

Responsive Legal Construction to Eradicate Corruption in the Procurement of Government Goods and Services

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Abstract

Corruption in the procurement of government goods and services that occurred besides finance or economic losses, also inhibits the growth and continuity of national development that requires high efficiency. The research is a normative research with statute, conceptual and case approaches. The location of research is Papua province, Indonesia. The results showed that The weakness of regulation substantive in the field of procurement of government goods and services was significantly lies in the following aspects: Firstly, legal substance with perception difference aspect for the organizers about whether or not can be provisions in administrative law in the field of procurement of government goods and services used in criminal law; Secondly, legal structure with regulatory aspect does not regulate the presence of special sections that deal with the prevention of the eradication of corruption; Thirdly, legal culture with regulatory aspect does not support an external legal culture system for communities that performs specialized legal duties; Fourthly, legal media with regulatory aspect does not regulate any individual, social organization, environment and justice system in the procurement of government goods and services. The construction of responsive legal principles in the procurement of government goods and services needs to be done to contain the value of integrity, openness, adaptive and competitive to provide greater legal certainty.

Keywords: Corruption, Legal Construction, Local Government, Goods and Services

1. Introduction

All this time, the corruption crime occurred extensively are not only to state finances loss, but also it become a violation of social and economic rights of society at large. The phenomenon of corruption that occurred in Indonesia including in Papua province on the procurement of government goods and services is very dominant relating to the performance of the bureaucracy that is known from the increasing number of corruption cases that delegated to the court of corruption at the District Court IA of Jayapura, in 2011 (20 cases), in 2012 (40 cases) and in 2013 (78 cases) involving bureaucracy in the governance of government goods and services in Papua province in district, municipal and provincial levels. In 2004 until 2013, the most dominant cases of corruption is related to the national and regional budgets and also related to the procurement of government goods and services, which illustrates the corruption of government services.

During this, the result of corruption in the procurement of government goods and services that occurred besides state/regional finance or economic losses also inhibits the growth and continuity of national development that requires high efficiency. The crime of corruption on the procurement of government goods and services is a violation of the social and economic rights of the community at large, so that the corruption should be classified as a crime that its prevention and action must be done thoroughly and remarkably including in Papua province.

However, the crime of corruption for goods and services in Papua province is caused by the low performance of government bureaucracy in an effort to realize good governance on the procurement of government goods and services. Conditions without a regulatory system with strict and coercive sanctions affect the performance of government bureaucracy over prevention in the context of eradicating corruption in the territory of Papua province due to strict and forceful criminal sanctions are essential so that regulatory norms are adhered to when the procurement of government goods and services should be planned, implemented and accounted.

Conditions without strict and forceful criminal sanctions is also cause the rules of goods and services procurement not fully adhered to when procurement of government goods and services is planned, implemented and accountable to cause law enforcement problems to be weak, lagging of public services, good governance on the management of procurement of government goods and services does not realize, namely transparency, accountability, participation, legal empowerment, effectiveness, efficiency and justice, which led to negative phenomenon of corruption crime occurs continuously on the government goods and services. The ongoing corruption undermines important factors in the prevention and prosecution of corruption such as dishonesty, disparagement, inaccuracy, unauthorized acts, no moral independence, no moral courage, unlawful acts, embezzlement in office and abuse of authority by officials which leads to the State or regional losses.

A negative phenomenon caused by the absence of strict and forceful criminal sanctions on the rules of procurement is also related to the role of government bureaucracy and bureaucrats or individuals in the bureaucracy to prevent and eradicate corruption in the procurement of government goods and services. Corruption is the abandonment of certain standards of conduct by the authorities for self-interest. The

abandonment of daily standards of conduct as abuse of authority for self-interest becomes something that violates the behavior of bureaucrats in development. Recently, the person is allergic to hear the term development whereas it contains a positive change.

Changes that can be made are the development of law for prevention and eradication of corruption on the procurement of government goods and services to deal with corruption. This research can at least give recommendations to the positive aspects toward changes in Indonesia, especially in Papua province. Increased corruption in 2011 to 2014 is very significant based on data that can be uploaded from the Google. Cases of corruption in Indonesia as many as 42% are bureaucratic officials. In a bureaucratic approach, corruption becomes an obstacle to the dynamics of bureaucratic change.

The importance of research is due to the study of the substantive weakness of procurement regulations in the procurement of goods and services, the implementation of the procurement of government goods and services within the local government of Papua province, and the construction of responsive legal principles to be applied in the procurement of government goods and services are still lacking or very rarely done in Papua, especially in relation to the eradication of corruption in the procurement of government goods and services. The construction of responsive legal principles to be applied in the procurement of government goods and services so that corruption does not occur is very closely with the implementation of goods and services in the geographic, cultural, bureaucratic and cultural dimensions and procedures as well as the weakness of the procurement rules of goods and services is essential to investigated. Therefore, the third of things are simultaneously related to the eradication of corruption.

Corruption has been very old, elitist, endemic, and almost systemic for the procurement of government goods and services even almost a culture that can paralyze the process of national and regional developments involving government bureaucracy in Papua. A research on the topic of corruption has been done in Papua province but corruption is still continuing, it is desirable that this research can find a proper solution of legal construction responsive in eradicating corruption in the field of procurement of government goods and services.

2. Method of Research

The research is a normative research with statute, conceptual and case approaches. The location of research is Papua province at the Office of the Regional Development Planning Board of Papua province in Jayapura, the Central Bureau of Statistics of Papua province in Jayapura, the Inspectorate of Papua province in Jayapura, LPSE Office of Papua province in Jayapura, Regional Police Office of Papua province in Jayapura, High Prosecutor Office in Jayapura, High Court Office in Jayapura, the Office of Supervisory Board of Finance and Development as Representative of Papua province in Jayapura, Finance Audit Agency in Jayapura, it was conducted in period 1 month from September to October 2017. The data collected will be analyzed qualitatively by describing data obtained and interpreted and concluded.

3. Substantive Weakness of the Procurement Rules of Government Goods and Services

The substantive weakness of the procurement rules of government goods and services as factors that constrain law enforcement from legal substance, legal structure, legal culture and legal media to the procurement rules. Consideration of the President Decree of the Republic of Indonesia No. 54 of 2010 known there is a philosophical foundation that the procurement of government goods and services of an efficient, open and competitive is necessary for the availability of goods and services that are affordable and quality so that will impact on improving public services (Ruslan. 2013).

The procurement rules of government goods and services are rules or norms that govern activities to obtain goods and services starting from the planning until the completion of all activities. Activities to obtain the government goods and services in Papua and West Papua provinces other than apply the Presidential Decree of the Republic of Indonesia as mentioned above is also the Presidential Decree No. 84 of 2012 on the procurement of government goods and services in the framework of accelerating the development of Papua and West Papua provinces.

The disadvantages of legal substance of the procurement of government goods and services is related to the content of the rules or norms, and the human behavior within the legal system and the products produced by those within the legal system as decisions they make, as well as the new rules they make which becomes obstacles in law enforcement. The presidential decree in the field of procurement of government goods and services cannot be completed until the punishment, so it causing a perception difference for the organizers whether the administrative law can be applied or not in criminal law and this becomes a weakness of presidential decree in the field of the procurement of government goods and services.

Field research data through interviews indicates that the weakness of legal substance for the presidential decree in the field of procurement of government goods and services does not provide substantive justice for all parties thus weakening eradication of corruption. This is due to the creation of substantive justice is very dependent on the space of people who run the rules or norms in the field of procurement of government goods

and services. This means that the presidential decree is still open space for people to act justly or unfairly. Substantive justice is harmony maintains a balance between the principles or values that have become legal norms in action/morality to re-defend that principle or value in the field of procurement of government goods and services.

Dominikus Rato (2017) argues that “*the law may be unjust, but the law is just the law because it wants to be just.*” Nevertheless, the relationship of law and justice as formulated by Radbruch has not explained much about the nature of justice, and so raises a problem when the law is conducive to enforcing justice. Conversely there are respondents argue instead strengthen substantive justice. Presidential decree in the field of the procurement of government goods and services is enough to provide justice; it can be seen from competitive competition in auction.

The presidential decree as a *red flag* indicates whether or not there is any deviation. The argument on the effectiveness of the law put forward by Ruslan (2013) that the law can be applied effectively, those who work as legal executors must perform the task well. They must publicly announce the Law. They must interpret it in a uniform and consistent manner, and as much as possible in the same breath that might also be attempted by affected citizens. Law enforcement officers must also work hard without bored to investigate and prosecute offenders.

The Indonesian criminal law recognizes the principle of legality. This principle, whether in the Netherlands or Indonesia is contained in Article 1 paragraph (1) by its formula: “*Geen feit is strafbaar dan uit kracht van eene daaraan voorafgegane wettelijke strafbepalingen*”, or “an act cannot be criminal except on the strength of statutory provisions, existing criminal invitations,” which are highly expected to provide substantive justice.

The second, the regulation on procurement of government goods and services does not guarantee the good cooperation morality for the State organizers and partners in the eradication of corruption. Actually the working morality built between the organizers and partners should refer to applicable laws and work contracts. Conversely, there are respondents who argue instead strengthen the morality of good cooperation for the State and partner agencies. The Presidential decree in the field of procurement of government goods and services is sufficient to ensure good cooperation morality for state and partner agencies, this can be seen by the fact that integrity must be made in every contract of work. The presidential decree governs the principles underlying the procurement process.

The third, the regulations on procurement of government goods and services do not regulate the fair rights/profits for the partners so that the organizers are difficult to determine the rights/benefits for partners and tend to be trapped in corruption. Fair rights or benefits for the partners have not been firmly regulated in accordance with the rules applied, so the amount of profit still depends on the organizers and personalities of each partner. This means that the presidential decree has not been fully regulated by stating the value of fair profit for the partners and still open space to the organizers, partners, auditors, and law enforcement to interpret them about the fair profit.

A legal structure is a law enforcement institution of the people directly involved in law enforcement which not only includes law enforcement, but also peace maintenance. Based on field research data through questionnaires known respondents agreed that the weakness of the legal structure of the presidential decree in the field of procurement of government goods and services are as follows:

- a. Presidential decree in the field of procurement of government goods and services does not set a special section to handle the prevention of eradication of corruption.
- b. The regulations in the field of procurement of government goods and services do not regulate the authority of the agencies to implement sanctions in administrative law.
- c. The regulation on procurement of government goods and services in administrative law is not regulated by law with criminal sanction so that it has no correlation with article 3 of Act No. 31 of 1999 regarding authority in criminal law.
- d. The regulations on procurement of government goods and services do not guarantee the extension of the use of authority with discretion for organizational officials in institutions so difficult under certain circumstances.

In interview shows that in addition to the above weaknesses that become obstacles in law enforcement, it also known that there are respondents who agree that the weakness of the legal structure is the regulation on inadequate apparatus/officials procurement in the field of procurement of goods and services in the eradication of corruption.

Seeing from the legal culture aspect as values that have relation with law and legal system, the following attitudes and values that give positive and negative influence to the behavior related to law. Based on field research data through a questionnaire, more than fifty percent of respondents agree that the weakness of legal culture of the Presidential decree in the field of procurement of government goods and services is that the regulation in the procurement of government goods and services does not support the external law culture system for the general population/community/partners who performing specialized legal duties.

There are various reasons for not supporting an external legal culture system for the community as the weakness of the presidential decree as follows:

- a. The provisions of the Presidential decree do not clearly set the norms/criminal behavior that is prohibited for all parties related to the procurement of goods and services so that the abuse of authority by officials still continues to occur.
- b. The Presidential decree on the procurement of government goods and services does not regulate criminal sanctions for all parties in the procurement process from planning to tender winners and the execution of work so that the abuse of authority by officials continues to occur.
- c. The Presidential decree on the procurement of government goods and services is not integrated into an external legal system for the public/community or partners.

The implementation of the procurement rules of government goods and services is the implementation of the government bureaucracy on the rules or norms governing activities to obtain goods and services by the Ministry/Institution/Regional Work Unit or other Institutions whose process starts from the planning until the completion of all activities to obtain goods and services. The implementation of the procurement rules of government goods and services in Papua province is related to the implementation of government bureaucracy on the rules or norms governing activities to obtain goods and services within the local government of Papua province that started from the planning until the completion of all activities to obtain goods and services.

Government bureaucracy is a local government institution at both the provincial, district or municipalities levels that are in the state sector that has a legal relationship, and accountability to the public in carrying out its duties through a hierarchical and controlled work management system. Based on experience, research and examination of law enforcement agencies (police, prosecutors, auditors) on corruption cases, identifiable points of corruption and *modus operandi* have been used by perpetrators in various sectors. In addition, in the field of management of development funds, both sourced from funds in the domestic and abroad have also found various types or forms of irregularities and weaknesses that are a point of prone to corruption. This starts from the initial stages of planning/pre-planning of a project/development program to the implementation stage and continues at the completion and utilization of the program.

4. The Construction of Responsive Legal Principles on the Procurement of Government Goods and Services

Construction is to find and build principles for creates of legal norms in the eradication of corruption in the field of procurement of government goods and services that can be applied. Law is a norm or provision applicable within the community containing orders or prohibitions in both written and unwritten to regulate and to force the violation thereon may be subject to sanctions. Responsiveness is a norm condition that has the principle of integrity, openness, adaptive and competitive to overcome every situation and conditions that occur.

Responsive legal is a norm or provision that responds to the danger of tyranny or hidden injustice in uncontrolled power and not on unified forces that can overcome the risk of arbitrariness in the exercise of power to break the road rather than inhibit the expansion of institutional competence. The principle of responsive legal is the value of a norm with integrity, openness, adaptability and competitive behavior or moral guidelines to maintain value. The construction of responsive legal principles is the finding and building of principles for the establishment of legal norms that have values of integrity, openness, adaptive and competitive to overcome tyranny or hidden injustice in uncontrolled power.

Several main characteristics of responsive legal are known from various problems as well as the aspirations that arise in the stage of legal development as argued by Philippe Nonet and Philip Selznick (2007), the great powers push modern law to develop in that direction, but the consequences cannot be predicted and unstable. Broadly, the arguments presented are as follows:

- a. The dynamics of legal development increase the goal authority in legal considerations.
- b. The purpose of making legal obligations increasingly problematic, thus loosening the legal claims of compliance and opening up the possibility for a more rigid and increasingly civilized conception of the public order (civil, as opposed to the public nature).
- c. Due to the law has openness and flexibility, legal advocacy enters a political dimension, which then increases the forces that can help correct and change legal institutions but it can also threaten to undermine institutional integrity; and
- d. We come to the most difficult problem in responsive legal: in a stressful environment, the sustained authority of the purpose of law and the integrity of the rule of law depends on the model of a more competent legal institution.

Sofyan *et al.* (2014) argues that in the preamble to the Criminal Procedure Code letter *a*, reads: “that the Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution which upholds human rights and guarantees the citizens at the same time in the law and government and shall enter into law and the government with no exception.” The actual condition known from the fieldwork through the questionnaire

shows the respondents agreeing that the main principles of responsive law to be applied in the field of procurement of government goods and services to the government of Papua province are integrity, openness, adaptive and competitive.

5. Eradication of Corruption in the Field of the Procurement of Government Goods and Services

Eradication of corruption is prevention and prosecution to eradicate corruption as caused by poor bureaucratic performance, inadequate bureaucratic governance and structured bureaucratic crime. Bureaucratic corruption is corruption caused by poor bureaucratic performance, inadequate bureaucratic governance and structured bureaucratic crime.

Law enforcement can be seen as a concrete form or manifestation of the rule of law. Conceptually, it is not merely the exercise of legislation, nor is it merely the exercise of judge decisions. Theoretically, Soekanto (2002) argues that the core and meaning of law enforcement lies in the activities of harmonizing the relationships of values that are outlined in the established and embodied principles, and the attitude of acts as a series of the final stages of value translation to create, and maintain peace of life.

Law enforcement can also be understood and described as a process involving law enforcement officers as components, including police, prosecutors and judges, and also legal counsel. In this process the wishes of the law become reality. The desire of the law referred to is none other than the minds of the legislatures formulated in these laws. Therefore, discuss about law enforcement has actually begun since the legislature has formulated its own laws. The next issue is about how to express the moral image contained in the legal formulation, and how the legal wishes are realized concretely in the life of society.

Law enforcement as a process does not work itself automatically but it needs a creativity of the law enforcement officers who are entrusted with the duty and authority. As law enforcers are required to have certain qualities, such as energetic, high intelligence, honest, and sincere. In addition, the most important is skills in understanding what is contained in the normative formulation. Law enforcers who will determine how to law in books become law in action by considering the aspects of legal certainty, justice, and legal protection, as well as the goals to be achieved.

Law enforcement officers are required not only to have mere juridical technical ability but also awareness of knowledge and adequate ability in the field of comprehensive development policy. A set of duties and authorities delegated to law enforcement is not without limitation. According to Danil (2014) in carrying out their duties, they are bound and subject to procedural rules that have been designed in such a way in the provisions of criminal procedural law.

The real conditions as in the fieldwork through show that respondents agreeing that the main principles of responsive legal that are the values of integrity, openness, adaptive and competitive should be constructed into law with criminal sanctions to be applied in the field of procurement of government goods and services in Papua province in order to ensure eradication of corruption. The application of responsive legal principles in the procurement of government goods and services is expected to support the success of prevention and prosecution.

Indicators of prosecution against corruption are determined by aspects of legal formation through legislation process. Regulations on the procurement of government goods and services should be regulated by a law stating that misuse of authority in the field of procurement of government goods and services is an element of corruption with criminal sanctions, so that it has correlation with article 3 of Act No. 31 of 1999 regarding the element of authority in the criminal law which is clearly regulated based on the principle of legality in criminal law without analogy.

Responsible legal justice is substantive justice. The issue of justice is in line with the evolution of legal philosophy. The evolution of legal philosophy as part of the evolution of philosophy as a whole, revolves around certain issues that emerge repeatedly of justice, welfare, and truth. Among the issues that are most prominent in relation to law is the question of justice, because laws or legislation should be fair, but often contradictory and even neglected. The law is always related to justice although often empirically less fully realized. It can be argued that law without justice is like making curry without meat, insignificant. Instead, a justice without law is like crossing a river without a bridge, and limping.

Justice is a fundamental issue in law. The naturalists say that the ultimate goal of law is justice. However, there is relativism in a justice; because it is abstract, broad, and complex then the purpose of the law is often floating. Therefore, the purpose of law should be more realistic. A rather realistic legal is legal certainty and legal benefit. Yet even though positivists more emphasis on legal certainty and functionalists prioritizing the benefit of the law, we can say that *summum ius, summa injuria, summa lex, summa crux* (hard laws can harm, except justice that can help it). Thus, while justice is not the sole legal objective, but the most effective objective of law is justice (Rato, 2017).

Substantive justice is a harmony to maintain a balance 'between the principles or values that have become legal norms in action/morality to re-defend that principle or value in the field of procurement of government goods and services. It needs to be the virtue of a determination to always think, say, and behave fairly without

neglecting procedural justice in order to protect the rights of individuals and citizens.

6. Conclusion

The weakness of regulation substantive in the field of procurement of government goods and services was significantly lies in the following aspects: *Firstly*, legal substance with perception difference aspect for the organizers about whether or not can be provisions in administrative law in the field of procurement of government goods and services used in criminal law; *Secondly*, legal structure with regulatory aspect does not regulate the presence of special sections that deal with the prevention of the eradication of corruption; *Thirdly*, legal culture with regulatory aspect does not support an external legal culture system for communities that performs specialized legal duties; *Fourthly*, legal media with regulatory aspect does not regulate any individual, social organization, environment and justice system in the procurement of government goods and services.

The construction of responsive legal principles in regulations in the field of the procurement of government goods and services is very significant determined the indicators of integrity, openness, adaptive and competitive values so more improve the indicator of prevention. Abuse of authority in the field of procurement of government goods and services is an element of corruption crime with criminal sanctions, so it has a correlation with article 3 of Act No. 31 of 1999 regarding the element of authority in criminal law which is set clearly based on the principle of legality without analogy. For recommendation, the researcher recommends for regulations in the field of procurement of government goods and services should be regulated by law with criminal sanctions without causing perception differences for the organizers in administrative and criminal laws. The construction of responsive legal principles in the procurement of government goods and services needs to be done to contain the value of integrity, openness, adaptive and competitive to provide greater legal certainty.

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