



Legal Liability in Government Procurement Contracts: Delineating the Boundaries between Civil, Administrative, and Criminal Law in Indonesia

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Abstract

Government procurement in Indonesia involves contractual relationships between the government, represented by the Commitment Making Officer, and goods/services providers, while simultaneously operating within a public-law framework. This hybrid character complicates determining whether procurement irregularities give rise to civil, administrative, or criminal liability. This study aims to establish a differentiated framework for delineating the legal boundaries among these three forms of liability and to examine their application in judicial practice. This study employs legal research using statutory, conceptual, and case approaches. Primary legal materials consist of relevant legislation, regulations, and three judicial decisions representing civil, administrative, and criminal dimensions of government procurement disputes. The findings show that civil liability arises primarily from non-performance of contractual obligations and entails contractual remedies, including performance, compensation, or termination. Administrative liability concerns violations of public-law obligations or improper exercise of governmental authority, while criminal liability requires fulfillment of statutory elements of a specific offense and requisite fault. The study further reveals that the involvement of public funds or government officials does not automatically transform a contractual dispute into an administrative or criminal matter. A differentiated approach is therefore necessary to provide legal certainty, prevent the over-criminalization of ordinary contractual disputes, and strengthen accountability in government procurement.

I. Introduction

Government procurement of goods/services plays a strategic role in supporting the implementation of governmental functions and national development (Sari et al., 2025). This procurement process involves various parties, including the Commitment Making

Officer (*Pejabat Pembuat Komitmen* hereinafter abbreviated to *PPK*) and the goods/services provider. The *PPK* is responsible as the party representing the government in making contracts with providers, while the goods/services provider is the entity responsible for fulfilling orders in accordance with the agreed contract (Pratomo et al., 2024). Through this process, the government enters into contractual relationships with private-sector entities by binding the parties to procurement agreements (Toatubun et al., 2018). In government procurement contracts, both the government and goods/services providers have an equal standing in fulfilling the rights and obligations stipulated in the agreed contract (Kuahaty, 2011).

In the implementation of government procurement contracts, various problems often arise related to the fulfillment of obligations by one of the parties (Seo et al., 2018). This can be in the form of late delivery, non-conformity in quality of goods/services, or even total failure to fulfill the contract. These problems continue to raise questions regarding the legal liability of the parties involved. The determination of such liability is complicated by the fact that government procurement contracts encompass various areas of law. Such contracts are not limited to civil and administrative law but may also involve criminal law. Civil law concerns the private law aspects of the contractual relationship, particularly the obligations arising from the contractual relationship between the government and goods/services providers. Administrative law relates to the authority and procedures governing the formation of government procurement contracts. Criminal law, meanwhile, concerns criminal sanctions that may arise from violations of provisions relating to state finances. The hybrid nature of government procurement contracts can be distinguished but are difficult to separate from one another. This creates difficulty in determining the boundaries between the application of private and public law, as the distinction between the two may become blurred. (Hardiyan, 2023).

Currently, government goods/services procurement activities are regulated in separate regulations, namely the Presidential Regulation. Historically, government procurement regulations in Indonesia have been revised or replaced several times. Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services (effective March 22, 2018) was then amended by Presidential Regulation Number 12 of 2021, which came into effect on February 2, 2021. The most recent amendment to date is Presidential Regulation Number 46 of 2025 concerning the Second Amendment to Presidential Regulation Number 16 of 2018. According to Article 1 number 1 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services, government procurement of goods and services is defined as the procurement of goods and services by Ministries/Institutions/Regional Apparatus funded by the State Budget (APBN) or Regional Budget (APBD), with the process beginning with the identification of needs and ending with the handover of work results (Fahrudin, 2023).

The relationship between *PPK* and the goods/services provider is examined through the lens of civil responsibility issues emerging from the implementation of the procurement contract. This relationship is important considering the position of *PPK* as a government representative who has the authority to make decisions and is responsible

for supervising the implementation of the contract. Meanwhile, the goods/services provider as a private party also plays a crucial role in the implementation of government projects (Huda & Yunas, 2016). In line with this, under the government (through the Commitment Making Officer, or PPK) and the provider of goods/services have agreed rights and obligations. Civil liability ensures that both parties fulfill their obligations in accordance with the contract (Brampu et al., 2024). If one party does not fulfill its obligations (breach of contract), this liability mechanism provides a way to demand fulfillment of rights or compensation. Civil liability encourages the parties to carry out contracts professionally and on time. In government procurement of goods/services, delays or quality that does not comply with specifications can have a major impact on the smooth running of public projects. With the existence of a civil liability mechanism, the negligent party can be held responsible through compensation, fulfillment of performance, or cancellation of the contract.

Government procurement of goods/services will essentially have a positive impact on the economy and national development (Sacks et al., 2014). However, the success of government procurement of goods/services in driving the national economy to support national development, in its implementation, still requires many improvements. Given that in practice, government procurement of goods/services still often involves various deviations that can cause losses to state finances and the country's economy, thus leading to criminal acts of corruption. Based on the annual report of the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, hereinafter abbreviated to KPK) in 2016, it is described that corruption cases for the period 2004-2016, procurement of goods and services cases have the largest portion among other corruption modes. In response to these risks, governments worldwide have implemented various laws and guidelines to enforce the highest ethical standards in procurement procedures (Dorasamy & Fagbadebo, 2021).

These risks are particularly significant because government procurement often involves substantial public funds. Where a procurement contract is not properly performed or a party fails to fulfill its contractual obligations, the state may suffer financial losses. In such circumstances, civil liability serves as a mechanism to hold the party responsible for the loss accountable, whether arising from negligence or contractual default, and to provide remedies such as compensation. Accordingly, civil liability provides legal certainty for the parties involved by establishing the rights, obligations, risks, and legal consequences associated with the performance of procurement contracts (Prakoso & Setyaningati, 2018). Clear contractual liability mechanisms may also facilitate dispute resolution and encourage the parties to fulfill their obligations properly. (With clear regulations regarding responsibilities in the contract, each party knows the risks and legal consequences that they must face if they fail to fulfill their obligations. This helps prevent disputes and provides a strong legal basis for resolving problems if disputes arise.

The importance of civil liability is further reflected in its role in promoting accountability and protecting the interests of both the government and goods/services providers. When contractual obligations are clearly defined and legal remedies are available in the event of a breach, the parties have greater certainty regarding the

consequences of non-performance. Such mechanisms may encourage the parties to resolve disputes through negotiation or other non-litigious means before resorting to judicial proceedings. In this respect, civil liability not only provides remedies for contractual breaches but also supports the effective and accountable implementation of government procurement contracts.

Nevertheless, civil liability is only one dimension of legal responsibility in government procurement. Because procurement involves public funds, government officials, and administrative procedures, irregularities may also result in administrative or criminal liability. Although previous studies have examined contractual, administrative, and criminal aspects of procurement, limited attention has been given to clear criteria for distinguishing these forms of liability.

This study therefore proposes a differentiated liability framework for government procurement contracts, distinguishing civil, administrative, and criminal liability based on the legal obligation violated, the capacity of the actor, fault or intent where required, the consequences of the conduct, and the fulfillment of criminal statutory elements. It argues that procurement irregularities should not automatically be treated as administrative or criminal offenses merely because public funds or government officials are involved. By examining Indonesian law and the respective liability of the government contracting party, *PPK*, and goods/services providers, this study contributes a structured basis for classifying procurement violations and determining appropriate legal consequences. The framework aims to reduce legal uncertainty, prevent the over-criminalisation of ordinary contractual disputes, and strengthen accountability in the use of public funds.

This study employs a normative legal research method (Marzuki, 2017), integrating statutory, conceptual, and case approaches to examine the boundaries between civil, administrative, and criminal liability in Indonesian government procurement contracts between Commitment Making Officers (*PPK*) and providers. Primary legal materials include the Indonesian Civil Code, Law Number 2 of 2017 on Construction Services, Law Number 6 of 2023 on Job Creation, and Presidential Regulation Number 16 of 2018 on Government Procurement of Goods/Services, as amended by Presidential Regulations Number 12 of 2021 and Number 46 of 2025, alongside relevant administrative and criminal legislation. Secondary materials comprise legal doctrines, scholarly books, journal articles, and previous research. The case approach examines three judicial decisions representing distinct forms of liability: Jember District Court Decision Number 118/Pdt.G.S/2022/PN Jmr (civil), Samarinda Administrative Court Decision Number 13/G/2024/PTUN.SMD (administrative), and Supreme Court Decision Number 243 K/Pid.Sus/2026 (criminal). These decisions are comparatively analyzed based on the nature of the legal relationship, applicable obligations, actors' legal capacities, alleged violations, standards of fault, evidentiary considerations, judicial reasoning, and legal consequences. Through this integrated analysis, the study establishes criteria for distinguishing contractual breaches from administrative violations and criminal offenses, while evaluating how Indonesian courts determine the appropriate forms of legal liability in government procurement disputes

II. Results and Discussion

A. Legal Framework and Contract Formation in Government Procurement

Government procurement of goods and services (*Pengadaan Barang/Jasa Pemerintah*, hereinafter abbreviated to PBJ) constitutes an important component of public financial management because a substantial proportion of government expenditure is implemented through procurement activities. The significant public funds involved in procurement create substantial economic value while also generating legal risks at various stages, including procurement planning, provider selection, contract formation and implementation, supervision, and payment. Irregularities at these stages may result not only in state financial losses but also in delays in the provision of public services, inadequate infrastructure, and failure to achieve government program objectives. Accordingly, the legal regulation of government procurement must address not only the procedural aspects of procurement but also the legal relationships and responsibilities arising from the procurement process.

The prevention and resolution of procurement irregularities require an integrated legal framework encompassing procurement regulations, contract law, administrative law, and criminal law. Within this framework, electronic procurement mechanisms have been developed to promote transparency, efficiency, accountability, and traceability. The Electronic Procurement System (*Sistem Pengadaan Secara Elektronik*, hereinafter abbreviated to SPSE) constitutes an important instrument in the procurement process by facilitating electronic procurement activities and maintaining records of procurement transactions. Such records may support the examination of procurement compliance and may be relevant in administrative, audit, or judicial proceedings. Nevertheless, the existence of electronic records does not by itself determine the legal liability of the parties, which must be assessed based on the applicable legal relationship and the nature of the conduct concerned.

The regulatory framework governing government procurement has developed significantly since Presidential Decree Number 80 of 2003. The principal framework is currently Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, as amended by Presidential Regulation Number 12 of 2021 and most recently by Presidential Regulation Number 46 of 2025. Presidential Regulation Number 46 of 2025 constitutes the second amendment to Presidential Regulation Number 16 of 2018 and entered into force on April 30, 2025. Accordingly, the analysis of government procurement contracts must take into account the regulatory framework applicable at the time the procurement process and contract were implemented. Contracts concluded under a previous regulatory framework remain subject to the applicable transitional provisions.

One of the central actors in the procurement process is the Commitment Making Officer. PPK performs functions relating to procurement preparation and contract implementation, including preparing contractual documents, controlling contract implementation, and carrying out other responsibilities prescribed by procurement regulations. PPK therefore plays an important role in ensuring that procurement contracts are implemented in accordance with both applicable regulations and contractual

provisions. However, the PPK's status as a government official should not automatically be equated with personal civil liability. The PPK exercises public authority in performing procurement functions, whereas contractual rights and obligations arise primarily from the legal relationship established through the procurement contract. The applicable form of liability must therefore be determined by examining the nature of the conduct, the legal relationship involved, the capacity in which the actor acted, and the legal consequences prescribed by the applicable legal regime.

The formation of a government procurement contract generally involves the determination of the appropriate contract type, preparation of contractual documents, establishment of the rights and obligations of the parties, fulfillment of requirements preceding contract execution, and execution of the contract by duly authorized parties. These elements are important because the procurement contract establishes the legal framework governing the parties' respective rights, obligations, performance standards, allocation of risks, and contractual remedies. The determination of the contract type is particularly significant because it affects the allocation of price, quantity, performance obligations, and contractual risks between the government and the provider.

The current procurement framework recognizes various contract types, including lump-sum, unit-price, combined lump-sum and unit-price, framework, cost-plus-fee, and performance-based contracts, while construction and integrated procurement may employ specific contractual arrangements according to the characteristics of the procurement. A lump-sum contract generally provides greater certainty regarding the agreed scope of work and contract price, whereas a unit-price contract links payment to the quantity or volume of work actually performed and verified. These differences have direct implications for the assessment of contractual performance and potential civil liability. In a lump-sum contract, for example, disputes may concern the conformity of the completed work with the agreed scope and specifications, whereas in a unit-price contract, disputes may concern quantity, measurement, quality, or payment.

The procurement contract should therefore regulate essential matters such as the scope of work, technical specifications, performance standards, completion schedule, payment mechanism, guarantees, inspection and handover procedures, contractual penalties, force majeure, termination, and dispute resolution. These provisions constitute the principal contractual basis for determining whether the parties have properly performed their respective obligations and whether a breach of contract has occurred. Where a party fails to perform an obligation arising from the contract, the resulting dispute may give rise to civil remedies in accordance with the contract and applicable law. At the same time, because government procurement operates within a public-law framework, contractual performance must also be distinguished from compliance with mandatory administrative obligations. This distinction is essential for determining whether a particular procurement irregularity remains within the sphere of contractual liability or may give rise to administrative or criminal consequences.

The position of PPK requires deeper doctrinal examination because PPK operates at the intersection of government administration and contractual implementation. The same individual may perform different acts within one procurement process, and each act's legal character must be assessed on its own terms. PPK does not hold a single legal

capacity that fixes the applicable liability regime. The decisive question is which capacity the PPK held when performing the conduct under examination.

a. PPK as Representative of the Government in a Contractual Relationship

When the *PPK* enters into, administers, or implements a procurement contract within authority assigned by the government, the contract exists between the government contracting party and the goods/services provider. The *PPK* performs functions on behalf of the government and within an institutional mandate. A court should not convert an obligation the government owes to the provider into a personal civil obligation of the *PPK*. A civil dispute must first identify the parties to the contract, the source of the obligation, the scope of the *PPK*'s authority, and the act alleged to have caused the loss.

The *PPK*'s signature, participation in contract administration, or involvement in payment and supervision does not by itself show that the *PPK* personally assumed the government's contractual obligations. Where the alleged breach is a failure to perform an obligation belonging to the government as contracting party, courts should assess the contractual claim against the party legally bound by that obligation. Personal civil liability requires a separate legal basis attributing the conduct and loss to the individual *PPK*. The *PPK*'s official status does not identify the legal source of an alleged personal obligation; that source must be shown separately.

b. PPK Exercising Public Administrative Authority

The PPK may also act in a public-law capacity, exercising authority derived from legislation or administrative regulations rather than a contractual right or obligation. Here the inquiry is whether the challenged act constitutes an exercise of governmental authority, whether that authority has a legal source, whether the PPK exercised it within its limits, and whether administrative law governs the act. That a government official issues an act, or that the act appears in a procurement process, does not make it an administrative act.

Samarinda Administrative Court Decision Number 13/G/2024/PTUN.SMD illustrates the point. *PPK* issued the challenged termination, and it produced legal consequences for the provider, but the court examined the act's legal source and substance and held that the termination concerned the procurement contract itself: a civil-law act, not an act of state administration. The case shows that a *PPK*'s official status does not settle the question. Courts must establish the legal nature of the act and the capacity in which the *PPK* acted before classifying it.

c. PPK Acting Personally and the Requirements of Individual Liability

A third situation arises when someone alleges that the *PPK*'s own conduct creates personal liability apart from the government's contractual position. Individual liability requires identification of personal conduct, a legal basis imposing responsibility on the individual, the applicable standard of fault or intent, causation where required, and the legal consequences prescribed by the relevant regime. A procurement irregularity, a contractual loss, or a state financial loss is therefore insufficient by itself to establish personal liability.

Criminal cases apply this distinction with particular force. *PPK* may be a

government official involved in procurement, but criminal responsibility is personal: prosecutors must prove that the individual's conduct satisfies the statutory elements of the offense together with the required form of culpability. Administrative law follows the same rule: courts cannot infer personal responsibility from the mere fact that an institutional decision produced an unfavorable consequence. They must examine the legal basis, the scope of authority, the conduct itself, and the applicable attribution rules.

The relevant question asks what capacity the *PPK* held, what legal obligation or norm governed the conduct, and what threshold for liability has been met. The title "*PPK*" alone answers none of that. This capacity-based approach stops courts and institutions from pinning institutional, contractual, administrative, or criminal consequences on the individual *PPK* by default.

B. Delineating the Legal Boundaries Between Civil, Administrative, and Criminal Liability in Government Procurement

Various legal issues may arise in the implementation of government procurement, potentially disrupting the performance of procurement contracts and causing losses to the parties involved. Such issues may stem from negligence, violations of administrative requirements, contractual non-performance, or intentional conduct undertaken to obtain an unlawful advantage. The legal characterization of such conduct is therefore essential in determining whether it gives rise to civil, administrative, or criminal liability (Alifa et al., 2025).

Public funds, government officials, or financial losses don't by themselves determine legal liability in government procurement. Courts assess the underlying legal relationship, the nature of the obligation or norm violated, the actor's capacity, the conduct itself, and the applicable legal consequences. Civil liability concerns contractual non-performance: compensation, performance, or termination. Administrative liability arises from violations of public-law obligations or the improper exercise of governmental authority. Criminal liability requires the statutory elements of a specific offense. These three forms can arise from the same procurement process. They don't arise together automatically. A procurement irregularity doesn't trigger all three just because it happened. This study maps the boundaries between civil, administrative, and criminal liability and traces how courts apply these distinctions in procurement cases.

a. Civil Liability

Presidential Regulation Number 12 of 2021 serves as a regulatory framework that strengthens oversight and law enforcement in the government procurement process, while also providing a basis for the application of civil liability as an important mechanism for addressing losses arising from procurement irregularities. This approach is intended to strengthen a procurement system that is more transparent, efficient, and accountable. Where procurement obligations are violated and such violations result in contractual losses, the state may pursue appropriate civil remedies against providers or other parties in accordance with the applicable contractual and legal framework (Sari et al., 2025). One of the principal forms of civil liability in this

context arises from a breach of contractual obligations or default (wanprestasi).

Deviations in the procurement process may, in particular circumstances, constitute a breach of contract (wanprestasi). Breach of contract is a common issue that arises when a party fails to perform its contractual obligations as stipulated in the agreement. Such breach may take the form of delay in completing the contractual work, failure to meet the required specifications or quality standards, or failure to perform the agreed obligations altogether. In government construction procurement, for instance, a contractor that fails to complete the project within the prescribed timeframe or delivers work that does not conform to the agreed specifications may be deemed to have committed a contractual breach. Consequently, the aggrieved party, whether the government or the contracting entity, may seek compensation or impose contractual sanctions in accordance with the terms and conditions stipulated in the agreement (Alifa et al., 2025).

The application of civil liability in such circumstances is closely related to the binding force of the procurement contract. A procurement contract establishes legally binding rights and obligations between the parties under the principle of *pacta sunt servanda*. Accordingly, where a party fails to perform its contractual obligations, the aggrieved party may seek civil remedies in accordance with the contract and applicable law. Unlike criminal liability, civil liability primarily focuses on the existence of a contractual breach, the resulting loss, and the availability of an appropriate legal remedy, rather than on the fulfillment of the elements of a criminal offense. Civil proceedings may therefore serve as an important legal mechanism for enforcing contractual obligations and recovering losses arising from procurement irregularities (Sari et al., 2025).

Breach of the contract itself can take four forms, namely: 1. Failing to do what one has promised to do; 2. Fulfilling what one has promised, but not as agreed; 3. Performing what has been promised but with delay; 4. Doing something that should not be done according to the agreement (Tatawi, 2015). These forms of breach provide a basis for assessing whether the conduct of a party in a government procurement contract constitutes contractual non-performance and, consequently, gives rise to civil liability.

b. Administrative Liability

Administrative irregularities in the procurement process constitute a recurrent issue that may arise from non-compliance with prescribed legal and procedural requirements. Such irregularities may include incomplete procurement documentation, inaccurate budget estimation, or the implementation of tender procedures that deviate from applicable laws, regulations, and procurement standards. These deficiencies may result from negligence, lack of due diligence, or inadequate understanding of the governing legal framework by the parties responsible for the procurement process. Although initially characterized as administrative deficiencies, such conduct may produce legal consequences, including delays in the procurement process, the imposition of administrative sanctions, or the termination of contractual relations. Furthermore, deficiencies in procurement

administration may create opportunities for fraudulent conduct by individuals or groups, particularly where procedural requirements are deliberately circumvented to obtain unlawful benefits or cause financial loss to the state or contracting entity. Accordingly, violations occurring in the procurement of goods and services must be assessed based on the nature, intent, and legal consequences of the conduct in order to determine whether the conduct constitutes an administrative violation, a breach of contractual obligations, or an unlawful act giving rise to further legal liability (Alifa et al., 2025).

c. Criminal liability

Government procurement is particularly vulnerable to criminal conduct at various stages of the procurement process. At the planning stage, irregularities may include budget inflation or mark-ups, directed procurement, and the manipulation of procurement packages through their consolidation or fragmentation for purposes of facilitating collusion, corruption, or nepotism, potentially resulting in losses to the state. Similar risks may arise during the company qualification, procurement evaluation, contract execution, and delivery stages, particularly where goods or services fail to meet the required quality standards and such conduct causes state financial losses. On the provider's side, criminal conduct may include document falsification and other unlawful acts committed in connection with the performance of contractual obligations. However, a failure to perform contractual obligations or a breach of contract does not, by itself, constitute a criminal offense unless the conduct also fulfills the elements of a criminal offense prescribed by law (Arifin et al., 2019; Sari et al., 2025).

In criminal law, the parameter for criminal liability is the principle of culpability. No one may be punished without fault (Murdian, 2016). Conceptually, the standard of proof in criminal law is known as "beyond reasonable doubt," which may be understood to mean that the defendant's guilt has been established beyond reasonable doubt and, therefore, warrants the imposition of criminal punishment (Dennis, 2013). Accordingly, not every irregularity in government procurement constitutes a criminal offense. Criminal liability arises only when the conduct satisfies the applicable elements of a specific criminal offense and the requisite fault can be established in accordance with criminal law. Potential criminal offenses in the procurement of goods and services include: (1) Bribery; (2) Embezzlement; (3) Falsification; (4) Extortion; (5) Abuse of position or authority; (6) Conflict of interest; (7) Favoritism (Samuel, 2022). Therefore, the existence of a contractual breach, administrative violation, or financial loss in the procurement process does not, by itself, establish criminal liability unless the conduct also fulfills the statutory elements of a criminal offense.

Table 1. Comparison of Civil, Administrative, and Criminal Liability in Government Procurement

Criteria	Civil Liability	Administrative Liability	Criminal Liability
Legal relationship	Contractual	Public law	Criminal law
Legal consequence	Performance, compensation, termination, or other contractual remedies	Administrative correction, annulment, or administrative sanctions	Criminal punishment and other statutory consequences
Wrongdoing	Wanprestasi	Procedural/authority violation	Statutory offense
Threshold	Failure to perform a contractual obligation	Violation of a public-law obligation or improper exercise of authority	Fulfillment of all statutory elements of a criminal offense

The three forms of liability may nevertheless intersect within the same government procurement process. However, their classification should be determined by the nature of the legal relationship, the type of wrongdoing, the applicable legal consequences, and the threshold required for liability. A single factual circumstance may therefore give rise to different forms of liability depending on the legal obligation violated and the capacity in which the relevant actor acted. Nevertheless, the existence of public funds, the involvement of a government official, or the occurrence of financial loss does not, by itself, determine the applicable form of liability. The distinction must instead be established by identifying whether the conduct constitutes a failure to perform a contractual obligation, a violation of a public-law obligation or improper exercise of governmental authority, or conduct that fulfills all statutory elements of a criminal offense. These criteria provide the analytical basis for the subsequent examination of judicial decisions concerning civil, administrative, and criminal liability in government procurement.

C. Judicial Perspectives on the Classification of Legal Liability in Government Procurement

The classification of legal liability in government procurement cannot be determined solely by the identity of the parties involved or by the fact that the procurement is financed by public funds. Rather, the applicable form of liability depends on the legal relationship underlying the dispute, the nature of the conduct at issue, the legal obligation that has allegedly been violated, and the legal consequences sought or

imposed. Judicial decisions demonstrate that similar procurement-related events may fall within different legal regimes depending on whether the dispute concerns contractual performance, the exercise of public authority, or conduct satisfying the elements of a criminal offense. This distinction can be observed by comparing the judicial reasoning in civil, administrative, and criminal proceedings involving government procurement.

1. Contractual Liability: District Court Decision Number 118/Pdt.G.S/2022/PN Jmr

Jember District Court Decision Number 118/Pdt.G.S/2022/PN Jmr offers a clear example of contractual liability. CV Ace Mitra Utama sued the Government of Jember Regency, including the Commitment-Making Officer (PPK), over Contract No. 027/12.B.2.6/KONTRAK/35.09.416/XII/2020, dated 29 December 2020. The plaintiff sought legal protection after the defendants failed to perform their contractual obligations. The court partially granted the claim and declared that the defendants had committed a breach of contract (*wanprestasi*). It also recognized the legal validity and binding effect of the debt arising from the procurement contract and imposed the corresponding contractual obligation on the defendants.

The decision shows that when a dispute centers on performance of obligations under a procurement agreement, the issue counts as a civil dispute. Government involvement as a contracting party does not, by itself, turn the matter into an administrative or criminal one. What matters for this study is the court's focus on the contractual relationship as the source of the parties' rights and obligations: has a party performed its obligations under the agreement, and if not, what civil consequences follow? The appropriate consequences may include recognition of breach, enforcement of contractual obligations, compensation, or other contractual remedies. This reasoning supports treating contractual default as a matter of civil liability in the first instance, unless additional circumstances show that the same conduct independently satisfies the requirements of administrative or criminal liability.

2. Administrative Dimension and the Boundary with Civil Liability: PTUN Samarinda Decision Number 13/G/2024/PTUN.SMD

Samarinda Administrative Court Decision Number 13/G/2024/PTUN.SMD shows where administrative liability ends and civil liability begins. Arief Rahman, director of CV Arman Karya Mandiri, sued PPK over the Semangko Village floodgate project in Kutai Kartanegara Regency. The PPK had terminated the contract unilaterally on 7 December 2023. Rahman argued the termination was a state administrative decision: concrete, individual, final, and binding on the provider.

The dispute looked administrative on its face. PPK issued the decision while acting inside a government procurement process. But the court looked past the official's title and asked what kind of act this actually was. The termination came from a public official and carried legal consequences, yet the court found it didn't belong to the field of state administration. It was a contract cancellation, and contract cancellations are civil-law acts. Rahman's own arguments gave this away: he built his case on the procurement contract's clauses, not on administrative-law provisions. That

meant the *PPK* had acted as a civil-law party executing a contract, not as a public authority exercising governmental power.

The court accepted the defendant's objection to absolute jurisdiction and threw out the claim as inadmissible under Article 2(a) of the Administrative Court Law, which excludes civil-law acts from administrative jurisdiction. Rahman needed to file in the general courts instead.

The case earns its place in the literature as a boundary marker, not a template for administrative liability. A government official's involvement, even a *PPK*'s, doesn't turn a dispute administrative by itself. What decides the question is the capacity the official acted in and the legal character of the specific act under challenge. When a *PPK* exercises public authority under administrative law and the consequences land in the sphere of public administration, an administrative-law issue exists. When the *PPK* acts inside a contractual relationship and the fight is over contractual rights and duties, the dispute stays civil. The court's reasoning makes one thing clear: an official's status can't settle which liability regime applies. You have to look at what the act actually was and what law it drew its authority from.

3. Criminal Liability: Supreme Court Decision Number 243 K/Pid.Sus/2026

Supreme Court Decision Number 243 K/Pid.Sus/2026 shows a different form of liability, in the procurement of laboratory equipment for the Faculty of Medicine at Tadulako University's educational services, fiscal year 2022. Fuad Zubaidi served as Commitment-Making Officer (*PPK*). The procurement carried a budget ceiling of roughly Rp13.05 billion; CV Satria Bayu Aji bid approximately Rp12.45 billion. Prosecutors alleged irregularities in the procurement process, including a substantial gap between the procurement price and the market or catalogue value of the equipment. This gap gave the case its criminal character and separated it from an ordinary contractual dispute: the question was not whether the provider or the government failed to perform a contractual obligation, but whether the conduct in the procurement process met the statutory elements of corruption.

Investigators calculated the catalogue value of 74 items at approximately Rp5.40 billion, an alleged difference of roughly Rp7.05 billion from the procurement value. The provider also failed to deliver the equipment within the required period. The court convicted Fuad Zubaidi. The Supreme Court, in its decision of 22 January 2026, sentenced him to one year of imprisonment and a fine of Rp100 million, with four months' imprisonment substituted if the fine goes unpaid. The decision has obtained final and binding legal force (*inkracht*).

This case draws a line between contractual non-performance and criminal wrongdoing. Failing to perform a procurement contract does not, by itself, constitute a criminal offense; criminal liability requires the conduct to satisfy the elements of the applicable criminal provision, including the required form of fault and any other statutory requirements. Here, courts tied the criminal classification to conduct in the procurement process, not merely to the contract's non-performance, and adjudicated that conduct under corruption law. The case marks where procurement irregularities stop being a contract problem and become a criminal one.

4. Comparative Judicial Analysis

The three decisions demonstrate that the classification of liability in government procurement depends primarily on the nature of the legal obligation violated and the capacity in which the relevant actor acts, rather than simply on the presence of government funds or the involvement of a government official. In Jember District Court Decision Number 118/Pdt.G.S/2022/PN Jmr, the dispute was classified as contractual because the court addressed the parties' failure to perform obligations arising from the procurement agreement. In contrast, PTUN Samarinda Decision Number 13/G/2024/PTUN.SMD demonstrates that even a decision issued by a PPK may remain within the civil sphere when the decision constitutes a contractual act rather than an exercise of public administrative authority. Finally, Supreme Court Decision Number 243 K/Pid.Sus/2026 illustrates the criminal dimension where the conduct is assessed against the statutory elements of a corruption offense.

These cases therefore support a differentiated approach to legal liability in government procurement. Civil liability is primarily concerned with the performance and enforcement of contractual obligations; administrative liability concerns the exercise of public authority and compliance with administrative law; while criminal liability requires conduct that fulfills the elements of a criminal offense under applicable legislation. The classification cannot be made solely because the procurement involves public money, a government official, or an alleged financial loss. Instead, each case must be examined by identifying the underlying legal relationship, the obligation or norm allegedly violated, the capacity of the actor, the nature of the conduct, and the legal consequences prescribed by the applicable legal regime.

From this perspective, judicial reasoning plays an important role in preventing the automatic criminalization or administrative characterization of contractual disputes. The Jember and Samarinda decisions demonstrate that procurement disputes involving government entities may remain within the civil-law domain where the dispute concerns contractual performance or contractual acts. The Supreme Court decision, on the other hand, demonstrates that procurement conduct may attract criminal liability where the factual and legal elements of a criminal offense are established. The comparison therefore provides a judicial basis for drawing the legal boundaries between civil, administrative, and criminal liability in government procurement.

III. Conclusion

This study concludes that legal liability in government procurement cannot be determined solely by the involvement of public funds, government officials, or the occurrence of financial loss. The appropriate form of liability must instead be determined by examining the underlying legal relationship, the nature of the wrongdoing, the capacity in which the actor acted, and the legal threshold and consequences applicable to the conduct. Civil liability arises primarily from the failure to perform contractual obligations (*wanprestasi*) and is addressed through contractual remedies such as performance, compensation, termination, or other remedies provided by the contract and

applicable law. Administrative liability, by contrast, concerns violations of public-law obligations or the improper exercise of governmental authority and may result in administrative correction, annulment, or administrative sanctions. Criminal liability represents a distinct regime that requires fulfillment of the statutory elements of a specific criminal offense together with the requisite fault under criminal law.

The analysis of the three judicial decisions reinforces these distinctions. Jember District Court Decision Number 118/Pdt.G.S/2022/PN Jmr demonstrates the application of civil liability where the dispute principally concerns the performance of contractual obligations arising from a government procurement agreement. Samarinda Administrative Court Decision Number 13/G/2024/PTUN.SMD further illustrates the boundary between administrative and civil law by demonstrating that an act issued by a PPK does not automatically constitute an administrative act when the PPK acts within the contractual relationship. Supreme Court Decision Number 243 K/Pid.Sus/2026 illustrates the criminal dimension of procurement where the conduct is assessed against the statutory elements of a corruption offense rather than merely against the existence of a contractual breach.

Accordingly, the three forms of liability may intersect within the same procurement process or factual circumstances, but they should not be treated as interchangeable or automatically cumulative. The decisive issue is the legal character of the conduct: whether it constitutes non-performance of a contractual obligation, violation of a public-law obligation or improper exercise of authority, or conduct satisfying all statutory elements of a criminal offense. This differentiated framework provides a more systematic basis for classifying procurement irregularities and determining appropriate legal consequences. It also contributes to legal certainty by ensuring that ordinary contractual disputes are not unnecessarily transformed into administrative or criminal cases, while conduct that genuinely violates administrative or criminal law remains subject to the appropriate legal mechanisms. In this respect, distinguishing the three liability regimes is essential to achieving both accountability in the management of public funds and proportionality in the enforcement of procurement law.

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