

## Law Enforcement For Commitment Making Officials Who Make Overpayments For Procurement of Goods/Services Without Mens Rea

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Article Info	ABSTRACT
<p><b>Keywords:</b> Commitment Making Officials, Advantages, Payment, Procurement, Goods/Services</p>	<p>Law enforcement in cases of criminal acts of corruption, including in the field of procurement of goods/services, must be carried out firmly and massively but measurably by prioritizing the principle of objectivity and the principles of justice and benefit. Law enforcement based on statutory regulations in the field of criminal acts of corruption should be imposed on perpetrators who truly have evil intentions (mens rea) to commit corruption. Law enforcement that does not pay attention to this aspect will result in concerns or even fear for implementing officials who make decisions, including Commitment Making Officials (PPK) in the procurement of goods/services that do not have a mens rea, that their actions could at any time be criminalized. This research aims to analyze legal enforcement for PPK who make overpayments for procurement of goods/services without mens rea and to analyze legal protection for PPK due to overpayments for procurement of goods/services without mens rea. The method used in this research is normative legal research which is carried out by examining primary legal materials as well as secondary legal materials relating to the legal issues being studied. Data was collected through document study or library research and analyzed through a qualitative approach. The research results show that law enforcement for PPK who make overpayments for procurement of goods/services can be carried out through state administrative law mechanisms or through criminal law mechanisms. The research results also show that in several cases, law enforcement based on the Corruption Crime Law was imposed on PPK who were not proven to have the mens rea to commit corruption. Legal protection for PPK due to excess payments for procurement of goods/services without mens rea has been provided by the state through a set of regulations in the field of procurement of goods/services, including as regulated in Article 84 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 provides legal services to those involved in procuring goods/services in dealing with legal problems related to the procurement of goods/services provided from the investigation process to the court decision stage.</p>
<p>This is an open access article under the <a href="https://creativecommons.org/licenses/by-nc/4.0/">CC BY-NC</a> license</p> 	<p><b>Corresponding Author:</b> Sonny Wirawan Universitas Langlangbuana, Bandung <a href="mailto:sonny.wirawan@gmail.com">sonny.wirawan@gmail.com</a></p>

## INTRODUCTION

Procurement of goods/services has an important role in the implementation of national development, namely for improving public services and developing the national and regional economies. Fulfilling the need for goods/services is an important part that cannot be separated in the administration of government. The availability of goods / services, in addition to being part of the duties and responsibilities of the government in an effort to meet the needs of the people, as well as the needs of the government in running the wheels of government (Purwosusili, 2017: 1).

Procurement of goods/services often experiences irregularities in the implementation process, especially in the form of criminal acts of corruption. KPK data on statistics on corruption crimes based on the types of cases handled states that in the period 2004 to 2022, the most types of cases handled by the KPK were procurement of goods/services, namely 277 cases out of a total of 539 cases. Furthermore, KPK data on statistics on corruption crimes based on the profession / position of the perpetrators of corruption crimes states that in the period 2004 to 2022, the profession / position of the perpetrators of corruption of civil servants (Esalon Officials I to IV) ranks third most after the private sector and members of the DPR and DPRD, namely 310 people out of a total of 1,159 people (KPK, 2024).

The results of Monitoring Trends in Corruption Case Prosecution in Semester I 2021 conducted by Indonesia Corruption Watch stated that law enforcement institutions most often use Article 3 in addition to Article 2 of Law Number 31 of 1999 and Law Number 20 of 2001 concerning the Eradication of Corruption (Corruption Law), out of 209 cases investigated by law enforcers, 90% of them used these two Articles (Anandya et al., 2021).

A term in the field of state / regional finance that has gone viral lately and caused polemics in the community is "overpayment". The term overpayment emerged along with the rampant news of the BPK RI audit results on the performance of the DKI Jakarta Provincial Government where in its findings there were several activities that were considered to have occurred overpayments and had the potential to cause state losses.

Goods/services procurement covers three legal aspects: state administrative law, civil law, and criminal law (Cristianata, 2017). Deviations in the administration of goods/services procurement but criminal proceedings have caused unrest for the implementers of goods/services procurement. In some cases, law enforcement and sanctions under the Corruption Act are imposed on PPKs who make overpayments for goods/services procurement without mens rea.

The issues to be discussed in this Article include:

1. What is the appropriate law enforcement for Commitment Making Officials who overpay procurement of goods/services without mens rea?
2. How is the legal protection of Commitment Making Officials due to the overpayment of goods/services procurement without mens rea?

## METHOD

The method used in this research is normative legal research conducted by examining primary legal materials (consisting of laws and regulations and judges' decisions) and secondary legal materials (consisting of textbooks, legal dictionaries and legal journals) related to the legal issues studied. Data was collected through document studies or library research and analyzed through a qualitative approach.

## RESULTS AND DISCUSSION

### **Legal enforcement for Commitment Making Officials who make excess payments for goods/services procurement without mens rea**

Indonesia is a country with a high number of corruption cases. Data from the Corruption Perception Index (CPI) in 2022 showed that Indonesia scored 34 and ranked 110 out of 180 countries. The score dropped 4 points from the previous year and is Indonesia's lowest score since 2015.

This condition demands that law enforcement on corruption cases must be an ongoing concern because corruption is an act that undermines the joints of the economy and harms society at large, including corruption in the field of goods / services procurement as the type of corruption case most handled by the KPK.

Law enforcement against corruption cases, including in the field of goods / services procurement, must be carried out firmly and massively but measurably by prioritizing the principles of objectivity and the principles of justice and expediency. Law enforcement and sanctions based on laws and regulations in the field of corruption should be imposed on perpetrators who really have malicious intent (*mens rea*) to commit corruption, namely taking advantage for themselves, others or corporations and their actions result in losses to the state or the state economy.

Law Enforcement Officials handling corruption cases should be able to prove the existence of the perpetrator's malicious intent through a series of parameters or standards of proof in such a way, where the perpetrator has planned from the start to provide poor quality work in order to get the maximum profit, for example by ignoring standards, guidelines, and the basics of construction science or other regulations in the field of goods / services procurement (Kombong, E. P., Nugroho, A. S. B., & Wibowo, R. A. (2020).

This is in line with the view of Romli Atmasasmita who revealed that every human action that harms other people and society can be punished for volition and desired actions. The evil of an act is an act that is truly realized when doing it and is indeed desired as a result of its actions, without any coercion from external factors. Conversely, an act should not be subject to attribution as a crime without him knowing (realizing) his actions and moreover he did not want it (Romli Atmasasmita, 2017).

Criminal justice systems in various countries have similarities when describing the main elements of a criminal offense, namely harm and fault expressed in "*actus reus*" and "*mens rea*" (guilty mind). An act does not make the perpetrator guilty unless the mind is evil. These two concepts in the criminal law system have been universally recognized as "the basic building blocks of criminal liability".

An act cannot be said to be a crime if there is no evil will in it. Kadish and Paulsen in this case stated that "an unwarrantable act without a vicious will is no crime at all". According to this doctrine, the existence of mens rea is a necessity in criminal offenses and to be able to hold someone accountable for committing a criminal offense, it is determined by the existence of mens rea in that person (Huda, 2011).

The principle of actus reus mens rea means that an act cannot make a person guilty if the intention is innocent. A postulate with similar content states that *nemo punitur sine injuria, facto, seu defalta* which means that no one is punished unless he has done wrong (Arifin., Hiariej, 2021). Error according to Imron Rosyadi is a mental state or mental attitude that clearly intends or does not intend an act which if the act is carried out it will get censure from the community. Error is a bad inner attitude that has a relationship with the bad actions committed, meaning that error will only occur if the bad intentions in a perpetrator are directly proportional to the actions committed (Rosyadi, 2022).

Fault carries the burden of criminal responsibility consisting of intent (*dolus*) and negligence (*culpa*). Willfulness in criminal law is part of fault. The intent of the perpetrator has a closer psychological relationship to an act (which is prohibited) than negligence, therefore the criminal threat on an offense is much heavier if there is intent than with negligence (Chandra & Putra, 2022).

Negligence is an error resulting from a lack of care so that something accidentally happens. According to Simons, negligence occurs due to the absence of caution and lack of attention to possible consequences. In various cases, this negligence or negligence has an impact or result that occurs, for example, having an accident due to haste in driving a motorcycle due to lack of caution in driving without thinking about the consequences that will occur (Chandra & Putra, 2022).

The author argues that in the event of overpayment in the procurement of goods / services carried out by PPK without mens rea, in this case the more appropriate position of criminal law is as an *ultimum remedium*, namely as the last sanction if administrative sanctions cannot be applied. Conversely, in the event of PPK deliberate overpayment which results in losses to state finances or the state economy, the position of criminal law is as a *primum remedium* in case settlement.

Settlement of state losses in cases of overpayment without mens rea in the procurement of goods / services carried out by PPK will be more effective and fulfill the principles of justice and expediency if resolved through the mechanism of state administrative law as regulated in Article 20 of Law Number 30 of 2014 concerning Government Administration (Government Administration Law). The article regulates, among others, that the settlement of state financial losses caused by administrative errors of officials who abuse their authority is carried out by the Government Internal Supervisory Apparatus (APIP), which is the government's internal supervisory institution tasked with conducting internal supervision of government policies and programs.

APIP functions to ensure that government policies and programs are implemented correctly, effectively, and efficiently, and to ensure that the internal control system is running well. APIP is responsible for providing advice and recommendations to government

leaders for the improvement and enhancement of the internal control system. The process is that APIP conducts supervision/examination of the case and issues a report on the results of the supervision/examination. If based on the results of the supervision/examination, APIP concludes that there has been a state financial loss due to an administrative error due to an element of abuse of authority committed by a Government Official, then the Government Official in question is obliged to return the state financial loss no later than 10 (ten) working days from the decision and issuance of the results of the supervision/examination.

Another effort to assess whether or not there is an element of abuse of authority based on the provisions of Article 21 of the Government Administration Law is by submitting an application to the Administrative Court. The application can be submitted by the Agency and/or Government Official. The court must decide on the application no later than 21 (twenty-one) working days after the application is submitted. Against the decision, the litigant may file an appeal to the Administrative Court. The Administrative Court must decide the appeal within 21 (twenty-one) working days after the appeal is filed. The decision of the Administrative Court is final and binding.

Alternative efforts to resolve state losses through state administration mechanisms are also regulated in Article 59 of Law Number 1 Year 2004 concerning State Treasury (State Treasury Law). The article stipulates that every head of the state ministry / institution / head of the regional work unit can immediately claim compensation, after knowing that in the state ministry / institution / regional work unit concerned there is a loss due to the actions of any party.

Articles 60 and 61 of the State Treasury Law stipulate that treasurers, non-treasurer civil servants, or other officials who violate the law or neglect their obligations are immediately asked for a statement of ability and/or acknowledgment that the loss is their responsibility and are willing to compensate for the loss. If the letter is impossible to obtain or cannot guarantee the recovery of losses, the relevant minister/institution head/governor/regent/mayor shall immediately issue a decision letter on temporary loss reimbursement to the person concerned.

Articles 63 and 64 of the State Treasury Law further state that the imposition of state/local compensation on non-treasurer civil servants is determined by the minister/head of institution/governor/regent/mayor. Treasurers, non-treasurer civil servants, and other officials who have been determined to compensate the state/regional losses may be subject to administrative sanctions and/or criminal sanctions and criminal decisions do not exempt from compensation claims.

A further problem in the event of an overpayment is that the party receiving the payment, namely the Provider, is a third party so that the responsibility to return the overpayment should also be submitted to the Provider who has caused the loss. Requests for liability to third parties in this case can be made through civil lawsuits in the context of recovering state losses filed by the State Attorney or the aggrieved agency.

Legal facts show that in some cases, law enforcement and sanctions under the Anti-Corruption Law are imposed on perpetrators who are not proven to have malicious intent (*mens rea*) to commit corruption, or at least in the Decision there is no effort by law

enforcement to find facts related to the perpetrator's intention in carrying out his actions which resulted in state losses. According to the author, this is important to determine the realm of the resolution mechanism to be taken, whether through state administrative law or through criminal law.

Corruption cases without malicious intent do not mean that the defendant has no fault at all. The defendant still has a mistake, but the mistake is not in the form of "intent to benefit oneself or another person or a corporation" as formulated in Article 3 of the Anti-Corruption Law but in the form of negligence that harms state finances or the state economy". These two things certainly have different legal impacts, one is processed criminally while the other is processed through the mechanism of state administrative law.

Article 3 of the Anti-Corruption Law has 4 (four) elements, namely: 1. any person; 2. with the aim of benefiting himself or herself or another person or a corporation; 3. abusing the authority, opportunity or means available to him or her because of position or position; and 4. which may harm state finances or the state economy. The Panel of Corruption Judges at Bengkulu District Court in Decision Number 34/PID.SUS- TPK/2020/PN BGL and the Panel of Corruption Judges at Medan District Court in Decision Number 26/Pid.Sus-TPK/2022/PN Mdn added 1 (one) more element as the fifth element of Article 3 of the Anti-Corruption Law, namely "either as a person who commits, orders to commit or as a person who participates in a criminal offense".

The element "with the aim of benefiting oneself or another person or a corporation" in the opinion of the author needs more attention because this element is attached to the presence or absence of malicious intent (*mens rea*) of the perpetrator which results in state losses. This is specifically reflected in the phrase "with the aim". The phrase "with purpose" implies that the perpetrator's actions are carried out with an awareness of purpose. Acts committed due to negligence or negligence should not fulfill this element even though their actions result in state losses.

The consideration of the Panel of Judges related to the typikor case on the construction of shallow groundwater irrigation / shallow wells in 2016 at the Mojokerto Regency Agriculture Office as stated in Decision Number 86/Pid. Sus-TPK/2021/PN Sby that the notion of "with purpose" in this element is the same as the notion of "with intent" in criminal law known as "bijkomend oogmerk" or "nader oogmerk" or as "verder reikend oogmerk" or "further intent", which implies that the "further intent" of the perpetrator need not have been carried out at the time the prohibited act was completed by the perpetrator. According to Prof. Van Hamel, one must also make a distinction between the opset and the so-called *bijkomend oogmerk* which he formulated as "het streven van een nader doel" or the attempt to achieve a further goal, for example the intention to take possession of the object that was unlawfully stolen in the crime of theft.

In the opinion of the author, the consideration of the Panel of Judges does not prove whether the Defendant really had the purpose or intention to benefit himself or herself or another person or a corporation. If the Defendant did not have the purpose or intent to benefit himself or herself or another person or a corporation then this element should not be proven.

The contrary conditions in this case were disclosed by the Public Prosecutor in his indictment and further cited by the Panel of Judges in one of its considerations, namely that the irregularities committed by the Defendant were caused by: 1. the defendant's negligence as PPA in controlling financial management; 2. the PA in the procurement process did not guide the provisions of Government Goods/Services Procurement; and 3. the defendant's negligence as PPK in carrying out his main duties and authority in Government Goods/Services Procurement. The sentence indirectly proves that the Public Prosecutor and the Panel of Judges agree that the actions committed by the Defendant were due to negligence, not intentionality.

This is reinforced by the condition that the project implementer who received the overpayment was not prosecuted and the Defendant was not subject to additional criminal liability in the form of paying restitution as stated in the Decision of the Appeal-level Panel which was upheld by the Decision of the Cassation-level Panel. The author is of the opinion that the settlement of the case through this decision, besides not fulfilling the principle of justice, also does not fulfill the principle of expediency because there is no recovery of state losses that have occurred.

Consideration of the Panel of Judges related to the corruption case in the physical construction work for the construction of the Talang Leak Port People's Market in 2018 at DPPKUKM Lebong Regency as stated in Decision Number 34/PID. SUS-TPK/2020/PN BGL that according to the Court, the word "with the aim" in the second element of Article 3 of the Anti-Corruption Law indicates the existence of a will that exists in the mind or inner nature of the maker, which is intended to obtain/give a benefit (benefit) for himself or others or a corporation, Therefore, with the word "with the aim", when the act will be carried out, it is required that there is an intention or there is a will or there is intent on the part of the perpetrator for the occurrence of profit, or the occurrence of a favorable situation, either benefiting the perpetrator himself or benefiting someone other than the perpetrator or benefiting a corporation.

A similar opinion was expressed by the Panel of Judges regarding a case of corruption in the renovation of the Museum Building in 2019 at the Tebing Tinggi City Education Office as stated in Decision Number 26/Pid.Sus-TPK/2022/PN that the element of purpose (doel) is no different in meaning from intent or guilt as intent (opzet als oogmerk) or intent in a narrow sense. The author agrees with the considerations of the two Judges; however, the considerations do not elaborate further regarding the presence or absence of intention / will / intent on the part of the perpetrator for the occurrence of profit / favorable conditions, either benefiting the perpetrator himself or benefiting someone other than the perpetrator or benefiting a corporation.

The Panel of Judges, the Public Prosecutor and/or the Legal Counsel may conduct an in-depth investigation regarding the communication (either explicitly through written documents or telephone conversations or implicitly through certain codes or terms) between the Defendant as PA/KPA and PPK with other parties involved in the procurement of goods/services, namely the Procurement Committee, PPTK, PPHP, Supervisory Consultant, and especially with the Provider who received the overpayment. The

deepening is carried out to obtain clues regarding the presence or absence of intent, malicious intent (*mens rea*), and conspiracy or conspiracy to commit corruption in the procurement of goods / services. Procurement of goods / services is an activity that involves many parties so that if there is a criminal act of corruption that occurs in it, it will involve more than one party.

The Anti-Corruption Law does not further explain the meaning of "abusing the authority, opportunity or means available to him because of his position or position". The Panel of Corruption Judges at the Surabaya District Court in Decision Number 86/Pid.Sus-TPK/2021/PN Sby and the Panel of Corruption Judges at the Bengkulu District Court in Decision Number 34/PID.SUS-TPK/2020/PN BGL in their considerations stated that "authority" is a series of rights attached to the position or position of the perpetrator of corruption to take actions that are necessary so that his work duties can be carried out properly, "opportunity" is an opportunity that can be utilized by the perpetrator of corruption stated in the provisions on work procedures related to the position or position of the perpetrator of corruption, while "means" is a condition, method or medium.

The Panel of Corruption Judges at the Bengkulu District Court in Decision Number 34/PID.SUS-TPK/2020/PN BGL and the Panel of Corruption Judges at the Medan District Court in Decision Number 26/Pid.Sus-TPK/2022/PN Mdn in their considerations stated that the element "abusing the authority, opportunity or means available to him because of his position or position" contains an alternative understanding, meaning that the element of abusing authority is alternated with abusing the opportunity or means available to the defendant because of his position or position. This means that if one of these acts is proven to have been committed by the defendant, then automatically this third criminal offense element has been fulfilled. In the opinion of the author, this element also contains fault in the form of intent (*dolus*) in it.

The principle of "not abusing authority" is a principle that requires every Government Agency and/or Official not to use their authority for personal or other interests and not in accordance with the purpose of granting such authority, not to exceed, not to abuse, and/or not to mix authorities.

Abuse of authority that fulfills the elements of the crime of corruption is an act accompanied by the intention to enrich or benefit oneself or another person or a corporation. The act is carried out by deliberately abusing the authority inherent in the position or position, for purposes other than the purpose for which the authority is given so that it has a detrimental impact on state finances or the state economy. Law Enforcement Officials in this case are important to assess the use of the authority of government officials, whether it is done with abuse of power that can be punished or is a misuse of authority that does not need to be punished (Putra, M. A. A, 2021).

Officials who are authorized to carry out their positions in carrying out their obligations can either misuse their authority or abuse their powers. The two actions have fundamental differences. Errors in the use of authority (misuse of authority) arise due to lack of care, not being careful in making or carrying out decisions / actions with no particular intention, except to carry out obligations. Errors in making such decisions/actions usually



occur in fulfilling required procedures, which are often referred to as administrative errors. This kind of error can be corrected with the intention of returning to the proper procedure. Meanwhile, Abuse of Authority (abuse the power) is carried out by deliberately deviating from the purpose of granting authority to other purposes for personal or other people's interests, which in practice can also result in losses to state finances or the state economy.

A similar opinion was expressed by Philipus M. Hadjon who stated that in measuring whether there has been an abuse of authority, it must be factually proven that the official has used his authority for other purposes. The occurrence of abuse of authority is not due to an accident. Abuse of authority is done consciously, namely diverting the objectives that have been given to the authority. The transfer of goals is based on personal interest, either for his own benefit or for others.

The Panel of Corruption Judges at Surabaya District Court in Decision Number 86/Pid.Sus-TPK/2021/PN Sby, the Panel of Corruption Judges at Bengkulu District Court in Decision Number 34/PID.SUS-TPK/2020/PN BGL, and the Panel of Corruption Judges at Medan District Court in Decision Number 26/Pid.Sus-TPK/2022/PN Mdn concluded that the element of "abusing the authority, opportunity or means available to him because of his position or position" had been fulfilled. Consideration of the Panel of Judges in Decision Number 34/PID.SUS-TPK/2020/PN BGL, for example, states that the Defendant as PPK did not properly test the results of the work carried out by the provider or implementing contractor by comparing the suitability between the proof letter to be authorized and the goods/services handed over/finished as well as the technical specifications required in the engagement document. The defendant also approved all requests for payment terms and ordered the Treasurer to make payments even though testing of the work was not carried out properly.

The decision does not address whether the Defendant's actions constituted abuse of power or misuse of authority. The verdict also does not explain whether or not the Defendant has intentionally and knowingly used authority, opportunity or means for other purposes. In the opinion of the author, an assessment of this matter is important to determine the fulfillment of the element "misuse of authority, opportunity or means available to him because of his position or position".

The element "either as a person who commits, orders to commit or as a person who participates in a criminal offense" as stated in Decision Number 34/PID.SUS-TPK/2020/PN BGL and Decision Number 26/Pid.Sus-TPK/2022/PN Mdn according to the theory of criminal law is a form of criminal participation (*deelneming*) which in essence is intended to provide an expansion of the meaning of the word "perpetrator" or in other words is an explanation of who can be called a "perpetrator" of a criminal offense and can be sentenced to the same punishment as the perpetrator. Article 55 paragraph (1) to 1 of the Criminal Code regulates that those who can be convicted as "perpetrators of criminal acts" are those who commit the criminal acts themselves (*pleger*), or those who order to commit criminal acts (*doenpleger*), or those who participate in criminal acts (*medepleger*).

Decision Number 34/PID.SUS-TPK/2020/PN BGL does not explicitly mention the Defendant's role, whether as *pleger*, *doenpleger*, or *medepleger*. In the Decision it is stated

that the fulfillment of these elements was obtained from the fact that the series of actions carried out by the Defendant as PPK together with the witness Provider/Executing Contractor did not carry out the physical work on the construction of the Talang Leak Port People's Market in accordance with the provisions. The Panel of Judges did not at all mention the existence of deliberate intent in proving this element, on the contrary, in other considerations it was stated that when it was related to the defendant's duties as a PPK who had the obligation to supervise and inspect the work carried out by the Supplier, according to the Court the defendant had failed to carry out his duties.

Decision Number 26/Pid.Sus-TPK/2022/PN Mdn stated that based on the Defendant's actions resulting from the collaboration carried out by the Defendant with the Provider, the Defendant was qualified as participating in committing a criminal act. The Panel of Judges was of the opinion that this element was fulfilled by considering that there appeared to be close cooperation or at least mutual understanding between the Defendant as PA and PPK and the Work Provider/Executor which had resulted in the expenditure of 100% of the budget for the renovation of the Museum Building, even though there was a volume shortage for the work. work, causing excess payments which result in state financial losses. The Panel of Judges in their considerations also did not mention the existence of intent in proving this element. The decision also does not explain how close cooperation or mutual understanding between the Defendant and the Provider was carried out.

#### **Legal protection for Commitment Making Officials due to excess payments without mens rea in the procurement of goods/services**

Article 28D of the 1945 Constitution stipulates that "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law". The concept of legal protection in Indonesia is interpreted as an appreciation of the awareness of the protection of human dignity which is based on the principles of the State of Law, Pancasila. One reflection of law is the existence of rights and obligations. Elements of rights include legal protection. Objective law is a legal regulation or legal norm that is aimed at everyone who has an interest and which provides guaranteed rights of protection (Atmadja & Budiarta, 2018).

Jeremy Bentham stated that to realize the goal of law, namely the happiness of individuals and society, legislation must achieve the goal of providing security (to provide protection) (Bentham in Suryaningsi, 2018). The function of the judiciary as a place to resolve legal issues can only be effective if the court has the prerequisites, namely as a place to obtain legal protection (Raharjo, 1982). Legal protection is a fundamental and constitutional right that must be granted by the state in general to the community or legal subjects without exception, in this case including legal protection to suspects/accused perpetrators of criminal acts.

According to Sudikno Mertokusumo, law functions as a protection for human interests so that human interests are protected. Implementation of the law can take place normally, peacefully, but it can also occur because of violations of the law. Violations of the law occur when certain legal subjects do not carry out the obligations they are supposed to carry out

or because they violate the rights of other legal subjects. Legal subjects whose rights are violated must receive legal protection (Mertokusumo in Anggara, 2018).

The function of law as a regulatory instrument and protection instrument is directed at a goal, namely creating an atmosphere of legal relations between legal subjects in a harmonious, balanced, peaceful and fair manner. There are also those who say that the purpose of law is to regulate society peacefully. The law requires peace between humans which can be maintained by law by protecting certain human interests (both material and ideal), honor, freedom, life, property, and so on against those who harm them. The aim of the law is achieved if each legal subject obtains their rights fairly and carries out their obligations in accordance with the applicable legal rules.

PPK is an official who is given the authority by the PA/KPA to make decisions and/or take actions that can result in the expenditure of the state budget/regional budget. The decisions taken and/or actions taken by the PPK will of course result in legal implications which could be administrative, civil, or even criminal.

Legal protection in the field of administration for citizens and government officials, including the PPK, is regulated in the Government Administration Law in section Considering letter b which states: "that to resolve problems in government administration, regulations regarding government administration are expected to be a solution in providing legal protection, both for citizens and government officials."

One of the objectives of the Government Administration Law as stated in Article 3 letter e is "to provide legal protection to citizens and government officials", while one of the rights of government officials as stated in Article 6 paragraph (2) letter i is "to obtain legal protection and guarantees." security in carrying out their duties" and "obtaining legal assistance in carrying out their duties".

Legal protection for PPK specifically in the field of procurement of goods/services is provided by the state through a set of regulations in the field of procurement of goods/services which provide corridors for PPK in carrying out their duties, including in the form of statutory regulations in the field of state finance, the Presidential Decree on Procurement of Goods/Services, Perka LKPP, and so on. Sometimes these regulations are not implemented properly because of the bad faith of the PPK in taking profits that are not in accordance with the provisions. Another condition is that these regulations cannot be implemented properly even though the PPK does not want this because conditions are not ideal, for example due to excessive workload, lack of PPK knowledge, lack of PPK thoroughness/accuracy, or deception from other parties.

The process of procuring goods/services carried out electronically is also a form of protection for PPK so that decisions taken and/or actions taken are in accordance with applicable provisions for procurement of goods/services. This process is carried out through the General Procurement Plan Information System (SIRUP), Electronic Procurement System (SPSE), E-Catalog application, and so on. By implementing this application system, it is hoped that the goods/services procurement process, including decisions/actions taken by PPK, can be implemented in an accountable and transparent manner.

The Presidential Decree on Procurement of Goods/Services also regulates legal services for actors procuring goods/services including PPK. Article 84 of the Presidential Decree on Procurement of Goods/Services states that Ministries/Institutions/Regional Governments are obliged to provide legal services to those who procure goods/services in dealing with legal problems related to the procurement of goods/services. Legal services are provided from the investigation process to the court decision stage. Article 85 of the Presidential Decree on Procurement of Goods/Services further regulates the matter of resolving contract disputes, namely that resolving contract disputes between PPK and Suppliers in contract implementation can be carried out through contract dispute resolution services organized by LKPP, arbitration, the Contract Dispute Board or settlement through court.

Article 8 letter g of Presidential Decree Number 16 of 2018 concerning Government Procurement of Goods/Services regulates Officials/Committees Receiving Work Results (PjPHP/PPHP) as administrative officials/functional officials/personnel/teams tasked with inspecting the administration of the results of Goods/Services Procurement work. The structure and function of PjPHP/PPHP were abolished in Presidential Decree Number 12 of 2021 concerning Amendments to Presidential Decree Number 16 of 2018 concerning Government Procurement of Goods/Services. In the author's opinion, the structure and function of PjPHP/PPHP should be revived and its function strengthened, not only to check the administration of work results, but also the technical results of work. PjPHP/PPHP should be filled by personnel who understand the technicalities of the work to support the PPK's duties in controlling the implementation of the work, especially to ensure that the results of the work carried out by the Supplier are in accordance with the Contract both in quantity and quality.

The author believes that the presence or absence of mens rea should be a concern for APH in handling cases of excess payments for procurement of goods/services made by PPK, especially at the judicial stage. Romli Atmasasmita in this case stated that the duties and responsibilities of whether or not there was malicious intent (mens rea) were actually on the panel of judges. The facts of the trial and the beliefs of the panel of judges determine the guilt (vis a vis) of the defendant's evil intentions in a criminal case, and the obligation of the prosecutor is to present evidence legally obtained in accordance with procedural law procedures and convince the panel of judges regarding the legal strength of this evidence ( beweijs kracht) (Atmasasmita, 2017). In the opinion of the Researcher, the Panel of Judges should pay more attention to the mens rea element in proving the fulfillment or non-fulfillment of the elements of corruption in Article 2 and Article 3 of the Corruption Law, especially in cases of excess payments in the procurement of goods/services carried out by the PPK.

Romli Atmasasmita further stated that in the practice of applying the law, there is often a misunderstanding regarding "malicious intent" (mens rea), namely that efforts to discover malicious intent (mens rea) are the task of investigators or prosecutors, whereas based on the Indonesian Criminal Procedure Code, their task is to collect evidence sufficient or sufficient beginning at least two pieces of evidence (from the five pieces of

evidence provided in the Criminal Procedure Code). In the author's opinion, however, investigators should also be able to identify the presence or absence of malicious intent (*mens rea*) in the case of overpayment for procurement of goods/services being investigated. This is to fulfill the principles of justice and so that case resolution through judicial institutions can run effectively. Article 32 paragraph (1) of the Corruption Law stipulates that: "In the event that an investigator finds and is of the opinion that there is insufficient evidence for one or more elements of a criminal act of corruption, whereas there has actually been a loss to state finances, then the investigator immediately submits the case files resulting from the investigation to State Attorney to file a civil lawsuit or hand it over to the injured agency to file a lawsuit."

This article states that compliance with the elements of corruption can already be identified by investigators during the investigation stage. If the investigator is of the opinion that there are elements of corruption that are not fulfilled/there is not enough evidence while state losses have been confirmed to exist, then the investigator can divert the settlement of recovering state financial losses through a civil lawsuit filed by the State Attorney or the agency that suffered the loss.

The use of criminal law mechanisms in eradicating corruption remains the main choice considering the massive scale of corruption in Indonesia, however, legal mechanisms must also be able to provide justice and adequate protection to parties who have indeed committed a mistake but do not have malicious intent (*mens rea*).

## CONCLUSION

Law enforcement against corruption cases, including in the field of goods / services procurement, must be carried out firmly and massively but measurably by prioritizing the principles of objectivity and the principles of justice and expediency. Law enforcement and sanctions based on laws and regulations in the field of corruption should be imposed on perpetrators who truly have the evil intent (*mens rea*) to commit corruption. The state has provided legal protection to PPK who make overpayments without *mens rea* in the procurement of goods / services through a set of regulations in the field of goods / services procurement that provide a corridor for PPK in carrying out their duties. Such protection, for example, is by providing legal services to the perpetrators of goods/services procurement in facing legal problems related to the procurement of goods/services provided from the investigation process to the court decision stage. Legal protection for PPKs who make overpayments without *mens rea* in the procurement of goods / services is not optimal because in some cases, law enforcement and sanctions under the Anti-Corruption Law are imposed on perpetrators who are not proven to have malicious intent to commit corruption, or at least in the verdict there is no law enforcement effort to find facts related to the perpetrator's intention in carrying out his actions which resulted in state losses.

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