

Measuring Corruption Tendency in Exercising Authority of the Proxy of Budget User: A Legal Culture Perspective

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Abstract

Presidential Regulation No. 12 of 2021 on the Amendment to Presidential Regulation No. 16 of 2018 on Government Procurement (PR 12/2021) expands the authority for the Proxy of Budget User (PBU) to become Commitment Making Officer. Consequently, the process of procuring government goods/services is controlled by a single person; such a condition can facilitate various forms of criminal acts, especially corruption. This study aims to analyze the dual position of PBU as a Commitment Making Officer, the tendency of corruption due to the expansion of PBU's authority, and the reformulation of PBU's authority in the future. It is normative juridical research that examines PR 12/2021 with a qualitative analysis approach. Amendment to the Presidential Regulation on Government Procurement includes the legitimacy of PBU as a Commitment Making Officer without any requirements as stated in the previous regulation. Among others, this study underlines that centralized authority will have implications for a more robust culture of corruption due to the absence of control from other parties. In future provisions, PBU may not hold a concurrent position as Commitment Making Officer in accordance with the principles of transparency and accountability. The culture of professionalism in the procurement of government goods/services needs to be improved to reduce the culture of corruption, collusion, and nepotism.

1. INTRODUCTION

Procuring goods/services in the government sector is essential for the implementation of national development in order to improve public services and develop national and regional economies. Procurement of goods/services is also expected to provide maximum value for money, contribute to the improvement of domestic products, increase the role of micro, small and medium enterprises, and promote sustainable development.¹ In this endeavor, the President of Indonesia has issued Presidential Regulation No. 16 of 2018 concerning Procurement of

¹ Niru Anita Sinaga, "Perjanjian Pengadaan Barang/Jasa Pemerintah Kaitannya dengan Asas Keseimbangan dalam Hukum Perjanjian," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 2 (2019): 30.

Government Goods/Services (hereinafter referred to as PR 16/2018) which was amended to Presidential Regulation No. 12 of 2021 (hereinafter referred to as PR 12/2021).

The government procurement of goods/services crosses the aspects of administrative, private, and criminal law. Administrative law plays more role, compared to the others, as it relates to the use of authority, fosters a clean government, and prevents maladministration.² Maladministration is a classic problem of government bureaucracies in carrying out their duties. It is an illegal act that involves exceeding authority, abusing it for illegal purposes, and neglecting legal responsibilities in the state administration's and the government's administration of public services, which results in material and/or immaterial losses to society and individuals. Maladministration typically arises when a public body disregards a rule or principle intended to bind it.³ The lack of understanding of the laws and regulations related to the procurement of government goods/services may impact irregularities in the procurement process. It can therefore be a causing factor of the state financial losses.⁴

Misuse of state finances is an act against the law: one of the elements of corruption. The corruption that occurs in Indonesia is widespread; not only is it detrimental to the state's finances, but it also violates the social and economic rights of the community as a whole.⁵ Mismanagement of the state finances results in uncontrollable state budget and financial losses, since errors and inaccuracies in the management process are done intentionally. This violation of law is strictly prohibited.⁶ The expanded authority of the Proxy of Budget User (hereinafter referred to as PBU), who can also serve as a Commitment Making Officer, will make it easier for them to use the funds that are initially intended for the purchase of goods/services for their interests.⁷

² Ahmad Rustan Syamsuddin, "Pembuktian Penyalahgunaan Wewenang dalam Perkara Tindak Pidana Korupsi Pengadaan Barang dan Jasa," *Jambura Law Review* 2, no. 2 (2020): 161.

³ Elstonsius Banjo, Surastini Fitriasih, and Eva Achjany Zulfa, "Maladministration and Intentionality on the Criminal Corruption Court in Indonesia," *Petita* 7, no. 2 (2022): 118.

⁴ Art. 1 (1) of Law No. 17 of 2003 on the State Finance states that State finances are all of State rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be used as State property in connection with the implementation of these rights and obligations.

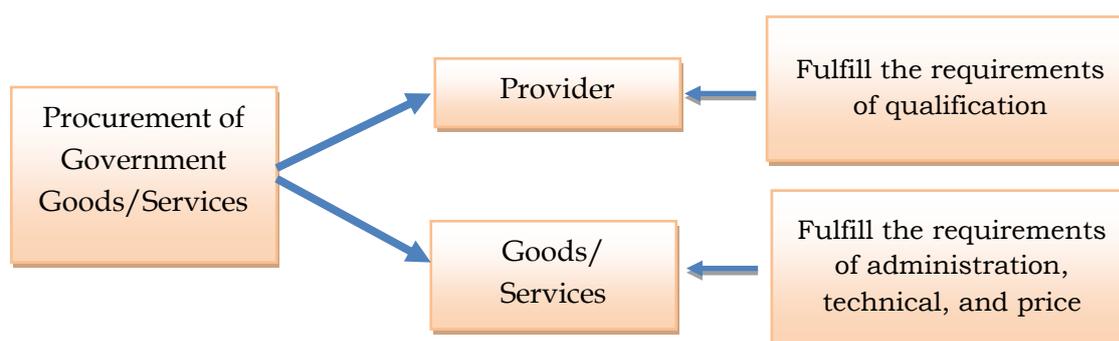
⁵ Vita Mahardhika, "Pertanggungjawaban Pidana Pejabat Pembuat Komitmen Sebagai Upaya Pencegahan Korupsi Pengadaan Barang/Jasa Pemerintah," *Jurnal Hukum Samudra Keadilan* 16, no. 1 (2021): 140.

⁶ Dewi Kania Sugiharti and Ajie Ramdan, "Mewujudkan Desa Bebas Korupsi Melalui Pengelolaan Keuangan Desa Terpadu," *Pandecta Research Law Journal* 14, no.1 (2019): 57.

⁷ As an illustration, in the case of the procurement of a driving license simulator (KPK vs. Djoko Susilo, Decision No. 48/PID.SUS/TPK/2013/PN.Jkt.Pst, dated 16 January 2014), Inspector General Djoko Susilo at that time served as Director of Traffic at the National Police Headquarters who was also the PBU. However, it was he who actively ordered Commitment Making Officers to deviate from the rules to win certain bidders. Opportunities for corruption will be even greater when PBU also serves as Commitment Making Officers. See Richo Andi Wibowo, "Mencegah Korupsi Pengadaan Barang Jasa (Apa yang Sudah dan yang Masih Harus Dilakukan?)," *Integritas: Jurnal Antikorupsi* 1, no. 1 (2018): 55.

In legal development, the government procuring goods/services has three essential and strategic meanings. First, it has a strategic meaning in the protection and preference of domestic business actors. Second, it is a significant sector in the effort for economic growth. Third, the applied system with the principles of good governance will encourage the efficiency and effectiveness of public spending as well as conditioning the behavior of the three pillars of governance, namely: the government, the private sector, and the community.⁸ In essence, the procurement of government goods/services is a process to obtain providers who meet the qualification requirements and, subsequently, to obtain goods or services that meet the stipulated requirements. The mechanism for the procurement can be seen in the following chart.

Chart 1. Procurement of Government Goods/Services



Source: Primary data, 2022.

As shown in Chart 1, in the goods/services procurement business sector, many business actors are engaged in their respective fields according to their business, such as the procurement of goods, construction work, other service work, construction consulting work, and non-construction consulting work, but not all business actors have the ability to provide goods/services according to the required specifications. In the procurement of government goods/services through providers, it is described that in order to obtain goods/services that meet the specifications to meet the needs, a Provider must be selected using several selection methods, such as purchasing, direct procurement, direct appointment, fast tender, tender, or selection. The qualification assessment is carried out to fulfill administrative and technical requirements. Suppose the business actor fulfills the qualification requirements in the first stage of the selection process (qualification assessment stage). In that case, they can participate in the second stage of the selection process, namely, making an offer to fulfill the requirements for goods/services. The fulfillment of business actors in meeting the requirements for goods/services will be assessed through administrative, technical, and price fairness evaluation. If, from the first stage to hold, both business actors have fulfilled the requirements, with the last criterion being bidding at a fair and lowest price, then the business actor will be declared the winner. The business actor designated as the

⁸ Mustofa Kamal, "Analisis Politik Hukum dalam Pengadaan Barang dan Jasa Pemerintah," *Jurnal Pro Justice: Kajian Hukum dan Sosial* 1, no. 2 (2020): 1.

winner will follow the next stage until the signing of the contract. If the business actor has signed the contract, the status of the business actor will become a provider.

Actors of procurement of goods and services in the government sector are Budget Users; PBU; Commitment Making Officers; Procurement Officials; Election Working Groups; Procurement Agents; Self-Managed Organizers; and Providers. Procurement is essential as it uses state-sourced finance. Article 1 (1) of the PR 12/2021 determines that the activities of the procurement of goods/services carried out by the government, both at the central and regional levels, are financed by the State Revenue and Expenditure Budget (*Anggaran Pendapatan Belanja Negara/APBN*) or *Anggaran Pendapatan dan Belanja Daerah/APBD*). Since it is carried out using state money, its mechanism must be carried out carefully in accordance with the duties and authorities of each organizer.

PR 12/2021 provides significant changes to the authority of the PBU. As stated in Article 10 (5) of the PR 12/2021, PBU for procuring goods/services using the budget from the APBD can also serve as Commitment Making Officer. Unlike PR 16/2018, the PBU can only serve as a Commitment Making Officer if no personnel can be appointed as Commitment Making Officers as regulated in Article 10 (5) of PR 16/2018.

The Commitment Making Officer represents the agency in engagements or agreements with other parties. The success or failure of the goods and services procurement process in one agency depends on the Commitment Making Officer, who is in charge of planning and supervising the procurement of goods/services. The duties of officials who make commitments are closely related to the use of the state budget. Therefore in their implementation, such officers require skill and thoroughness as well as responsibilities that are different from the primary duties of other administrative staff.⁹ The construction industry faces many challenges demonstrating that onerous contract administration practices are a significant cause of disputes costing the sector billions of dollars annually.¹⁰ The essence of the government procurement of goods/services is based on an agreement called the goods/services procurement contract document. Questions that arise when PBU also serves as a Commitment Making Officer will be related to the competence of the PBU itself in procuring goods/services in the government. In addition, this dual position will eliminate the function of internal control in procuring goods and services.

Holding multiple positions will eliminate the role of internal control in procuring goods/services. Consequently, this will facilitate fraudulent practices that are detrimental to state finances. This dual position will make it easier for bidders to pay bribes by negotiating with only one person without communicating with different people, allowing them to make an

⁹ Heru Triawan, "Pelanggaran Prosedur Hukum oleh Pejabat Pembuat Komitmen dalam Pengadaan Barang/Jasa," *Sosioedukasi: Jurnal Ilmiah Ilmu Pendidikan dan Sosial* 11, no. 1 (2022): 22.

¹⁰ Alan J. McNamara and Samad M. E. Sepasgozar, "Intelligent Contract Adoption in the Construction Industry: Concept Development," *Automation in Construction* 122 (2021): 103452.

informed decision. The Organization for Economic Cooperation and Development (OECD) Anti-Bribery Convention and Transparency International classifies bribery as a form of corruption. Bribery is an act in which a party deliberately abuses power entrusted to their interests, meaning that they receive rewards for using their authority to act in the interests of other parties.¹¹

Several researchers have previously conducted research on the procurement of government goods/services. Arifin, Soegianto, Sulistiyani (2020) assessed that legal protection in the government goods/services procurement partnership agreement could provide legal certainty for the parties. Such protection is in the form of a partnership agreement that must be made in written form as an effort to avoid disputes and controversy, as well as the recognition of the partnership agreement as evidence of work experience which is very beneficial for micro, small and medium enterprises.¹² Manalu (2017) revealed the weak legal protection for the organizers in organizing the procurement of government goods/services, which is caused by the overlapping authorities in the administration of government procurement of goods/services; the absence of clear and firm provisions at the statutory level; and the weak political will of stakeholders related to legal protection for organizers of government procurement of goods/services.¹³ Betham, Hipan, and Fality (2019) discussed the legal protection for organizers of government procurement of goods/services so that they can work in accordance with statutory regulations in order to benefit the government and society.¹⁴ Slightly differs from the above studies, this article focuses on the expansion of PBU's authority as officials making commitments in the procurement of government goods/services and the tendency of corruption due to the expansion of this authority.

Several other researchers have also conducted a study on the culture of corruption. Chen et al (2020) examined the culture of corruption by comparing the before and after situations of the arrest of corrupt officials, in order to capture changes in local corruption culture. Corrupt officials are formed from officials who have a long term of office and are appointed from the regions, which are more likely to have more power.¹⁵ Pahlevi (2022) argued that legal culture as part of the legal system requires law not only to be seen as a formulation of rules on paper, but to be understood as a social

¹¹ Fabian Teichmann et al, "Business to Government (B2G) Corruption and Resource Misallocation. The Case of China at the Municipal Level," *Journal of Economic Criminology* 1 (2023): 100005.

¹² Zaenal Arifin, Soegianto Soegianto, and Diah Sulistyani, "Perlindungan Hukum Perjanjian Kemitraan Pengadaan Barang/Jasa Pemerintah pada Bidang Konstruksi," *Jurnal USM Law Review* 3, no. 1 (2020): 59.

¹³ Julianda B. Manalu, "Perlindungan Hukum terhadap Penyelenggara Pengadaan Barang/Jasa Pemerintah," *Jurnal Hukum Samudra Keadilan* 12, no. 2 (2017): 296.

¹⁴ Ashari Abd Asis Betham, Nasrun Hipan, and Firmansyah Fality, "Analisis Yuridis Prosedur Pengadaan Barang/Jasa Pemerintah serta Perlindungan Hukum Terhadap Pelaku Pengadaan Barang/Jasa," *Jurnal Yustisiabel* 3, no. 2 (2019): 191.

¹⁵ Yunsen Chen et al, "Corruption Culture and Accounting Quality," *Journal of Accounting and Public Policy* 39, no. 2 (2020): 106698.

reality that occurs in society.¹⁶ This social reality shows that a culture of corruption has indeed been awakened and rooted in people's lives. The culture of asking for help, embarrassment, and family relations is used to justify fraudulent practices in procuring government goods/services. The widespread corruption of the judiciary, as well as the weak legal culture of the people, have then contributed as the obstacles to realizing an ideal rule of law state.¹⁷

This paper reflects legal research that assumes the expansion of PBU authority has implicated in the gap to commit corruption in government procurement of goods/services. The analysis is focused on the norms stipulated in PR 12/2021 to 2018 as the primary legal materials, besides other relevant laws and regulations. Secondary legal materials are obtained from a textbook, journal articles, online newspapers, and other sources of information.

2. RESULT AND ANALYSIS

2.1. Concurrent Position of Proxy of Budget User as Commitment Making Officer

2.1.1 The Essence of Government Procurement of Goods/Services

Public procurement accounts for 15-20% of global GDP, while GPA commitments alone represent around EUR 1.3 trillion in business opportunities worldwide.¹⁸ Government procurement usually contributes significantly to a country's economy.¹⁹ The procurement of goods/services is essentially an effort by the users of the goods/services to obtain or acquire the goods/services needed by using specific selection methods and processes to produce the correct goods/services from every money spent (value for money), measured from aspects of quality, quantity, time, cost, location, and provider. Procurement is an activity to obtain goods or services in a transparent, effective, and efficient manner according to the needs and desires of its users. It compares aspects such as quality, quantity, time, and location. The procurement process involves finding, agreeing terms, and acquiring goods, services, or works from external sources, often through a competitive bidding or bidding process. These processes ensure buyers receive goods, services, or work at the best price. Procurement is the acquisition of goods, services, or work from external sources.²⁰

¹⁶ Farida Pahlevi, "Pemberantasan Korupsi di Indonesia Perspektif Legal System Lawrence M. Freidmen," *El-Dusturie: Jurnal Hukum dan Perundang-undangan* 1, no. 1 (2022): 33.

¹⁷ Ana Fauzia, Fathul Hamdani, and Deva Octavia, "The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law," *Progressive Law Review* 3, no. 1 (2021): 12-25.

¹⁸ European Commission, "Internal Market, Industry, Entrepreneurship and SMEs," https://single-market-economy.ec.europa.eu/single-market/public-procurement/international-public-procurement_en

¹⁹ Allison Anthony, "The Use of E-procurement in South African Public Procurement Law: Challenges and Prospects," *Law, Democracy & Development* 22, no. 1 (2018): 39.

²⁰ William L. Mboma, "Assessment on Effects of Procurement Process Through the Use of Gpsa Framework Agreement on Public Entities in Tanzania: A Case Study of National Auditing Office (NAO)," *Asian Journal of Management, Entrepreneurship and Social Science* 2, no. 2 (2022): 164.

Laws and regulations on procurement in the government sector are usually based on the assumption that there is greater competition for tenders and that the best way to achieve greater competition is to reduce transaction costs for suppliers.²¹ In the process of procuring goods and services, of course, there are many choices, and that is where the government can consider the best products for the public interest.

Procurement is an effort to obtain goods and services that are needed and carried out based on logical and systematic thinking, following norms and ethics, and according to standard procurement methods that are carried out as procurement guidelines. Procurement of goods/services in government organizations is an important concern because it considers funding sources, one of which comes from mandatory community contributions, namely taxes, so that the government does not only need to be accountable and transparent but also prioritizes efficiency and effectiveness.²² Procurement activities of government goods/services are closely related to the government's efforts to achieve welfare and prosperity for the community.

Article 1 (1) of the PR 12/2021 defines government procurement as "Activities of procurement by ministries/institutions/regional apparatuses financed by the state budget, regional budget, the process commences from the identification of needs to the handover of the work results." It can be drawn from the above definition that the procurement of goods/services either by the private sector or by the government has the following elements:

1. An activity carried out by users to obtain goods/services;
2. A process of both standardized and/or agreed upon;
3. The best price/cost measured by quality, quantity, time, place, and provider; and
4. The principles of efficiency, effectiveness, transparency, and accountability.

Guidelines for planning the procurement of government goods/services include identification; determination of the type; method; packaging and consolidation; time of utilization; and budget. Procuring government goods/services includes procurement of goods, construction work, consulting service work, and other services. The term 'goods' covers the meaning of every tangible and intangible object, movable or immovable, which can be traded, used, worn, or utilized by the property user. Construction work is the whole or part of the activities that include the construction, operation, maintenance, demolition, and rebuilding of a building. Further, consultancy services are professional services that require specific expertise in various scientific fields that prioritize the existence of thought. Other Services are non-consulting services or services that require

²¹ Elizabeth Dávid-Barrett and Mihály Fazekas, "Anti-corruption in Aid-funded Procurement: Is Corruption Reduced or merely Displaced?," *World Development* 132 (2020): 105000.

²² Dhiona Ayu Nani and Syaiful Ali, "Determinants of Effective E-Procurement System: Empirical Evidence from Indonesian Local Governments," *Jurnal Dinamika Akuntansi dan Bisnis* 7, no. 1 (2020): 33.

equipment, particular methodologies, and/or skills in a governance system widely known in the business world to complete a job.

As previously mentioned, the actors in the procurement of goods/services include Budget Users and PBU.²³ According to the PR 12/2021, Budget Users are officials holding the authority to use the budget of State Ministries/Institutions/Regional Apparatuses.²⁴ Furthermore, it is stated as follows: “PBU in the Implementation of APBD are officials who are authorized to carry out part of the authority of budget users in carrying out some of the tasks and functions of Regional Apparatuses.”²⁵

The APBD is the annual financial plan of the regional government, which is discussed and approved jointly by the regional government and the Regional People’s Representative Council, and is stipulated by regional regulations. The APBD is the systematic and detailed list containing the regional revenue and expenditure plans for one year. It is generally prepared to obtain a deeper picture of the central/regional financial condition and assess the government’s performance in managing finances and predicting future financial conditions. The APBD is prepared to regulate regional expenditures from planned revenues to obtain the prescribed targets and create economic growth and community prosperity.²⁶

2.1.2 Tracing the Legal Culture of Multiple Positions of Proxy of Budget User as Commitment Making Officer

The government procurement of goods/services involves PBU. Article 10 of the PR 12/2021 states that PBU carries out the delegation in accordance with the delegation from the Budget User. In addition to this authority, PBU has the authority to answer the Appeal of the Construction Work Tender participants. PBU may assign a Commitment Making Officer to carry out the authority related to taking actions that result in budget expenditures; and/or entering into agreements with other parties within the stipulated budgetary limits. The Procurement Manager of goods/services can assist the PBU. The PBU using the regional budget, can also serve as a Commitment Making Officer. This expansion of authority provides greater space for corruption than if a different person from the power of PBU holds the authority of the Commitment Making Officer. If more than one person holds the authority to procure government goods/services, reaching a consensus on crime will be more challenging because the provider has to spend twice the effort to negotiate. In the planning stage, several patterns may occur, including legislative bribery; project arrangement or debt bondage; lower specification setting below the standard; project duplication; budget fraud/embezzlement; and breaking of the packet. In the selection and implementation stages, for example, there are fake administrative

²³ Presidential Regulation No. 12 of 2021, Art. 8.

²⁴ *Ibid.*, Art. 1 (7).

²⁵ *Ibid.*, Art. 1 (9).

²⁶ Lelly Ani, JMV Mulyadi, and Dwi Pratowo, “Analisis Faktor-Faktor yang Mempengaruhi Penyerapan Anggaran Belanja dengan Perencanaan Anggaran sebagai Pemoderasi pada Pemerintah Kota Depok Tahun 2013-2017,” *Ekobisman: Jurnal Ekonomi Bisnis Manajemen* 5, no. 1 (2020): 2.

documents and requirements; sale and purchase or rental of administrative documents and qualification requirements; agreement in price setting; bribes; and changes in specifications of goods after competition (post-bidding), exchange of state assets or services; proxy or selling flags; giving commissions; as well as change of contract without addendum. In addition, there are also tendencies of fictitious projects; projects abandoned/failed/not according to specifications; default; illegal sub-contracts; extortion; illegal levies; audit arrangements; handover before completion; and fictitious minutes or reports.

The provision where PBU can serve as a Commitment Making Officer for procuring goods/services using the regional expenditure budget is a change from PR 16/2018. In this Presidential Regulation, PBU can only serve as a Commitment Making Officer if no staff can be appointed as Commitment Making Officers. The condition in which PBU can concurrently act as a Commitment Making Officer, on the one hand, is deregulation in the procurement of government goods/services. However, on the other hand, it is causing the centralization of authority in procuring goods/services to PBU. Meanwhile, if viewed from the PBU's daily duties and responsibilities, a PBU certainly has many duties and responsibilities.

The position of Commitment Making Officer is a challenging one. According to Article 1 (10) of the PR 12/2021, Commitment-Making Officers are officials whom Budget Users or PBU authorizes to make decisions and/or take actions that may result in the APBN/APBD.²⁷ Commitment-Making Officers have a range of powers and responsibilities in administrative and civil processes. The Commitment Making Officer is the party directly involved in signing a contract. The legal consequences for the parties involved in the contract as regulated in Article 1338 of the Civil Code and the *Pacta Sunt Servanda* principle, namely, all legally executed agreements shall bind the individuals who have concluded them by law. They cannot be revoked otherwise by mutual agreement or under legally declared sufficient reasons and shall be executed in good faith. That is why it is crucial to understand the type and form of the contract that the parties will make.²⁸ Commitment Making Officer is an official responsible for implementing the procurement of goods/services, acting on behalf of the local government in the procurement contract. In forming the procurement contract, the government carries out business activities in the form of procurement of goods/services in a contractual relationship. As a party to the contract, the government no longer has state immunity and is in the same position as its counterparty, "equal before contract."²⁹

In addition to the aforementioned tasks, the Commitment Making Officer carries out the task of delegating authority from the Budget User or PBU, including taking actions resulting in budget expenditures; and entering into and establishing agreements with other parties within the

²⁷ See Presidential Regulation No. 12 of 2021, Arts. 11 (a)-(p).

²⁸ Naony F. Istiqlallia, Raissa Ardelia, and Pramudya Ramadhanti, "Pertanggungjawaban Hukum Pejabat Pembuat Komitmen (PPK) dalam Pengadaan Barang/Jasa Pemerintah," *Perspektif* 25, no. 2 (2020): 129.

²⁹ Jelita Angela Rawis, "Kontrak Pengadaan Barang dan Jasa Pemerintah Menurut Perpres Nomor 16 Tahun 2018," *Lex Privatum* 9, no. 1 (2021): 63.

stipulated budget limits. If the Commitment-Making Officer is not authorized to utilize the budget from the APBD, the Budget User or PBU assigns the Technical Implementation Officer of the Activities to carry out the duties of the Commitment-Making Officer,³⁰ where they must meet the competency requirements of the Commitment Making Officer.

2.2. Corruption Tendency due to the Expansion of Proxy of Budget User

2.2.1 Procurement of Goods/Services for Public Interest

Fulfilling excellent and quality public services with human and physical development is the state's goal in accelerating national development. Zaida Ilimzhanova et al (2019) stated in their research: "The rules of state control over the quality of public services, in addition to assessing the quality of services, are more at assessing measures to improve the processes of public services."³¹ In physical development, the state must balance it with a proper regulatory arrangements related to the procurement of goods/services. Along with the purpose of procurement which can provide the maximum value for money, it is set in one of the objectives to produce the correct goods/services for every money spent. Procurement also considers quality, quantity, time, cost, location and provider.³² The procurement of goods/services also aims to increase the use of domestic products; increase the participation of micro, small business, and cooperatives; improve the role of national business actors; support the implementation of research and utilization of research products/services; advance the participation of creative industries; realize economic equality and provide expansion of business opportunities and strengthen sustainable procurement.

One of the main elements in a country's development activities and services is the procurement of goods/services. The procurement of goods and services is very close to the existence of various new facilities, offices, market buildings, hospitals, schools to office stationery carried out in all sectors, such as the business, the non-profit, and the government sectors to meet the needs of each organization. There are differences between each organization in the sector, namely in the procurement process, among others, in terms of funding, availability of providers, and service interests. The similarity among the organizations of the above sectors is that they have the same goal: to obtain goods and services with the best value. Government goods/services are not solely procured to provide comfortable public facilities. This activity also has implications for the economic turnover of the supplying community.

2.2.2 Culture of Corruption in Government Procurement of Goods/Services

Grassroots corruption is one of the complex problems in grassroots governance. At present, local government continues to decentralize power to grassroots departments. The grassroots governments provide many public

³⁰ See Presidential Regulation No. 12 of 2021, Arts. 9 (1) (a)-(n).

³¹ Zaida A. Ilimzhanova et al, "Formatting of Public Services in the Framework of Fulfillment of Tax Obligations," *Revista Espacios* 40, no. 32 (2019): 11.

³² Mahardhika, *loc.cit.*

services and public goods, matching with public finances.³³ Issues and problems in the procurement of goods/services have received the attention of the international community since the 60s, and various efforts have been made to find solutions.³⁴ Procurement of goods/services is vulnerable to fraud problems. This is a concern of countries in the world. The elaboration of rules, that are meant to be applied in different areas, over very different subjects must find its starting point in the general principles of law, norms with a high degree of generality that can be given different interpretations.³⁵

The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument.³⁶ The Convention's broad approach and mandatory provisions make it a unique tool for developing comprehensive responses to global problems. The Convention covers five main areas: preventive action, criminalization and law enforcement, international cooperation, asset recovery, technical assistance, and information exchange. The Convention covers various forms of corruption, such as bribery, trade in influence, abuse of function, and various acts of corruption in the private sector.³⁷

The juridical consequence of using the state budget in procuring goods and services is that if there is a deviation, there is a tendency for criminal corruption to occur. Procurement corruption is a problem faced globally. Based on a report by the United Nations Office on Drugs and Crime (UNODC), procurement corruption has an impact on the loss of around 10-25 percent of state money.³⁸ There are still many entrepreneurs who work together with local officials who organize tenders to win the tender itself. Some regional officials arrange for the desired entrepreneur to win the tender. Another form of this fraud can occur between the service provider and the auction committee, the Commitment Making Officer, the Budget User Authority, or the provider of the goods himself, who conspires horizontally in determining the winner of the tender.

Public procurement is usually an interaction between bureaucrats and company managers, often associated with bureaucratic corruption. The culture of corruption in the bureaucracy (or small) is the abuse of power entrusted daily by public officials in their interactions with ordinary citizens. Bureaucratic corruption is the most widespread form of corruption

³³ Su Nan, "Study on the Relation of Grassroots Corruption and Government Expenditure," *Procedia Computer Science* 199, (2022): 1031-1035.

³⁴ Ismail, Muh Sarkowi and Aleksander Purba, "Kompetensi Pejabat Pembuat Komitmen Dinas Pengairan Kabupaten Lampung Tengah dalam Melaksanakan Tugas Pokok dan Kewenangannya Sesuai Perpres Nomor 12 Tahun 2021," *Seminar Nasional Insinyur Profesional (SNIP)* 2, no. 1 (2022): 1.

³⁵ Măgureanu Alexandru Florin, "European Juridical Culture-in Varietate Concordia," *Procedia-Social and Behavioral Sciences* 81 (2013): 176-180.

³⁶ Indonesia has signed the United Nations Convention Against Corruption on December 18, 2003 and has ratified it through Law No. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003.

³⁷ Provisions for overcoming corruption in procuring goods/services in the government sector can be found in Art. 9 on Public Procurement and Management of Public Finances.

³⁸ Indonesia Corruption Watch, "Pemetaan Potensi Kecurangan dalam Metode E-Purchasing pada Proses Pengadaan Barang/Jasa di Indonesia," <https://antikorupsi.org/index.php/id/pemetaan-potensi-kecurangan-dalam-metode-e-purchasing-pada-proses-pengadaan-barangjasa-di-indonesia>

worldwide, especially in developing countries and transition economies.³⁹ This condition is inseparable from the legal culture of bureaucrats who want to be served and get rewards for their authority. The community's legal culture also supports corruption in procuring goods/services, for example, procurement participants who want to win tenders, tender winners who want to work below standards but are not subject to sanctions, and evasion of tender winners from making improvements.

The vulnerable points for deviations in the procurement of government goods/services, which are categorized as criminal acts, occur at the procurement planning stage, such as indications of budget inflation or mark-ups, directed procurement implementation, unification engineering and/or splitting procurement packages with the intention of collusion, corruption or nepotism that harms the state. Other vulnerable points for criminal acts can also occur at the company qualification stage, the procurement evaluation stage, the contract signing stage, and the delivery stage of goods that do not meet the requirements and are of low quality, which can cause state losses.⁴⁰ The vulnerability of government goods/services procurement activities to corruption is caused by the large amount of budget used. Conspiracy in this activity is also relatively easy to do.

The *modus operandi* of corruption related to self-estimated prices occurs when officials making commitments or budget users do not carry out price surveys. Price determination is made only based on the price offer made by the service provider. Such an action can certainly raise suspicions for investigators that the budget user and the commitment maker have agreed/cooperated with partner providers of goods and services. At the procurement stage, the *modus operandi* of corruption committed by officials making commitments and budget users in all cases studied is related to selecting providers of goods/services. In principle, selecting providers of goods and services can be done by direct appointment or public auction. The mode of corruption at the procurement stage is carried out by Commitment Making Officers and/or Budget Users to change the public auction method to a direct appointment method.⁴¹ This condition will undoubtedly facilitate the negotiation of profit sharing, where providers who can provide more will be directly appointed.

The *modus operandi* of criminal acts of corruption in procuring government goods/services can also be seen in several court decisions with permanent legal force. The Supreme Court Decision No. 2413 K/Pid.Sus/2016 convicted the defendant of the criminal act of corruption in procuring medical, health, and family planning equipment. Defendant signed all documents relating to self-estimation of prices, contracts for the

³⁹ Alfredo Jiménez, Julien Hanoteau, and Ralf Barkemeyer, "E-procurement and Firm Corruption to Secure Public Contracts: The Moderating Role of Governance Institutions and Supranational Support," *Journal of Business Research* 149 (2022): 640-650.

⁴⁰ Ita Susanti and Sri Murniati, "Analisis Yuridis Terhadap Aspek Hukum Pengadaan Barang/Jasa Pemerintah Beserta Akibat Hukumnya," *Sigma-Mu* 10, no. 2 (2018): 62.

⁴¹ M. R. Kurniawan and P. Pujiyono, "Modus Operandi Korupsi Pengadaan Barang dan Jasa Pemerintah oleh PNS," *Law Reform* 14, no. 1 (2018): 115.

implementation of government goods/services procurement activities, as well as requests for the disbursement of activity funds to be completed 100%, and payments were made in two stages with a value greater than the actual value.⁴² Decision No. 1987 K/PID.SUS/2016 convicted the defendant in the road widening case, where payment has been made in full even though the implementation of the widening activities is still lacking and the work has not been completed. The same mode can also be seen in Supreme Court Decision No. 2421 K/PID. SUS/2016. The actions of Defendant I who had signed the Minutes of Handing Over the First Work and the Request for Payment of 5% retention which had been submitted were incorrect and not in accordance with the concrete reality.⁴³

Puspitasari and Lukman (2021) examined government goods/services procurement fraud schemes. Based on the corruption case in the procurement of goods/services, the Commitment Making Officer did it in collusion in carrying out the fraud scheme. Several things at least cause such action: (1) Collusion is formed due to fraudulent recruitment efforts by Providers on Committing Officers; and (2) Collusion is intended to avoid and ignore internal controls. Weak internal control in procuring goods/services results in ineffective corruption prevention. Existing internal controls do not sufficiently regulate the broad scope of authority of the Committing Office.⁴⁴ This condition will be more massive when PBU serves as a Commitment Making Officer concurrently.

Concurrent positions as a PBU to become a Commitment Making Officer have been carried out in the district government at the Public Works and Spatial Planning Office in 2023. The Budget User Authority does not actually have the competence as a PBU, thus the problems found during project preparation can be seen from the preparation of technical specifications, self-estimated prices, and careless drafting of contracts, which resulted in the delay of the procurement process and contract execution. These conditions indeed tend to harm state finances.

The law has responded to corruption tendencies in procuring goods/services. It can be seen in Article 7 of the Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes that determines prison sentences and/or fines for contractors, construction experts who are constructing buildings, or sellers of building materials who, when handing over building materials, commit fraudulent acts that could endanger the security of people or goods, as well as any person in charge of supervising the construction or delivery of building materials who deliberately allows such fraudulent acts.

In several cases of criminal acts of corruption, the person legally responsible is the Commitment Making Officer, even though he only exercises the delegation of authority from the Budget User/PBU. Previously, corruption cases that illustrate criminal consensus by PBU and Commitment Making Officers in procuring goods and services have been

⁴² See The Supreme Court Decision No: 2413 K/PID.SUS/2016.

⁴³ See The Supreme Court Decision No: 1987 K/PID.SUS/2016.

⁴⁴ Meliana Puspitasari and Randhi Pradana Lukman, "Peluang Fraud Pejabat Pembuat Komitmen (PPK) atas Pengadaan Barang dan Jasa Pemerintahan," *Conference on Economic and Business Innovation (CEBI)* (2021): 13.

discussed. Suppose PBU concurrently serves as a Commitment Making Officer; in that case, it will make it easier for the PBU to commit a criminal act of corruption without being involved and known by other parties. The expansion of the authority of PBU as regulated in Article 10 (5) of PR 12/2021 will reduce the control function in an institution. Such expansion will hinder the implementation of the principles of good governance in the procurement of government goods and services. The control function in procurement is undoubtedly essential in using regional finance. The complexity of regional financial audits involving various institutions with their respective objectives and interests then results in the juridical application as mandated by the constitution, and the package of laws in the field of regional finance cannot run optimally without synergistic supervision as, until now, there is still overlapping authority between institutions examiner.⁴⁵

Concurrent positions of the PBU that can also serve as a Commitment Making Officer in the procurement of goods/services will facilitate a culture of collusion and nepotism between the PBU and the person desired to work on the project. Collusion is an agreement or cooperation against the law between state administrators or between state administrators and other parties that harms other people, society and/or the state.⁴⁶ At the same time, nepotism is any unlawful act by state administrators that benefits the interests of his family and or his cronies above the interests of the community, nation, and state.⁴⁷ This condition will facilitate corruption in the procurement of government goods/services.

2.3. Reformulation of Proxy of Budget Users

Policymakers are involved in making the devastating impact of corruption on economic development. Therefore, it is essential to prioritize strengthening legal institutions such as robust, accountable, and independent justice systems, strict and impartial public administration, and transparent laws with predictable enforcement.⁴⁸ Corruption in the procurement of goods and services occurs because good governance principles have not been optimally implemented in the procurement of government goods and services. By applying the concept of good governance, the government, society, and the business world will be able to check each other's actions or inactions. In order to create better government administration, especially in improving the quality of procurement services, the government should initiate electronic procurement that is expected to increase transparency and accountability and prevent corruption.

⁴⁵ Fajriatul Mukarramah Kasman, "Pelaksanaan dan Pertanggungjawaban APBD terhadap Pengelolaan Keuangan Daerah," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 6, no. 2 (2017): 139.

⁴⁶ Law of the Republic of Indonesia No. 28 of 1999 concerning the Organization of a State that is Clean and Free from Corruption, Collusion and Nepotism, Art. 1 (4).

⁴⁷ *Ibid.*, Art. 1 (5).

⁴⁸ Shrabani Saha and Kunal Sen, "Do Economic and Political Crises Lead to Corruption? The Role of Institutions," *Economic Modelling* 124 (2023): 106307.

Transparency and accountability are essential principles in procuring goods and services. The elements of transparency and integrity are essential in developing strategies to deal with issues related to corruption.⁴⁹ Transparency focuses on the procurement of goods and services carried out openly and can be accessed by the public. In this regard, the procurement must be run honestly, meet applicable laws, and not discriminate. In addition, tenders should be conducted honestly and openly, encouraging fair business competition; therefore, the quality of work and prices are correct, and the results are helpful and can be utilized in the interests of all parties.⁵⁰ The OECD notes that transparency requirements might be less efficient for preventing pre-bidding collusion between firms than corrupt practices between agencies and firms. However, *ex-ante* transparency can also make pre-bidding collusion and cartel maintenance more complex, making the process more distant and depersonalized.⁵¹

Accountability can reduce corruption and other abuses, assure compliance with standards and procedures, and improve performance and organizational learning. It also demands that institutions explain and justify their results to internal and external monitors or stakeholders and impose sanctions when performance falls short or corruption is found.⁵² This objective is in line with the principles of good governance in the government administration process that underlines a democratic, transparent, clean, responsible, effective, and efficient government.⁵³ A monitoring and evaluation procedure for measures to improve legal culture in society was introduced to assess ongoing measures to enhance a democratic legal culture.⁵⁴ This democratic legal culture will refer to community participation to oversee transparency and quality in government projects. The legal culture in society functions to achieve the primary purpose of the law, namely, to bring justice.⁵⁵

Good governance is the active and productive cooperation between the state and citizens, and the key to its success lies in the powers participating in political administration. Only when citizens have sufficient political power to participate in elections, policy-making, administration, and supervision

⁴⁹ Marlina Wati Ishak and Jamaliah Said, "Assessing the Role of Anti-corruption Initiatives in Reducing Lobbyist Involvement in E-procurement: A Case Study of Mardi," *Procedia Economics and Finance* 31 (2015): 485-494.

⁵⁰ A. Fiskhinindya, A. Yunani, and A. T. Sompa, "Implementation of Good Governance Principles in Procurement of Regional Government Goods and Services by the Procurement Service Unit (ULP) Banjarbaru City, Indonesia," *European Journal of Management and Marketing Studies* 4, no. 1 (2019): 68.

⁵¹ Monika Bauhr et al, "Lights on The Shadows of Public Procurement: Transparency as an Antidote to Corruption," *Governance* 33, no. 3 (2020): 495.

⁵² J. C. Kohler and D. Dimancesco, "The Risk of Corruption in Public Pharmaceutical Procurement: How Anti-corruption, Transparency and Accountability Measures May Reduce This Risk," *Global Health Action* 13, sup1 (2020): 1694745.

⁵³ Lati Praja Delmana, "Pengaruh Penerapan Good Governance dalam E-Purchasing terhadap Pencegahan Korupsi," *Jurnal Ilmu Pemerintahan Widya Praja* 45, no. 1 (2019): 47.

⁵⁴ Zafar Ergashev, "Democratic Legal Culture: How Strong are Values?," *The American Journal of Political Science Law and Criminology* 3, no. 5 (2021): 87.

⁵⁵ Arsyad Aldyan, "The Influence of Legal Culture in Society to Increase the Effectiveness of the Law to Create Legal Benefits," *International Journal of Multicultural and Multireligious Understanding* 9, no. 11 (2022): 323.

can they prompt the state and join hands to build public authority and order.⁵⁶ Citizen participation has been widely recognized as an effective means of controlling corruption in a country. A bottom-up approach in which citizens are empowered to participate in policy decision-making and to share their opinions and experiences in creating change.⁵⁷ Good governance practices in the procurement process and quality procurement are the greatest desires for all types of organizations from local and global perspectives. This study has focused on quality procurement and its tools with good governance practices both in public and private sector organizations in Bangladesh to compare the level of quality procurement.⁵⁸

Early prevention and detection efforts can be made with an excellent legal formulation. The procurement of goods/services for each government agency should be based on an annual plan which elaborates the agency's strategic plan so that goods/services are purchased because they are needed to support the implementation of the agency's duties and functions. Another critical aspect in the procurement of goods/services is the consideration of the professionalism and integrity of the leader, the Authorization of Goods Users and PBU, and the selection of the Procurement Committee and Project Leader. Thus, the division of authority of the parties involved in the procurement of government goods/services must be appropriately formulated to prevent abuse of authority which will result in state financial losses.

The role of the Commitment Making Officer is crucial in preventing corruption in the procurement of goods/services. This officer is responsible for almost all stages of procuring goods/services, namely administrative, technical, and financial aspects.⁵⁹ Given such an important role, this task should be carried out by professional people rather than in concurrent positions. Provisions for concurrent positions, as regulated in Article 10 (5) of the PR 12/2021, must be reformulated immediately.

In setting the authority of PBU in the future, PBU may not hold concurrent positions as Commitment Making Officer. Leaders at the regional level need to increase the capacity and capability of employees to become Commitment Making Officers to realize sustainable procurement. Based on the quadruple bottom line principle, sustainable procurement can be defined as the acquisition of materials and services using the most effective and efficient way to implement environmental, economic, and social good governance. Sustainable procurement is the procurement of goods/services that aims to achieve an economically beneficial value not only for ministries/institutions/regional apparatuses as users but also for the

⁵⁶ Yu Keping, "Governance and Good Governance: A New Framework for Political Analysis," *Fudan Journal of the Humanities and Social Sciences* 11, no. 1 (2018): 1.

⁵⁷ Anupriya Khan, Satish Krishnan, and Amandeep Dhir, "Electronic Government and Corruption: Systematic Literature Review, Framework, and Agenda for Future Research," *Technological Forecasting and Social Change* 167 (2021): 120737.

⁵⁸ M. K. Hossain and M. Z. Islam, "Good Governance Practices in Procurement Operations and Quality Procurement: A Comparative Study Between Public and Private Sector Organisations in Bangladesh," *International Journal of Procurement Management* 14, no. 6 (2021): 796.

⁵⁹ Mahardhika, *loc.cit.*

community, as well as significantly reducing negative environmental and social impacts in the entire cycle of its use.

The control system in the procurement of government goods/services is critical to ensure that the community obtains the best quality of goods/services. Participation, transparency, and accountability will improve if they are supported by an accounting system or report that produces timely information. The phenomenon that must be observed to be developed in improving the welfare and prosperity of the people today is the demand for organizations engaged in services such as central and regional governments, regional government work units, and state institutions that are required to carry out public accountability.⁶⁰ Transparency is crucial to curb undesirable outcomes in public procurement, such as malfeasance, breaches of contract, and general inefficiency.⁶¹ In ensuring transparency and accountability in the procurement of government goods/services, the position as the PBU should not be concurrently a Commitment Making Officer. The general public suffers when the allocation of resources is misdirected to corrupt activities.⁶²

3. CONCLUSION

PR 12/2021 expands the authority of PBU to concurrently serve as Commitment Making Officer in procurement activities using regional budgets. The concurrent position is no longer limited by the absence of a Commitment Making Officer as in the previous provisions. The culture of corruption will grow if there is a centralization of authority in just one person, mainly if it is carried out for a long time. This condition reduces internal control's function in procuring goods/services at the regional level. As a result, the plausibility of corruption in procurement activities will be even greater. Reformulation of the dual authority of this position needs to be done. In future provisions, PBU may not hold concurrent positions as Commitment Making Officer. The solution that can be offered in this case is to optimize human resource development and provide fair opportunities for employees who have the potential to become Commitment Making Officers. Anti-fraud and anti-bribery policies must be internalized in the legal culture of the community providing goods/services and the government. The culture of professionalism should gradually replace the culture of asking for help to be given a job, the culture of being reluctant to help people who ask, the culture of offering money as a thank-you, and the culture of helping because of shared family history.

⁶⁰ Yudi Rahman and Fauzi Firdaus, "Pengaruh Penerapan Good Governance dan Standar Akuntansi Pemerintah Terhadap Akuntabilitas Keuangan Kecamatan di Kabupaten Barito Kuala," *Jurnal Ilmiah Ekonomi Bisnis* 6, no. 3 (2020): 410.

⁶¹ Jorge Gallego, Gonzalo Rivero, and Juan Martinez, "Preventing Rather than Punishing: An Early Warning Model of Malfeasance in Public Procurement," *International Journal of Forecasting* 37, no. 1 (2021): 361.

⁶² Melissa L. Rorie (ed). *The Handbook of White-Collar Crime* (West Sussex: Wiley Blackwell, 2020), 51.

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