CRIMINAL LEGAL INSTRUMENTS IN THE PROCUREMENT OF GOODS/SERVICES REGARDING ACCOUNTABILITY FOR CRIMINAL ACTS OF CORRUPTION

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ABSTRACT

The aim of the research is to examine how the legal system handles perpetrators of corruption in the process of procuring goods/services and to examine the sanctions they receive. The legal materials collected include laws, regulations, and court decisions. Analysis is carried out by listing, organizing and analyzing each relevant provision. The results show that even though the legal framework already exists, its implementation may still be a challenge: 1) Regulation of criminal liability for perpetrators of criminal acts of corruption in procurement of goods and services in statutory regulations is regulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 1999 concerning the Eradication of Corruption Crimes, as formulated in Article 2 and Article 3, Article 6, 11, 12 letters a, b, c, d and Article 13, Article 8 and Article 10, Article 12 letters e, f, g, Article 7 and Article 12 letter h, Article 12 letter j, and Article 12 B and Article 12 C. Meanwhile, the accountability of perpetrators of criminal acts of corruption is regulated in Presidential Regulation Number 12 of 20021 concerning Amendments to Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, however In its implementation, law enforcers only assess criminal acts of corruption from the elements of articles on criminal acts of corruption. 2) Mistakes and Criminal Sanctions for Perpetrators of the Crime of Corruption in Procurement of Goods and Services as a Basis for Criminal Accountability, apart from considering the elements of the article on the criminal act of corruption charged by the Public Prosecutor and the facts in the trial, the Panel of Judges also considers the reasons for justification and forgiveness, especially Article 51 paragraph (1) and Article 44 of the Criminal Code.

Keywords: *Criminal Law Instruments, Criminal Liability, Procurement of Goods and Services*.

INTRODUCTION

Procurement of goods and services by the government, as explained in Article 1 point 1 of Presidential Regulation Number 12 of 2021, includes procurement activities carried out by Ministries, Institutions and Regional Apparatus funded by the State Revenue and Expenditure Budget (APBN) or Revenue and Expenditure Budget Regional (APBD). The process starts from identifying needs to delivering work results. To ensure that the government goods/services procurement process runs well, the government has established Presidential Regulation Number 157 of 2014 concerning the Government Goods/Services Procurement Policy Institute (LKPP) (Samuel et al, 2022).

In recent decades, corruption has become a serious threat to Indonesia's economic development, with increasingly detrimental impacts. The government has begun to consider the financial losses caused by these corrupt practices (Syamsuddin, 2020; Simangungsong & Siregar, 2021). Corruption is a common and very important issue to be considered in public policy analysis and by the government (Ridwan et al., 2020; Kurniawan & Pujiyono, 2018). Even though it has been regulated through various regulations, government procurement of goods/services activities still often give rise to various problems which result in financial losses for the state. According to Suparman (2017), facts on the ground show the following:

1. Every year, around 35% of the State Revenue and Expenditure Budget (APBN) allocated for goods and capital expenditure experiences a leak of around 30%, or the equivalent of IDR 270 trillion.

2. In 2011, there were 7,967 cases related to procurement, which resulted in state losses reaching Rp. 6.99 trillion. The main causes of these losses are waste, inefficiency and ineffectiveness in the process of procuring government goods and services.
3. In 2016, 448 defendants were found guilty by the Corruption Crime Court (Tipikor).
4. Based on data from the Indonesian Corruption Watch (ICW) between 2016 and 2019, an average of 40% of corruption cases occurred in the procurement of goods/services. In fact, in 2019, the number of corruption cases that occurred in the procurement of goods/services reached 64%.
5. By the end of 2022, the Corruption Eradication Commission (KPK) had handled 867 cases using the bribery mode and 274 cases using the goods/services procurement mode. These two types of cases account for around 87% of the total cases handled by the Corruption Eradication Commission.
6. According to the Corruption Eradication Commission (KPK), during 2023, 85 cases of criminal acts of corruption involving bribery or gratification have been handled, followed by 62 cases of corruption in the procurement of goods/services.

Based on the facts presented, it can be concluded that the implementation of government procurement of goods/services is very vulnerable to various types of legal violations, ranging from non-fulfillment of contracts (defaults), collusion in the tender process, abuse of authority, to criminal acts of corruption. This shows the need for serious efforts to increase transparency, accountability and supervision in the process of procuring government goods/services to prevent legal violations and abuse of power (Susanti & Murniati, 2018). Opportunities for corruption to occur in the process of procuring goods/services can be seen at the stages of implementation, such as at the planning stage which may not be accurate or feasible, setting price ceilings that are too high, and procurement planning that is fictitious (Chalid, 2023). Based on research conducted by various institutions and experts, such as Indonesia Procurement Watch (IPW), the factors causing corruption in government procurement of goods/services can be identified as follows: (1) weak legal and institutional framework, (2) capacity of goods/procurement managers low government services, and (3) low levels of compliance with regulations, supervision and law enforcement (Amiruddin, 2012). As is the case that has occurred based on:

"Case Decision Number: 29/Pid.Sus-TPK/2021/PN.Jkt.Pst, there has been an act of corruption committed by the provider of goods/services with Juliari P Batubara, hereinafter referred to as JPB as Budget User (PA) and also as Minister Social. As demanded by the Public Prosecutor that the defendant JPB is guilty of committing a criminal act of corruption as regulated and punishable by crime in Article 12 letter b in conjunction with Article 18 of the Law on the Eradication of Corruption Crimes in conjunction with Article 55 paragraph (1) 1 of the Criminal Code in conjunction with Article 64 paragraph (1) Criminal Code. "The decision also stated that JPB had received a prize of around Rp. 32,482,000,000.00 (thirty-two billion four hundred and eighty-two million rupiah) from the service provider."

Based on the principles mentioned above, misuse of state finances in the procurement of goods/services should be prevented. Misuse of state finances is an act that is contrary to the law, as regulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. This law states that any action that violates the law and results in gaining profits for oneself, another person, or a legal entity, as well as causing harm to state finances, is an act of corruption that must be followed up legally. Therefore, by implementing these principles, it is hoped that it can reduce or prevent the practice of misuse of state finances in the procurement of government

goods/services.

Law Number 20 of 2001, in its explanation of the article, emphasizes that corruption in Indonesia occurs systematically and evenly, which not only harms state finances but also harms the social and economic rights of society at large. Therefore, supervisory institutions, such as the Police, Prosecutor's Office and Corruption Eradication Commission (KPK), must work synergistically and share information to build a law enforcement system that is neutral and free from power intervention.

Corruption crimes are part of criminal law policy, which aims to ensure that perpetrators of these criminal acts can be stopped, tried and given appropriate punishment. This aims to ensure that the law is enforced fairly and effectively, as well as sending a signal that corrupt behavior will not be tolerated in society. Thus, criminal law policy plays a role in creating a conducive environment for preventing and prosecuting criminal acts of corruption (Malau, 2022). The function of criminal law can then be carried out through three phases, namely the formulation stage, implementation stage and implementation stage (Malau, 2019). A high level of corruption will certainly hinder the achievement of the Indonesian nation's aspirations in national development (Astafurova et al, 2020; Fedrick et al, 2019).

In order to be categorized as an unlawful act in the implementation of procurement of government goods/services, three elements of an unlawful act must be fulfilled, namely: (1) there is an act that is contrary to the law, (2) there is an error on the part of the perpetrator, and (3) there is a loss as a result. the consequences of these actions (Tuanakotta, 2009). Dogmatically, in criminal law, the existence of an element of error is a prerequisite for prosecuting perpetrators of criminal acts.

In line with Sauer's opinion, there are three triads (understandings) in criminal law, namely: (1) unlawfulness, (2) fault (schuld), (3) crime (strafe). Furthermore, Ruslan Saleh emphasized that the accountability system in criminal law has no benefits if there is no basis that the act committed is unlawful. Therefore, the main priority is to ensure that the act is a criminal act, and all elements of wrongdoing must be related to the criminal act. Thus, to determine the error that resulted in the perpetrator being convicted, it must first be proven that the act violated the law (Muladi & Priyatno, 1991): (1) committing a criminal act, (2) capable of being responsible, (3) with intent or negligence, (4) the absence of a forgiving reason. From this explanation, if the four elements mentioned are fulfilled, then the person involved or the perpetrator of a criminal act can be considered to have criminal responsibility, so that he can be punished. However, a person can only be held criminally responsible if it is proven that he committed a criminal act with fault inherent in his actions.

Legal accountability for errors arising from the process of procuring goods/services can be implemented by legal institutions to create an effective deterrent effect, namely creating fear of criminal sanctions, especially loss of freedom, in order to protect society. The law should create justice that provides peace for society as a whole. However, it often happens that the law only causes suffering to society. This is because the law is not always the basis for moral agreement and behavior in society as a whole. In fact, the law often creates injustice between society and the authorities.

RESEARCH METHODS

The approach method used in this study is a normative juridical approach, which is a scientific research procedure to search for the truth based on the logic of legal science from a normative perspective. In this approach, law is seen as a system that stands alone and is separated from various other systems in society, thus establishing boundaries between the

legal system and other systems (Ibrahim, 2007). This research aims to carry out a juridical analysis of criminal law instruments related to the implementation of procurement of goods/services, especially in the context of accountability for criminal acts of corruption arising from these activities, by referring to Presidential Regulation Number 12 of 2021 concerning Amendments to Regulation Number 16 of 2018 regarding Procurement of Goods/Services. To deepen the analysis and discussion related to the problems studied, this research will also use several other relevant laws and regulations.

RESULTS AND DISCUSSION

A. Formulation of Corruption Crimes in Procurement of Goods/Services in Criminal Law Regulatory Instruments

In efforts to eradicate corruption in the procurement of goods/services, the importance is not only of the number of laws or regulations that regulate it, but also the quality of existing laws and regulations in this field. Potential criminal acts of corruption in the procurement of goods/services include various things, such as giving bribes, forgery, extortion, abuse of position or authority, conflicts of interest, and favoritism (Susriyanto, 2022).

In the context of procurement of goods/services, aspects of criminal law are applied when criminal violations are committed by the parties involved, whether they are users or providers of goods/services. This principle is in line with the concept"No punishment without guilt" (there is no punishment without fault), which emphasizes that punishment can only be given if it is proven that there was a mistake committed by the perpetrator.

Juridically, criminal acts of corruption can be seen in Article 2, Article 3, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, and Article 16 in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12 of Law Number 20 of 2001, among others as follows:

1. Any individual who carries out actions that are contrary to the law with the intention of enriching himself, another person, or a corporation, which has the potential to harm state finances or the state economy;
2. Any individual who, with the intention of benefiting himself, another person, or a corporation, abuses the authority, opportunities, or facilities he has because of the position or position he holds, which has the potential to harm state finances or the state economy;
3. Corrupt actions that were previously considered normal and ordinary can be considered criminal acts of corruption. An example is giving gratuities to state officials and those related to their positions. If it is not reported to the Corruption Eradication Commission, this could be considered a form of corruption. Recognizing the forms or types of actions that can be categorized as corruption is the first step to preventing someone from committing corruption.

Regulations regarding criminal acts of corruption in the procurement of goods/services have been regulated in articles in the Criminal Code, namely: bribery, fraudulent acts, office crimes, extortion, use of state land, and participation as contractors. Meanwhile, the article which is often used as a reference by law enforcers to determine whether or not there is an act of corruption is regulated in Article 2, by breaking the law carrying out acts of enriching oneself, other people or corporations which are detrimental to the state's finances, life imprisonment or a minimum prison sentence of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

Likewise, the types of perpetrators of criminal acts of corruption are regulated by Article 1 paragraph (3) of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, which is formulated by the phrase "every person" as an individual or corporation.

In this law, every person presented at trial is the subject of a criminal offense as stated in their identity in the public prosecutor's indictment. The aim is to ensure that the individual presented at trial is the person charged according to the identity stated in the indictment, and not someone else. This is important to prevent errors in the identity of the defendant being examined at trial. Therefore, perpetrators of criminal acts of corruption can be individuals (natural person) as well as legal entities or corporations (legal entity).

From this interpretation, it can be seen that the definition of criminal acts of corruption expands in terms of perpetrators who can be punished, both individuals and corporations, by broadening the meaning. This is reflected in Article 1 paragraphs 1 and 2 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. This article states that the perpetrators addressed are civil servants and people who are treated like civil servants. This includes people who receive salaries or wages from companies that receive assistance with state funds or facilities, who may be subject to criminal acts of corruption. This formulation is not only too broad but also very dangerous, especially in relation to other legal concepts, in this connection the concept of company law. In Article 3 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, it is stated that abuse of the authority vested in him because of his position to benefit himself is punishable by life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (two) years. twenty) years and/or a fine of at least IDR 50,000,000.00 (fifty million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

The formulation of offenses in Article 3 of the Corruption Eradication Law (UU PTPK) creates inconsistencies. In one article, there are elements of the offense which are explained as material offenses, while elements of other offenses are described as formal offenses. For example, if the elements of an offense are formulated as "with the aim of benefiting oneself, another person, or a corporation," then the offense is considered an intentional offense (dolus), with intent in the form of level I intent (intentional intent). This is different from the formulation of "enriching oneself, another person, or a corporation" in Article 2 of the PTPK Law, which includes 3 (three) forms of intentionality: intentionality with intent, intentionality with certainty/necessity, and intentionality with possibility (dolus eventualis). Based on this argument, the offense in Article 3 of the PTPK Law cannot occur due to negligence (culpa). The element of intent contained in various articles of criminal acts of corruption includes:

1. Article 5 paragraph (1) letter (a) concerns the criminal act of active bribery, namely "with the intention of causing civil servants or state officials to do something in their position which is contrary to their obligations."
2. Type of corruption crime: active bribery or giving bribes to judges or advocates. Article 6 paragraph (1) letter a, namely "With the intention of influencing the decision of the case submitted to him for trial." Article 6 paragraph (1) letter b, namely "With the intention of influencing the advice or opinion that will be given in connection with the case submitted to the court for trial."
3. The type of criminal act of corruption is giving gifts or promises to civil servants as regulated in Article 13 "taking into account the power or authority inherent in their position or position";
4. The element "known or should be suspected" is found in Article 11, Article 12 letter a and letter b and letter c, Article 12 letter h; 5. The element "intentionally" is found in Article 8, Article 9, Article 10 letters a, b, and c, Article 12 letter I.

In Article 12B, it is stated about the receipt of gratuities by civil servants or state administrators which are related to their position and which are contrary to their obligations or duties. The criminal act of gratification and the elements contained in this criminal act as formulated in Article 12 B become the elements referred to in the provisions of Article 5 paragraph (2), Article 6 paragraph (2), Article 12 Letters a, b, c of the law. the same law, namely Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

The formulation of the criminal act of corruption Article 11 of Law Number 20 of 2001 is the result of the adoption and harmonization of Article 418 of the Criminal Code which is one of the crimes of office, first adopted and harmonized into a criminal act of corruption by Law Number 24/Prp/1960, then adopted and harmonized again in Article 1 number (1) letter c of Law Number 3 of 1971. In the formulation of Article 11 of Law Number 20 of 2001 there are two types of criminal acts of corruption, namely:

1. Corruption offenses committed by civil servants or state officials who receive gifts or promises, even though they know or should suspect that the gifts or promises are given as compensation for the use of power or authority related to their position or position.
2. Corruption offenses committed by civil servants or state officials who receive gifts or promises, even though they know or should suspect according to the belief of the giver of the gift or promise that there is a connection between the gift or promise and the position held by the recipient.

The formulation of the criminal act of corruption in Article 12 letters a, b, letter c and letter d is essentially the same as the formulation of the criminal act of corruption in Article 11 of Law Number 20 of 2001, the only difference being the threat of punishment. If the public prosecutor uses Article 12 of Law Number 20 of 2001, then the judge will sentence him to a minimum of 4 years in prison and a fine of at least IDR 200,000,000.00 (two hundred million rupiah). Furthermore, Article 12 A paragraph (1) of Law Number 20 of 2001, provisions regarding imprisonment and fines as intended in Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 are not applies to criminal acts of corruption whose value is less than IDR 5,000,000.00 (five million rupiah). Paragraph (2) For perpetrators of criminal acts of corruption whose value is less than IDR 5,000,000.00 (five million rupiah) as intended in paragraph (1), they will be punished with a maximum imprisonment of 3 (three) years and a maximum fine of IDR 50,000,000, 00 (fifty million rupiah).

In the 8th paragraph of the general explanation of Law Number 20 of 2001, it is stated that the purpose of inserting Article 12 A paragraph (1) and paragraph (2), is that "Furthermore, this law also regulates new provisions regarding maximum imprisonment and criminal fines for criminal acts of corruption whose value is less than IDR 5,000,000.00 (five million rupiah). "This provision is intended to eliminate the feeling of injustice for perpetrators of criminal acts of corruption, in the event that the amount corrupted is relatively small." The meaning of Article 12 A paragraph (1) and paragraph (2) of Law Number 20 of 2001 along with the general explanation, because before the amendment to Law Number 31 of 1999, the provisions contained in Article 5, Article 6, respectively, Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 of Law Number 31 of 1999 include a minimum criminal threat that must be imposed, so that there is a sense of lack of justice for perpetrators of criminal acts of corruption whose value of corruption is smaller than the perpetrators of criminal acts of corruption whose corruption value is greater if the criminal law sanctions are both based on minimum criminal threats. The formulation of the criminal act of bribery corruption contained in Article 13 of Law Number 31 of 1999, consists of two formulations:

1. Corruption violations committed by civil servants or state officials who receive gifts or promises, even though they are aware or should have anticipated according to the giver's thoughts that there is a connection with the position held by the recipient.
2. Any person who gives gifts or promises to a civil servant with reference to the power and authority deemed inherent in the position or position of that civil servant.

Thus, it is clear that there are differences between the two criminal acts of bribery corruption formulated in Article 13 of Law Number 31 of 1999, namely as follows:

1. In the first consideration regarding the criminal act of bribery corruption, the bribe perpetrator already has clear knowledge and understanding of the power and authority related to the position or position of the civil servant before giving gifts or promises. The act of giving gifts or promises by the perpetrator of the bribe is caused by the power and authority possessed by the civil servant.
2. In the second consideration regarding the criminal act of bribery corruption, the perpetrator of the bribe before giving gifts or promises to a civil servant does not have clear knowledge or understanding of the power and authority possessed by the civil servant. However, the bribe perpetrator simply assumes that the power and authority is attached to the position or position of the civil servant who is given the gift or promise.

In Law Number 20 of 2001 which amends Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, there are no provisions dealing with the recovery of government procurement contracts for goods/services involved in corruption. Law enforcement only focuses on punishing individuals involved in acts of corruption, either with prison sentences or fines, without regulating specific measures regarding affected contracts. However, even though it is not directly regulated in the Corruption Law, we can refer to contract law regulations in the Civil Code and government procurement regulations for goods/services to handle this matter.

Article 1320 of the Civil Code regulates the requirements that must be fulfilled for an agreement to be considered valid, which are divided into subjective requirements and objective requirements. Subjective requirements include the agreement between the parties involved in the agreement and their capabilities, while objective requirements include the existence of a specific object and its valid reasons. If subjective conditions are not met, the agreement or contract can be cancelled, whereas if objective conditions are not met, the contract is considered null and void. From this rule, if there is a criminal act of corruption in a contract for the procurement of goods/services, the contract should be considered null and void because it does not meet objective requirements, namely the existence of a valid reason and does not conflict with halal principles. This shows that the agreement between the parties involved in the contract for the procurement of goods/services has violated the law, so that the contract is not legally valid and all legal consequences that arise are also invalid according to law. Therefore, it is necessary to restore the situation as it was before the contract occurred.

B. Elements of the Crime of Corruption in Procurement of Goods/Services in Criminal Law Regulatory Instruments

The elements of criminal acts are divided into subjective elements and objective elements. Subjective elements are part of the perpetrator or related to the perpetrator, including what is in his mind (trick orfault). The objective elements of a criminal act include: The nature of breaking the law or wederrechtlijkheid; The quality of the perpetrator, such as status as a civil servant in crimes according to Article 415 of the Criminal Code; and the relationship between an action as a cause and a reality as an effect. An act can be considered a criminal offense if it meets the following elements: Violates

the law; Causing harm to society; Prohibited by criminal regulations; and the perpetrator is threatened with criminal punishment.

If we examine the formulation of criminal acts of corruption in Article 2 paragraph (1), several elements will be visible, including breaking the law, enriching oneself, another person, or a corporation, and can harm the country's finances or economy. The perpetrator of a criminal act of corruption in Article 2 paragraph (1) of the PTPK Law is defined as "any person" who acts unlawfully. Article 2 paragraph (1) does not require the existence of certain qualifications, such as status as a Civil Servant, which must be possessed by "every person" who commits the criminal act of corruption in question. Therefore, in accordance with the definition of "every person" in Article 1 point 3 of the PTPK Law. According to R. Wiyono that (Wiyono, 2009):

"Perpetrators of criminal acts of corruption as stated in Article 2 paragraph (1) may consist of: above: (a) Individuals, and/or, (b) Corporations. If you examine the provisions regarding criminal acts of corruption as contained in Article 2 paragraph (1) of the Law PTPK, three main elements will be found, namely: First, unlawfully; Second, enrich yourself or other people or a corporation; and third, detrimental to state finances or the state economy."

1. Elements Against the Law

In the explanation of Article 2 paragraph (1) of the PTPK Law, it is explained that "unlawfully" includes actions that violate the law both formally and materially. This means that even though the act is not regulated by law, if it is considered immoral because it goes against the sense of justice or social norms in society, then the act can be considered a criminal act. The use of the word "can" before the phrase "harm the state's finances and economy" shows that the criminal act of corruption is a formal offense, where it is enough to fulfill the elements of the action that have been formulated, without the need to wait for the consequences to occur. In criminal law literature, the teaching of material unlawfulness has two functions, namely (Saleh, 1987):

a. The doctrine of the nature of violating material law in its positive function is when an act, even though it is not regulated as against the law in legislation, is considered by society to be an act that is contrary to legal norms, then the act is still considered to be against the law;
b. The doctrine of the nature of violating material law in its negative function is when an act, even though it is considered to violate the law according to statutory regulations, if it is considered by society as an action in accordance with legal norms, then the act is considered not to violate the law.

The Supreme Court once issued a very significant decision which has become a reference in the justice system in Indonesia, namely the acceptance of the possibility of reasons that can eliminate the unlawful nature of an act, outside of the reasons regulated in the Criminal Code. This decision is contained in the Supreme Court Decision Number 42 K/Kr/1965, dated January 8 1966. The considerations in this decision state that "An action in general can lose its unlawful character not only based on the provisions in statutory regulations, but also based on the principle - principles of justice or law that are general and unwritten. In this case, for example, factors such as not harming the state, serving the public interest, and not making a profit by the defendant himself can be taken into consideration."

In its decision dated 24 July 2006 Number 003/PUU-IV/2006, the Constitutional Court stated that the first sentence of the explanation of Article 2 paragraph (1), which explains that "what is meant by 'unlawfully' in this article includes acts against the law in in the formal sense and in the material sense, that is, even though the act is not regulated

in statutory regulations, if the act is considered a disgraceful act, because it is not in accordance with a sense of justice or the norms of life, social and community, then the act can be punished," it is considered is contrary to the 1945 Constitution, so it does not have binding legal force.

2. Elements of Enriching Yourself or Other People or Corporations

Law Number 20 of 2001 concerning the Eradication of Corruption Crimes does not provide a specific definition of what is meant by "acts of enriching" oneself, another person, or a corporation. However, when linked to the provisions of Article 28 and Article 37, the concept of "enriching" is related to the addition of wealth assets owned by the defendant, another person, or a corporation as a result of the defendant's actions. The additional wealth must be significant so that it results in an imbalance between the assets received by the recipient and the income or income that he can account for.

"According to Moch Faisal Salam, he said that the legislators did notprovide a clear definition of what is meant by self-enrichment or another person or a corporation. However, it is linked to article 37 paragraph (4) where the suspect/accused is obliged to provide information about source".

Taking into account Article 37 paragraph (4), the interpretation of the term "enrich" can indicate an increase in a person's wealth, which is measured by the increase in assets obtained and can be accounted for from his income.

3. Elements that can harm state finances

In the explanation of Article 2 paragraph (1), it is stated that the word "could" before the phrase "harm the state's finances or economy" indicates that a criminal act of corruption is sufficient to fulfill the elements of the action that have been formulated, without having direct consequences. This indicates that the criminal act of corruption is formulated as a formal offense, where it is sufficient to fulfill the elements of the act that have been regulated, without having to wait or prove the consequences of the act.

The juridical understanding of state financial losses can be found in Law Number 1 of 2004 concerning State Treasury, which is explained in Article 1 point 22. According to this article, state or regional losses refer to a shortage of money, securities and goods, the amount of which is clear. and certainly as a result of unlawful actions, either intentionally or through negligence. However, there are different interpretations regarding the meaning of state finances. In the general explanation of the PPTK Law, it is stated that state finances include all wealth in all forms, whether separated or not, including all assets and liabilities owned by the state:

a. Is under the control, management and responsibility of state officials, both at the central and regional levels;
b. It is under the control, management and accountability of BUMN/BUMD, foundations, legal entities and companies supported by state capital or capital from third parties based on an agreement with the state or government.

Thus, the interpretation of Article 2 paragraph (1) and Article 3 of the Corruption Law regarding the application of elements detrimental to state finances has changed, with a focus on the consequences (material offenses). In other words, an element of harm to state finances is no longer considered a potential loss, but must be an actual loss or one that has already occurred. The typical elements of criminal acts of corruption compared to the Criminal Code are "enriching or benefiting oneself or another person or an entity, abusing one's position or position, and causing loss to the State's finances." Regarding the formulation "with a profitable purpose" mentioned in Article 3 of the PTPK Law, this highlights that the action was carried out with the intention of providing a profit.

Based on the explanation above, criminal acts of corruption can occur when the

perpetrator has the desire to abuse the authority, opportunities or resources available to him because of his position or position which can cause losses to state finances or the state economy. The perpetrator's will is proven through actions that are contrary to the law (actus reus), which are based on the perpetrator's evil intentions (mens rea) carried out intentionally.

4. Subjective Elements (Mens Sale)

The subjective element of criminal norms is the fault (schuld) of individuals who violate criminal norms. This means that the perpetrator must be accountable for the violation. Only individuals who can be held accountable can be found guilty if they violate criminal norms. Mens rea in punishment, in essence, cannot be separated from the existence of "free will" in humans. In the study of criminal law, this "free will" produces two schools in the purpose of punishment (criminal responsibility), namely the classical school and the positive school. The classical school views that humans have free will to act. When human actions are contrary to the law (committing a crime), then the individual must be willing to take responsibility for his actions.

Mens rea alone is not enough to punish the perpetrator of a crime; needs to be accompanied by a series of actions (actus reus). Malicious intent (mens rea) in the context of criminal law is included in the category of "criminal liability". When there is an allegation of a criminal act, the first thing that must be proven is whether or not there is an unlawful act (actus reus). After the unlawful act is proven, then it is considered whether the defendant can be held criminally liable. So, proof of "malicious intent (mens rea)" can only be done after the criminal act is proven. This is a natural consequence of the dualistic principle applied, which separates criminal acts and criminal responsibility.

C. Principle of Error in Criminal Liability of Perpetrators of Corruption Crimes in Procurement of Goods and Services

Legal regulations regarding government procurement of goods and services and their relationship to criminal acts of corruption are contained in Presidential Regulation (Perpres) Number 54 of 2010 Jo. Presidential Decree Number 35 of 2011 Jo. Presidential Decree Number 70 of 2012 Jo. Presidential Decree Number 172 of 2014 Jo. Presidential Decree Number 4 of 2015 Jo Presidential Decree Jo/Presidential Decree Number 12 of 2021 concerning Procurement of Government Goods/Services. In government procurement of goods/services, criminal acts of corruption can occur from the procurement preparation stage to the implementation stage of the contract for the procurement of goods and services.

In the context of government procurement of goods and services, criminal liability for perpetrators of criminal acts of corruption is regulated by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. This law stipulates that the criminal responsibility of perpetrators of corruption can be divided into two, namely official responsibility and personal responsibility. Official accountability refers to the responsibilities that must be borne by officials who commit criminal acts of corruption as part of their position. Meanwhile, personal responsibility relates to mistakes committed by individuals personally, regardless of the position or position they hold. The parameters for personal responsibility include committing unlawful acts and abuse of authority. This means that individuals will be personally responsible for their corrupt actions, regardless of their position. Meanwhile, the parameters of criminal liability are based on the principle of no crime without fault, which emphasizes that a person can only be punished if proven guilty of committing a criminal act of corruption.

In connection with psychological and normative errors, as well as elements of criminal acts, errors have several elements:

1. The ability to take responsibility for the perpetrator in the sense that the perpetrator is in a healthy and normal condition;
2. There is a relationship between the perpetrator and his actions, whether intentional (trick) or due to negligence (fault);
3. There is no excuse from the perpetrator that can erase the mistake

The reasons for expunging a crime can be divided into two, namely those that apply generally to each offense and those that only apply to certain offenses. This is regulated in Articles 44, 48 to 51 of the Criminal Code. General reasons for expunging crimes include provisions that apply to each criminal act. Meanwhile, special reasons for expunging crimes only apply to certain offenses. For example, Article 221 paragraph (2) of the Criminal Code states that a person will not be prosecuted if he harbors someone who has committed a crime, especially to protect family members such as wives, husbands, or people who are still related to the perpetrator by blood.

CONCLUSION

Based on the discussion above, it can be concluded that regulations regarding criminal liability for perpetrators of criminal acts of corruption in the procurement of goods and services are regulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. This includes various articles such as Article 2, Article 3, Article 6, 11, 12 letters a, b, c, d, and Article 13, Article 8, Article 10, Article 12 letters e, f, g, Article 7, Article 12 letter h, Article 12 letter j, as well as Article 12 B and Article 12 C. Meanwhile, the accountability of perpetrators of criminal acts of corruption in the procurement of goods and services is regulated in Presidential Regulation Number 12 of 2021 concerning Amendments to Regulation Number 16 of 2018 concerning Procurement of Goods/ Government Services. However, in its implementation, law enforcers tend to assess criminal acts of corruption based on the elements of articles on criminal acts of corruption, namely Mens Rea and Actus Reus. Errors and criminal sanctions against perpetrators of criminal acts of corruption in the procurement of goods and services are the basis for criminal responsibility. Apart from considering the elements of the article on the criminal act of corruption charged by the Public Prosecutor and the facts in the trial, the Panel of Judges also considered the reasons for justification and forgiveness, especially referring to Article 51 paragraph (1) and Article 44 of the Criminal Code.

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