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From Collusion to Corruption: How Indonesian Law Fights Back in Procurement Conspiracy

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Abstract

Government procurement of goods and services is one of the largest sectors in the state budgets, but it is vulnerable to corrupt practices. Based on data from Indonesia Corruption Watch (ICW), in 2017, there were 84 cases of corruption in the procurement of goods and services that caused state losses of IDR 1.02 trillion. This study aims to answer several main questions: what are the forms and indicators of collusion in government procurement of goods and services? How does the existing legal framework regulate and handle such collusive practices? Moreover, what legal sanctions are applied to perpetrators of violations? Using a normative method that examines related laws and regulations, this study uncovered that collusion in procurement occurs in three main forms: horizontal, vertical, and combined collusion. This study also reviews the role of the legal framework, including Law No. 5 of 1999 and Law No. 20 of 2001, which aims to create transparency and fair competition. The results of the study revealed that collusion in the procurement of goods and services violates the principles of fairness and transparency and suggests the need to strengthen regulations and supervision, including the active role of the Business Competition Supervisory Commission and the Corruption Eradication Commission. This synergy is expected to eradicate monopolistic practices and corruption while supporting clean and competitive governance.

Keywords: Collusion; Gratification; Indonesia; Public procurement; Tender conspiracy

1. Introduction

Procurement of goods and services holds a significant portion of the State Budget, making it vulnerable to fraudulent practices [1]. To overcome this vulnerability, the government has attempted to formulate various regulations and policies aimed at creating legal certainty and preventing fraud. These efforts are aimed at addressing potential violations, both from public officials and external parties, including private business actors and other parties involved in the development of the Republic of Indonesia.

The performance of Procurement Officers or Working Groups is a key factor in determining the success of government procurement implementation. The lack of state civil servants who have expertise certificates in the field of procurement of goods and services can have a negative impact on the quality of the procurement results. Furthermore, the government encounters additional impediments in its goods and services procurement processes, encompassing the endemic practices of corruption, collusion, and nepotism [2]. Collusion in government goods and services procurement materializes through illicit collaborations in tender proceedings between suppliers and

the procurement committee. The objective of such collusion revolves around orchestrating or predetermining the victor of the procurement tender [3].

Indonesia Corruption Watch (ICW) has conducted extensive scrutiny of the goods and services procurement domain, unearthing its vulnerability to corrupt practices throughout the year 2017. The ICW's Investigation Division Staff reported the handling of 84 cases in 2017, resulting in state losses amounting to IDR 1.02 trillion. Notably, the public service sector finds itself conspicuously susceptible to corruption within the Goods and Services Procurement process [4]. Moreover, the Corruption Eradication Commission released statistical data pertaining to its activities from 2004 to 2017. Among these figures, the year 2017 witnessed 688 cases handled by the Corruption Eradication Commission, with 171 cases relating to the procurement of goods and services, ranking second only to bribery-related cases, which accounted for 396 cases [5]. Furthermore, corruption in the procurement of goods and services in Indonesia is one of the areas most vulnerable to abuse of authority. Based on data from the Corruption Eradication Commission, from 2004 to 2023, there were 339 corruption cases related to procurement of goods and services, making it the second largest case after bribery. In 2023 alone, 63 cases were recorded, the highest number in that period [6].

Previous studies discussing corruption in government procurement of goods and services in Indonesia have highlighted the importance of transparency and accountability as the main principles in preventing corruption. The link between the application of the principles of transparency and accountability and the control of gratification is one of the seven groups of corruption crimes [7]. Their research identified aspects that influence the potential for corruption in government infrastructure procurement based on a literature review of laws and regulations in Indonesia. The results are expected to provide indicators of the potential for corruption in public infrastructure procurement [8].

Furthermore, other research expanded the focus by highlighting the vulnerability of the State Budget to corruption, especially in the procurement of goods and services [9]. Their study used a Participatory Action Research (PAR) approach that integrates community solidarity into the corruption prevention model. The study emphasizes the important role of e-procurement as a prevention mechanism, by adding mandatory declarations from tender participants and an improved auction objection mechanism. This study also emphasizes the need for a region-based approach to addressing the varying fraud patterns at the provincial level, involving oversight by the public, academics, and journalists [10]. Meanwhile, Puspita et al. specifically examined the effect of e-procurement policies on reducing corruption in government procurement in 34 provinces in Indonesia [11]. Using the difference-in-differences (DD) approach, they found that the implementation of e-procurement significantly reduced the number of corruption cases in provinces with high levels of government procurement spending or capital spending. This finding confirms that e-procurement supports good governance in government procurement [12].

Additionally, research by Kurniawan and Pujiyono examined the modus operandi carried out by state civil servants in corruption in government procurement of goods and services [13]. Their study uncovered that corruption can occur at every stage of

procurement, from preparation, implementation, to completion. The modes used include document manipulation, tender arrangements, and collusion with providers. This study also highlighted that the more complex and planned the mode used, the more severe the punishment imposed by the judge [14]. In addition, research by Wibowo also discussed efforts to prevent corruption in the procurement of goods and services in Indonesia [15]. The study highlighted the government's initiative in designing a more horizontal procurement organization and the implementation of an electronic procurement system (e-procurement) to increase transparency and accountability. However, this study also provides critical notes on the potential problems arising from these initiatives and suggests the need to expand the auction challenge mechanism by adopting the practices implemented in the Netherlands [16].

While these studies provide valuable insights, there are still gaps in understanding the specific patterns and modes of corruption in Indonesia and how to detect and prevent collusion. Drawing on these data and studies, this article aims to provide a new contribution through an in-depth legal analysis, highlighting preventive measures and law enforcement in procurement corruption. The combination of normative approaches and empirical data is expected to add a new dimension to this discourse. Based on the context that has been explained, the main challenge in formulating this law lies in the effort to understand the forms of conspiracy that occur in government procurement of goods and services. Questions that arise include: what are the patterns and indicators that indicate the existence of conspiracy in government procurement of goods and services? How does the legal framework regulate and respond to this phenomenon? In addition, what sanctions can be imposed on perpetrators of this kind of violation?

2. Research Methods

This study used a normative method, a method that focuses on the study of laws and regulations relevant to the procurement of goods and services in the Indonesian government. The normative method aims to analyze legal norms in applicable regulations and their application in preventing collusion and corruption practices. According to Soekanto [17], the normative method involves the analysis of primary legal materials such as laws, government regulations, and other legal documents, as well as secondary legal materials in the form of legal literature, scientific journals, and reports from related institutions [18], such as the Corruption Eradication Commission and Indonesia Corruption Watch (ICW).

The approach used in this study included the analysis of legal documents and case data that have been handled by the Corruption Eradication Commission and ICW to identify general patterns and modus operandi in collusion and corruption practices. This analysis provides an overview of the suitability and weaknesses of existing regulations, including an evaluation of the sanctions that have been applied. With this approach, the study is expected to be able to provide policy recommendations to strengthen the legal framework in creating integrity in the procurement process of goods and services.

3. Results and Discussion

3.1. Detecting Tender Conspiracy: Forms and Indications

The prohibition against business actors involved in conspiracy activities aimed at arranging or determining tender winners, thus creating unfair business competition, is an important component of the legal regulations governing competitive business practices. Such conspiracies in the context of tenders can be divided into three main categories, namely horizontal conspiracy, vertical conspiracy, and a combined form that includes horizontal and vertical elements.

Horizontal conspiracy is a hidden strategy used by business actors or providers of goods and services that are in the same market space and often compete directly. In this collusive arrangement, these entities work together to influence the course of the tender process, with the aim of creating the impression of legitimate competition among the participating parties [19]. This organized effort to create the appearance of competition when it is actually just a trick clearly undermines the basic principles of fair business competition. Through their collusion, these business actors systematically undermine the fairness, impartiality, and transparency that are essential to the integrity of the tender process, thereby violating the main principles of equal commercial engagement [20]. By forming alliances to manipulate the tender environment, business actors in horizontal conspiracies sacrifice the essence of fair competition. Their joint efforts not only undermine market dynamics but also undermine trust and confidence in the integrity of the tender process. Thus, horizontal collusion is a challenge that requires strict regulatory oversight to maintain the principles of fairness and transparency in commercial transactions [21], ensuring that competition remains legitimate and equal.

In contrast, vertical collusion occurs when one or more business actors or providers of goods and services engage in a hidden agreement with an entity that has a significant role in the tender process. This type of collusion can be manifested in the form of a partnership between a business actor and a tender committee, auction committee, user of goods and services, owner, or employer. In vertical collusion, this unethical cooperation can appear in various forms, including situations where the tender committee, auction committee, user of goods and services, owner, or employer are in league with one or more tender participants. This form of conspiracy fundamentally undermines the principles of neutrality and impartiality that should characterize the tender procedure, thereby undermining the core principles that maintain the fairness and transparency of the process [22].

Vertical conspiracies introduce a disturbing dynamic into the tender process by undermining the integrity of the parties entrusted to maintain the fairness of the process. When entities holding key roles engage in collusion with certain bidders, they not only breach their fiduciary duties but also undermine the fair competitive landscape. This distortion ultimately erodes stakeholders' trust and confidence in the impartiality of the tender process. Therefore, combating vertical conspiracies becomes crucial to maintain the sanctity of competitive business practices and uphold the principles of fairness and equality in government procurement. Regulatory oversight and the implementation of strict enforcement mechanisms are vital tools to protect the neutrality and transparency that are at the heart of the integrity of the tender process.

Unlike horizontal and vertical conspiracies, joint conspiracies represent a more sophisticated and complex collusion scheme in the context of the tender process. These conspiracies involve not just one, but two or even three different parties involved in the tender procedure. These parties include the tender committee, the auction committee, the users of goods and services, the owners, the employers, and the business actors or providers of goods and services. This multifaceted collaboration aims to undermine the integrity of the tender process by setting up a scenario where the outcome is predetermined through hidden and secret transactions [23].

A clear example of a joint conspiracy is the phenomenon of fictitious tenders, where the conspirators, which may include tender committees, employers and business actors, design a tender process that appears to follow administrative procedures but in fact does not involve any real competition. This covert manipulation of the tender procedure is carried out very carefully, maintaining the appearance of a procedurally sound process while ensuring that the final outcome conforms to pre-determined arrangements. The essence of a joint conspiracy lies in its ability to masquerade as a legitimate tender, thereby hiding the true nature of the collusion and defeating the principles of fair competition that underlie the integrity of the government procurement process. To address and prevent joint conspiracy, a multifaceted approach is needed, combining regulatory vigilance, law enforcement mechanisms and the promotion of transparency to maintain fairness and impartiality in the tender process.

In addition, tenders that have the potential to harm business competition or hinder the fair development of competition are characterized by a lack of transparency and limited dissemination of information, which ultimately prevents interested and qualified business actors from participating. Such cases generally involve tenders that are not transparent and fail to receive wide publicity, leading to the exclusion of competent business entities. In addition, these tenders often have discriminatory characteristics that limit access to only certain business actors, while other business actors with similar competence are excluded. In particular, such tenders often impose strict technical requirements or brand specifications, which appear to be designed to favor certain business actors, thereby creating significant barriers that prevent the involvement of other worthy competitors. These restrictive practices collectively serve to hamper the competitive landscape and undermine the basic principle of impartial business engagement.

To ensure that there is conspiracy in the tender process, it is important to consider various indicative factors that are often found during the implementation of the process. Based on Business Competition Supervisory Commission (*in Indonesian called KPPU*) Regulation Number 2 of 2010 which regulates the Guidelines for Article 22 concerning the Prohibition of Conspiracy in Tenders, the mode and indications of collusion can be categorized based on various stages in procurement, which include a total of 14 different phases. These phases include the planning phase, formation of the committee, company pre-qualification or pre-auction, preparation of requirements for tender participation, preparation of tender documents, tender or auction announcement, procurement of tender documents, determination of the estimated price itself or the auction base price, explanation of tender or open auction procedures, submission and opening of tender

offer documents, evaluation and determination of tender winners, announcement of prospective winners, submission of objections, selection of tender winners, signing of contracts, and finally the implementation phase and post-implementation evaluation [24].

A comprehensive classification of modes and indications of collusion at various stages of procurement is essential to detect and prevent illegal practices that could undermine the integrity and fairness of the tender process. By categorizing these indicators at each stage, regulatory bodies and oversight mechanisms can effectively examine and assess potential collusion, thereby ensuring that the principles of impartiality, transparency and fair competition in government procurement are maintained [25]. In addition, this systematic classification framework emphasizes the importance of vigilance and rigor in regulatory oversight to protect the integrity of tender procedures, which is a crucial aspect in strengthening trust and confidence in public procurement practices [26].

3.2. Grasping the Essentials Laws and Policies

The initial regulatory framework governing the ins and outs of government procurement of goods and services is reflected in Presidential Decree No. 18 of 2000, which regulates the Guidelines for the Implementation of Procurement of Goods/Services for Government Institutions [14]. Previously, regulations related to procurement were regulated in Presidential Decree No. 16 of 1994, which focused more on the implementation of the State Budget [27]. Presidential Decree Number 18 of 2000 elucidates various facets of this domain, encompassing the primary responsibilities and qualifications of relevant stakeholders, procurement methodologies and procedures, the promotion of domestic product utilization, procurement contract specifications, and guidance, as well as oversight mechanisms [28].

Subsequently, in the course of its evolution, Presidential Decree Number 80 of 2003 was promulgated to supersede Presidential Decree 18 of 2000. Presidential Decree Number 80 of 2003 introduced a range of requisites, including the mandatory acquisition of expertise certificates for goods/services procurement, the institutionalization of more systematic auction arrangements, and obligatory notifications for job/auction announcements [29]. Over the years, Presidential Decree 80 of 2003 underwent multiple iterations, culminating in its most recent revision, embodied in Presidential Decree Number 95 of 2007, which constitutes the Seventh Amendment to Presidential Decree 80 of 2003.

The evolving landscape of goods and services procurement has necessitated increasingly intricate regulatory frameworks, particularly concerning the delineation of authority and responsibility among individuals engaged in the procurement process. Notably, Presidential Decree 80 of 2003 did not provide a clear regulatory framework for the authority of the Project Leader (now referred to as PPK) in relation to goods and services procurement. The comprehensive authority over the procurement of goods/services remained vested in the Budget User, encompassing tasks ranging from the formulation of the Self Estimated Price (HPS) to the appointment of the Procurement Committee/Official and the monitoring of contract execution [30]. Furthermore,

Presidential Decree 80 of 2003 did not proffer benchmarks for HPS preparation in alignment with the principles underpinning government procurement of goods/services.

In the pursuit of enhancing the efficacy of government procurement and steering it toward the realization of value for money, the government introduced Presidential Decree No. 54 of 2010, which intricately delineated the processes for formulating HPS in consonance with the principles governing government procurement of goods/services [31].

Subsequently, with the aim of refining regulations governing government procurement of goods/services, the Government Goods/Services Procurement Policy Institute (LKPP) formulated novel regulations through Presidential Regulation Number 16 of 2018, which supplanted Presidential Regulation Number 54 of 2010 and its subsequent amendments. Presidential Regulation Number 16 of 2018 aspired to expedite and streamline the execution of Government Goods/Services Procurement, prioritizing simplicity, cost-efficiency, ease of oversight, and adherence to the principle of value for money. This amendment encompassed structural revisions, modifications to terminology and definitions, and changes to procedural regulations. The new framework, comprising 15 chapters and 94 articles, simplifies normative components while deferring standard and procedural matters to LKPP Regulations and relevant technical ministry regulations [32].

Moreover, in 2021, Presidential Regulation (Perpres) Number 12 of 2021 was issued as an amendment to Presidential Regulation (Perpres) Number 16 of 2018, governing the Procurement of Government Goods/Services. This amendment was necessitated by the enactment of the Job Creation Law (UU) on November 2, 2020, which held significant implications for Micro, Small and Medium Enterprises (MSMEs). Given the close interrelation between MSMEs and the procurement of goods/services funded by the State Budget or Regional Government Budget resources, adjustments were introduced to this Presidential Decree to accommodate regulations pertaining to the utilization of MSME products and the procurement of construction services. The intention behind this revision is to facilitate the establishment and growth of businesses, thereby fostering economic development [33].

Furthermore, in tandem with these legislative developments, it is imperative to note that Law No. 5 of 1999 prohibits actions by business actors that hinder or contravene the principles of healthy business competition, encompassing restrictions on market access, collusion, and other endeavors aimed at stifling competition [34]. One such action contributing to unfair business competition is the act of conspiracy for the purpose of organizing and/or predetermining the winner of tenders, as stipulated in Article 22 of Law Number 5 of 1999.

Article 22 of Law Number 5 of 1999, specifically addressing the Prohibition of Monopolistic Practices and Unfair Business Competition, proscribes business actors from conspiring with other entities to orchestrate and/or influence the outcome of a tender in a manner that results in unfair business competition. To comprehensively elucidate the elements within Article 22, the following components can be discerned [35]. The first component pertains to the identification of the business actor, encompassing

both individuals and corporate entities, whether as legal entities or non-legal entities, operating within the jurisdiction of the Republic of Indonesia, either independently or through collaborative agreements, engaged in diverse economic sector activities (Article 1 point e of Law Number 5 of 1999).

The second component encapsulates the essence of conspiracy, which manifests as collaborative endeavors among business actors and other relevant entities, initiated through various means, with the aim of securing a favorable outcome in a given tender. Elements characterizing conspiracy encompass cooperative activities between multiple parties, transparent or clandestine adjustments of documents with fellow participants, the examination of tender documents prior to submission, the fabrication of spurious competitive dynamics, and the facilitation of conspiratorial endeavors [36].

Subsequently, the third component addresses other parties, referring to individuals or entities (vertical or horizontal) involved in the tendering process who partake in collusion with business actors functioning as tender participants and/or other legal entities with relevance to the tender. The fourth component pertains to the orchestration and/or determination of the tender's victor, involving actions undertaken by involved parties in the tender process with the objective of sidelining competing business actors and/or securing victory for specific tender participants through multifarious means. The orchestration and/or determination of the tender winner encompasses aspects such as the establishment of winning criteria, technical prerequisites, financial considerations, specifications, procedural aspects of the tender, among others. Finally, the fifth component pertains to the infraction of unfair business competition, where business actors conduct production and/or marketing activities for goods and/or services through dishonest or unlawful means, thereby hindering fair business competition and contravening legal norms [37].

3.3. Legal Measures to Combat Gratification and Tender Conspiracy

The regulatory provisions embedded within Law Number 5 of 1999, which pertains to the Prohibition of Monopolistic Practices and Unfair Business Competition, align harmoniously with the broader national endeavor to combat corruption, as enshrined in Law Number 20 of 2001, titled the Eradication of Corruption Crimes [8]. This synchronicity reflects the concerted efforts of the legal framework to foster a more efficient economic landscape by eliminating not only monopolistic and anticompetitive practices but also corrupt activities that undermine the integrity of the business environment. This convergence of legal objectives is notably evident in Article 44, paragraph (5) of Law Number 5 of 1999, which stipulates that decisions rendered by the Business Competition Supervisory Commission can serve as substantial preliminary evidence for investigators, thereby empowering them to initiate comprehensive investigations, including those involving criminal acts of corruption.

The combination of these regulatory provisions emphasizes the link between competition law and anti-corruption measures within the broader framework of good governance and economic efficiency. By empowering investigators to utilize KPPU decisions as substantial initial evidence, this legal framework affirms the commitment to eradicating corrupt practices that undermine the principles of fairness, transparency,

and equal competition in the business world. This regulatory synergy not only increases the effectiveness of anti-corruption efforts but also strengthens the integrity of the business environment, which ultimately contributes to the creation of a more efficient and equitable economic ecosystem [38].

Furthermore, at every stage of procurement of goods and services, from preparation, auction, tender, contract, realization, to monitoring and evaluation, there are patterns that indicate the potential for corrupt practices, monopolies, and unfair competition. At the preparation stage, indications of irregularities are often seen from the manipulation of needs and budget preparation that are directed to benefit certain parties. The auction and tender stages are the main areas where conspiracies occur, with modes such as discriminatory qualification adjustments, the use of biased technical specifications, or unrealistic self-estimated price (HPS) settings. At the contract stage, there are often changes to terms or conditions that benefit certain parties. Meanwhile, at the realization and evaluation stages, irregularities such as reduced quality of goods/services and weak supervision worsen the situation.

The practice of gratification, which often involves the exchange of gifts, services, or benefits, can be seen as a mechanism that benefits the giver of the gratification. However, this unethical practice indirectly creates a reciprocal impact, where the recipient of the gratification may tend to provide special treatment or benefits to certain parties, especially in the context of the tender process, in order to ensure their victory. This dynamic is not only a serious criminal act of corruption but also goes against the principles of fair competition. Therefore, this practice is expressly prohibited by the legal framework contained in Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, as well as Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

Gratification practices are often an integral part of tender conspiracies, where incentives in the form of money, goods, or services to auction committees or related officials are used to obtain preferential treatment. This practice violates the principle of fair competition and is often associated with violations of Article 22 of Law Number 5 of 1999 and Article 12B of Law Number 20 of 2001. Strict law enforcement against gratification, especially in the procurement process of goods/services, is very important to prevent the dominance of certain groups that can damage the integrity of the procurement process.

Recognizing gratification as a corrupt practice as well as a violation of the principle of fair competition confirms the comprehensive approach adopted by these regulations to address not only the act of corruption itself but also the factors that support it. By integrating measures to prevent bribery into the regulatory framework, the law aims to maintain the integrity of the tender process, promote transparency, and ensure a level playing field for all participants. In doing so, the regulation supports the broader goals of good governance and economic fairness in the realm of business competition [39].

The act of accepting or offering gratification in the context of Government Procurement of Goods/Services has a direct and significant relationship with what can be categorized as a criminal act within the scope of the tender conspiracy, as regulated in Article 22 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic

Practices and Unfair Business Competition. The implementation of this conspiracy depends on the fulfillment of two main elements. First, there must be the involvement of two or more parties who work together to carry out certain actions. Second, the actions carried out by these parties must violate applicable laws or regulations, which constitute a violation of legal provisions.

In the context of government procurement, gratification given or received in return for preferential treatment or illegitimate benefits during the tender process not only meets the criteria for conspiracy but also reflects corrupt behavior that undermines the principles of fair competition. This dual legal framework, which includes competition law and anti-corruption measures, emphasizes the seriousness of these practices and serves as an important deterrent to collusion, maintains the integrity of the tender process, and encourages fair business involvement in the realm of public procurement [40].

Supervision and enforcement of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is under the authority of the Business Competition Supervisory Commission. As a specialized supervisory institution, KPPU holds a broad mandate to ensure the proper implementation of this law. This task includes not only the establishment of a fair and competitive business environment but also maintaining a conducive climate for business competition to develop well. Essentially, KPPU functions as a key institution in the realm of competition law, responsible for enforcing the principles of equal competition and protecting market dynamics from monopolistic practices and unfair behavior [41].

The dual role of the Business Competition Supervisory Commission emphasizes the broader goal of creating a balanced and transparent business ecosystem. By acting as both a regulatory authority and a driving force to promote healthy competition, KPPU contributes to market vitality, where businesses can operate with confidence, and consumers can enjoy competitive prices and quality products and services. This comprehensive approach is in line with the core goals of good governance and economic efficiency, and emphasizes the importance of regulatory institutions such as KPPU in shaping and maintaining a thriving business landscape [42].

The Business Competition Supervisory Commission primarily functions as a law enforcement agency responsible for enforcing the provisions of the Business Competition Law. KPPU has an important role in investigating and handling cases of monopolistic practices, unfair business competition, and other violations in the competitive landscape. However, it should be noted that KPPU is not a special judicial institution for resolving business competition disputes. KPPU's authority focuses more on administrative functions, making it more similar to an administrative institution in the legal framework. Therefore, the sanctions it imposes are administrative in nature, reflecting its primary role in maintaining balance and fairness in the business environment [43].

The absence of authority to impose criminal or civil sanctions within the scope of the Business Competition Supervisory Commission emphasizes its unique role as an administrative entity that focuses on regulating and supervising competition in the business sector. Although KPPU does not have the judicial authority to impose criminal

or civil sanctions, its administrative sanctions remain an effective tool to prevent anti-competitive behavior and maintain market fairness. This more targeted approach ensures that KPPU can handle competition issues effectively while still adhering to the limitations of its authority within the broader legal framework.

With limited authority in law enforcement, KPPU recognizes the importance of collaboration with other law enforcement agencies to handle complex cases in the realm of business competition. In cases of business competition that indicate criminal activity, especially those involving state civil servants or state officials, KPPU can cooperate by transferring the case to authorized legal institutions, such as the Police, Prosecutor's Office, and Corruption Eradication Commission for further investigation and action [44]. This collaborative approach is very important because KPPU's jurisdiction is more directed at providing administrative sanctions to business actors, while KPPU does not have the authority to handle criminal proceedings.

The framework of cooperation between the Business Competition Supervisory Commission and other law enforcement agencies emphasizes the importance of synergistic efforts in eradicating complex violations in the arena of business competition. By transferring cases involving criminal elements to the competent authorities, KPPU ensures that the full spectrum of legal instruments and sanctions can be applied as needed, thus encouraging a comprehensive approach to maintaining fair and competitive business practices while upholding the rule of law [45].

One of the notable cases that drew substantial public attention pertains to criminal gratification within the context of procurement, specifically in the acquisition of electronic National Identification Card (e-KTP) packages based on national population identification numbers during the 2011-2012 period within the Ministry of Home Affairs [46]. This case stands as a prominent example, as it marked one of the initial instances where the Business Competition Supervisory Commission became involved and subsequently referred the matter to the Corruption Eradication Commission. The KPPU's investigation into this case revealed a conspiracy that extended to the 2011-2012 tender for e-KTP implementation, implicating auction officials and business groups. This conspiracy mirrors similar procurement-related malfeasance cases, such as the procurement of goods and services linked to the Permai Group, operating under the jurisdiction of the former Demokrat General Treasurer, Mohammad Nazaruddin. These high-profile cases underscore the gravity of collusion and corruption within procurement processes, prompting the involvement of specialized enforcement agencies to ensure a thorough and impartial investigation [47].

The transfer of cases such as these from the KPPU to the Corruption Eradication Commission reflects the recognition that corrupt practices and conspiracies not only undermine fair business competition but also threaten the integrity of public procurement and governance. These cases serve as a reminder of the importance of collaborative efforts between law enforcement agencies in handling complex cases of corruption and collusion, where they work together to uphold the principles of transparency, equal competition, and good governance in the realm of government procurement.

Cases related to the crime of gratification are generally tried in special corruption courts. During the trial process, these cases follow the legal procedures set out in the Criminal Procedure Code (KUHAP), with special provisions regarding corruption cases regulated in Law Number 19 of 2019 concerning the Corruption Eradication Commission and Law Number 46 of 2009 concerning the Corruption Court [48]. This special legal framework provides the necessary guidelines and structure to handle corruption cases, including those involving gratification.

The use of special corruption courts emphasizes the nature and severity of corruption-related offenses, which require a focused legal process to uphold the principles of fairness, transparency, and accountability [49]. By utilizing these special institutions and laws, the justice system aims to effectively eradicate corruption, protect the rule of law, and enhance public confidence in the impartial judicial process in handling cases of graft and other corruption offenses. Moreover, to prevent monopolistic practices and corruption in the procurement of goods and services, it is important to increase transparency through the implementation of an e-procurement system that includes open publication at every stage of procurement. In addition, strengthening supervision by institutions such as KPPU and Corruption Eradication Commission, as well as involving the community in tender monitoring, can be effective steps to close the gap for irregularities. Education and training for state civil servants involved in procurement are also key to increasing professionalism and reducing dependence on certain parties.

4. Conclusions

The prohibition of conspiracy activities in the government procurement process is a fundamental component of legal regulations governing business competition. Horizontal conspiracy, vertical conspiracy, and joint conspiracy are forms of collusion that undermine the principle of fair and equal competition in the tender process. In addition, the development of the regulatory framework in the course of government procurement in Indonesia reflects the government's commitment to improving efficiency, transparency, and the application of the principle of value for money in the use of public funds. This exhibits Indonesia's responsiveness to changing circumstances and ongoing efforts to create a procurement environment that supports economic growth, while maintaining integrity and responsible use of resources.

Furthermore, the alignment between the provisions of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, with Law Number 20 of 2001, which focuses on the Eradication of Criminal Acts of Corruption, is a significant step towards creating a more transparent, competitive, and corruption-free business environment in Indonesia. The synergy between these two legal frameworks is reflected in Article 44, paragraph (5) of Law Number 5 of 1999, which authorizes investigators to initiate comprehensive investigations, including those involving corruption, by utilizing decisions taken by the Business Competition Supervisory Commission. This regulatory harmony affirms the commitment to eradicating monopolistic and corrupt practices, strengthening the principles of fairness, transparency, and equal competition. The practice of gratification, which is recognized

as an act of corruption that undermines the principle of fair competition, is discussed comprehensively in this legal framework. The integration of measures to prevent gratification demonstrates the comprehensive approach adopted by this law to combat not only corruption but also the factors that maintain it. By prohibiting gratification, this law aims to maintain the integrity of the tender process, promote transparency, and ensure equal competition for all participants.

References

[1] C. Liu and J. L. Mikesell, "The Impact of Public Officials' Corruption on the Size and Allocation of U.S. State Spending," *Public Adm. Rev.*, vol. 74, no. 3, pp. 346–359, May 2014, doi: 10.1111/puar.12212.

[2] M. S. Silitonga, M. van Duijn, L. Heyse, and R. Wittek, "Setting a Good Example? The Effect of Leader and Peer Behavior on Corruption among Indonesian Senior Civil Servants," *Public Adm. Rev.*, vol. 79, no. 4, pp. 565–579, Jul. 2019, doi: 10.1111/puar.13059.

[3] C. Bildfell, "P3 Infrastructure Projects: A Recipe for Corruption or an Antidote?," *Public Work. Manag. Policy*, vol. 23, no. 1, pp. 34–57, Jan. 2018, doi: 10.1177/1087724X17709791.

[4] S. Wildansyah, "ICW: Korupsi Pengadaan Barang 2017 Meningkat, Negara Rugi Rp 1 T," *Detiknews*, Feb. 2018.

[5] K. Endri, "Abraham Samad: Kasus Terbanyak di KPK Pengadaan Barang dan Jasa," *Tempo*, Mar. 2018.

[6] Anti-Corruption Learning Center, "Mencegah Korupsi pada Pengadaan Barang & Jasa," *Anti-Corruption Learning Center*, 2024.

[7] D. Yustiarini and B. W. Soemardi, "A review of corruption in public procurement in Indonesia," *IOP Conf. Ser. Mater. Sci. Eng.*, vol. 849, no. 1, p. 012013, May 2020, doi: 10.1088/1757-899X/849/1/012013.

[8] D. Yustiarini and B. W. Soemardi, "A review of corruption in public procurement in Indonesia," *IOP Conf. Ser. Mater. Sci. Eng.*, vol. 849, no. 1, p. 012013, May 2020, doi: 10.1088/1757-899X/849/1/012013.

[9] S. U. W. Prakasa and A. Asis, "Mitigasi Korupsi Berbasis PAR: Studi pada Bantuan Sosial Semeru Pemerintah Daerah Kabupaten Lumajang," *J. Penegakan Huk. dan Keadilan*, vol. 4, no. 1, pp. 1–10, Mar. 2023, doi: 10.18196/jphk.v4i1.17159.

[10] S. U. W. Prakasa, A. Hariri, H. S. Haq, A. R. Arafah, and M. M. Sahid, "Public Procurement Nexus Social for Mitigate the Corruption: Lesson from Indonesia," *Lex Sci. Law Rev.*, vol. 7, no. 2, pp. 413–448, Nov. 2023, doi: 10.15294/lesrev.v7i2.72630.

[11] A. C. Puspita and Y. M. L. Gultom, "The Effect of E-Procurement Policy on Corruption in Government Procurement: Evidence from Indonesia," *Int. J. Public Adm.*, vol. 47, no. 2, pp. 117–129, Jan. 2024, doi: 10.1080/01900692.2022.2093900.

[12] A. C. Puspita and Y. M. L. Gultom, "The Effect of E-Procurement Policy on Corruption in Government Procurement: Evidence from Indonesia," *Int. J. Public Adm.*, vol. 47, no. 2, pp. 117–129, Jan. 2024, doi: 10.1080/01900692.2022.2093900.

[13] M. R. Kurniawan and P. Pujiyono, "Modus Operandi Korupsi Pengadaan Barang Dan Jasa Pemerintah Oleh Pns," *Law Reform*, vol. 14, no. 1, p. 115, Mar. 2018, doi: 10.14710/lr.v14i1.20241.

[14] M. R. Kurniawan and P. Pujiyono, "Modus Operandi Korupsi Pengadaan Barang dan Jasa Pemerintah oleh PNS," *Law Reform*, vol. 14, no. 1, p. 115, Mar. 2018, doi: 10.14710/lr.v14i1.20241.

[15] R. A. Wibowo, "Mencegah Korupsi Pengadaan Barang Jasa (Apa yang Sudah dan yang Masih Harus Dilakukan?)," *Integritas*, vol. 1, no. 1, pp. 37–60, 2016.

[16] R. A. Wibowo, "Mencegah Korupsi Pengadaan Barang Jasa (Apa yang Sudah dan yang Masih Harus Dilakukan?)," *Integritas J. Antikorupsi*, vol. 1, no. 1, pp. 37–60, 2015.

[17] S. Soekanto, *Penelitian Hukum Normatif*. Yogyakarta: CV. Rajawali, 2009.

[18] M. M. Rohman, N. Mu'minin, M. Masuwd, and E. Elihami, "Methodological Reasoning Finds Law Using Normative Studies (Theory, Approach and Analysis of Legal Materials)," *MAQASIDI J. Syariah dan Huk.*, pp. 204–221, Dec. 2024, doi: 10.47498/maqasidi.v4i2.3379.

[19] A. R. M. Efendy, "Towards Enhanced Personal Data Protection: A Novel Approach to Regulation and Practice in Indonesia," *E-Justice J. Law Technol.*, vol. 1, no. 1, pp. 1–15, 2024.

[20] S. Wibowo, "Tender Conspiracy in Electronic Procurement of Goods and Services (A Study of Case Number 04/KPPU-L/2015)," *Prophet. Law Rev.*, vol. 3, no. 1, Jun. 2021, doi: 10.20885/PLR.vol3.iss1.art4.

[21] R. Anggriawan and M. E. Susila, "Corporate Investment Fraud: Exploring Criminal Liability and the Legal Framework in Indonesian Context," *Law Justice*, vol. 8, no. 2, pp. 226–242, Dec. 2023, doi: 10.23917/laj.v8i2.2885.

[22] S. Dhurotun Muniroh and U. Kamal, "The indication of unfair business competition practice in the implementation of public procurement auction using E-Tendering," *J. Priv. Commer. Law*, vol. 2, p. 78, 2018.

[23] R. Susetyani, D. Y. T. Muryanto, and D. P. S.H.MH, "The Implementation of the Decision of Kpu In Relation to the Objection of Business Actors Due to Tender Conspiracy Case," *Sch. Int. J. Law, Crime Justice*, vol. 03, no. 02, pp. 50–57, Feb. 2020, doi: 10.36348/sijlcj.2020.v03i02.001.

[24] A. K. Ferdinand, S. DM, and M. Shafira, "Penegakan Hukum dalam Pengadaan Barang dan Jasa Pemerintah oleh Komisi Pengawas Persaingan Usaha (KPPU) dan Komisi Pemberantasan Korupsi (KPK)," *Cepalo*, vol. 4, no. 2, pp. 111–128, Sep. 2020, doi: 10.25041/cepalo.v4no2.2006.

[25] S. Z. S. Tabish and K. N. Jha, "Analyses and evaluation of irregularities in public procurement in India," *Constr. Manag. Econ.*, vol. 29, no. 3, pp. 261–274, Mar. 2011, doi: 10.1080/01446193.2010.549138.

[26] V. Lapuente and S. Van de Walle, "The effects of new public management on the quality of public services," *Governance*, vol. 33, no. 3, pp. 461–475, Jul. 2020, doi: 10.1111/gove.12502.

[27] R. M. Tuakia and A. Silviana, "Penggunaan Tanah Aset Milik PT. Kereta Api oleh Masyarakat," *J. Ilm. Univ. Batanghari Jambi*, vol. 23, no. 2, p. 1463, Jul. 2023, doi: 10.33087/jiubj.v23i2.3100.

[28] L. Ratna Kusumawati, Z. Arief Fakrulloh, and E. Isretno Israhadi, "Juridical Overview of Misappropriation of Medical Devices Procurement Budget By Hospitals," *Edunity Kaji. Ilmu Sos. dan Pendidik.*, vol. 2, no. 1, pp. 134–144, Jan. 2023, doi: 10.57096/edunity.v1i05.45.

[29] I. Ahmaddien, "Juridicial Review of Government Procurement of Goods and Services Based on Presidential Regulation 12 2021 in Conjunction of Presidential Regulation 16 2018," *Romeo Rev. Multidiscip. Educ. Cult. Pedagog.*, vol. 1, no. 1, pp. 11–22, Nov. 2021, doi: 10.55047/romeo.v1i1.41.

[30] I. B. Hengki, "Perceptions of Government External Auditors on The Effectiveness of Red Flags in Detecting Fraud on Procurement of Goods and Services in West Java," *Rigeo*, vol. 11, no. 8, 2021.

[31] M. D. Pane, "Aspek Hukum Pengadaan Barang Dan Jasa Pemerintah, Suatu Tinjauan Yuridis Peraturan Pengadaan Barang Dan Jasa Pemerintah," *J. Media Huk.*, vol. 24, no. 2, 2017, doi: 10.18196/jmh.2017.0090.147-155.

[32] M. A. Samad, L. H. Zuada, and V. A. I. Baculu, "Implementation of E-Government Policies," in *Proceedings of the 2nd Annual International Conference on Business and Public Administration (AICoBPA 2019)*, Paris, France: Atlantis Press, 2020. doi: 10.2991/aebmr.k.201116.015.

[33] F. Tampilang, J. Tinangon, and L. Mawikere, "Analysis of Regional Property Procurement based on Presidential Regulation no. 12 of 2021 to the Manado City Government," *Formosa J. Appl. Sci.*, vol. 2, no. 9, pp. 2093–2104, 2023, doi: https://doi.org/10.55927/fjas.v2i9.5932.

[34] I. Sugiarto, "Perspektif Ilmu Ekonomi Dan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Terhadap Diskriminasi Harga," *J. Wawasan Yuridika*, vol. 33, no. 2, p. 153, Oct. 2016, doi: 10.25072/jwy.v33i2.101.

[35] A. M. T. Anggraini, "Sinergi Bumn Dalam Pengadaan Barang Dan/Atau Jasa Dalam Perspektif Persaingan Usaha," *Mimb. Huk. - Fak. Huk. Univ. Gadjah Mada*, vol. 25, no. 3, p. 446, Mar. 2014, doi: 10.22146/jmh.16072.

[36] Y. S. Wibowo, N. D. Rizkia, and H. Fardiansyah, "Juridical Analysis of the Practice of Tender Conspiracy for Periodic Maintenance of the Bateballa-Jatia Cs Road in the Work Unit of the Public Works and Spatial Planning Office of Bantaeng Regency APBD 2017 Fiscal Year," *Indones. J. Contemp. Multidiscip. Res.*, vol. 2, no. 4, pp. 737–746, Jul. 2023, doi: 10.55927/modern.v2i4.5132.

[37] M. Fajar, R. Fahlevi, Y. Nurhayati, and H. Tegnan, "Direct appointment of state-owned enterprises in the procurement of goods and services: unfair competition in tender in Indonesia," *Int. J. Procure. Manag.*, vol. 13, no. 6, p. 818, 2020, doi: 10.1504/IJPM.2020.111359.

[38] R. K. Rachman, "A Juridical Review on the Enforcement of Criminal Law to the Violations of Tender Conspiracy Practices in the Procurement of Government Goods/Services in Health Sector," *Int. J. Soc. Sci. Hum. Res.*, vol. 04, no. 12, Dec. 2021, doi: 10.47191/ijsshr/v4-i12-27.

[39] N. N. Sirait and M. Siregar, "Correlation between Competition Law Cases and Corruption(Case Study: Indonesia)," in *Proceedings of the 1st Economics and Business International Conference 2017 (EBIC 2017)*, Paris, France: Atlantis Press, 2018. doi: 10.2991/ebic-17.2018.22.

[40] V. A. Sikumbang and S. Syafridatati, "Implementation of Criminal Against Persons of Corruption in Procurement of Goods and Services Conducted by Members Of the Makassar DPRD (Case Study No. 1153k/Pid. Sus/2017)," *J. Jurisprudentia*, vol. 14, no. 1, p. 4, 2023.

[41] U. Silalahi and P. Chrysentia, "Tender conspiracy under kppu decision and prohibition of monopolistic practices act," *Sriwij. Law Rev.*, vol. 4, no. 1, 2020, doi: 10.28946/slrev.Vol4.Iss2. 347/pp91-108.

[42] B. R. Adella, "The Validity of the Collusive Tender in the Procurement of Goods and Services of Bus Transjakarta Pte Ltd. (Case Study the Verdict Number: 15/Kppu-I/2014)," *Yust. J. Huk.*, vol. 7, no. 3, p. 614, Dec. 2018, doi: 10.20961/yustisia.v7i3.21596.

[43] I. Haryanto, M. Sakti, and W. A. Kusuma Putra, "Protection For Tender Participants Businesses That Are Losses Due To Collection According To Business Competition Law," *Justicia Sains J. Ilmu Huk.*, vol. 5, no. 2, pp. 299–321, Aug. 2021, doi: 10.24967/jcs.v5i2.1290.

[44] S. C. Putro and G. E. S. Darnis, "Strategy to Prevent Corruption in the Procurement of Defense Equipment in Indonesia," *Int. J. Arts Soc. Sci.*, vol. 4, no. 5, 2021.

[45] A. Maulidi, "The Investigation and elimination of public procurement fraud in government sectors (a case study in Indonesia's procurement system: cases from 2006 to 2012)," *Int. J. Econ. Financ. Issues*, vol. 7, no. 2, pp. 145–154, 2017.

[46] S. Anisah and T. Raharjo, "Batasan Melawan Hukum dalam Perdata dan Pidana Pada Kasus Persekongkolan Tender," *J. Huk. Ius Quia Iustum*, vol. 25, no. 1, pp. 24–48, Jan. 2018, doi: 10.20885/iustum.vol25.iss1.art2.

[47] Z. Arifin, E. P. Handayani, and S. Virdaus, "Combating Corruption in the Procurement By The Press," *IOP Conf. Ser. Earth Environ. Sci.*, vol. 175, p. 012131, Jul. 2018, doi: 10.1088/1755-1315/175/1/012131.

[48] B. Hartono, "Corruption Eradication Policy Judging from the Politics of Criminal Law (Law Number 19 of 2019 Concerning the Second Amendment to Law Number 30 of 2002 Concerning the Corruption Eradication Commission)," in *Proceedings of the International Conference on Law, Economics and Health (ICLEH 2020)*, Paris, France: Atlantis Press, 2020. doi: 10.2991/aebmr.k.200513.106.

[49] S. A. Schütte, "Against the Odds: Anti-Corruption Reform in Indonesia," *Public Adm. Dev.*, vol. 32, no. 1, pp. 38–48, Feb. 2012, doi: 10.1002/pad.623.