

Limits Of Criminal Liability Of Commitment-Making Officials In Alleged Procurement Corruption

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ABSTRACT

This study examines the legal position of Commitment-Making Officials (PPK) and the limits of their criminal liability in government procurement corruption. This research discusses the difference between administrative or technical errors and criminal acts, specifically the criteria for establishing criminal liability. This study uses a normative juridical method with a legislative approach. Legal materials are analyzed qualitatively through legal reasoning. The findings indicate that the criminal liability of the PPK cannot be established solely based on official status or financial loss to the state. Responsibility requires evidence that establishes a relevant criminal act, fault, and the absence of legally recognized reasons that exclude criminal liability. The novelty of this study lies in examining the boundaries between administrative accountability and criminal liability by considering the authority of officials, behavior, fault, and causal relationship with state financial losses. In the context of Law Number 20 of 2021 on the eradication of corruption, the applicable legal provisions must be assessed in accordance with the relevant temporal and transitional rules, including the relationship between Articles 2 and 3 of the Corruption Eradication Law and Articles 603 and 604 of the Criminal Code. This study recommends that law enforcement distinguish between administrative or technical irregularities and corruption by assessing specific behaviors and the fulfillment of applicable criminal elements before imposing criminal liability.

Keywords: Commitment-Making Officer, criminal liability, corruption offenses, government procurement of goods/services, abuse of authority

INTRODUCTION

The procurement of goods/services by the government is an important part of governance because it involves the use of state or regional finances to meet government needs and support public services.¹ The large budget and the complexity of the procurement stages create the potential for irregularities, such as price inflation (mark-up), manipulation of technical specifications or supplier selection, collusion, bribery, payment for unfinished work, and the delivery of goods or work results that do not comply with the contract. These deviations can be categorized as acts of corruption if they meet the elements of criminal acts as stipulated in

¹ Jawade Hafidz Arsyad and Dian Karisma, *Sentralisasi Birokrasi Pengadaan Barang Dan Jasa Pemerintah* (Sinar Grafika, 2022).

the legislation.² Based on a report by Katadata citing data from the Corruption Eradication Commission (KPK), there were 68 corruption cases related to the procurement of goods and services out of a total of 154 cases handled by the KPK in 2024.³ Meanwhile, the KPK's 2025 Annual Report recorded 39 cases in the category of procurement of goods/services/KN. This data indicates that the procurement of goods/services remains a significant focus in law enforcement. However, deviations in procurement must be assessed carefully because not every procedural error or financial loss to the state automatically constitutes a criminal act of corruption.⁴

One of the officials involved in the procurement of government goods/services is the Commitment Making Officer (PPK), who is the official authorized to make decisions and/or take actions that can result in the expenditure of the state or regional budget. Article 11 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, as last amended by Presidential Regulation Number 46 of 2025, regulates the duties of the Commitment Making Officer (PPK), including preparing procurement planning, determining technical specifications or work reference frameworks, setting the Estimated Self-Price (HPS) and contract drafts, controlling contract implementation, storing procurement documents, and reporting the implementation and completion of activities to the Budget User (PA) or Budget User Proxy (KPA).⁵ This position places the PPK in an important role in the procurement process, especially in planning, contract formation, and controlling the execution of work. Nevertheless, the authority of the PPK is still limited by the provisions of laws and regulations and the scope of authority granted to them. Therefore, the accountability of the PPK must be assessed based on the authority they possess and the concrete actions they take, not merely because of their position in the procurement process. The legal accountability of the PPK is related to the law on the procurement of goods/services, state finance law, administrative law, and criminal law. Article 1 number 22 of Law Number 1 of 2004 on State Treasury defines state/region losses as a deficiency of money, securities, and

² S H Rudi Margono, *Teknis Penerapan Pasal Tipikor Pada Pengadaan Barang Dan Jasa Pemerintah* (PROFESOR RUDI MARGONO, 2026).

³ Nabilah Muhamad, "KPK Tindak 154 Kasus Korupsi Pada 2024, Terbanyak Pengadaan Barang-Jasa," Databoks, 2025, <https://databoks.katadata.co.id/ekonomi-makro/statistik/6793073ce8a21/kpk-tindak-154-kasus-korupsi-pada-2024-terbanyak-pengadaan-barang-jasa>.

⁴ Komisi Pemberantasan Korupsi, "Laporan Tahunan KPK 2025," 2025, <https://cms.kpk.go.id/storage/10040/Laporan-Tahunan-KPK-2025-Website.pdf>.

⁵ Republik Indonesia, *Peraturan Presiden (Perpres) Nomor 46 Tahun 2025 Tentang Perubahan Kedua Atas Peraturan Presiden Nomor 16 Tahun 2018 Tentang Pengadaan Barang/Jasa Pemerintah, UUD Dan Peraturan Menteri*, 2025, <https://peraturan.bpk.go.id/Details/318647/perpres-no-46-tahun-2025>.

goods that are real and definite in amount due to unlawful acts, whether intentional or negligent.

⁶ Article 59 regulates the resolution of state/region losses caused by unlawful acts or negligence, while Article 64 regulates the possibility of imposing administrative and/or criminal sanctions on officials required to compensate for those losses.⁷ In addition, Articles 17–21 of Law Number 30 of 2014 on Government Administration provide a legal framework for assessing the prohibition of abuse of authority, including actions that exceed authority, mix authority, or act arbitrarily, as well as administrative examinations of alleged errors that cause state financial losses.⁸ These provisions are important because errors in the execution of administrative duties, contract violations, and abuse of authority do not always result in the same legal consequences. The determination of the form of accountability must consider the nature of the act, the applicable legal obligations, and the legal consequences as stipulated by the relevant regulations. The distinction between administrative and criminal liability is also relevant to Constitutional Court Decision Number 25/PUU-XIV/2016.⁹ Through that decision, the Constitutional Court stated that the word "may" in Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law is contrary to the 1945 Constitution and has no binding legal force. The decision is important because the financial loss to the state in the application of both provisions must be an actual loss, not merely a potential loss.¹⁰ Supreme Court Circular Letter Number 4 of 2016 (SEMA Number 4 of 2016) also provides guidelines regarding the authority of institutions in determining state financial losses in corruption cases. The legal instrument must be understood according to its respective functions, as the determination of state financial losses, the administrative assessment of officials' actions, and the proof of criminal liability are interrelated legal issues, but distinct.¹¹ Thus, the existence of state financial losses does not eliminate the obligation to prove other elements of the alleged crime and the basis for imposing responsibility on the concerned officials.

⁶ Pemerintah Pusat Indonesia, *Undang-Undang Republik Indonesia Nomor 1 Tahun 2004 Tentang Perbendaharaan Negara*, Database Peraturan, vol. 1964, 2004.

⁷ Indonesia.

⁸ pemerintah pusat Indonesia, "Undang-Undang (UU) No. 30 Tahun 2014," *ASHRAE Transactions* 104, no. Pt 1B (2014): 1639–50, <https://peraturan.bpk.go.id/Details/38782/uu-no-38-tahun-2014>.

⁹ Sekretariat Jenderal et al., "PUTUSAN Nomor 25/PUU-XIV/2016," no. 6 (2016).

¹⁰ Jenderal et al.

¹¹ Mahkamah Agung, "Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2016 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan," 2016, 1–20.

The applicable legal framework must also take into account changes in legislation in the field of criminal law. Law Number 1 of 2023 concerning the Criminal Code will come into effect on January 2, 2026, and includes provisions on corruption offenses in Articles 603 and 604, as well as provisions on participation in offenses through Article 20. Article 622 regulates the repeal of several provisions in the Corruption Eradication Law after the National Criminal Code comes into effect.¹² Therefore, the legal basis for assessing the alleged procurement corruption must be determined by considering the time of the act, the relevant criminal provisions, and the applicable transitional rules. For actions that occurred before January 2, 2026, Article 3 of Law Number 1 of 2023 must also be considered in assessing the impact of changes in criminal regulations, including the application of provisions that are more favorable to the perpetrator or accomplice of the crime. Thus, the determination of criminal liability cannot be based solely on the time of the case examination, but must take into account the applicable law to the act and the provisions regarding changes in criminal law.¹³

Previous research, including that conducted by Istiqlallia (2020),¹⁴ Marlina (2020),¹⁵ Mahardhika (2021),¹⁶ and (2022),¹⁷ has discussed various aspects of PPK accountability, procurement deviations, and the relationship between official authority and corruption offenses. The research serves as a foundation for understanding the discussion on the legal responsibilities of procurement officials. However, this research specifically focuses on determining the limits of criminal liability of the PPK through a systematic study of the regulatory framework, particularly the relationship between procurement authority, administrative errors, state financial losses, abuse of authority, and the fulfillment of elements of corruption offenses. The contribution of this research lies in the integration of procurement provisions last amended in 2025, the administrative law framework regarding abuse of authority, the requirement of actual loss as affirmed in Constitutional Court Decision Number

¹² Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *Direktorat Utama Pembinaan Dan Pengembangan Hukum Pemeriksaan Keuangan Negara Badan Pemeriksa Keuangan*, no. 16100 (2023): 1–345.

¹³ Presiden Republik Indonesia.

¹⁴ Naony Fenti Istiqlallia, Raissa Ardelia, and Pramudya Ramadhanti, "Pertanggungjawaban Hukum Pejabat Pembuat Komitmen (Ppk) Dalam Pengadaan Barang/Jasa Pemerintah," *PERSPEKTIF: Kajian Masalah Hukum Dan Pembangunan* 25, no. 2 (2020): 129–34.

¹⁵ Heni Marlina, "Perlindungan Hukum Terhadap Pejabat Pembuat Komitmen (PPK) Dalam Kontrak Pengadaan Barang/Jasa Pemerintah," *Doctrinal* 5, no. 2 (2020): 192–202.

¹⁶ Vita Mahardhika, "Pertanggungjawaban Pidana Pejabat Pembuat Komitmen Sebagai Upaya Pencegahan Korupsi Pengadaan Barang/Jasa Pemerintah," *Jurnal Hukum Samudra Keadilan* 16, No. 1 (2021): 140–55.

¹⁷ Ahmad Rustan, "Tanggung Jawab Pejabat Pembuat Komitmen (Ppk) Dalam Proses Pengadaan Barang/Jasa Pemerintah" (Universitas Airlangga, 2022).

25/PUU-XIV/2016, and the implications of the National Criminal Code coming into effect in 2026. Unlike research that focuses on the assessment of judges' considerations in individual cases, this study examines relevant legislation and legal principles to determine the boundary between administrative or contractual deviations and actions that may result in criminal liability.¹⁸

Based on the description, the main legal issue is not merely whether a procurement activity causes state financial loss, but whether the concrete actions of the PPK exceed or abuse the granted authority, violate applicable legal obligations, and meet the elements of a criminal offense based on relevant legislation. This distinction is necessary so that criminal liability is not imposed solely based on position or the occurrence of state financial losses, while also ensuring that actions meeting the elements of corruption can be assessed according to the applicable law. Therefore, this research discusses three problem formulations, namely: (1) What is the legal position of PPK in the implementation of government goods/services procurement? (2) How is the legal accountability of PPK regulated in relation to corruption crimes? and (3) What are the limits of criminal accountability for PPK in suspected corruption crimes in government goods/services procurement based on applicable laws and regulations? Through a normative legal approach, this research aims to clarify the boundaries between administrative responsibility, responsibility for state financial losses, and criminal responsibility, as well as to provide a systematic legal basis for determining the scope of criminal responsibility of the PPK.

METHODS

This research uses a normative juridical method with a descriptive-analytical nature to examine the norms, principles, and legal provisions regarding the limits of criminal liability of Commitment-Making Officials (PPK) in alleged corruption in government procurement of goods/services.¹⁹ The approach used is the statute approach, which involves examining and analyzing legislation related to government procurement of goods/services, state finance, government administration, and the eradication of corruption. The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include Law

¹⁸ Jenderal et al., "PUTUSAN Nomor 25/PUU-XIV/2016."

¹⁹ Beni Ahmad Saebani, "Metode Penelitian Hukum Pendekatan Yuridis Normatif" (CV Pustaka Setia, 2021).

Number 1 of 2023 concerning the Criminal Code, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services and its amendments, Law Number 30 of 2014 concerning Government Administration, as well as other relevant regulations. Secondary legal materials include books, scientific journals, articles, and expert legal opinions, while tertiary legal materials encompass legal dictionaries and encyclopedias. The collection of legal materials is carried out through library research by tracing, inventorying, and identifying relevant legal materials. All legal materials were then qualitatively analyzed through a systematic interpretation of the provisions of legislation to draw conclusions regarding the limits of criminal liability of PPK in alleged corruption in government procurement of goods/services.²⁰

RESULTS AND DISCUSSION

The Position and Authority of Commitment-Making Officials in Government Procurement of Goods and Services

The procurement of goods and services by the government is a strategic instrument in the administration of government to meet the needs of the government and support the provision of public services. Its implementation must adhere to the principles of efficiency, effectiveness, transparency, openness, competition, fairness, and accountability as regulated in Article 6 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, as amended by Presidential Regulation Number 12 of 2021 and lastly by Presidential Regulation Number 46 of 2025. One of the officials who plays an important role in the process is the Commitment Making Officer (PPK). Based on Article 1 number 10 of the regulation, the PPK is an official authorized by the Budget User (PA) or the Budget User Proxy (KPA) to make decisions and/or take actions that can result in the expenditure of state or regional budget funds. Salah satu pejabat yang memiliki peran penting dalam proses tersebut adalah Pejabat Pembuat Komitmen (PPK). Berdasarkan Pasal 1 angka 10 peraturan tersebut, PPK merupakan pejabat yang diberi kewenangan oleh Pengguna Anggaran (PA) atau Ku

The duties and authority of the PPK are primarily regulated in Article 11 of Presidential Regulation Number 16 of 2018 and its amendments. These tasks include preparing

²⁰ Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

procurement planning, conducting procurement consolidation, establishing technical specifications or terms of reference, setting contract drafts and the Estimated Budget Price (HPS), determining the amount of advance payment to be made to the provider, controlling contract implementation, storing and maintaining the integrity of activity implementation documents, reporting the implementation and completion of activities to the PA/KPA, and handing over the work results to the PA/KPA. Additionally, in accordance with the delegation of authority from the PA/KPA, the PPK can take actions that result in budget expenditures and enter into agreements with other parties within the established budget limits. [3] The breadth of these duties and authorities highlights the importance of establishing the limits of legal accountability for PPK when deviations occur in the procurement of goods and services for the government. However, administrative errors, contract failures, or state financial losses do not automatically prove the criminal liability of the PPK. Such liability must be assessed based on the applicable legal provisions and the fulfillment of relevant criminal elements.

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²¹ Its implementation must adhere to the principles of efficiency, effectiveness, transparency, openness, competition, fairness, and accountability as regulated in Article 6 of Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, as amended by Presidential Regulation Number 12 of 2021 and Presidential Regulation Number 46 of 2025.²² One of the officials who plays an important role in the process is the Commitment Making Officer (PPK). According to Article 1 number 10 of the regulation, the PPK is an official authorized by the Budget User (PA) or the Budget User Proxy (KPA) to make decisions and/or take actions that can result in the expenditure of state or regional budget funds.²³ This authority places the PPK in a crucial position in the procurement of goods/services process and creates the need to distinguish between administrative irregularities in the performance of their duties and actions that meet the elements of criminal acts based on applicable legal provisions.

²¹ Sang Made Suartama and Cokorde Istri Dian Laksmi Dewi, "Efektivitas Atas Tata Pemerintahan Yang Baik Dalam Penyelenggaraan Pengadaan Barang Dan Jasa Pemerintah Kabupaten Karangasem," *Kajian Ilmiah Hukum Dan Kenegaraan* 1, no. 2 (2023): 105–12.

²² Indonesia, *Peraturan Presiden (Perpres) Nomor 46 Tahun 2025 Tentang Perubahan Kedua Atas Peraturan Presiden Nomor 16 Tahun 2018 Tentang Pengadaan Barang/Jasa Pemerintah*.

²³ Marlina, "Perlindungan Hukum Terhadap Pejabat Pembuat Komitmen (PPK) Dalam Kontrak Pengadaan Barang/Jasa Pemerintah."

In carrying out its duties, the Commitment Making Official (PPK) has quite extensive authority, including preparing procurement planning, determining technical specifications, setting the Owner's Estimate (HPS), drafting contracts, determining winners for specific packages within its authority, signing contracts, controlling contract implementation, making performance payments, and handing over work results.²⁴ The extent of these authorities causes the PPK to be one of the parties most frequently held accountable when deviations occur in the procurement of government goods and services. However, not all state losses or contract failures automatically constitute criminal offenses that can be attributed to the PPK. Therefore, clear boundaries regarding the scope of the PPK's legal responsibilities are necessary to prevent the criminalization of administrative errors.

Criminal Liability of Commitment-Making Officials (PPK) for Corruption Crimes.

Legal accountability is a consequence of actions that violate legal norms and requires a relationship between the act, fault, and the violated legal provision. In criminal law, the principle of *guilt without fault* applies, so a PPK cannot be punished merely because of state losses or their position as a PPK, but must be proven to have committed a crime, possess the ability to be held accountable, have fault in the form of intent or negligence, and not have any justifying or excusing reasons.²⁵

1) The Existence of a Criminal Act

The criminal liability of the Commitment Making Official (PPK) must be based on evidence that the actions he/she took fulfill the elements of the alleged criminal act, not merely because of procedural deviations or financial losses to the state. In government procurement of goods/services, actions that potentially lead to criminal liability include approving payments for fictitious work, endorsing work results that do not comply with the contract, illegal price inflation (mark-up), document manipulation, procurement winner manipulation, and package splitting aimed at evading provider selection procedures. The assessment of such actions needs to be linked to the obligations and authority of the PPK based on Article 11 of Presidential

²⁴ M M Agus Arif Rakhman, *Buku Kerja Pejabat Pembuat Komitmen Versi Perpres No. 16 Tahun 2018: Edisi Kedua* (Prenada Media, 2021).

²⁵ Imelda Martinelli et al., "Teori Hans Kelsen Dalam Memaknai Tanggung Jawab Perjanjian Utang-Piutang: Studi Putusan No. 3/Pdt. G/2023/PN Sos," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 5, no. 1 (2025): 130–39.

Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 and Presidential Regulation Number 46 of 2025, particularly in the preparation of procurement planning, determination of technical specifications, determination of the Estimated Price (HPS), contract signing, and contract implementation control.²⁶

Legally, violations of procurement ethics as regulated in Article 7 of the Presidential Regulation, including the obligation to avoid unhealthy business competition and conflicts of interest, can serve as a basis for assessing deviations in the procurement process.²⁷ However, violations of procurement regulations do not automatically prove the occurrence of corruption. Fictitious payments, for example, need to be proven through the conformity of payment documents with the realization of work, the involvement of the PPK, as well as the presence or absence of unlawful acts and relevant elements of fault. Likewise, price inflation must be assessed based on price fairness, the process of determining the HPS, contract execution, and evidence regarding the involvement and intent of the perpetrator's actions. The arrangement of the winner and document manipulation must also be examined based on the role of each party, evidence of engineering or collusion, and the legal provisions violated. Meanwhile, the splitting of new packages is relevant as an indication of a violation if it is proven to be contrary to the applicable procurement regulations and carried out for prohibited purposes, not merely because the procurement is divided into several packages.

The determination of the criminal provisions must take into account the time of the act and the applicable criminal law principles. For actions subject to the provisions of the National Criminal Code effective from January 2, 2026, Articles 603 and 604 of Law Number 1 of 2023 concerning the Criminal Code need to be considered according to the elements of each offense. The application of provisions in the Anti-Corruption Law must take into account the transitional and revocation provisions in the National Criminal Code. Furthermore, if there is a conflict of interest because the PPK directly or indirectly intentionally participates in procurement that falls under their management or supervision duties, such actions can be analyzed based on Article 12 letter i of Law Number 31 of 1999 as amended by Law Number

²⁶ Indonesia, *Peraturan Presiden (Perpres) Nomor 46 Tahun 2025 Tentang Perubahan Kedua Atas Peraturan Presiden Nomor 16 Tahun 2018 Tentang Pengadaan Barang/Jasa Pemerintah*.

²⁷ Indonesia.

20 of 2001, as long as the elements are met.²⁸ Thus, the determination of criminal liability for the PPK must be carried out through an assessment of the concrete actions, the authority of the position, the form of error, the relationship with the financial loss to the state if required by the applicable offense, and the fulfillment of all relevant elements of the crime. The Existence of the Ability to Be Responsible

In principle, the Commitment-Making Official (PPK) as a legal subject can be held criminally liable if proven to have committed a crime intentionally or due to negligence, in accordance with the provisions of Article 36 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code. However, criminal liability requires the presence of fault and the ability to be held accountable. In the case where the perpetrator experiences a condition as regulated in Article 39 of the Criminal Code, namely a mental disability in an acute relapse accompanied by psychotic symptoms and/or a moderate to severe intellectual disability, the perpetrator cannot be sentenced to punishment, although they can be subjected to actions in accordance with legal provisions. Meanwhile, Article 38 of the Criminal Code regulates the possibility of sentence reduction and/or the imposition of actions for perpetrators who, at the time of committing the crime, have a mental disability and/or an intellectual disability.²⁹

2) The Existence of an Error

The element of culpability is an important basis in determining the criminal liability of the Commitment-Making Official (PPK). In the context of corruption crimes charged under Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, the assessment of the element of culpability must consider the form of intent (*dolus*) that can be proven based on facts and evidence in the case. Intent can be assessed through the knowledge and will of the perpetrator regarding their actions, including awareness of the abuse of authority or the consequences of their actions. Relevant indicators include knowledge of the deviation, actions that consciously abuse authority, the intention to benefit oneself or others, and continuing to act or approve of actions despite knowing the circumstances relevant to the commission of the crime. However,

²⁸ Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 20 Tahun 2001 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi," 2001.

²⁹ Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana."

these indicators cannot stand alone as evidence of wrongdoing and must be assessed together with the elements of the alleged crime.

On the contrary, negligence or deficiencies in the execution of administrative duties do not by themselves prove the intent to commit corruption. Administrative negligence must be distinguished from actions carried out with intent that meet the elements of a criminal offense based on applicable legal provisions. Therefore, procedural errors, negligence, or discrepancies in contract execution are not sufficient to establish criminal liability for the PPK without proving the relevant elements of the crime. Thus, the determination of criminal liability must be based on an assessment of the form of fault required by the alleged offense, not merely on the occurrence of administrative deviations or financial losses to the state.

3) The Absence of Justifying or Excusing Reasons

The criminal liability of the PPK must consider the existence or absence of justifying reasons and extenuating circumstances based on the applicable legal provisions. Articles 31 to 35 of Law Number 1 of 2023 concerning the Criminal Code regulate various circumstances related to justifying reasons, while extenuating circumstances are regulated in Article 40 and the following provisions. In the context of corruption offenses, an order from a superior does not automatically absolve the PPK of criminal responsibility. The validity of the order, the authority of the person giving the order, and the circumstances under which the order was carried out must be assessed based on relevant legal provisions. Furthermore, criminal liability must take into account the element of fault as emphasized in Article 36 of the Criminal Code. Specifically regarding corruption offenses based on Articles 2 and 3 of the Anti-Corruption Law, the analysis should focus on proving the relevant elements of the crime and intent, rather than solely on the existence of state financial loss or administrative disorder. Negligence cannot be equated with intent and can only be punished if explicitly regulated by law. Therefore, administrative errors arising from negligence do not by themselves prove the crime of corruption, while an order from a superior cannot be used as justification if the concrete circumstances and applicable legal provisions do not meet the requirements for a criminal exemption.³⁰

³⁰ Presiden Republik Indonesia.

4) Forms of Criminal Liability for PPK

The legal accountability of the Commitment-Making Official (PPK) must be determined based on the concrete actions they have taken, the authority they possess, the element of fault, and whether or not the elements of the applicable criminal offense are met. Article 2 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 regulates unlawful acts that enrich oneself, others, or a corporation and result in actual losses to the state finances or the national economy. Meanwhile, Article 3 regulates the abuse of authority, opportunity, or means arising from one's position or status with the aim of obtaining such benefits, thereby causing losses to the state finances or the national economy. Based on the Constitutional Court Decision Number 25/PUU-XIV/2016, the potential loss alone is not sufficient to prove the element of state loss under both provisions. The accountability of the PPK can also arise in cases of bribery or conflict of interest based on Article 5, Article 11, and Article 12, particularly Article 12 letter i, which regulates the involvement of officials directly or indirectly in procurement that is their duty to manage or supervise. Articles 603 and 604 of Law Number 1 of 2023 concerning the Criminal Code may also be relevant to actions subject to the new Criminal Code. Meanwhile, provisions regarding participation are assessed based on Article 20 of the new Criminal Code or Article 55 of the old Criminal Code, depending on the time the act occurred and the applicable transitional provisions.³¹

Administrative accountability must be distinguished from criminal accountability. Violations of procurement procedures can result in administrative consequences based on the provisions in Presidential Regulation Number 16 of 2018, as amended by Presidential Regulation Number 12 of 2021 and Presidential Regulation Number 46 of 2025, and, if relevant, Law Number 30 of 2014 on Government Administration and Government Regulation Number 94 of 2021 on Civil Servant Discipline. Article 59 of Law Number 1 of 2004 on State Treasury provides a basis for addressing state losses caused by unlawful acts or negligence, while still adhering to applicable requirements. However, administrative disorder or negligence does not automatically prove the existence of a corruption crime. Criminal liability requires the proof of relevant elements of the crime and the form of fault as determined by law. Thus, the limits of the PPK's accountability depend on the actual actions taken by the official, the applicable legal provisions, evidence of actual state losses if required, and the relationship between those

³¹ Jenderal et al., "PUTUSAN Nomor 25/PUU-XIV/2016."

actions and the alleged criminal act. The Constitutional Court Decision Number 25/PUU-XIV/2016 reinforces this distinction by asserting that the mere potential for state loss is not sufficient to prove the element of state loss based on Articles 2 and 3 of the Corruption Eradication Law.³²

The Limits Of Legal Responsibility Of The Commitment-Making Official (PPK) In Alleged Corruption In Government Procurement Of Goods And Services Viewed From Legislation And Law Enforcement Practice

1. Palembang High Court Decision Number 14/Pid.Sus-TPK/2014/PT.PLG

The Palembang High Court Decision Number 14/Pid.Sus-TPK/2014/PT.PLG relates to a corruption case in the construction of the Jagaraga–Ogan Komering Ulu Selatan Government Office road. In this case, Hairul Emri acted as the Commitment Making Officer (PPK), while Burhaidi served as the head of the procurement committee. The first-instance court stated that the defendants were proven to have committed corruption based on the primary charges. The decision was then upheld by the Palembang High Court.

From the perspective of the limits of PPK authority, this case shows that the position of PPK is not only understood as an administrative role in contract execution but must also be linked to the concrete actions taken in the procurement process. Therefore, the assessment of criminal liability needs to consider the involvement of the PPK in the series of questioned actions, not merely based on their position.

The consideration of the appellate court emphasises that the mistakes of other parties, including those who perform supervisory functions or inspect the results of the work, do not automatically absolve the defendant of their wrongdoing. The High Court agrees with the considerations of the first-instance court regarding the fulfilment of the elements of the primary charge. Thus, the division of tasks in procurement cannot automatically be used as a reason to absolve someone of responsibility if their involvement and the elements of the crime against that person have been proven by the court.

2. However, this decision should not be interpreted to mean that every deficiency in the execution of the PPK's duties is always a criminal act of corruption.

³² Indonesia, “Undang-Undang (UU) Nomor 20 Tahun 2001 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi.”

The relevance of the decision lies in the importance of proving the actions and involvement of the defendant in the specific case. In determining the limits of criminal liability for PPK, it is necessary to distinguish between violations of administrative procedures, non-compliance with contract execution, and actions that meet the elements of corruption offences. The assessment must be based on proven facts and the elements of the crime applied, not just on the existence of issues in project implementation.

Supreme Court Decision Number 1966 K/Pid.Sus/2015 Supreme Court Decision Number 1966 K/Pid.Sus/2015 relates to the procurement of integrated laboratory equipment for madrasas within the Ministry of Religious Affairs. In this case, the defendant Rijal Roihan served as the head of the Procurement Service Unit (ULP)/procurement committee, not as the Commitment Making Official (PPK). The Supreme Court rejected the public prosecutor's cassation request, thus the appellate court's decision imposing a four-year prison sentence and a fine of Rp200,000,000 remains in effect.

This decision is relevant to the discussion on the limits of PPK's accountability because it highlights the importance of distinguishing the authority and functions of each party in the procurement process. The PPK and the procurement committee have different roles. Therefore, actions that form the basis of the procurement committee's criminal liability cannot automatically be imposed on the PPK, and vice versa. The determination of the responsible party must be based on the duties, authority, and involvement of each individual in the alleged act.

In the context of this research, the decision is more appropriately placed as a comparison to explain that criminal liability in the procurement of goods and services is individual and must be linked to actions that can be proven against each defendant. Thus, the existence of issues in the tender process or procurement implementation does not by itself prove that the PPK has committed a corruption crime. It must first be determined whether the PPK committed or participated in actions that fulfil the elements of the alleged crime.

However, since the defendant in this ruling is not the PPK, the ruling cannot be directly used to conclude how the court assesses the criminal liability of a PPK. Its analytical value lies in the differentiation of roles in procurement and the necessity of linking criminal liability to the concrete actions of each party.

3. Comparison and synthesis of the two rulings Both rulings highlight the importance of assessing criminal liability based on roles and concrete actions in the procurement process.

However, the weight of the analysis is different: the Palembang High Court Decision directly involves a PPK as the defendant, whereas the Supreme Court Decision No. 1966 K/Pid.Sus/2015 involves the head of the procurement committee/ULP. Aspect of analysis: Palembang High Court Decision No. 14/Pid each case

CONCLUSION

Based on the research and discussion results, it can be concluded that the legal accountability of the Commitment Making Officer (PPK) in government procurement of goods and services must be determined by considering the scope of authority granted by legislation and the concrete actions taken in the performance of their duties. The position and authority of the Commitment Making Official (PPK) based on Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services as amended by Presidential Regulation Number 12 of 2021 do not automatically serve as the basis for establishing criminal liability. Determination of accountability must be based on applicable legal provisions and actions that can be held accountable to the concerned officials.

The limits of the criminal liability of the PPK are determined by whether or not the elements of the alleged corruption crime are fulfilled. Administrative or procedural deviations and issues in contract execution cannot automatically be categorised as acts of corruption solely because they occur in the procurement process or are related to state financial losses. Criminal liability requires the proof of relevant elements of the crime, including unlawful acts or abuse of authority, as well as the form of culpability required by the applicable criminal provisions. Thus, mere financial loss to the state is not sufficient to prove the criminal liability of the PPK.

Analysis of the two court rulings also highlights the importance of distinguishing the roles and actions of each party involved in the procurement of goods and services for the government. The Palembang High Court Decision Number 14/Pid.Sus-TPK/2014/PT.PLG directly involves the PPK as the defendant in the road construction case in Ogan Komering Ulu Selatan Regency. Meanwhile, the Supreme Court Decision Number 1966 K/Pid.Sus/2015 relates to the defendant who served as the head of the procurement committee/Procurement Service Unit (ULP), not as

the PPK. Therefore, the second decision is used as a comparison to explain the differentiation of functions in the procurement process and the principle of individual accountability, not as a decision that directly determines the criminal liability of the PPK. Overall, the analysis emphasises that criminal liability must be based on the concrete actions of the defendant and the proven elements of the crime, not merely on the position held or the existence of issues in the procurement process.

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