

The Urgency of a System Approach in Efforts to Prevent Corruption in the Procurement of Goods and Services

Danutirto Satrio Pinandito*)

*) Master of Law, Faculty of Law, Sultan Agung Islamic University, Semarang email: danujnt@gmail.com

Abstract

This article aims to know and analyze the system for preventing corruption in the procurement of goods and services based on Robert Klitgaard's CDMA theory approach. Secondary data in the form of Laws and Regulations related to the procurement of goods and services is elaborated with Robert Klitgaard's CDMA Theory, through a normative juridical approach. The orientation of the analysis uses the law and concept approach. The first results found: any loopholes indicated by the strengthening of discretion of officials with an interest in the procurement of goods and services need layered control in limiting their discretionary powers. Second: Monopoly variables in all stages of procurement of goods and services need to be watched out if practice develops the fact that it is narrowed down to a single supplier and technical specifications that lead to a single supplier.

Keywords: Procurement of Goods and Services, Corruption, CDMA Theory

1. Introduction

The process of procuring government goods and services that is efficient, transparent and fair is the hope of all parties. This awareness is a manifestation of fulfilling the expectations of both the community, suppliers and direct users who experience government service programs, both public facilities, education, health and other services.

In fact, referring to data from the Corruption Eradication Commission which reports that the level of corruption in the procurement of government goods and services: since 2004-2014, the KPK has handled 411 corruption cases of which 131 or one third of the cases occurred in the procurement of goods/services. This places corruption in this area as the second most common case handled by the Commission after bribery cases¹. The category of case handling throughout 2017 consisted of 93 cases of bribery, 15 cases of procurement of goods and services, and 5 cases of Money Laundering.² This reality shows that the government procurement sector is prone to corruption "dirty games".

State financial leakage from sector procurement of goods and services, in fact prevention has been carried out as early as possible through statutory regulations (substance law), enforcement law (structure law) as well as improving the mental and behavior of both organizations and individuals in the procurement of goods and services (legal culture). The three subsystems have not been fully capable of overcoming the disgraceful act of "tricking" the goods and service procurement system because of the mentality of state administrators who have a "moral hazard"

¹prevent-corruption-procurement-goods-services-what-already-and-still-must-be-done.htm

²KPK Report 2017, KPK, Jakarta, p.49

character. Although improvements to both the structure of government procurement of goods and services and e-procurement technology have been implemented to close the gaps in corruption, the results have not been comprehensive in efforts to combat corruption.

Legislation (PUU) related to the procurement of government goods and services is regulated in Presidential Regulation No. 12 of 2021. This PUU aims to: (a) produce the right goods/services from every money spent, measured in terms of quality, quantity, time, cost, location, and provider, (b) increasing the use of domestic products, (c) increasing the participation of Micro, Small Business, and Cooperatives, (d) increasing the role of national business actors, (e) supporting the implementation of research and utilization goods/services resulting from research, (f) increasing the participation of creative industries. (g) realizing economic equality and providing expansion of business opportunities; and (h) increasing Sustainable Procurement.

This objective shows that the development of regulations for the procurement of goods and services is based on the principle of value for money with indicators of quality, quantity, time, cost, location, and provider. In addition, the encouragement for MSMEs and cooperatives as well as national businesses to actively participate in the fulfillment of government goods and services. Moreover, the fields of research and creative industries are also actively involved in supporting the process of procuring goods and services.

The involvement of the industrial sector and national businesses both on a micro and large scale from within the country is a good policy breakthrough to be appreciated. However, the implementation of each policy is the main marker of the success or failure of the program. For this reason, from the point of view of corruption in the procurement of government goods and services, the author seeks to find alternative strategies, tactics and technicalities to "secure" the procurement of government goods and services.

Efforts to punish the corruptors encountered several problems including the obstacles in the sentencing process, namely the defendant did not provide clear information during the trial process, on the day of the trial the public prosecutor was unable to present the defendant and witnesses in the trial, the defendant was not on time in attending the trial, unclear witness testimony and finally false testimony³. The development of corruption, especially in the sphere of abuse of power and bribery, has so controlled every aspect of people's lives, that in the end every society is faced with difficulties when dealing with state officials who should be able to serve every community need without having to pay these officials.⁴ In addition, the defendant's statement does not admit his actions, the witness

³ Sari, Indah Novita, 2016, *Proses Pemidanaan Terhadap Pelaku Tindak Pidana Korupsi (Studi di Pengadilan Tindak Pidana Korupsi Semarang)*, Skripsi, Fakultas Hukum Unissula, Semarang

⁴ Miftakhul Khobid, Gunarto, Lathifah Hanim, 2018, *Analisa Kebijakan Formulasi Hukum Pidana Dalam Penanggulangan Tindak Pidana Korupsi*, Jurnal Hukum Khaira Ummah Vol. 13. No. 1 Maret 2018, p.5

statements are different, and the facilities and infrastructure are limited⁵ in the investigation process carried out by the Public Prosecutor.

One of the ideas proposed is the CDMA theoretical approach from Robert Klitgaard in identifying and preventing corruption in the procurement of goods and services. This theory provides initial information that Corruption (C) can occur in the ecosystem or is equivalent to the discretion (D) of officials or organizers in the structure of procurement of goods and services. Monopoly (M) by officials authorized to make decisions on the procurement of goods and services. Accountability (A) the decision-making ecosystem and the determination of the winner of the procurement tender is less open (transparent). So that this overall approach leads to a criminal act of corruption (C) having a high chance of occurring if (D + M) is significant, at the same time there is an accountability deficit (minus A).

Based on the above, the authors examine more deeply about Robert Klitgaard's CDMA theory as a solution to the prevention of criminal acts of procurement of goods and services. So the purpose of this article is to analyze the system for preventing corruption in the procurement of goods and services based on Robert Klitgaard's CDMA theoretical approach.

2. Research methods

This article uses a normative juridical method so as to be able to find the truth by using an inductive method and criteria for measuring a fact in accordance with an appropriate legal study.⁶ This research uses a qualitative approach that emphasizes inductive analysis, descriptive analysis, and the study of people's perceptions or opinions.⁷ The library data related to the theme were analyzed through the orientation of conceptual thinking (*concept approach*) and laws and regulations (*statue approach*).

3. Research Results and Discussion

The government has done many things to prevent corruption in the procurement sector. Two of them are creating a procurement organizational structure and designing electronic-based procurement. The current procurement organization positions the Procurement Officer/Procurement Service Unit (PP/ULP) with the Commitment Making Officer (PPK) in an equal position. So that checks and balances can occur between the two. In addition, a new structure was introduced, called the Job Recipient Officer (PPHP) which functions as the final controller when the goods/services are handed over. Previously, this authority was attached to the PPK. Thus, this PPHP structure reduces the authority of the KDP

⁵ Hastuti, Nurul Fuji Sri ,2018, Peran Jaksa Sebagai Penyidik Dalam Mengungkap Kasus Tindak Pidana Korupsi (Studi di Kejaksaan Tinggi Jawa Tengah), Skripsi, Fakultas Hukum UNISSULA , p.1.

⁶ Koko Arianto Wardani dan Sri Endah Wahyuningsih, *Kebijakan Formulasi Hukum Pidana Mati Terhadap Pelaku Tindak Pidana Korupsi Di Indonesia*, Jurnal Hukum Khaira Ummah, Vol. 12. No. 4 Desember 2017, p. 953.

⁷ Moleong, L.J, 2004, *Metodologi Penelitian*, Remaja Rosda Karya, Bandung, p. 3

which is too broad and at the same time reduces the possibility of the PPK to abuse the procurement system.

In addition, the Government has also developed and implemented electronic tendering which according to various studies has made it difficult for corruption and bid rigging to occur. In fact, innovation was also developed by designing electronic purchasing which allows the procurement committee to buy goods/services needed effectively in the electronic catalog.

However, there are notes that need to be considered for the positive efforts above. Regarding the procurement organizational structure, the three existing structures -PP/ULP, PPK, and PPHP- are under the Budget User/Budget User Power (PA/KPA) structure, so if PA/KPA intend to outsmart the procurement system, then there is still the gap where the PA/KPA intervenes in these three structures.

While the record for electronic purchasing is the loss of the element of competition between providers. Procurement officers can choose goods available in the electronic catalog without one supplier of goods competing with other providers. So, this system raises a fundamental question, what is the basis for the committee to choose goods offered by one provider and not another if they have never competed in getting a contract? The implementation of government procurement of goods and services is still mostly just fulfilling administrative obligations without considering the substantive aspects. Regulations related to the procurement of goods and services have weaknesses, particularly with regard to the mechanism for implementing the procurement of goods and services. Regulations related to the procurement of goods and services have weaknesses, particularly with regard to the mechanism for implementing the procurement of goods/services. To overcome these problems, the work mechanisms, traditions, and bureaucratic behavior that have the potential to hinder the realization of a clean government, regulatory reforms need to be adjusted so that the flexibility of the procurement of goods and services meets the needs of the government and at the same time avoids colliding with existing procurement principles. Besides that, it is also necessary to revamp the regulations in the field of the Procurement of Goods and Services, namely from the Presidential Regulation being changed to a Law.

Based on the results of research related to corruption in the field of government procurement and services, several research findings can be presented as follows: (1) The research illustrates that there are still holes or gaps for corruptors to break through the defense system of the procurement of goods and services.

Efforts to prevent corruption, as an alternative approach, are in the form of a system approach to preventing corruption in the strategic, tactical and technical dimensions at every stage of the procurement of goods and services. In general, the procurement of goods and services goes through four stages of the process, namely:⁸:

- **Bidding Stage**

The system that applies in the procurement of goods and services at this stage is known as the identification stage of the need for goods and services. In addition,

⁸Ibid, p. 136 -138

the diction that explains this stage can be said as an invitation to the supplier to make an offer for the goods and services needed.

- **Bid Evaluation Stage**

This stage contains an assessment process for bids that have been submitted (submitted by suppliers) for the selection of suppliers who are accepted according to the required qualifications for both goods and services.

- **Work Agreement or Contract Stage**

This third stage, in the form of a process of negotiating a work contract between parties, in an existing bid agreement, to be carried out in accordance with the points of the work contract agreement.

- **Contract Execution Stage**

This stage describes the implementation of the contract by the supplier in accordance with the agreed contractual agreement guidelines.

Robert Klitgaard's CDMA Theory⁹ explained that according to Klitgaard, corruption was $C = (D + M) - A$. *Corruption(C)* or Corruption is the same as monopoly power (M, monopoly power) plus discretion by officials (D, official authority) minus accountability (A, accountability). This formula is a figure of speech with various meanings, one of which is the element of plus and minus. Corruption is a function of various factors, with positive partial derivatives in terms of the degree of monopoly and extent of official authority, and negative derivatives in terms of accountability. Because each of these variables is multi-dimensional and because no measure can be one hundred percent reliable, these mathematical formulas are nothing more than learning aids.

Robert Klitgaard in postulating this CDMA approach provides the following measures or limitations: *first*, If someone holds a monopoly on a good or service and has the authority to decide who is entitled to that good or service and how much. *Second*, while there is no accountability, it means that others can witness what the person holding that authority decides. The principle of accountability, results-oriented is the principle that determines that every activity and the final result of state financial management activities must be accountable to the people as the holder of the highest sovereignty of the state in accordance with the provisions of the applicable laws and regulations.

A preventive approach to corruption in the field of procurement of goods and services in government, through the stages and theory of CDMA, which is described into 4 stages including: Types of Corruption and its Problems, Conditions that foster the Corruption ecosystem, Indicators of Potential Corruption and Policy Urgency in preventing and eradicating corruption . Thus the description of the system can be explained as follows:

Procurement process of goods and services at:

(1) First Stage: Government Announcement About the Need (Offer) of Goods and Services. At this stage, the tactical and technical problems with the emergence of

⁹ Robert Klitgaard et.al, 2005, *Penuntun Pemberantasan Korupsi dalam Pemerintahan Daerah*, Yayasan Obor Indonesia, Jakarta, p. 176-177

corruption are that the specifications of the work and/or goods needed are too detailed. In addition, these specifications are too limiting.

The correlative factor of criminogen (FKK) of corruption lies in government stakeholders (Commitment Making Officials, Budget Users, Tender Committees and so on) unable to determine specifications correctly and accurately. In addition, the technological sophistication required is too excellent so that it leads to a single supplier (monopoly door). Another factor is incompetent employees and a poor system of career development, salaries, incentives in the organization of procurement of goods and services.

Technical indicators of the potential for corruption are identified from: unclear or non-existent specifications, the function of the required tools requiring a need or emergency contract. Another indicator is that suppliers are involved in making specifications of the goods and services offered.

The recommended corruption prevention policy is that officials or personnel involved in the procurement of goods and services who are honest and competent in character are given appropriate incentives. In addition, use independent and trusted consultants who are able to formulate specifications for goods and services and their needs.

(2) *Second Stage:*

This stage contained the process of suppliers submitting bids to meet needs. The types of corruption that may arise are collusion or regulated bidding, pressured bidding, gathering of suppliers (arisan = rotation in supplying goods/services) and the division of markets or territories by suppliers.

The identified FKKs are: first, competition is only based on price or quality, second: government demand is less elastic (flexible), third offers and supplier identities are announced, four similar companies have many opportunities for communication and the five goods and service procurement officials have broad authority.

The potential for corruption can be indicated from: (1) the number of suppliers is small or the market share is constant for some time, (2) the pattern is formed after some time, (3) Information that the bid price is higher than the market price, (4) a single supplier or "that's all" on all offers.

The recommended corruption prevention policies are firstly, increase competition, secondly, supplier selection, thirdly, change the system of rewards and sanctions for suppliers, fourthly, use information to increase opportunities to uncover and punish collusion, fifthly, improve relations between suppliers and the government, and sixthly, change attitudes or behavior. work culture.

(3) *Third phase :*

This stage contains an assessment process by the government through the procurement of goods and services to assess supplier offers and determine the winner.

FKK that may exist are corruption in the bureaucracy, bribery, "for sustenance", political considerations, structural officials relations with poor implementers, focus on cost or quality, leading to a single supplier, preferential

treatment to suppliers, incentives for implementing goods and services with unbalanced work risk.

Ecosystems that foster the potential for corruption are described: big contracts (compared to market prices), too many rules and procurement according to quantity, procurement environment, quality or cost being the only measure of winning bidders.

The potential for corruption is indicated by indicators: (1) contracts awarded to suppliers at the lowest price, (2) contracts awarded to suppliers without experience, (3) a single source supplier without an auction, (4) contracts being offered back, (5) specifications changed after initial requirements lead to higher billing.

The strategic policy to prevent corruption that can be done is to increase the incentives for procurement officials and sanctions for violations. Second, bid evaluation and supplier selection are more open by means of written reviews, bids are opened in public and evaluation involves the public. Third need to announce random bid checks.

(4) **Fourth Stage:**

This stage is the implementation of the contract or work agreement by the supplier. The type of corruption that is likely to arise is Ex-post Corruption or excessive rent-seeking. In addition, there are cost overruns. Furthermore, Fixed Costs become inappropriate due to cross subsidies.

The FKK that is fertile ground for potential corruption are Indications of (1) Rising Costs, (2) Addition of Goods from a Single Source, (3) Cancellation of Winners, (4) Low Quality, (5) Changes in Specifications and (6) Late Production.

Policy strategies to prevent corruption at this stage: (1) Rotation of positions for implementing goods and services procurement, (2) Ordering periodic competition for routine needs, (3) Providing additional resources in the form of: executives for supervision.

The strategy for preventing corruption in the procurement of goods and services sector can be summarized as follows: (a) The General Pattern of Robert Klitgaard's CDMA theory covers the factors that cause corruption in the procurement of goods and services. (b) Discretionary Statements (D) The authorized official in determining and selecting suppliers is one of the variables that has the potential to strengthen the existence of a criminal act of corruption. Based on experience, the discretionary indicator can be seen from the fact how wide the range of authority provided by the goods and services procurement system is. If the broad spectrum of the official's authority is without any limiting authority, then it can be strongly suspected that the Discretionary dimension is a source of fertilizing corruption. (c) Description Monopoly (M) is seen in limiting the emergence of a single supplier and the ability of the prevention system in the supplier evaluation stage and determining the winner of the auction. In essence, the technical specification variable that is too sophisticated and leads to a single supplier also needs to be suspected as a fertile ground for corruption. (d) Information minus Accountability (A) is described in strengthening supervisory resources (stage 4) to ensure the implementation of contracts or work agreements. Periodic checks on

suppliers of routine needs, all of which involve “supervisory powers” both from within the system and from outside the system, such as independent and trusted consultants in evaluating the procurement system for goods and services.¹⁰

4. Closing

The system for preventing corruption in the procurement of goods and services, from the perspective of Robert Klitgaard's CDMA theory, explains that any loopholes indicated by the strengthening of discretion of officials with an interest in the procurement of goods and services need layered control in limiting their discretionary powers. Monopoly variables in all stages of procurement of goods and services need to be watched out if the practice develops the fact that it is narrowed to a single supplier and technical specifications that lead to a single supplier. Finally, accountability can be strengthened by providing layered supervision, from internal and external sources of the goods and service procurement system. Considering that CDMA theory is general in nature, if it is to be applied in every field of procurement of goods and services, adjustments are needed in identification through indicators of the ecosystem where the procurement system is installed.

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¹⁰ Selamat Agista Erikha Bhakti, Djauhari, *Upaya Pencegahan Tindak Pidana Korupsi Melalui Peran Serta Masyarakat*, Jurnal Hukum Khaira Ummah Vol. 12. No. 2 Juni 2017, p.11