



Prosecutorial Perspectives on Criminal Acts in Government Procurement

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Abstract

This study examines prosecutors' perceptions of criminal acts in government procurement, highlighting the initial steps in the law enforcement process. The focus is on the accuracy with which prosecutors perceive the process and complexity of criminal cases involving the procurement of goods and services. This article provides a descriptive analysis of the challenges faced by prosecutors in handling government procurement crimes, highlighting the importance of their role and the factors that influence effective law enforcement. Using an empirical research method, the study identifies five factors contributing to criminal acts in government procurement: issues within the procurement process, malicious conspiracies, limited human resources, budget problems, and legal decisions made by the Court. These factors can be categorized into two main obstacles to law enforcement: individual factors and structural factors.

Keywords: Prosecutor, Criminal Law, Government Procurement, Procurement Fraud

1. Introduction

The role of prosecutors in handling criminal acts related to the procurement of goods and services is crucial in maintaining the integrity and efficiency of government operations.¹ This article explores the perceptions of prosecutors regarding these crimes and the various factors that hinder effective law enforcement. The complexity of corruption, often classified as a white-collar crime, and the structural and individual factors that influence legal processes are discussed in detail.²

Regulations for the procurement of goods and services are outlined in Presidential Regulation of the Republic of Indonesia Number 4 of 2015, which amends Presidential Regulation Number 54 of 2010 on the Procurement of Government Goods and/or Services. These regulations reflect the Government's commitment to accelerating equitable development across all regions.

The vital function of government procurement requires all parties involved to adhere strictly to the applicable legal rules. However, corrupt behavior often impedes the objectives of government procurement. Corruption, characterized as an extraordinary

¹ Lukito, Anastasia Suhartati. "Building anti-corruption compliance through national integrity system in Indonesia: A way to fight against corruption." *Journal of financial crime* 23, no. 4 (2016): 932-947.

² Fijnaut, Cyrille, and Leo Huberts. "Corruption, integrity and law enforcement." In *Corruption, integrity and law enforcement*, pp. 3-34. Brill Nijhoff, 2000.

crime, demands extraordinary eradication efforts. Maximizing efforts to eliminate actions detrimental to state finances, including enhancing the enforcement of existing laws and regulations, is crucial.

Corruption, collusion, and nepotism adversely impact national development. The global evolution of crime has become more sophisticated, affecting various sectors, including political, economic, and socio-cultural fields.³ Despite this, legal tools to prevent and eradicate crime are inadequate and lagging, allowing various types of crimes by individuals, groups, or corporations to occur easily, generating substantial illicit wealth.

Corrupt behavior is highly destructive, deviating from the provisions stipulated in the Code of Criminal Procedure. Hence, the role of the prosecutor's office in law enforcement is vital. Prosecutors with integrity are crucial for directing law enforcement and providing legal protection. Adequate legal protection is necessary to suppress crime and mitigate its negative impact on society. Legal protection ensures the safeguarding of human rights when they are violated, allowing the community to enjoy all rights granted by law.

The Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power in prosecution and other authorities under the law. As the controller of the case process (*dominus litis*), the Prosecutor's Office holds a central position in law enforcement, determining whether a case proceeds to court based on valid evidence according to the Criminal Procedure Law. Criminal procedural law is essential for seeking material truth in court trials, delivering verdicts by judges, and implementing decisions by prosecutors.

This study focuses on revealing prosecutors' perceptions of procurement criminal cases and government procurement.⁴ The general issue lies in the disparity between prosecutors' perceptions and the actual process of handling government procurement cases. Prosecutors face numerous factors that hinder their enforcement efforts. The objective of this research is to understand prosecutors' perceptions in handling law enforcement and the factors affecting the role of the Prosecutor's Office in eradicating crimes in the procurement of goods and services.

2. Method

This research employs a juris-empirical research approach by examining pertinent legal regulatory literature and incorporating field observations. The research specifically analyzes the perceptions of prosecutors at the Gowa State Attorney's Office, South Sulawesi, Indonesia in handling cases related to the procurement of government goods and services. Informants for this research were selected using the purposive sampling

³ Yustiarini, Dewi, and Biemo W. Soemardi. "A review of corruption in public procurement in Indonesia." In *IOP Conference Series: Materials Science and Engineering*, vol. 849, no. 1, p. 012013. IOP Publishing, 2020.

⁴ Isra, Saldi, Feri Amsari, and Hilaire Tegnan. "Obstruction of justice in the effort to eradicate corruption in Indonesia." *International Journal of Law, Crime and Justice* 51 (2017): 72-83.

method, targeting prosecutors who frequently handle government procurement cases. The data analysis employs a qualitative empirical approach.

3. Result and Discussion

3.1. Prosecutors' Perceptions and Challenges in Combating Procurement Crimes: Understanding Prosecutors' Perceptions

Prosecutors are deeply aware of the complexities involved in criminal acts related to government procurement. Their perceptions are shaped by their attention to and interpretation of the various factors influencing these crimes. Prosecutors must navigate a landscape where unlawful intentions and actions, often hidden behind legal loopholes, complicate the prosecution process.⁵ This understanding is crucial for ensuring the quality and effectiveness of legal proceedings.

Corruption in government procurement is a significant challenge. Classified as a white-collar crime, it is typically carried out in secret, making it difficult to dismantle. The investigation and prosecution of these crimes require specialized skills and intelligence, particularly at the inquiry stages.⁶ The typology of corruption involves intricate schemes that are not easily uncovered, demanding extraordinary efforts from law enforcement agencies.

Law enforcement in Indonesia faces a dual perception challenge: it is often seen as stringent on minor offenders but lenient on major criminals involved in corruption, collusion, and nepotism. This perception undermines public trust in the legal system. There is a pressing need to balance preventive measures with repressive actions to ensure consistent prosecution and public education on legal norms. Law enforcement must aim to re-establish ideal legal norms that guide citizens' interactions within the legal framework.

The primary objective of law enforcement is to uphold justice, certainty, and benefit within the community. This involves both preventive measures, such as public education on legal norms, and repressive actions, ensuring that violators are consistently prosecuted. Effective law enforcement harmonizes the relationship between legal rules and the actions of individuals, creating a stable and just society.⁷

Law enforcement in government procurement crimes is influenced by both individual and structural factors:

- a. Individual Factors: These involve the unlawful intentions and actions of individuals, including malicious consensus and the exploitation of legal

⁵ Susilo, Susilo, Muhamad Adji Rahardian Utama, and Anita Carolina Rajagukguk. "Legal Assistance of Government Law Office in the Procurement of Goods and Services." *The Indonesian Journal of International Clinical Legal Education* 3, no. 3 (2021): 339-352.

⁶ Susanto. "E-court as the prevention efforts against the Indonesia judicial corruption." *Yustisia* 9, no. 1 (2020): 116-138.

⁷ Maturbongs, Petrus Paulus, Andi Muh Sofyan, Achmad Ruslan, and Syamsuddin Muchtar. "Responsive Legal Construction to Eradicate Corruption in the Procurement of Government Goods and Services." *JL Pol'y & Globalization* 73 (2018): 109.

loopholes. Prosecutors often encounter strategies designed to manipulate budgets and outsmart the system, complicating the prosecution process.

- b. Structural Factors: These pertain to issues within the legal system itself, such as human resource limitations, budget constraints, and legal problems within judicial institutions. These structural challenges significantly impact the effectiveness of law enforcement.

The prosecutor's office plays a vital role in combating procurement crimes. The effectiveness of this institution depends on the personal integrity and capabilities of prosecutors. Prosecutors must possess the ability to prove cases effectively and overcome structural challenges within the legal system. Their role is not only to prosecute but also to ensure that legal processes are transparent, fair, and efficient.

The nomenclature for "prosecutor" in modern times depends on the jurisdiction of the prosecution concerned. In many countries, "prosecutor" literally means "lawyer." However, a prosecutor is defined as a public official with the authority to prosecute. According to etymology, the word "prosecution" comes from the Latin "*prosecutus*," consisting of "pro" (before) and "sequi" (following), which can be understood as "the process of a case from beginning to end." Thus, a prosecutor is someone who is given the power to prosecute.

The Prosecutor's Office is the only state institution authorized to delegate criminal cases, prosecute perpetrators of criminal acts in court, and carry out the determination and decision of criminal judges. This authority is a characteristic that distinguishes the prosecutor's office from other law enforcement agencies. In general crimes, the Prosecutor acts as a public prosecutor, while in special crimes, the Prosecutor also serves as an investigator.⁸ As an investigator, special skills and expertise are needed to find and collect evidence so that the suspect can be prosecuted. The investigation is the beginning of handling every criminal act, especially corruption.

The authority of the prosecutor as an investigator existed during the time of the *Herzien Inlandsch Reglement* (HIR), applied in Indonesia as a criminal procedural law. Investigation was considered part of the prosecution, making the public prosecutor the coordinator of the investigation, and even allowing the prosecutor to conduct the investigation themselves. After the repeal of HIR and its replacement by Law Number 8 of 1981 concerning the Code of Criminal Procedure (KUHAP), the prosecutor's authority as an investigator still exists, although Article 6 of the KUHAP defines the investigator as the state police of the Republic of Indonesia.

Law enforcement is an essential element in the case of criminal acts of procurement of government goods and services. It is a process to describe abstract values, ideas, and ideals that are the goals of the law. Law enforcement involves harmonizing the relationship of values described in solid rules and actions to create, maintain, and ensure peace in society. The five factors affecting law enforcement include: legal or statutory

⁸ Maharani, I Gusti Ayu Stefani Ratna. "Expert Information as an Evidence of Criminal Act of Corruption in Goods and Services Procurement." *Udayana Master Law Journal* 7, no. 3 (2018): 295-304.

factors; law enforcement factors; means or facilities factors; community factors; and cultural factors.

Usually, the latter activity is also commonly referred to as law enforcement activities in the narrow sense (law enforcement) which in the criminal field involves the role of the police, prosecutors, advocates, and judiciary or in the civil field involves the role of advocates (lawyers) and the judiciary".⁹ However, various challenges of law enforcement, criminal acts of procurement of goods and services have always been obstacles to the effectiveness of law enforcement.

In the context of law enforcement In Indonesia there are several factors hindering law enforcement. First of all, Law or Regulation. An absolute thing must be done, namely synchronization and harmonization of regulations related to law enforcement so that there are no regulatory inconsistencies which will later cause confusion in their application. Based on the search conducted by the author, the current condition is that there are many laws and regulations. The abundance of legal regulations certainly has an effect on the quality of legal regulation.¹⁰ Such a large number of legal regulations can result in mutual inconsistencies between the rules of law that one and the other, are disharmonious, overlapping, and very much highlight each other's sectoral egos.

For this reason, if the laws and regulations are good, but the law enforcement's mentality is not good, there will be interference with the law enforcement system. The mentality of officers plays a very important role because based on the cases that occur, deviations are mostly due to the bad / low mentality of the officers. In the matter of officer mentality, integrity becomes a determining factor in the implementation of law enforcement. The black or white of law enforcement depends heavily on the integrity of the officers or law enforcement.

For now, the judges have obtained decent facilities compared to before. The state needs to make efforts so that other law enforcement officials are also given good facilities. If the state has provided good facilities but there is still misappropriation, it needs to be given severe sanctions. The reward and punishment system must be applied consistently.¹¹ First and foremost is legal awareness, legal compliance and the behavior of citizens. It's useless if the 3 elements above are in good condition but not balanced with legal awareness, legal compliance and community behavior. In the extreme it can even be said, the three things above become meaningless if Indonesian citizens behave well, awareness and legal compliance are very high.

The perception of prosecutors in describing various criminal acts of government procurement cases. Both in cases that have been handled or their perceptions in other cases. The perception of informants shows that they still have the determination to

⁹ Sumanto, Dedi. "Penegakan hukum dan pembangunan hukum di Indonesia." *Al-Mizan Journal* 10, no. 1 (2014): 121-139.

¹⁰ Nurmandi, Achmad, and Sunhyuk Kim. "Making e-procurement work in a decentralized procurement system: A comparison of three Indonesian cities." *International Journal of Public Sector Management* 28, no. 3 (2015): 198-220.

¹¹ Anas, Ricky, Riswadi Riswadi, and Zudan Fakrulloh. "The Attorney's Role in Saving State Assets as Prevention of Corruption Crimes." In *Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2023, 6 May 2023, Salatiga, Central Java, Indonesia*. 2023.

enforce the law to which they are obliged. Prosecutors who became informants presented various analyses containing their criticism of factors that hinder law enforcement in the criminal act of procurement of government goods and services.

The perceptions of the prosecutors show their deep understanding based on their attention to and interpretation of the crime situation. Human perception is a fundamental trait that allows individuals to interpret their environment and act accordingly. The factors influencing a person's perception can be described as follows:

- a. **Attention Factors:** Attention is a mental process where a stimulus or series of stimuli becomes prominent in consciousness while other stimuli fade. It occurs when we focus on one of our sensory inputs and ignore others. External factors attracting attention include movement, intensity of stimuli, novelty, and repetition.
- b. **Personal Factors:** These are derived from needs, past experiences, and other personal characteristics. They determine perception not by the type or form of stimulus, but by the traits of the person responding to that stimulus.
- c. **Situational Factors:** These stem from the nature of the physical stimulus and its neural effects on the individual's nervous system. According to gestalt theory, perception is structural, meaning humans perceive something as a whole.

In handling criminal acts in the procurement of goods and services, prosecutors are influenced by the three factors above. Perception is largely determined by one's intentions. Fishbein and Ajzen suggest that attitudes toward behavior are influenced by salient beliefs or the strongest beliefs connecting behavior to positive or negative outcomes. Generally, individuals are motivated to act in ways they believe will yield positive results, and avoid behaviors believed to have negative outcomes. These beliefs, known as behavioral beliefs, drive individuals to act.¹²

All the elements mentioned above contain the five barrier factors perceived by prosecutors who were informants in this study. The informants also understood that cases of government procurement of goods and services were not ordinary crimes. Criminal acts, especially corruption, are very complex to dismantle and are classified as white-collar crimes.¹³ The typology of corruption, often carried out in secret, along with various obstacles in the law enforcement process, requires the role of intelligence, particularly at the investigation and inquiry stages. "White-collar crime" poses a significant challenge to law enforcement in Indonesia. Law enforcement is often perceived as strict on minor offenders but lenient on major criminals involved in corruption, collusion, and nepotism.

Law enforcement aims to re-establish ideal legal norms that guide citizens in their interactions. It is a process to uphold justice, certainty, and benefit in the community. Law enforcement includes both repressive and preventive measures. Preventive efforts

¹² Mustafa, Mochamad. "The Political Economy of Public Procurement Reform and Democratic Decentralisation in Indonesia." *Indonesian Journal of Political Studies* 1, no. 1 (2021): 1-21.

¹³ Saragih, Erwin Priyadi Hamonangan, M. Syukri Akub, Hamzah Halim, and Amir Ilyas. "Efforts of The Prosecutor as State Attorney to Recovery Recovery of State Losses Through Replacement Money." *Revista de Gestão Social e Ambiental* 18, no. 6 (2024): 567-78.

involve educating the public about legal norms, while repressive actions ensure consistent prosecution of law violators. The analysis of informants' statements shows they are well aware of the complexities of dismantling criminal acts in government procurement.¹⁴ Their adequate understanding is crucial for determining the quality of a prosecutor. However, they face challenges in implementing their knowledge effectively.

From a legal perspective, the complexity of law enforcement is directly related to the ability to present evidence and advise judges on sentencing white-collar criminals. The main problem with law enforcement is applying abstract legal rules to concrete actions. Law enforcement officials such as police, prosecutors, judges, and correctional officers are directly involved in this process. The role of the prosecutor's office in eradicating procurement crimes depends on the personal integrity and capability of prosecutors, their proficiency in proving cases, and their ability to overcome structural challenges.

4. Conclusion

The prosecution of government procurement crimes is a complex and multifaceted challenge. Prosecutors must navigate a landscape fraught with individual and structural obstacles. Their perceptions and understanding of these challenges are crucial for effective law enforcement. By addressing both individual and structural factors, and balancing preventive and repressive measures, the prosecutor's office can significantly contribute to the eradication of corruption and the establishment of a just legal system. The effectiveness of prosecutors in handling government procurement crimes is critically influenced by their deep understanding of the complex nature of corruption, the challenges posed by individual and structural factors, and their ability to balance preventive and repressive measures, which collectively are essential for maintaining the integrity of legal processes and ensuring justice within the community.

References

Anas, Ricky, Riswadi Riswadi, and Zudan Fakrulloh. "The Attorney's Role in Saving State Assets as Prevention of Corruption Crimes." In *Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2023, 6 May 2023, Salatiga, Central Java, Indonesia*. 2023.

Fijnaut, Cyrille, and Leo Huberts. "Corruption, integrity and law enforcement." In *Corruption, integrity and law enforcement*, pp. 3-34. Brill Nijhoff, 2000.

Isra, Saldi, Feri Amsari, and Hilaire Tegnan. "Obstruction of justice in the effort to eradicate corruption in Indonesia." *International Journal of Law, Crime and Justice* 51 (2017): 72-83.

Juwita, Ratna. "Understanding the Typology of Health Sector Corruption in Indonesia." *Indonesia Law Review* 13, no. 2 (2023): 89-122.

¹⁴ Juwita, Ratna. "Understanding the Typology of Health Sector Corruption in Indonesia." *Indonesia Law Review* 13, no. 2 (2023): 89-122.

Lukito, Anastasia Suhartati. "Building anti-corruption compliance through national integrity system in Indonesia: A way to fight against corruption." *Journal of financial crime* 23, no. 4 (2016): 932-947.

Maharani, I Gusti Ayu Stefani Ratna. "Expert Information as an Evidence of Criminal Act of Corruption in Goods and Services Procurement." *Udayana Master Law Journal* 7, no. 3 (2018): 295-304.

Maturbongs, Petrus Paulus, Andi Muh Sofyan, Achmad Ruslan, and Syamsuddin Muchtar. "Responsive Legal Construction to Eradicate Corruption in the Procurement of Government Goods and Services." *JL Pol'y & Globalization* 73 (2018): 109.

Mustafa, Mochamad. "The Political Economy of Public Procurement Reform and Democratic Decentralisation in Indonesia." *Indonesian Journal of Political Studies* 1, no. 1 (2021): 1-21.

Nurmandi, Achmad, and Sunhyuk Kim. "Making e-procurement work in a decentralized procurement system: A comparison of three Indonesian cities." *International Journal of Public Sector Management* 28, no. 3 (2015): 198-220.

Rohim. *Modus Operandi Tindak Pidana Korupsi*. Depok: Pena Mukti Media, 2008.

Saragih, Erwin Priyadi Hamongan, M. Syukri Akub, Hamzah Halim, and Amir Ilyas. "Efforts of The Prosecutor as State Attorney to Recovery Recovery of State Losses Through Replacement Money." *Revista de Gestão Social e Ambiental* 18, no. 6 (2024): 567-78.

Sumanto, Dedi. "Penegakan hukum dan pembangunan hukum di Indonesia." *Al-Mizan Journal* 10, no. 1 (2014): 121-139.

Susanto. "E-court as the prevention efforts against the Indonesia judicial corruption." *Yustisia* 9, no. 1 (2020): 116-138.

Susilo, Muhamad Adji Rahardian Utama, and Anita Carolina Rajagukguk. "Legal Assistance of Government Law Office in the Procurement of Goods and Services." *The Indonesian Journal of International Clinical Legal Education* 3, no. 3 (2021): 339-352.

Yustiarini, Dewi, and Biemo W. Soemardi. "A review of corruption in public procurement in Indonesia." In *IOP Conference Series: Materials Science and Engineering*, vol. 849, no. 1, p. 012013. IOP Publishing, 2020.