance with the Contract, Providers are subject to administrative sanctions.
- (4) The acts or actions as referred to in paragraph (1), paragraph (2), and paragraph (3) are subject to administrative sanctions in the form of:
- 1) the sanction is aborted in the election;
  - 2) sanctions for disbursement of guarantees;
  - 3) blacklist Sanctions;
  - 4) compensation sanctions; and/or
  - 5) fines.

In fact, often cases of corruption in the procurement of goods only impose on the perpetrators the element of abuse of power to seek economic benefits from the implementation of the procurement of goods and services in infrastructure development. So that the evidence only focuses on the presence or absence of abuse of authority and boundaries through corrupt, collusive, and nepotism-based administrations that result in state losses in infrastructure development. However, the deepening of whether or not the goods procurement process is as intended by Act No. 1 of 2004 and Presidential Regulation Number 12 of 2021 concerning *Pertasa* Changes to Presidential Regulation Number 16 of 2018 which specifically discusses the procurement of goods is not touched, this is because the Act No. 31 of 1999 Jo. Act No. 20 of 2001 is specifically intended for corruption, not for the procurement of goods and services.

This will create an impact on service providers who only act as government partners in the implementation of infrastructure development in the field. Considering that partners are often involved in corruption cases even though the partners are not the holders of authority and cannot be said to be authoritatively capable of harming the state. This situation is clearly far from the expectations of Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The explanation above shows that the system in the regulation regarding criminal sanctions in cases of corruption in the procurement of goods for infrastructure development is experiencing problems. In its development, the lack of clarity regarding criminal

arrangements in the Law on the Procurement of Goods can result in the implementation of criminal acts in corruption cases, the procurement of goods for infrastructure development is not right on target. And it can result in injustice for the contractors appointed in the procurement of goods for infrastructure development. This clearly resulted in a conflict between Pancasila, the 1945 Constitution of the Republic of Indonesia as the State Fundamental Norms and the legal politics of criminal sanctions for procurement of goods in infrastructure development as *Formell Gezets* (Formal Law).

b. Weaknesses of Law Implementation

Due to the absence of clear regulations regarding the elements of action and types of criminal sanctions for procurement of goods, the implementation of law enforcement in cases of corruption in the procurement of goods in infrastructure development also does not have certainty in terms of viewing the position of the provider of goods and services procurement services in infrastructure development in Indonesia. In addition, law enforcement in cases of procurement of goods and services in infrastructure development often uses Act No. 31 of 1999 Jo. Act No. 20 of 2001 is specifically intended for corruption, which only focuses on punishing officials on the basis of abuse of authority and state losses, while aspects of the procurement of goods and services are often never a balance and legal basis in prosecuting or deciding before a court.

This can be seen in the Decision Number: 06 / Pid. Sus. K / 2017 / PN. Mdn. In the decision, Mr. Denny Emil Pakpahan as a convict in a corruption case in the procurement of goods in the construction of the Health Service infrastructure in Batu Bara Regency was sentenced on the basis of Article 2, Article 3 and Article 18 of Act No. 31 of 1999 Jo. Act No. 20 of 2001. It can be known that Denny Emil Pakpahan is a Commissioner of CV. ANTOR PRAJA should not be subject to a criminal case of corruption, due to the findings by the BPK (Financial Watch Broad) of a state loss of IDR 231,072,354.50 (two hundred and thirty-one million seventy-two thousand three hundred and fifty-four rupiah and fifty cents), not only caused by the convict but also from the existence of a government bureaucratic defect, so that the convict must be punished based on politics the law on the procurement of goods and services, namely in the first stage before criminal sanctions are administrative sanctions, considering that the punishment for the procurement of goods for the service providers for the procurement of goods and services is *ultimum remidium*, not the main nature as for perpetrators of pure corruption.<sup>12</sup> It is because, CV. ANTOR PRAJA acts according to the civil law of partnership agreements and also does not have the authority to take actions that are detrimental to the state because it is not a state-owned institution.

12 [www.pn-medankota.go.id](http://www.pn-medankota.go.id), Accessed on pada 12 Desember 2020.

This is increasingly complicated considering that currently the procurement of goods is often based on digitalization, the weakness of supporting facilities or facilities including software and hardware. According to Soerjono Soekanto, law enforcers cannot work properly if they are not equipped with vehicles and proportional communication tools. Therefore, facilities have a very important role in law enforcement. Without these facilities, it will not be possible for law enforcers to harmonize their supposed roles with their actual roles. The lack of supporting instruments for law enforcement will have an impact on law enforcement as well.<sup>13</sup>

This is increasingly complicated by the existence of KKN (Corruption, Collusion and nepotism) problems in the law enforcement camp so that the mouthpiece of the law that has weaknesses becomes increasingly damaged and causes injustice. Anis stated that a breakdown of the state administration system, including the smallest part, namely the procurement of goods for infrastructure development is increasingly mushrooming due to the law enforcement crisis. Anis emphatically stated that:<sup>14</sup>

The destruction of the legal system is increasingly mushrooming with corruption, collusion, and nepotism intertwined with the temporary interests of law enforcement officers (even bureaucratic officials) at all levels of the judiciary, from the police, prosecutors, to judges.

### **3. Political Reform of Criminal Law in Implementing Criminal Sanctions in Cases of Corruption Procurement of Goods for Justice-Based Infrastructure Development**

In order to realize protection for service and goods providers who often bear criminal sanctions in cases of corruption in the procurement of goods and services, it is necessary to reform the norms of criminal law politics in the implementation of punishment in corruption cases in the procurement of goods for infrastructure development. The provisions that must be reformed are:

**Table of Legal Policy Reform for the Protection of Goods and Service Providers in Cases of Corruption Crimes**

<b>Provisions Before Reform</b>	<b>Weaknesses</b>	<b>Provisions After Reform</b>
<b>Article 64 of Act No. 1 of 2004: Article 64 1) The treasurer, non-treasurer</b>	This provision does not contain the type of threat of criminal sanctions and also does not contain elements of criminal acts	Input: There is a need for provisions related to the elements of criminal acts of

13 Soerjono Soekanto, *Kelemahan-Kelemahan yang Mempengaruhi Penegakan Hukum*, PT. Raja Grafindo Persada, Jakarta, 2007, page. 5.

14 Anis Mashdurohatun, Penegakan Hukum Pidana Di Bidang Illegal Logging Bagi Kelestarian Lingkungan Hidup & Upaya Penanggulangannya, *Jurnal Hukum*, Vol.26 No. 2, August 2011.



**civil servant, and other officials who have been assigned to the state/region may be subject to administrative sanctions and/or criminal sanctions.**

**2) The criminal verdict does not exempt from the claim for compensation rugi.**

of procurement of goods.

procurement of goods and types of criminal sanctions in Act No. 1 of 2004.

Legal Reform:  
Article 1 of Act No. 1 of 2004:

- 1) Same
- 2) Same
- 3) Same
- 4) Same
- 5) Same
- 6) Same
- 7) Same
- 8) Same
- 9) Same
- 10) Same
- 11) Same
- 12) Same
- 13) Same
- 14) Same
- 15) Same
- 16) Same
- 17) Same
- 18) Same
- 19) Same
- 20) Same
- 21) Same
- 22) Same
- 23) Same
- 24) Same

25) The criminal act of procuring goods is an act of benefiting oneself in the implementation of the procurement of goods and services that can harm the state and/or individuals and/or legal entities.

Article 64A of Act No. 1 of 2004:

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The types of criminal threats as referred to in Article 64 consist of imprisonment for a minimum of 4 years and a maximum of 20 years with a fine of IDR 10,000,000,000.00.

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#### D. CONCLUSION

The implementation of criminal sanctions for corruption in the procurement of goods for infrastructure development is not based on the legal politics of procurement of goods, so that the criminal sanctions are still unclear. It is because the issue of procurement of goods should not be directly subject to criminal sanctions as an *ultimum remidium*. Considering that the procurement of goods is regulated by administrative law instead of criminal law, while criminal threats are only as a last resort when violations in the realm of procurement of goods in infrastructure development are not controlled. Weaknesses in the implementation of criminal sanctions for corruption in the procurement of goods for infrastructure development is unclear criminal arrangements in the legal politics of the procurement of goods and services, law enforcement is also increasingly murky due to vague legal regulations, and the lack of facilities and infrastructure for law enforcement and law enforcement knowledge regarding the legal politics of the procurement of goods as a whole. It is necessary to add provisions in Act No. 1 of 2004, namely paragraph (25) in Article 1 of Act No. 1 of 2004 which states that the criminal act of procuring goods is an act of benefiting oneself in the implementation of the procurement of goods and services that can harm the state and/or individuals and/or legal entities. Then Article 64A of Act No. 1 of 2004 which states that the types of criminal threats as referred to in Article 64 consist of imprisonment for a minimum of 4 years and a maximum of 20 years with a fine of IDR 10,000,000,000.00

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