Violence and Social Welfare in the Criminal Law Paradigm

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Abstract. The process of procuring government goods/services involves the roles of many parties, in this case if simplified it becomes: the budget owner, the party carrying out the procurement process, the party providing the goods/services. Due to the many parties involved, on the one hand it is a tiered supervision model, but on the other hand it can also give rise to criminal acts of corruption which are carried out jointly. Based on the legal provisions regarding inclusion as in the Criminal Code, the actions of each perpetrator are not emphasized. It is only determined that the punishment for each perpetrator is the same, this is the beginning of the problem. The large number of parties involved can be drawn as perpetrators who are seen to know the same thing and complement each other, it is considered that the actions of one perpetrator will make it easier for other perpetrators so that all of them will be punished. This legal research aims to further analyze these problems, namely through a conceptual approach. The results of the study based on the concept of participation require complex qualifications. When charged for criminal acts of corruption in the procurement of goods/services, this is due to the special characteristics of procurement.

Keywords: Violence, Economy, Criminal Law

1 INTRODUCTION

The Indonesian government as a modern country generally has the aim of building prosperity, namely the condition of the people whose needs are met. In connection with this practice, the government carries out goods/services procurement activities. The process by which Ministries, Institutions, and Regional Apparatus that get funding from the APBN/APBD acquire products and services is referred to as "procurement of government goods and services," or simply "procurement of goods and services." The Presidential Decree on Procurement of Goods and Services, also known as Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods and Services, contains the provisions outlined in Article 1 number 1. The ability to create extraordinary public services through the results of a goods/services procurement activity makes goods/services procurement an invaluable tool for government

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activities. The meaning of public services as given between The 1945 Constitution of the Republic of Indonesia

As of January 10, 2024, KPK statistics indicates that, in terms of criminal acts of corruption, events involving the purchase of goods or services from the government continue to rank second, after gratification/bribery. Actually, from 2004 to 2022, the KPK handled 1,351 incidents of corruption, of which about 277 (20%) involved the purchase of goods or services. This suggests that the purchasing of goods and services is one sector of the economy that is susceptible to unlawful acts of corruption. In the history of case handling by the Corruption Eradication Commission, the procurement of goods and services is the sector with the largest number of corruption crimes, with 277 out of a total of 539 cases since the Corruption Eradication Committee was founded. Meanwhile, in 2006, Indonesia Procurement Watch (IPW) found that the highest level of corruption in Indonesia was in goods and services procurement (PBJ) projects. This can be seen from World Bank data contained in the country procurement assessment report (CPAR). It is stated that the level of leakage of state money is around 10-50 percent. This ultimately became one of the factors that caused the 2023 Corruption Perception Index (CPI) from Transparency International to position Indonesia's GPA score to stagnate at 34 and was ranked 115th out of 180 countries [1].

When it comes to the acquisition of goods or services from the government, corruption crimes typically include multiple people working together to achieve a common aim. This idea is known as inclusion (deelneming) in criminal law. This is illustrated in the following decisions:

1. Cassation Decision Number 5089 K/ Pid.Sus/ 2023, with the construction of the Defendant as PPK together with others in the procurement of consultancy services subject to charges under Article 2, Article 3, Article 9 of the Corruption Crimes.
2. Judicial Review perhap between 340 PK/ Pid.Sus./ 2023, with the construction of the Defendant as chairman of the activities committee together with procurement officials in the procurement of snacks and others, subject to charges under Article 2, Article 3 of the Corruption Crimes.
3. Cassation proporsionai than 110 K/ Pid.Sus./ 2024, with the construction of the Defendant as a supervisory consultant together with others charged with committing a criminal act as settlement about the criminal liability.

There are several views which state that this inclusion is an extension of a criminal act, meaning that if it is related to the character of the person referred to, it does not necessarily mean that a person fulfills all the elements of a criminal act. In the case of participating (medepleger), there is more than one actor with the position of Procurement Officer [2] who has the role of preparing procurement documents and then the Commitment Making Officer who has the role of signing and controlling the contract and provider. Where a crimeinal act of corruptiaon is motivated by losses to the state, the punishment meted out to each perpetrator is the same.

Sentencing based on these provisions does not or does not provide adequate guidance, especially in relation to the subject's personal condition. When a participation describes the relationship between the respective subjects, namely state officials/administrators, civil servants, private companies or corporations, and even

individuals. With this concept, the punishment for officials will be the same as for others. Likewise, between corporations and individuals, all are subject to the same basic and/or additional penalties. Referring to the purpose of punishment, the spirit of certainty in the nuances of positivism is increasingly being abandoned. Likewise, punishment withot the settlement around the sanction is easy and certain if all perpetrators are punished equally. However, justice for each perpetrator is not sufficiently expressed, and truly appropriate punishment has not been realized.

1.1 Problem Formulation

So in response to such based conditions, the legal issue in this research is what is problematic in deelneming violence and social welfare about law paradigm ?.

1.2 Research Objectives

By the research are theorie, that is, it is used prescriptively to solve the legal issues faced. Also known as normative legal research or literature, which according to Soerjono Soekanto and Sri Mamudji includes: research on legal principles, research the paradigm about violence based on law or norm.

1.3 Research Goals and Benefits

The author's targets for achieving research objectives are:

1. Government
2. Law Maker
3. Mail Manager
4. And other parties related to archives and correspondence

2 Methods

2.1 Object of Research

The problem in the occurs is examined and created using a conceptual approach to associated legal concepts, which is the research methodology employed. Legal materials, including primary and secondary legal materials, are employed in relation to this strategy.

2.2 Data Types and Sources

Primary legal materials are in the form of statutory regulations including court decisions, while secondary legal materials are all materials that support primary legal materials in the form of journals, textbooks, articles and others.

3 Result and Discussion

3.1 Problematics in Welfare State

State power as a representation of public interests is optional to the position of state government, in this case the position of legislative, executive and judicial power. Simply put, we must return to the theorie about public government, which is the basis in the constitution for determining the position and authority of state institutions.

Theorie about the public government gods has developed in practice, so that many terms have developed to accompany the practice of the doctrine of the separation of powers. Starting from the separation of power (separation of power) to the division of power (division of power). Even though in practice there has been a lot of development towards the doctrine of separation of powers, substantively the aim of this separation of powers is to avoid centralization of power in just one institution. Historically, Indonesia at its inception was not intended to adhere to the doctrine of separation of powers. The doctrine of separation of powers was the main argument put forward by Soepomo in rejecting the granting of the Supreme Court's authority to conduct judicial reviews. [3] In principle, Soepomo stated firmly, "Such a system did exist, namely in America and also in Germany during the Weimar Constitution era, becoming the German Republic after the world war. There is also in Australia, in Cecho Slovakia after World War One. This system is used in the Netherlands based on materiele recht, which is a consequence of the Trias Politica system, which in America is actually implemented perfectly. According to his view, in the draft Constitution, we do not use a system that differentiates the principals of the 3 bodies, meaning that it does not mean that the judicial power will control the power to form laws." [4]

In the perhaps of basic norm, Indonesia will sephare into optional amount help. Evidence of the non-adherence of the doctrine of separation of powers can be seen in the formulation of Article 1 paragraph (2) of the 1945 Constitution which states "sovereignty is in the hands of the people and is exercised entirely by the MPR." In the basic norm of Indonesia contains the meaning that the supremacy adhered to by the 1945 Constitution is the supremacy of institutions (MPR) not the supremacy of the Constitution.

After the amendment to the 1945 basic norm of Indonesia or supreme, there was a constitutional shift from institutional supremacy to constitutional supremacy. The formulation of Article 1 paragraph (2) changes to "sovereignty is in the hands of the people and is exercised according to the Constitution. The shift in supremacy from MPR supremacy to constitutional supremacy cannot be separated from the MPR's desire to purify the presidential system. The presidential system is an elaboration of the doctrine of separation of powers.

There are also branches that are quasi-judicial, meaning that theoretically they are not strictly included in the executive or judicial powers. Montesquie only stated that executive power is the implementation of the law and judicial power is the power to judge. In legal practice, these two branches of power experience extraordinary dynamics. Executive power, which was originally designed only to implement laws, is now starting to extend to the power to regulate (regeling). [5] The executive's regulatory

power is because the field of administrative law, which is the domain of executive power, is also experiencing extraordinary dynamics.

Purification of the presidential system will give a strong role to administrative law. Even though the presidential system is a consequence of constitutional supremacy, where one State institution has an equal position with another, but in terms of the reach of power, the President's power is actually wider than the branches of power. legislative and judicial. [6] The formulation of executive power is state power reduced by legislative power and judicial power. Legislative power has three functions, namely the legislative function, the budget function and the supervisory function. Meanwhile, judicial power has the function of judging and convicting. Thus, the executive power has powers beyond legislative and judicial powers, including the authority to carry out inquiries, investigations and prosecutions.

Therefore, the power of the President appears as the authority to carry out investigations, investigations and prosecutions which constitute executive authority. Of course, there are those who will refute this argument by comparing it with the Indonesian Corruption Eradication Commission which is independent from all power intervention. There are differences in the legal politics of the Indonesian Prosecutor's Office and the Indonesian Corruption Eradication Committee. Where the Indonesian Corruption Eradication Commission was specifically formed to eradicate corruption, so its independence must be truly guaranteed. Although the KPK RI is functionally included in the executive domain, structurally the KPK RI is independent, because the KPK RI, like other independent state institutions, is designed to be an independent institution. [7] Meanwhile, since the beginning of the Republic's founding, the Prosecutor's Office was designed to be subordinate to the President.

Strengthening the presidential system will certainly have consequences for the President to take responsibility for law enforcement. To be able to realize law enforcement, the President needs officers who have the authority to enforce the law. The authorities authorized to enforce the law are the Police and Prosecutor's Office. In general crimes, the enhamp to attempt that who are settlement. Investigation, investigation and prosecution are an inseparable series. Therefore, if the police who have the authority to carry out inquiries and investigations are officers of the President, then the Prosecutor's Office which has the authority to carry out prosecutions should also be officers of the President.

With the implementation of the presidential system, the highest government responsibility lies in the hands of the President as regulated in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. After amendments to the 1945 Constitution of the Republic of Indonesia, the President is no longer elected and appointed by the People's Consultative Assembly (MPR), but elected directly by the people through general elections. As a consequence of the shift in the system of selecting the President and Vice President from previously being elected and appointed by the MPR to being elected directly by the people, there has also been a shift in political accountability from the MPR to the people directly.

In this presidential system, almost all aspects of public life are the responsibility of the President. Thus, the President, through his apparatus, namely the Police and the Prosecutor's Office, has quasi-judicial authority, because it only extends to the

prosecution process. Meanwhile, the process of trial and sentencing is in the hands of the judge.

Then the release of the Prosecutor's Office from the executive does not automatically mean that the Prosecutor will be more independent and progressive in carrying out his functions. This is like looking back at the existence of judicial power, which along the way experienced several shifts. During the New Order, judicial power stood on two legs. One foot stands in the executive realm, the other foot stands in the judicial realm. This two-legged system is known as the two roof system, where for financial matters the authority of the Minister of Finance, while for administrative matters. Financial/salary issues which are the authority of the Minister of Finance are what made the judiciary during the New Order era considered not independent.

This less independent judicial power during the New Order era meant that the post-New Order authorities, based on demands for reform, immediately made changes to the system by changing the two-roof system to a one-roof system, where both financial and administrative issues were directly under the Supreme Court. . Judicial power after the New Order cannot be said to be better, in fact reality shows that the independence possessed by judges can also cause judges to commit deviant actions as well.

Therefore, it is not an independent question of which authority is the main problem, but rather the monitoring system for each institution that must be strengthened. To supervise judicial power, the framers of the 1945 Constitution of the Republic of Indonesia (Grondwetgever) established an independent institution specifically to monitor the honor of judicial power, namely the Judicial Commission. The birth of several state institutions in Indonesia, post-reformation, was also followed by a supervisory system being built, either through the establishment of other state institutions, such as the Election Organizer Honorary Council (DKPP) with the task of maintaining the dignity and honor of election organizers, such as the General Election Commission and the Supervisory Body. General elections. However, there are also several state institutions that have an internal monitoring system, such as the Council of Honor Court for DPR members. The Prosecutor's Office as a law enforcement institution does not have a monitoring system. The Prosecutor's Office has an institution that has special duties and authority to supervise the performance of the Prosecutor's Office, namely the Prosecutor's Commission. [8]

The existence of procurement of goods/services is highly correlated with government activities, in the sense that the results obtained in a goods/services procurement activity can create excellent public services. In terms of the meaning of public services as in Article 1 number 1 of Republic of Indonesia Law Number 25 of 2009 concerning Public Services, they must be carried out so that they truly meet the expectations and needs of both service providers and recipients, as specified in the Decree of the Minister for Administrative Reform and Bureaucratic Reform Number 63 of 2009. 2003. In principle, the existence of these goods/services is very necessary in providing public services, for example the existence of buildings and related facilities.

In connection with support for public services, the implementation of procurement of goods/services has the following objectives:

a. Promote and contain the prenempt to attempt that the prosecuter.
b. Inhalf about product and the collect.

c. To get abot product-product of the ramp thay.
d. Business-business actor to get the product.
e. Support tabout condition and the sanction.
f. The factors of publib government.
g. Create the economics power and the goods of half.
h. Remove abot the punishmet.

The successful implementation of procurement of goods/services is ultimately supported by subjects, which in this case can be identified in the form of institutions, human resources procuring goods/services, procurement actors.

The institutional procurement of government goods/services is implemented in the form of the Goods/Services Procurement Work Unit (UKPBJ), which is a government organization formed by the Minister/Head of Institution/Regional Head with the task of providing support for the procurement of goods/services to Ministries/Institutions/Regional Apparatus. Meanwhile, Human Resources for Procurement of Goods/Services consist of:

a. Management Resources for Goods/Services Procurement Function.
b. Resources for designing policies and systems for procurement of goods/services.
c. Ecosystem Support Resources Procurement of goods/services.

Meanwhile, the public of us:

a. About the budget.
b. Budget the Power.
c. Commitment Making Officer.
d. Plemenary the half.
e. The public area.
f. Procurement Agent.
g. Impowerig and the tax.
h. Reintnaj.

So, based on this identification, it can be described that in a process of procuring goods/services there are subject roles which are qualified as state officials/administrators, civil servants, private sector or corporations, individuals.

Deelneming Criminal Acts of Corruption

About norming the corruption as a criminal act is closely related to government power, especially state government. In this sense, it can be seen that corruption as a criminal act is almost as old as the history of thinking about the state. The main clue related to this is the statement in John Emerich Edward Dalberg-Acton's (Lord Acton) phenomenal letter to Bishop Mandell, namely "power tends to corrupt, and absolute power corrupts absolutely". Miriam Budiardjo interprets this statement as “people who have power tend to abuse it. Humans who have absolute power will certainly abuse it." Miriam Budiardjo's interpretation is very close to political science, namely those related to power. It is clearly stated that power and corruption are two interrelated things, the connotation of which is that power ultimately gives birth to corruption.

Departing from this view, what is revealed is that countries in the world are busy designing penal measures against criminal acts of corruption. This is also what the

Dutch state did, because this will be related to the enactment of positive law in Indonesia. Since the initial formation of Wetboek van Strafrecht, the Netherlands has included provisions regarding criminal acts of corruption. Furthermore, after being taken over in Law of the Republic of Indonesia Number 1 of 1946 concerning the Criminal Code (KUHP), such a formulation can be found in Chapter XXVIII of the Criminal Code, namely Crimes Committed in Office. This is what P.A.F Lamintang means as ambsdelicten, namely "a number of certain criminal acts which are only committed by people who have the characteristics of being civil servants". The provisions in Chapter XXVIII of the Criminal Code that correlate with criminal acts of corruption are Articles 415, 416, 418, 419, 420, 423, 425, 435 of the Criminal Code. Explained simply, the provisions of Article 415 of the Criminal Code contain a formula for civil servants or other people who are required to carry out public work permanently or temporarily, deliberately embezzle money or valuable documents, or deliberately let money or valuable documents go unnoticed. taken or embezzled by another person or helping another person, is punishable by a maximum sentence of seven years. Meanwhile, Article 416 of the Criminal Code, in simple terms, determines that civil servants or other people who are required to permanently or temporarily carry out public work who deliberately create or falsify books or lists related to administrative audits, are subject to a maximum penalty of four years. Meanwhile, Article 418 of the Criminal Code, in essence, determines that civil servants who receive gifts or agreements related to their authority will be sentenced to a maximum of six months. Furthermore, Article 419 of the Criminal Code, 1e is a civil servant who receives a gift or agreement to do or forget something that is contrary to his obligations. 2e If a civil servant receives a gift that he or she knows is related to something he or she has done or neglected in his or her position, then such things will be subject to a maximum penalty of five years. [9] Furthermore, the provisions of Article 420 of the Criminal Code are intended for judges and advisors, namely in relation to cases that must be resolved. Then Article 423 of the Criminal Code is for civil servants who, with the intention of benefiting themselves or others, arbitrarily force other people to give something, make payments, deduct payments, or do something. Meanwhile, Article 425 of the Criminal Code is for civil servants whose position is to collect or receive something, but it is used by themselves or other civil servants. As well as Article 435 of the Criminal Code, namely for civil servants who interfere in the procurement of goods or collect rights.

The meaning of participation in a criminal act can be understood by referring to the provisions of the law, including by following expert views. Some of them are, according to Schaffmeister, essentially participation or deelneming if several people or more than one person are involved in one offense. According to this doctrine, deelneming based on its nature consists of:

4. Deelneming which stands alone, namely the responsibility of each participant is respected individually;
5. Deelneming which does not stand alone, namely the responsibility of one participant depends on the actions of other participants.

Furthermore, the classification of participation perpetrators as intended in Article 55 of the Criminal Code is as follows:

- 1. Actor (Plegen, Dader)

In a narrow sense, perpetrators are those who commit criminal acts. Meanwhile, in a broad sense, it includes the four classifications of perpetrators in Article 55 paragraph (1) of the Criminal Code, namely those who commit the act, those who order it to be done, those who participate in the act and those who recommend it.

- 2. Ordering to Do (Doenplegen, Medelijke Dader)

Someone wants to commit a criminal act, but he does not carry it out himself. He ordered someone else to carry it out. In this inclusion, the person who is ordered will not be punished, while the person who ordered it is considered the perpetrator.

- 3. Participate in Carrying Out (Medeplegen, Mede Dader)

Medeplegen/mede dader are those who participate in a criminal act. There are conditions for those who participate, including:

a. there is conscious cooperation from each participant without the need for agreement, but there must be intentionality to achieve results in the form of a criminal act; And

b. there is physical cooperation in carrying out criminal acts.

- 4. Organizer (Uitlokker)

The promoter is as described in Article 55 paragraph (1) number 2 of the Criminal Code. Meanwhile, in the Explanation of Article 20 of Republic of Indonesia Law Number 1 of 2023, several elements of the article are further explained, including:

- 1. What is meant by "by means of a tool", for example a remote control which is used indirectly to commit a criminal act. Then, in the case of "ordering to do", the person who is ordered to commit a criminal act is not punished because there is no element of error.
- 2. What is meant by "participating in committing a criminal act" are those who work together consciously and together physically to commit a criminal act, but not everyone who participates in committing a criminal act must fulfill all the elements of a criminal act even though all are threatened with criminal penalties. the same one. In participating in a criminal act, each person's actions are seen as one unit.
- 3. What is meant by "motivating other people to commit criminal acts", includes persuading, encouraging, provoking or luring other people in certain ways.

This shows that the law views the role of the perpetrator differently, but in the end the punishment is the same. In fact, in judicial practice in Indonesia, the imposition of inclusion articles made in separate files will "simplify" the process for suspects or other defendants whose cases have not been decided. In the sense that it is sufficient that the elements of the offense from other perpetrators are fulfilled, the participating perpetrator is considered by law to also be an actor who fulfills all the offense formulations.

In this regard, Packer has presented a theory regarding proportionality and punishment. That is, the imposition of punishment must focus on the perpetrator, but not on

the criminal act. So the punishment is designed to eliminate a person's ability to commit crimes in the future, which is said to be proportional, for example in the crime of murder which can be subject to different punishments depending on the motive. According to Packer, the way to make this happen is in two ways, namely the legislature which must be able to predict the maximum length of punishment and the judge who must be able to predict the perpetrator's response to the sentence. Specifically regarding punishment, Packer also stated that for it to be a criminal punishment, the conditions must be sufficient. In this case, it is to prevent, and not retaliate. Then, in order to be subject to punishment, the person who is sentenced to a criminal sentence must actually commit a criminal act in an environment where he or she deserves to be called reprehensible.

So with Packer's theory of proportionality, the provisions for inclusion (deelneming) in the Criminal Code as a "hook" between perpetrators in criminal acts of corruption in the field of procurement of government goods/services must be seen in the aspect of differences in roles and differences in punishment. The legislature must provide a range of sentences for each perpetrator, as well as judges who do not automatically declare that all elements have been proven. Packer's view regarding proportionality was later widely used as a basis, including Otterström who stated first, that a punishment is proportional if it is commensurate with the seriousness of the crime; second, that violators morally deserve proportional punishment. [10] So each actor must be carefully considered, for example, the position of the actor as a Civil Servant who is a Commitment Making Officer in a procurement is certainly different from the position of a community organization. Criminal law must provide a basis for punishment that adopts or is able to read the position of each perpetrator, so that the judge when applying it is also helped by the detailed "guidelines" that already exist in the law.

4 Disclosure

The writers hereby declare that they are not associated with, nor involved in, any organisation or entity that has any financial interest (such as speaking fees, grants for education, honoraria, involvement in speaker's bureaus, equity interests, expert testimony, or patent license arrangements), nor any non-financial interest (such as relationships, knowledge, or beliefs related to the topic or material discussed in this manuscript).

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