

UNLAWFUL ACTS RESULTING IN CRIMINAL PENALTIES IN GOVERNMENT PROCUREMENT OF GOODS AND SERVICES BASED ON DECISION NO.10/PID.SUS-TPK/2021PN BNA

Fariq Abiyyu Nawar^{1*}, Mohammad Eka Putra², Mulhadi³
Universitas Sumatra Utara / Master of Law, Medan¹²³ Corresponding
Corresponding Email: abiyyunawar@gmail.com^{1*}

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Abstract

Corruption case No. 10/Pid.Sus-TPK/2021/PN Bna, this case is quite interesting because it itself explains how a tendering process for the procurement of goods/services by the government which turns out to have many irregularities and conspiracies in it which actually also aims to benefit and enrich oneself by harming the state's finances. The research methods used in this study are normative with analytical descriptive properties, the approach used is normative and case approaches, data sources used are secondary data, techniques and data collection tools for literature studies, qualitative data analysis with deductive and inductive conclusions drawn. The results of the study stated that the Regulation regarding the procurement of goods and services according to Presidential Regulation Number 12 of 2021 concerning the Procurement of Government Goods and Services provides guidelines for the Regulation, to the procedures for the Procurement of Government Goods and Services that are Simple, Clear, and Comprehensive in accordance with good governance. It is carried out in 3 stages, namely: Unlawful acts in the procurement of goods and services can be subject to criminal sanctions are acts that abuse authority and arbitrariness. Abuse of authority and arbitrariness is basically a teaching of state administrative law, in the law on the eradication of corruption (PTPK Law), namely Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 explains the abuse of authority, namely in the provisions of article 3. Consideration of the Panel of Judges on Unlawful Acts that resulted in Criminal Offense in case no. 10/Pid.Sus-TPK/2021/PN Bna That the defendant was the head of the Simeuelue Regency PUPR office and as a budget user in road and bridge maintenance activities at the Simeuelue Regency PUPR office in 2017.

Keywords: *Unlawful Acts, Procurement of Goods and Services, Criminalization*

INTRODUCTION

One of the disputes that often occurs is an unlawful act, namely an act carried out unlawfully to gain profit, enrich oneself, others or a corporation. An unlawful act is an act carried out beyond one's authority or beyond one's power. An unlawful act in the criminal concept (*wederrechtelijk*) is if the act threatens and harms the public or public interest, which act is expressly stated to violate the law, then the act is also carried out without authority and power and an act that violates general principles in the legal field. (Indah Sari, 2020)

In addition, in the Corruption Eradication Law (Law No. 31 of 1999) Article 2 paragraph (1) explains as follows: "Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy, shall be punished. " Meanwhile, in the explanation of Article 2 paragraph (1) it explains "what is meant by unlawfully includes both formal and material meanings, namely even though the act is not regulated by law, if it is considered reprehensible because it is not in accordance with the sense of justice or norms of social life in society, then the act can be punished. (Indah Sari, 2020)

If we look further into the outline of the Government Procurement of Goods/Services process starting from the preparation stage, implementation of provider selection, contract implementation to reporting, related to the process, there are things that can weaken the position of the parties. Procurement of Goods/Services activities by the Ministry/Regional Government Agencies (users of goods/services) funded by the APBN/APBD whose process starts from identifying needs, to the handover of work results. These activities are carried out through a contract in the form of a written agreement between the user of the goods and the provider or self-managed implementer. In the contract, the government does not require it to be made in an authentic deed. This means that

the parties, namely the user of the goods and the provider, use a private deed as a contract for the procurement of goods and services. A private deed does not have perfect evidentiary force, therefore if there is negligence on the part of the parties in fulfilling the provisions of the agreement in the contract, then the contract as a private deed does not have perfect evidentiary force. This needs to be proven in court, so that the contract can guarantee (Reni Hernaningsih, 2020). These weaknesses were then exploited by irresponsible parties to reap profits and result in state losses.

The increasing development of facilities and infrastructure in Aceh is due to the increasing need for it. Infrastructure development aimed at beautifying and becoming a regional need is also the reason why the need is increasing. However, infrastructure development for regional interests which is realized through the procurement of goods and services then makes it vulnerable to corrupt practices in the procurement of goods and services for the government. This can be seen in the findings of several data on corruption cases in the procurement of goods and services that were tried by the corruption court (TIPIKOR) in Aceh.

During 2013-2016, from monitoring conducted by Aceh Transparency Society (MaTA), markup (budget inflation) was the most frequent corruption method and resulted in the most state losses. Among them are:

- a. In 2013, state losses due to the markup corruption mode were Rp. 233,610,217,466
- b. In 2014, state losses due to the markup corruption mode were Rp. 329.3 billion, and state losses arising from corruption in the infrastructure sector were Rp. 513.4 billion.
- c. In 2015, state losses due to the markup corruption mode were Rp. 180,708,871,956
- d. In 2016 itself, it was not stated how much state losses were incurred, but there were a total of 41 corruption cases with the modus operandi of markup (Aceh Tribuk, 2024)

Seeing this phenomenon, it is a very interesting topic to discuss further how an unlawful act in the procurement of government goods and services is then classified as a criminal act because it results in state losses. An example is the corruption case No. 10/Pid.Sus-TPK/2021/PN Bna, this case is quite interesting because it explains how a tender process for the procurement of goods/services by the government turned out to have many irregularities and conspiracies in it which actually also aimed at profiting, enriching oneself by harming state finances. In addition, in case No. 10/Pid.Sus-TPK/2021/PN Bna which was later decided to be studied, there were many types of violations such as the principle of transparency as part of the principle of Good Governance which means the openness of information containing public information. government openness that provides space for public supervision in the implementation of development is very important, for example the procurement of government goods and services carried out by the government itself.

The procurement process that starts from the initial plan design to the process of handing over the results is very important to be given access to the public to be monitored so that later the gap for corruption in this sector will be reduced. In the procurement of goods and services which were then misused and caused unlawful acts resulting in state financial losses because they began with the perpetrator's mens rea (evil intent). Not only that, it turns out that the judge's decision in this case seemed "odd" by sentencing the defendant to a prison sentence of 2 years and 6 months (two years and six months), even though the state losses arising from corruption with abuse of authority reached 5 (five) billion, the money confiscated by the state was only around 1 billion and then there was still 4 billion left that had not been returned. This case also then gives us an idea of how authority that is beyond the limits (abuse of authority beyond the limits) has a significant impact on the process of running the state (government), then also the consequences caused by the abuse of authority because of the position he holds also have an impact on state losses which then for this case which has no transparency it was decided to be reported because there was an indication of corruption that caused state losses.

FORMULATION OF THE PROBLEM

Based on the background above and to provide research limitations, several problems are formulated, as follows:

1. What are the contents of the regulations regarding goods and services according to Presidential Regulation Number 12 of 2021 concerning government procurement of goods and services?
2. What are the unlawful acts in the procurement of goods and services that can be subject to sanctions and criminal penalties?
3. What is the Panel of Judges' Consideration regarding Unlawful Acts that Result in Criminal Prosecution in Case No. 10/Pid.Sus-TPK/2021/PN Bna?

RESEARCH METHODS

That in this type of research using normative legal research method, namely research conducted by examining library materials or secondary materials. Abdulkadir Muhammad stated that normative legal research uses normative legal case studies in the form of legal behavioral products whose main study is the law that is associated as positive law and becomes a reference for behavior for everyone. The analysis used in this study is qualitative analysis, namely interpreting an article of legislation related to default in the procurement of goods and services contract by the government which should be civil law which then in practice there are criminal elements that make it the realm of criminal law, which in the end will produce something in accordance with the problems in this study.

RESULTS AND DISCUSSION

Regulations regarding procurement of goods and services according to Presidential Regulation Number 12 of 2021 concerning Government Procurement of Goods and Services

In organizing national and state life, the government is expected to help advance general welfare with social justice for all Indonesian people. Starting from there, the government then realizes it by providing community needs in the form of goods, services or infrastructure. Therefore, to maintain order in terms of procurement of goods and services, the government then forms laws and regulations to regulate this, namely in Presidential Regulation (PerPres) Number 16 of 2018 concerning Government Procurement of Goods and Services which was later amended by Presidential Regulation (PerPres) Number 12 of 2021 which then provides guidelines on the Regulation, to the procedures for Simple, Clear, and Comprehensive Government Procurement of Goods and Services in accordance with good governance.

Procurement of goods began since the existence of a market where people could buy and sell by bargaining directly (cash) between the buyer (user of goods/services) and the seller (provider of goods/services) until a price agreement was reached and then continued with a sale and purchase transaction. A sale and purchase transaction can be defined as a condition in which the provider of goods delivers goods to the user and then the user pays based on the agreed price. In the development of civilization, the transaction material is not only tangible goods, but also services. Various services that can be the subject of transactions, for example: health services, education services, and other services. The Construction Services sector is a sector that has a specific legal system, management, and procedures in the procurement of Goods and Services.

In government organizations in the context of implementing development activities, in general there are two large groups of activities or activities that initiate the need for procurement of goods/services, namely operational activities for the implementation of government activities and development activities in the form of various investments throughout the territory of the Unitary State of the Republic of Indonesia. Procurement of goods/services related to organizational operations is usually carried out to support daily operational activities that are repetitive and have a fixed procurement pattern, for example the purchase of office stationery, or other needs to support service to the community.

Meanwhile, procurement of goods/services related to investment is carried out after an economic study with several feasibility indicators which ultimately conclude that an investment is feasible to be carried out. The investment is carried out in order to increase service improvements to the community which are manifested in the form of projects, such as infrastructure projects, human resource development initiatives and other projects. The nature of procurement in the form of this project is not continuous, but has a start and end time of completion and has uniqueness between one project and another.

The process of implementing operational and investment activities through projects, government organizations strive to provide public services for areas that cannot be provided by private businesses or for strategic areas that are indeed mandated by law to be carried out by the government, and operational services that can only be carried out by the government. Public services provided by government organizations include the following services:

1. Construction of road and bridge facilities
2. Development of educational facilities
3. Provision of health services
4. Maintaining public security, etc

Procurement carried out by government organizations in the context of implementing development activities is a very important activity, because it is related to: (LKPP, 2018)

1. Supporting government activities, in daily operations and investments

2. Providing public services of a strategic, tactical and operational nature.

Unlawful acts in the procurement of goods and services can be subject to criminal sanctions.

The legal character of procurement of goods and services is a mixed law that includes aspects of administrative law, civil law, and criminal law. This mixed nature is reflected in the working of the three legal fields together at each stage of procurement of goods and services. Lack of understanding of this legal character has implications for errors in handling corruption cases in procurement of goods and services. In the process of procurement of goods and services, it can generally be classified into 4 (four) stages:

1. Preparation stage of procurement. includes: Planning; Formation of committee; Determination of procurement system; Preparation of procurement schedule; Preparation of Own Estimated Price (HPS); Preparation of Procurement Documents;
2. Process Stage, including: Selection of goods and services providers; Determination of goods and services providers;
3. Contract drafting stage and
4. Contract implementation stage.

The legal aspect that works in the first and second stages is administrative law, in the third and fourth stages is the civil law aspect. While the criminal law aspect works in all stages. The criminal law aspect (corruption) will work if in each stage there are elements of unlawful acts, abuse of authority, bribery, gratification in the procurement of goods and services.

Criminal law in the procurement of goods and services can be applied if there are criminal violations committed by the parties, such as abuse of authority and unlawful acts aimed at benefiting themselves, other parties or corporations as stated in articles 2 and 3 of Law Number 20 of 2001 concerning the eradication of criminal acts of corruption. This is also in line with the principle in criminal law, namely "geen straf zonder schuld", no punishment without fault.

Criminal acts in the procurement of goods and services often occur at every stage in the procurement of goods and services, such as:

1. Planning stage: indications of budget inflation/mark-ups, directed procurement implementation, engineering of integration and splitting of work packages with the intention of collusion, corruption and nepotism which is detrimental to the state.
2. Company qualification stage, procurement evaluation stage, contract signing stage, delivery stage of goods that do not meet requirements and are of low quality which results in state losses.
3. Acts of document falsification, default in carrying out work which constitute unlawful acts and result in state losses

In the procurement of goods and services, criminal sanctions are the last resort (*ultimum remedium*), which means that for violations that occur in the procurement of goods and services, administrative sanctions such as blacklisting of companies that commit violations are prioritized in order to create a deterrent effect and there is no repeat of violations by the same company, then if the work is not completed or does not meet the performance (default), the provider should be sued for this so that the state losses incurred are compensated for so that it becomes a win-win solution that has an impact on the common good between the provider and user of goods and services. Criminal sanctions are the last sanctions applied if the company does not have good intentions to compensate for losses. This sanction can also occur because the provider or user with a certain intention from the start has had evil intentions (*mensrea*) in carrying out government procurement of goods and services, this evil intention can take various forms such as abuse of authority in office and unlawful acts intended to gain profit so that the state suffers losses due to the actions they do.

Consideration of the Panel of Judges regarding Unlawful Acts Resulting in Criminal Prosecution in case no. 10/Pid.Sus-TPK/2021/PN Bna

This case began when in 2017 the Simeuleu Regency government in the PUPR department carried out road and bridge maintenance activities sourced from the Simeuleu APBD for the 2017 Fiscal Year amounting to IDR. 10,790,000,000 (ten billion seven hundred and ninety million rupiah) based on DPA Number: 1.03.01.01/DPA SKPK/2016, dated December 29, 2016, the Commitment Making Officer is held by witness Afif Linon, ST Bin Hamidin (deceased) based on the decision of the head of the PUPR and Spatial Planning Service of Simeuleu Regency Number: 800/133/DPU/2017 concerning the determination of the Commitment Making Officer, Technical Activity Implementation Officer, Financial Administration Officer, Goods Procurement Officer, Goods Inspection Team, Work Result Receiving Committee, Assistant Treasurer for Expenditures, Technical Staff, Field

Supervisory Administration Staff, RUP Admin, DAK nE-Mon Officer, Heavy Equipment Operator and Field Facilitator Staff at the Public Works and Spatial Planning Service of Simeuleu Regency in 2017 and List of Attachments I, List of Attachments II, List of Attachments III and List of Attachments IV and List of Attachments V. Then since September 8, the position of PPK for Road and Bridge Maintenance Activities in Simeulue Regency in the 2017 budget year, there was a change in the position of PPK from Afit Linon, ST to witness Bereuh Firdaus, SE Bin T. Lisman (deceased) in accordance with the Decree of the Head of the PUPR and Spatial Planning Service of Simeulue Regency No. 800/133/DPU/2017 concerning the determination of Commitment Making Officers, Technical Activity Implementation Officers, Financial Administration Officers, Procurement Officers, Goods Inspection Teams, Work Result Receiving Committees, Assistant Treasurer for Expenditures, Technical Staff, Field Supervisory Administration Staff, RUP Admin, DAK nE-Mon Officers, Heavy Equipment Operators and Field Facilitators at the Public Works and Spatial Planning Service of Simeulue Regency in 2017 and List of Attachments I, List of Attachments II, List of Attachments III and List of Attachments IV and List of Attachments V and there was a change in the budget to Rp. 10,790,000,000 based on DPPA (Document for Implementation of Budget Changes) SKPK PUPR Office of Simeulue Regency Number: 1.03,01,01/DPPA/2017 dated October 11, 2017, increased by Rp.9,690,000,000,- (Nine Billion Six Hundred and Ninety Million Rupiah) so that the budget for Road and Bridge Maintenance activities of Simeulue Regency in 2017 changed to Rp.10,790,000,000,- (Ten Billion Seven Hundred and Ninety Million Rupiah).

Consideration of the errors committed by the defendant is closely related to the position and status of some budget users, therefore the defendant's actions are more appropriately qualified as an act of "abusing the authority, opportunity or means available due to position or status" as per the elements of Article 3, not as an act of "against the law" as per the elements of Article 2;

The panel of judges then opined that the second element of Article 2 was not legally fulfilled, therefore the remaining elements did not need to be considered any more, and the defendant must be declared not legally and convincingly proven guilty of committing a crime as per the primary charge, therefore the defendant must be declared acquitted of the primary charge;

Based on the above considerations, the panel of judges will also consider the subsidiary charge of violating Article 3 in conjunction with Article 18 paragraph (1) letters a, b, paragraph (2), paragraph (3) of the Republic of Indonesia Law Number 31 of 1999 concerning the eradication of criminal acts of corruption as amended and supplemented by Law Number 20 of 2001 concerning the eradication of criminal acts of corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, the elements of which are as follows:

1. Each person
2. With the aim of benefiting oneself or another person or corporation;
3. Abusing the authority, opportunity or means available due to position or status;
4. Harming state finances or the state economy
5. The person who commits, orders or participates in carrying out the act;

CONCLUSION

Regulations regarding procurement of goods and services according to Presidential Regulation Number 12 of 2021 concerning Procurement of Government Goods and Services provide guidelines on Regulations, to procedures for Simple, Clear, and Comprehensive Procurement of Government Goods and Services in accordance with good governance. Unlawful acts in the procurement of goods and services can be subject to criminal sanctions are acts that abuse authority and arbitrariness. Abuse of authority and arbitrariness are basically the teachings of state administrative law, in the law on the eradication of criminal acts of corruption (UU PTPK), namely Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 explains the abuse of authority, namely in the provisions of Article 3. Consideration of the Panel of Judges regarding Unlawful Acts resulting in Criminal Procedure in case no. 10/Pid.Sus-TPK/2021/PN Bna That the defendant is the head of the PUPR office of Simeulue Regency and as a budget user for road and bridge maintenance activities at the PUPR office of Simeulue Regency in 2017. Therefore, according to the author, the procurement of government goods and services must be carried out in an evaluation stage, so that in the future there will be no actions that deviate from the provisions of the stages of procurement of goods and services regulated in Presidential Regulation Number 12 of 2021 concerning Procurement of Goods and Services.

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