

ADMINISTRATIVE LAW AS ONE OF THE EFFORTS TO PREVENT CORRUPTION IN THE PROCUREMENT OF GOODS AND SERVICES

¹Ratih Septi Dewi, ²Abdul Wahid, ²Kamal, ²Hatta Tampubolon

¹Master of Law Students, Faculty of Law, Tadulako University

²Faculty of Law, Tadulao University

ABSTRACT : Procurement of goods and services is one of the activities carried out in all regional apparatuses, both central and regional. Procurement of goods and services is one of the entry points for acts of gratification that have the potential to be part of criminal acts of corruption. In an effort to prevent criminal acts of corruption, efforts are needed to strengthen regulations and supervision by related agencies.

The purpose of this study is to determine the factors that influence the occurrence of criminal acts of corruption in the procurement of goods and services and their prevention based on administrative law. The research method used is the normative legal research method, to determine legal regulations, legal principles and legal doctrines.

The results of the study indicate that there are several factors that influence corruption in the procurement of goods and services, including: 1) Political factors or those related to power, where absolute power causes absolute corruption; 2) Legal factors or those related to law, which are caused by weak sanctions for corruption; 3) Cultural factors, where corruption is a legacy of feudal culture which then causes a clash of loyalty, namely between obligations to family and obligations to the state.

Conclusion: Strengthening administrative law is one of the efforts to prevent corruption that may occur in procurement of goods and services activities in addition to the implementation of criminal law. With the existence of administrative law, the process of supervision of perpetrators of procurement of goods and services becomes more effective and efficient.

KEYWORDS : *Procurement of goods and services, corruption, administrative law*

I. INTRODUCTION

Law is a set of norms or rules that function to regulate human behavior with the aim of peace and tranquility in society. Laws are made to be implemented, therefore it is not surprising if people say that law can no longer be called law when it is no longer implemented. An act that is stated by criminal law as an act that is prohibited and is threatened with punishment for anyone who violates the prohibition is called a criminal act¹. Criminal acts according to their form or nature are contrary to the order or order desired by law, namely acts that are against (violate) the law². One of the acts against (violate) the law is corruption as one of the factors inhibiting the rate of development of the national development of the Indonesian nation which is very terrible is corruption³. The problem of corruption in Indonesia as stated by Evi Hartanti, that it has become a structural problem (inherent in the government system), a cultural problem (collective customs that have been accepted as habits in society), and a personal problem in the form of a corrupt mentality that is integrated into the personality of people and the Indonesian nation in general⁴.

METHOD

The research method used is the normative legal research method, to determine legal regulations, legal principles and legal doctrines. This research also uses the approach of positive legal rules and their principles (statue approach), namely conducting a review of all laws and regulations related to the problem/issue faced⁵.

II. RESULTS AND DISCUSSION

Corruption Crime

The term corruption comes from one word in Latin, namely *corruptio* or *corruptus*, which literally means rottenness, depravity, dishonest, bribeable, immoral, deviation from holiness, insulting or slanderous words. From Latin, it was copied into English as corruption or corrupt, and in Dutch as *corruptie*.

The definition of corruption is an activity carried out to enrich oneself or a group, where the activity violates the law because it has harmed the nation and state. The factors that cause corruption in Indonesia are^{6,7} :

1. Political factors or those related to power : This is in accordance with the formulation of misuse of state funds popularized by E. Jhon E. Merich Edward Dalberg Acton who stated that, "power tends to corrupt, but absolute power corrupts absolutely" or "power tends to corrupt, and absolute power causes absolute corruption."
2. Juridical factors or those related to law : Weak punishment sanctions will concern the wording of articles and verses of laws and regulations on corruption crimes.
3. Cultural factors : Corruption is a legacy of feudal culture which then causes a clash of loyalty, namely between obligations to family and obligations to the state.

In Indonesia, regulations related to Corruption Crimes are regulated through Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The elements of corruption crimes, based on applicable laws are as follows⁸ :

1. Actions of a person or legal entity against the law;
2. The action abuses authority;
3. With the intention of enriching oneself or others;
4. The action is detrimental to the state or the state economy or is reasonably suspected of harming state finances;
5. Giving or promising something to a civil servant or state administrator with the intention that the civil servant or state administrator does or does not do something in his position that is contrary to his obligations;
6. Giving something to a civil servant or state administrator because of or related to something that is contrary to the obligations carried out or not carried out in his position;
7. Giving or promising something to a judge with the intention of influencing the decision of a case submitted to him for trial;
8. Giving or promising something to a person who according to the provisions of the laws and regulations is determined to be an advocate to attend a court hearing with the intention of influencing the advice or opinion that will be given with a case submitted to the court for trial;
9. There is an act of fraud or intentionally allowing such fraud to occur;
10. Civil servants or other persons other than civil servants who are assigned to carry out a public office continuously or temporarily by embezzling money or securities that are kept because of their position, or allowing such money or securities to be taken or embezzled by others or helping to carry out such acts;
11. Civil servants or state administrators who receive gifts or promises even though it is known or reasonably suspected that the gift or promise was given because of the power or authority related to their position or according to the mind of the person giving the gift or promise is related to their position.

Corruption in Procurement of Goods and Services

Procurement of goods/services is essentially an effort by the user to obtain or realize the goods/services needed, using certain methods and processes in order to reach an agreement on specifications, prices, time and other agreements. Meanwhile, according to Article 1 of Presidential Regulation 16 of 2018, procurement of goods/services is an activity to obtain goods/services by Ministries/Institutions/Regional Work Units/other Institutions whose process starts from planning needs until all activities to obtain goods/services are completed⁹. The procurement of goods/services is funded by the APBN/APBD, either carried out independently or by providers of goods and services.

The legal character of procurement of goods and services is mixed law which includes administrative law, civil law and criminal law. In the procurement of goods and services process, there are 4 stages, namely^{10,11} :

1. Procurement preparation stage, which includes; formation of a committee, determination of a procurement system, preparation of a procurement schedule, preparation of an estimated price (HPS), and preparation of procurement documents;
2. Process stage, including; selection of goods and services providers, determination of goods and services providers;
3. Contract preparation stage; and
4. Contract implementation stage.

The legal aspects that work in the first and second stages are administrative law, while in the second and third stages are civil law aspects. The criminal law aspect applies to all stages of the goods and services procurement process. The legal aspect of corruption can be applied if at each stage elements of unlawful acts, abuse of authority, bribery, gratification can be found in the goods and services procurement process.

Prevention of Corruption Based on Administrative Law

Various patterns of deviation that can be found in the procurement of goods and services can be prevented by using administrative law, by tightening the supervision process. Supervision (controlling) is a process to ensure

that all procurement activities of goods and services carried out are in accordance with the provisions of the procurement of goods and services of BLUD. In administrative law, there are 4 types of supervision, namely¹² :

1. Internal and External Supervision : Internal supervision is supervision carried out by people or bodies within the relevant organizational unit. This type of supervision can be carried out by means of direct superior supervision or built-in control, or supervision carried out routinely by the Inspectorate. External supervision is supervision carried out by a supervisory unit outside the supervised organizational unit. In this case, the RSUD which carries out the BLUD process, the supervision process can be carried out either by the Audit Board of Indonesia (BPK) or an accredited private auditor.
2. Preventive and Repressive Supervision : Preventive supervision is supervision carried out on an activity before the activity is carried out, so that it can prevent misappropriation. This supervision is carried out by the Government with the intention of avoiding any deviation in the implementation of state finances that will burden and harm the state more. This supervision is also carried out so that the budget implementation system can run as desired. Preventive supervision is more useful and meaningful if carried out by direct superiors, so that early detection of the possibility of misappropriation can be carried out.

Repressive supervision is supervision carried out on an activity after the activity has been carried out. This supervision is usually carried out at the end of the budget year¹³ :

1. Active and passive supervision : Active supervision is carried out as a form of supervision carried out at the location of the activity concerned. While passive supervision is supervision carried out through research and testing of accountability letters accompanied by evidence of receipts and expenditures;
2. Supervision based on formal truth (*rechtmatigheid*) and supervision based on material truth (*doelmatigheid*)
Supervision based on formal truth (*rechtmatigheid*) is supervision carried out on each expenditure whether it is in accordance with applicable regulations, and its truth is supported by existing evidence. While supervision based on material truth (*doelmatigheid*) is supervision of each expenditure whether it is in accordance with the purpose of the budget and has met the economic principle, namely that the expenditure is necessary and the cost burden is as low as possible.

III. CONCLUSION AND SUGGESTIONS

Conclusion

Strengthening administrative law is one of the efforts to prevent corruption that may occur in the procurement of goods and services in addition to the implementation of criminal law. With the existence of administrative law, the process of supervision of the perpetrators of procurement of goods and services becomes more effective and efficient.

Suggestions

The government, both central and regional, needs to create clear strengthening/regulations for the procurement of goods and services. In addition, regional apparatuses tasked with carrying out supervision must also carry out their duties effectively and efficiently to prevent potential corruption from occurring.

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