

Reduce Corruption in Public Procurement: The Effort Towards Good Governance

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ABSTRACT

The Corruption Eradication Commission is introducing new laws on corruption. However, the crucial questions are whether the said laws effectively decrease corruption cases, including corruption in public procurement. The number of factors that result in corruption is increasing, especially in the public procurement sector. One of the most important things that can't be ignored is that the public doesn't take part in supervision. This study aims to examine how to reduce corruption in public procurement through an effort towards good governance. The study takes a socio-legal approach. By reviewing some review literature relevant to public procurement corruption, as well as reports by multiple authorities tracking the same subject. This study concludes that public procurement law policies in Indonesia have not worked well. This is one of them, influenced by corrupt law enforcement officials and the irresponsible political elite. As a result, existing legal regulations are not properly implemented.



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1. Introduction

Following an ethical, nondiscriminatory, and transparent value system, procurement policies establish the application of methods and public financial resources that produce the best social and economic outcomes. This establishes the objectives of public procurement in terms of the principles of cost-effectiveness, transparency, open and effective competition, nondiscrimination, accountability, and due process. The main idea is that good governance exists in the public procurement sector when public funds are spent for the right reason to obtain the right quality, quantity, and price at the right time, place, and source (Jaja & Aditya, 2022).

Governance is a broad concept that encompasses formal and informal spheres of life in any human society, emphasizing the importance of adhering to ethical virtues such as transparency, equality, fairness, responsibility, accountability, participation, responsiveness to the needs of the people, and effectiveness in the management of public funds (Rideng et al., 2022). Good governance is the process and structure that guarantees the effective management of resources. Good governance is essential for the rule of law, and the rule of law is necessary for good governance. Good governance requires transparency, accountability, participation, effectiveness, efficiency, predictability, fighting corruption, consistency, and coherence (Lehtinen et al., 2022).

Good governance must be considered in the context of public procurement, as it directly relates to the expenditure of public funds. E-procurement, as an innovative enabler of good governance in public procurement, is frequently one of the primary interventions implemented by many governments. In this action research, e-procurement is operationally defined as the collaborative use of information and communications technologies (especially the Internet) by government agencies and other procurement community actors to complete the entire government procurement process cycle for the acquisition of goods, works, and services with good governance in public procurement (Abraham et al., 2020).

Demand aggregation, procurement planning, selection of procurement methods, preparation of bidding documents, invitation of bids, bid submission, bid opening, bid evaluation, contract awards, contract management, payment processing, and contract closure are typical phases of a government procurement process cycle. The Public Procurement Act outlines general procurement principles, while the Public Procurement Regulations detail particular procedures, methods, and regulations. Currently, the majority of governments around the globe use e-procurement systems as a tool for public procurement reform in order to enhance governance in the public procurement sector (Alfada, 2019).

Article 1 paragraph (3) of Law No. 19 of 2019 regulates the KPK as an independent state institution under the family of executive power. So as to carry out the task of prevention and eradication of criminal acts of corruption, the KPK must also be subject to Law No. 19 of 2019. The provision has also been strengthened by the Constitutional Court decision No. 36/PUU-XV/2017, which stipulates that the KPK falls under the family of executive power and the KPK becomes the object of DPR's voting rights. Furthermore, the clause in article 3 of Law No. 19 of 2019 also mentions that the KPK is a state institution in the group of executive powers that in carrying out their duties and authorities are independent and free from the influence of any power. It is becoming increasingly clear that the position of the KPK as an independent institution is important enough to be a concern because the KPK itself in combating corruption is very closely related to the state organizing apparatus (Jang et al., 2015).

Indonesia's Corruption Perception Index (CPI) has increased significantly in the last three years (prior to the revision of the KPK Law), as evidenced by the Transparency International Indonesia report, which states that, since 2017, Indonesia's CPI score has been 37 and ranked 96, and in 2018, Indonesia's CPI score continued to increase to 38 and was ranked 89. In line with the Corruption Clearing House (ACCH) recapitulation data available on the Anti Corruption Clearing House (ACCH) portal, until the end of 2018, the KPK succeeded in handling corruption crimes with the following details: until the end of 2018, the KPK succeeded in handling corruption crimes with the following details: investigation of 164 cases; investigation of 199 cases; prosecution of 151 cases, *inkracht* of 106 cases; and execution of 113 cases, saving the state money in the trillions of rupiah range. In 2019, Indonesia got a score of 40 and was ranked 85th, which shows that the country did a great job of getting rid of corruption in 2019.

Meanwhile, according to Transparency International Indonesia, following the enactment of Law No. 19 of 2019, Indonesia's Corruption Perception Index (CPI) 2020 has a score of 37 points and ranks 102nd out of 180 countries worldwide. This score has dropped three points since last year, when it stood at 40. Despite the fact that this is the highest achievement in Indonesia's CPI score in recent years, The issuance of the new KPK Law also has an impact on the corruption of public procurement. Where, in public procurement, corruption has manipulated quality when agents tasked with quality evaluation overestimate the quality of corrupt companies. The agent favors an inefficient company, the buyer can adjust the procurement mechanism, so inefficient rent corruption erodes the company's efficient technology leases. However, it may require procurement of projects at undesirable levels of quality. To settle the trade-off between preventing corruption and distorting quality, buyers can overestimate how much they value quality. This means that auction valuations no longer have an advantage over minimum quality auctions (Huang & Xia, 2019).

According to ICW, information about public procurement that is easily accessible and consumed by the public is important. In the midst of crisis situations and pandemic covid-19, regulations will be made looser to facilitate the handling of the crisis itself. But on the other hand, the space to practice deviation becomes wide open. Therefore, public procurement information must be

transparent so that the public can supervise and participate in the process (Jang et al., 2015). Based on information on the finance minister's website, the government budgeted the allocation of health in the 2020 state budget in pandemic situations of Rp 57.40 trillion. In accordance with Presidential Regulation (Perpres) No. 54 of 2020 on Changes in Posture and Details of State Revenue and Expenditure Budget for Fiscal Year 2020, the health function budget becomes Rp76.55 trillion, in the framework of handling the Corona Virus Disease pandemic 2019 (Covid-19). If viewed, the details of the allocation of funds issued are not visible in detail so that the potential for fraud and procurement corruption will be very likely in that case (Jancsics, 2015).

Corruption in the public procurement sector must be traced to the beginning of the disaster process, especially the allocation of budget details to be carried out. According to Hayidrali, Coordinator of the National Strategy Daily of the Corruption Eradication Commission (KPK), there are at least two important reasons why the eradication of Indonesian corruption has not run optimally, especially public procurement corruption in the midst of the COVID-19 Pandemic. First, efforts to monitor public procurement in Indonesia is a big task. Even LKPP (Government Procurement Policy Institute) itself, as an institution that handles public procurement, does not have clear procedures and does not have a standardized information disclosure policy. This leads to fraudulent practices and confusion among citizens regarding what procurement information is publicly available and what procurement is private. In 2020, the amount of the state budget for public procurement will be 2,400 trillion Rupiah, up from just 475 trillion in recent years. Its procurement consumes more than 45% of the state budget, mainly in the infrastructure, health and education sectors. The situation has shown that Indonesia has the largest national budget in Southeast Asia, covering more than 632 procurement units and 700,000 suppliers (Anggriani et al., 2020).

Second, corruption has a systematic effect on existing mechanisms as well as undermining systems that seek to maintain their integrity. Some research suggests that elements of undue influence are embedded in existing administrative processes. According to KPK data (2004–2019), about 70% of cases investigated and prosecuted by the KPK involve public procurement, of which 65% involve bribery. Corruption in public procurement is very vulnerable to conflicts of interest and also abuse of power carried out by the state apparatus. It can be seen in the case of bribery carried out by Harun Masiku, which until now could not be resolved by the KPK. It is also aggravated by the SP3 clause in article 40 of Law No. 19 of 2019, which is even more performance hampering the KPK in cracking down on corruption perpetrators (Khan & Krishnan, 2021). Another case that is no less important is the corruption case of social aid (*Bantuan sosial-Bansos*), Juliari P Batubara, which was only sentenced to 12 years in prison based on the verdict No. 29/Pid.Sus-TPK/2021/PN.JKT.PST on August 23, 2021. This low verdict is precisely contradictory to the spirit of eradicating corruption. In fact, the KPK leadership has stated firmly that it will severely punish the perpetrators of social assistance. COVID-19 corruption (Campbell, 2020).

Corruption in the public procurement sector is nothing new, but the study of the issue is considered fresh. For example, Lino tried to outline the role of public sector audit organizations to combat corrupt practices among the apparatus. But in fact, there are many officers who participate in corrupt practices until they end up involved in the abuse of power (Lino et al., 2022). Owusu examined the correlational impact of the two main constructions related to corruption in construction projects and related infrastructure, which included the effectiveness of existing anti-corruption measures in planning, procurement, and management projects, as well as barriers that hinder the effectiveness of corruption eradication. According to Owusu, it stems from the relationship between corruption, public procurement, and infrastructure development (Owusu et al., 2020).

The above articles discuss the potential for corruption in the procurement sector. However, all these readings have not fully looked at the corrupt practices of public procurement legally in Indonesia. This is important because since the Corruption Eradication Commission Law No. 19/2019 ("new KPK Law") was enacted, various implementation regulations, including several clause changes in the old KPK Law, have been issued by the government in an effort to fulfill the vision of eradicating corruption in Indonesia. Instead of bringing effectiveness and efficiency, various regulations and laws are actually obstacles that actually complicate the prevention of corruption in Indonesia. Based on this, this paper takes a legal look at the issue of public procurement in Indonesia.

2. Research Method

This study was created using socio-legal research. Combining social data and legal documents. Legal approach fosters to identify legal problem between fact and norm (Peerthum et al., 2020). The label socio-legal studies has gradually become a general term encompassing a group of disciplines that apply a social scientific perspective to the study of law, including the sociology of law, legal anthropology, legal history, psychology and law, the study of judicial political science, and comparative science (Lin et al., 2022). The socio-legal approach is a combination of approaches within the social sciences, including political science, economics, culture, history, anthropology, communication and a number of other sciences, which are combined with approaches known in legal science, such as learning about law, principles, doctrines and statutory hierarchies. The socio-legal approach thus becomes a single concept for the combination (Kusuma et al., 2021). Thus, the legal analysis carried out has a broad and interdisciplinary perspective in describing the issues raised in this research (Wiratraman, H. P., & Putro, 2019). On some of the findings of the above procurement corruption case, there needs to be further analysis of the causes of corruption in the public procurement sector, as well as mitigation of what can be done to overcome the problem of public procurement corruption carried out by government officials (Valarini & Pohlmann, 2019).

3. Results and Discussion

3.1. Risk of Corruption in the Public Procurement Sector

Corruption has so far covered all sectors, so many government officials are netted by the KPK from social ministers to related agencies. However, another challenge from this comes from the punishment or light sentence handed down to the perpetrators actually adds to public distrust of the KPK as a corruption eradication agency. Coupled with the lack of special procurement laws, that are necessary to harmonize regulations and to provide legal certainty in which some government officials also participate in corrupt practices. In addition, complaint mechanisms related to abuse of power will help improve accountability and enable key agencies to understand how procedures can be improved (Karjoko et al., 2021). According to Glenn, in his article entitled "Corruption in Public Procurement A Perennial Challenge" public procurement practices are very vulnerable to corruption because of the high level of funds allocated (Lastra et al., 2018; Lino et al., 2022). In line with this, Indonesia Corruption Watch (ICW) also reported that in 2019 as many as 64% of corruption cases were corruption in the public procurement sector including procurement of goods and services. During the pandemic the government is required to procure quickly and flexibly to cope with the covid-19 pandemic, even the government has made initial payments with large amounts to secure supplies (Deng, 2018).

As a result, many budgets are not balanced with needs, so that loopholes open, then used by policymakers to carry out corrupt practices. Gans-Morse offers several recommendations to reduce and prevent public procurement corruption, which includes a comprehensive review and also an increase in interdisciplinary knowledge of anti-corruption policies, focusing more on combating corruption of public procurement among government officials (Gans-Morse et al., 2018). From these recommendations are relevant to the current conditions where the perpetrators of public procurement corruption are the majority of government officials, although some are also from the private sector. Government Regulation instead of Law Number 1 of 2020, which in this case serves as the juridical basis for state financial policies for handling the COVID-19 pandemic, has not yet been regulated in detail regarding public procurement so that in taking action against perpetrators of corruption in the public procurement sector, it refers to the KPK Law. Law No. 19 of 2019, the second amendment to Law Number 30 of 2002, also does not adequately regulate corruption in public procurement. This is made worse by Article 1(3) of the KPK Law, which says that the KPK is now part of the executive family (Isra et al., 2017).

According to Anupriya Khan, the subject and background of corruption in developed countries is electronic government, where in developed countries, corruption becomes a serious problem (Khan & Krishnan, 2021). That is, in developed countries corruption is also transformed through a fairly rapid digital rate. This needs to get more attention because such conditions need control from the public and openness of public information. In Indonesia the disclosure of public information is regulated in Law No. 14 of 2008 on Public Information Disclosure (KIP), in Article 18 it is

mentioned that the information of the return report of corruption is not included in the category of excluded information. In the KIP Law it is explained that in examining criminal cases in court, the KPK is authorized by law to disclose excluded information. The written purpose of the KIP Law in Article 3 is to increase the active role of the community in public policy making and the transparent and accountable management of public bodies. Public bodies are managed by public officials whose basic functions and duties relate to the implementation of the state, some or all of whose funds are sourced from the State Revenue and Expenditure Budget and/or the Regional Revenue and Spending Budget (Yustiarini & Soemardi, 2020).

In addition to the openness of public information, Indonesia must also learn how to establish an independent anti-corruption agency, Indonesia must examine best practices for independent anti-corruption designs. Of course, legal regulations on corruption eradication must also be improved, not vice versa. The presence of an independent state institution indicates a level of oversight and balance. As a result, independent anti-corruption institutions must be separated from any power in order for their performance to be unaffected (Muhtadi, 2015). Furthermore, the need for special authority for anti-corruption institutions is critical because the cases handled involve state finances. Aside from that, it is critical to redesign an independent anti-corruption agency so that the deficiencies in Law No. 19 of 2019 can be addressed immediately (Wicaksana Prakasa et al., 2021).

3.2. KPK and Prevention of Public Procurement Corruption

In 2019, after the issuance of Law No. 19 of 2019, the result of the revision of the old KPK Law (second amendment of Law No. 30 of 2002), the position of the KPK changed which was previously an independent institution but is currently part of the executive power group, although the clause as an independent institution still exists in the Law. As is well known that, the executive is one of the parties that should also be supervised by the KPK itself. So far, the impact of the KPK position has affected many things from the decline of Indonesia's CPI score to the dismissal of KPK employees who are considered not to pass the National Insight Test (TWK) (Shim et al., 2015). Eradicating corruption is increasingly difficult because in addition to the revision of the KPK Law, there is also still a pandemic atmosphere, where the face of new corruption begins to appear from the many cases of procurement corruption ranging from health tools, vaccines, masks and others. Apart from the above challenges, showing that rapid technological progress has also caused corruption to be more surplus, especially corruption of public procurement and all modes that it does by utilizing existing loopholes, coupled with the pandemic situation that has not ended. Rimšaitė L for example, explained in his research about the role on public procurement tenders resulting in the exchange of information between competitors thus leading to market closures and price increases for end users. Enforcement of anti-corruption laws has increased, including the imposition of large fines for companies, and jail time for offending company executives (Rimšaitė, 2019).

As stated by Francesco Checchi, UNODC Anti-Corruption Advisor in the UNODC webinar in 2020 the importance of measures to ensure the independence of public procurement bodies must also be underlined, which explains that it is important for the government to seek input both internally and externally to build an optimal procurement system. He took feedback from uncac's latest review in Indonesia, which recommended an external audit of procurement practices and measures to increase meaningful participation of civil society organizations. It is relevant to Checchi also introducing conflict-of-interest requirements for procurement staff, regulations around unexplained wealth, victim compensation measures, increased access to information and an independent sanctions-based complaint mechanism. At least public procurement regulations in Indonesia also hamper the process of tracking the fraud of the apparatus in carrying out procurement, meaning that situations like this need to get more attention. Because the allocated budget is state money. Given that public procurement is in direct contact with government officials, it is important to strengthen public integrity as well as reforms related to public procurement rules (McClintock & Bell, 2013).

In terms of monitoring public procurement that is digital, actually the National Strategy Secretariat has developed e-catalogs in five "highest budget" ministries, since July 2020. Meanwhile, at the sub-national level, 34 provinces are currently working to integrate their procurement processes using local e-catalogs. As digitalization evolves rapidly, it must also be accompanied by positive policies, that's why it's important to ensure that new initiatives adapt to new strategic challenges. Current work in this field is being designed with economic recovery in

mind from Covid-19. Partly for this reason, faster and simplified local e-catalogs have been built to empower local industries and businesses. This can help strengthen the business environment, for example by increasing opportunities for local companies to compete with larger chains (Cuèllar & Stephenson, 2022).

3.3. Reduce Corruption in Public Procurement

The eradication of corruption in Indonesia has been going on for several years, but the reality is increasingly widespread and strong in almost all sectors of government, including the public procurement sector in the pandemic period. The issuance of Perpu by the president that should be able to minimize corruption in the pandemic period, quite the opposite of the existing clause has not accommodated corruption in the public procurement sector. As a result, fraud contained in public procurement is difficult to reach by the KPK and law enforcement officials (Lassou et al., 2021). After the issuance of the new KPK Law has impacted all sectors in Indonesia including corruption in public procurement, meaning that the sector most vulnerable to corruption must be strengthened by progressive legal regulations so that corruption in the public procurement sector can be minimized. Indonesia Procurement Watch (IPW) stated, as of 2021 out of 240 corruption cases handled by the Corruption Eradication Commission (KPK), 70 percent were public procurement cases. but after the issuance of the new KPK Law the situation is getting worse (Romano et al., 2021).

This was corroborated by the statement of KPK Investigator Novel Baswedan, in a test hearing of the KPK Law at the Constitutional Court on September 23, 2020. According to Novel Baswedan, now the KPK loses the power to make legal efforts in urgent circumstances, because the entire process must go through the approval of the KPK Supervisory Board. This condition will affect the speed of the KPK in cracking down on corruption cases, and indirectly open greater opportunities for corruption suspects, to transfer, transfer, or eliminate evidence of alleged corruption crimes. Coupled with the high number of cases handled by the KPK, it is an indicator that the public procurement is fertile ground for corrupt practices in Indonesia. This is also in line with the release of ICW data which states that corruption cases in the public procurement are the second most handled by the KPK. Indonesia Corruption Watch (ICW) data from 2016 to 2020 also showed the same thing. A total of 49.1% or 1,093 cases out of 2,227 cases handled by law enforcement, related to public procurement. State losses incurred reached Rp 5.3 trillion (Suhardjanto et al., 2020).

Corruption in the public procurement, and public works has been commonplace in Southeast Asian countries (with the exception of Singapore) for many years (Grandia & Voncken, 2019). It has affected the provision of vital services and infrastructure and has been a key factor in undermining governance standards. In recent years, reforms have been introduced in the region to combat corruption in the public procurement process (Jones, 2009). However, until now the impact in many states has been increasingly massive and through many modes. Indonesia as one of the developing countries in southeast Asia must be able to learn from Singapore and Hong Kong where the two countries can overcome the gap in corruption in the public procurement through independent institutions that specifically deal with corruption in each country (Owusu et al., 2020).

In Hong Kong there is ICAC where in combating corruption there is no need to coordinate with other law enforcement officials so that its independence is absolutely guaranteed, as well as the CPIB Singapore, there is no provision regarding coordination with other agencies authorized to commit corruption crimes, it is nothing but to avoid intervention from other institutions. When compared to the Indonesian KPK which has now entered the executive power group, it requires the KPK to coordinate first to crack down on corruption perpetrators, as a result after the new KPK Law was published. OTT conducted by KPK is very drastically decreased, as the data presented by ICW. The revision of the KPK not only undermines the independence of the KPK, because it places the KPK under the family of executive power, but also undermines the internal mechanism of corruption enforcement in the KPK. This can be seen where on the enforcement side, the bad face of Law No. 19/2019 began to be seen when the KPK conducted a hand arrest operation against Wahyu Setiawan, Commissioner of KPU 2017-2022. The case, which also involves KPK fugitive, PDIP politician Harun Masiku, has shown how complicated the licensing process is to conduct searches. As a result, until now, the KPK has not conducted a search at the PDIP Office and failed to recapture Harun Masiku (Joseph Joseph et al., 2016).

The KPK as an independent anti-corruption agency is still far from the anti-corruption agency in Hong Kong and Singapore. Therefore, Indonesia can learn from both countries to overcome corruption in Indonesia including the handling of corruption cases in public procurement. The pattern of funding of anti-corruption institutions in Indonesia, the effectiveness of Singapore and Hong Kong institutions in fighting corruption, lessons from Singapore and Hong Kong as the basis for fighting effective anti-corruption in Indonesia (Awopeju et al., 2018). Singapore and Hong Kong's success in minimizing public procurement corruption is the result of its government's strong political will and the adequate budget, personnel and operational autonomy granted to the Corruption Practices Investigation Bureau to enable it to impartially enforce anti-corruption laws. To improve Indonesia's anti-corruption strategy, the Anti-Indonesia Agency must be established and adequately managed and funded to investigate corruption cases. Those found guilty of corruption violations should be punished in accordance with the law, without suspending their prison sentences or being pardoned by the president (Quah, 2017).

4. Conclusion

To reduce corruption in public procurement in Indonesia, Law No. 19 of 2019 concerning the Commission on the Eradication of Corruption has not regulated corruption related to public procurement so far. This becomes important because the public procurement sector becomes a wetland and is prone to corruption. Although there is actually a Government Regulation in Lieu of Law Number 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease Pandemic 2019 (COVID-19), in reality the Government Regulation in Lieu of Law has not regulated in detail about corruption in public procurement in the pandemic period, even though many cases during the pandemic involve public officials. The spirit of eradicating corruption in public procurement must continue because during this time the sector is a wetland for corruption. Furthermore, it is necessary to reform public procurement provisions by strengthening and adding substance to related laws so that the eradication of corruption in the public procurement sector can be overcome.

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