



Law Enforcement Against Abuse of Authority in the Procurement of Goods and Services in Jayapura City

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Abstract

This research, entitled "Law enforcement against abuse of authority in the procurement of goods and services in Jayapura City", was conducted with the aim of analyzing, explaining, the legal position of officials making commitments to the procurement of goods and services and law enforcement against abuse of authority in the procurement of goods and services. This study uses a juridical normative and empirical juridical approach because it does not involve mere normative aspects but also examines how the law is real in people's lives. The results reveal that the fact that the legal position of the committees is as users of goods and services and can be interpreted as a function and as an organization, as a function, namely carrying out governmental duties and the government as an organization, the government assisted by the implementation of government tasks. The function of this government as a whole consists of actions, decisions, and provisions which are legal actions and real actions. Abuse of authority in the procurement of goods and services by government agencies is a crime, where the enforcement of the criminal law is part of criminal politics as one of the overall crime prevention policies. Therefore, the role of law enforcers must be able to ensure a balance between a sense of justice, benefit, and legal concern.

Keywords: *Abuse of Authority; Procurement of Goods and Services; Jayapura City*

Introduction

On a state, government is always required to promote public welfare. To carry out this duty, a government has an obligation to provide various forms of needs for their people either in the form of goods, services, or infrastructure development. On the other hand, the government also needs goods and services to run the government activities. Providing the goods and services is an important part of running the government activities. Related to providing goods, which is a routine practice, a commercial transaction is a common activity which is done by the center government or local government.

Providing goods and services is done by the government to run the state purpose. The government gets involved in a contract relation with private sector which is by a goods and services provider contract. Those relations which are made by the government are also related with the obligation to provide, develop, and maintain public utilities. The contract which is made is basically a commercial contract even though in the contract there's a bit of public law element. On the other hand, the legal relation is formed

because of a contract, also because the content of the contract is filled with a regulation for the goods and service provider. Providing goods and services by the government involving a very big amount of money. Therefore, the government is known as the largest buyer in the state.

The source of funds on the contract basically comes from the state fund which is known as Regional Income and Expenditure Budget (APBD), beside the fund which are from foreign loans and grants (PHLN). This type of fund is sometimes misappropriated on the goods and services project and to be known by the public. This phenomenon then be the reason by the world bank on promoting the government program on several state to fight corruption. As the public actor, state administrative agency or official have a special rights and obligation to use and run the public authority (*openbaar gezag*). According to its utilization of public power, a state administrative agency or official can unilaterally determine a various rules and decision (*beschikkingen*) which binding the people (with civil law entities) and laying a certain rights and obligations because it has legal consequences for them.

From the perspective of public law, a state is a job organization. Between the state function, there's several state functions which are the field of administrative law. Even though this state function is attached with rights and obligations or given an authority to take a legal action, the position is unable to act alone. Related with the position of government as the representative of public legal entities on the field of private law, Philipus M. Hadjon stated that "beside legal entity (person), a state administrative agency or official, binding themselves on a various contract, such as buy and sell, lease, chartering, even grant contract. Here, the state administrative agency or official perform their role as civil actor. A legal action which taken by the administrative agency or official is not regulated based on the public law, but based on the civil law (*privaatrecht*), as is usually the case with laws and regulations that underlying the civil legal acts committed by citizens and legal entities". The participation of the government in several civil actions also influenced the relationship of civil law which going on the public, also binding the agreement which made by the government, people, or civil entity.

Generally, the existence of civil relations by binding themselves on a contract based on Chapter III of Civil Code which stated the principles of contract law. on the goods and services providing action, the binding which is done on the civil relations between government and private sectors is based on the President Decree No. 172 of 2014 Concerning on Procurement of Government Goods and Services. On providing government goods and services, beside the regulation above, it is also based on Law No. 18 of 1999 Concerning on Construction Services; Law No. 17 of 2003 Concerning on Financial Service; Law No. 1 of 2004 Concerning on State Treasury; and Regulation of Government No. 58 of 2005 Concerning on Regional Financial Management.

The non-existence of specific legal instruments on commercial contracts by the government is also the weakness factor in providing the goods and services. Theoretically, there's several legal issues concerning the goods by the government which could be filed to be studied further.

Research Method

This research is empirical legal research, because it is based on the consideration that a law cannot be separated from the people lives in form of values and action which done (law is not autonomous). Therefore, in empirical legal science the study on a legal is not only about the normative aspect, but also a law can be seen through the empirical aspect on the people lives. The type of data based on the source which is needed for this research is primary data which obtained through the provider of goods and services, and commitment officer of goods and services. While the secondary data is obtained through library research or document research.

Legal Position of Goods and Services Commitment Maker Officer

The government can interpret as “function” and as “organization”. As a function, which act as a ruler is to carry out the government duty and as organization, the government which burdened with a duty of government. The government can also understand through two terms, on one side in terms as “government duty” on the other hand as “government organizations”. This function overall consists of several actions, decisions, decrees which are general, a civil act, and real action. On narrow terms “government” known as an organ/body/authority which also as the tools which run the executive duty, while on wide terms, then “government” convers legislative, executive, and juridical duty.

The other function, which related as the ruler, services, empowerment, and development can be explained as follows:

1. Ruler Function, which is known as a rule maker with all the forms, known as an attempt, to create a right condition to be conducive for the ongoing activities, beside making a better social order on a social life.
2. Service function, which creates justice in social life.
3. Empowering function, which encourages community self-sufficiency and development to create social welfare.

Those three functions as government duty which addressed to public service to be run by the government tool. Therefore, generally the ruler functions to run every action outside the function which is run by legislative and judicial authority based on the provisions and authority of community.

The legal act of government authority is done by government as people and private legal entity is involved in the law. Whereas the government sells and buys, rents and leases, mortgages, create a contact, and have property rights. In a specific position, government use various private laws. Sometimes they're involved in some position which is the same as the private sector position, without any specific position as government while protecting the public interest in the event of dispute. When the government act on the field of civil law and obey on the civil law regulations, the position of government on the civil law is not different with a person or legal entity, there's no special position, and could be a party on a dispute with the same position with a person or a legal entity on general court.

On providing government goods and services based on the President Decree No. 172 of 2014, the government has done a legal action not only from the public aspect but also from private aspect which is the legal subject that appointed to cause a desired legal effect by the legal subject, which on the principle it could be active and passive.

The government is a legal subject which is the supporters of rights and obligations. The supporters of rights and obligations could be called as a person as how the parties of contractor provide goods, and on the legal term “person” consist of private and legal entities. Legal entities (including government authorities) are a legal subject on the juridical term and have a rights and obligation on the goods and services providing contract based on the President Decree No. 172 of 2014. On the implementation of the government's goods and service provide contract based on the decree, there's other legal subject action which by the law is related with legal cause, whereas this act is approved or not by the related parties. The legal cause which arises does not depend on the will of the actors. Others act that is approved and there's also an act against the law.

Law Enforcement against the Abuse of Authorities in the Procurement of Goods and Services

Crime action and criminal responsibility are two wide terms in the scope of criminal law. Therefore, this study will limit the scope just to learn on when the act is known as a crime. Even though according to Van Hattum, between the act and people which done the action there's a close relationship

and cannot be separated. Related to the action of a crime, Roeslan Saleh stated that the action which is a criminal offence is a bunch of and act which basically threatens with a crime. The term of criminal act is a interpretation from *strafbaar feit* or *delict*, but on several regulations which applied, the interpretation of criminal act is different each other, such as criminal incident, criminal activity and others. According to Simmons, the element of criminal act is divided into two elements:

1. Objective element, consist of:
 - a. People act.
 - b. Result of an action.
 - c. Certain circumstances accompany the act.

2. Subjective element, consist of:
 - a. Person who can be responsible
 - b. An error accompanies the act.

From the perspective of criminal law science, every act which is done and meets the element of criminal act, will always be demanded for a responsibility in form of criminal sanctions as long as meet the element to be accountable. Criminal responsibility seems to exist, except there's a reason to abolish the punishment as stated. Except, there's a reason to abolish the lawlessness of criminal act (justification reason) and reason which abolish an error (excuse).

Imposition of criminal sanctions is a reaction to an offence in the form of grief that was intentionally inflicted by the state to the maker of the delict as the act which meets the criminal act. This is kind of a responsibility of a crime, within the theoretical framework there's two doctrine which are monistic and dualistic. Wherein the dualistic doctrine seen that a crime act is only about the action. The problem of a person who done the act then being responsible for its act, is another problem. This is the opposite of the principle of *geen straf zander schuld*. A punishment as the basis of paradigm to corruption eradication still based on three big punishment group, which are absolute theory or retaliation theory (*per geldings theorien*), relative theory or goal theory (*doel theorien*), and combine theory (*verenigings theorien*).

Herbert L. Packer stated that there's two conceptual views which both have a different moral implication, which are retributive view and utilitarian view. Retributive view presupposes a punishment as negative reward for deviant behavior which done by community, therefore this view seen a punishment only as a revenge for a mistake which done as the basis of moral responsibility. This view is said to be backward looking. While utilitarian view, seen a punishment from the terms of benefit or its use where can be seen from a situation which is desired to be the result by punishing. On the other hand, the punishment which intended to fix the attitude or behavior of the convict. On the other hand, the punishment is intended to prevent others from the possibility to do the same action. These views are said to be forward looking and have a deterrent characteristic.

Corruption will always relate to power. Like two sides from a currency, corruption always accompanies the trip of power and vice versa. Related to this, Miriam Budiardjo stated that humans which have a power tend to abuse it. But humans which have absolute power will definitely abuse it.

Philipus M. Hadjon explain the function of government on perform the public law action. As for the government, the basis to do the public law is the existence of authority which related with the position (*ambt*). Even though, the responsibility principle of responsibility and accountability stick together. Each authorization to the government official implied in it about the accountability of the official concerned. The responsibility of a position regarding to legality of government act, on administrative law, legality of government act related with approach towards government power. Personal responsibility related with functional approach or behavioral approach on administrative law.

Soerjono Soekanto explained that there's a core conceptual and terms on law enforcement which located on the action to harmonize the relation of values which stated on a solid rule and answer every action as value chain on the final stage, to create, preserve, and maintain peace.

The main law enforcement issue lies in the factors which affect it. Those factors are:

- a. The factor of its law, which is the regulations.
- b. The factor of law enforcement, which are the parties which create and implement the law.
- c. The factor of tools and facilities which support the law enforcement.
- d. The factor of people, which is the environment where those regulations are applied.
- e. The factor of culture which is the result of work and creation is based on human life.

Those five factors above are related to each other, because of the essence of law enforcement also a benchmark rather than the effectiveness of law enforcement. The act to do and applied the regulations also to do a legal action to every violation of law which done by the subject of law, through court or arbitrary and others alternative disputes or conflict resolution.

On the modern state structure, then the duty of law enforcer is one through an executive component and done by a bureaucracy and executive, therefore it also known as law enforcer bureaucracy. Since the state interferes in various activities and services on the community, then this intervention is intensified such on the field of health sector, production house, and education. This type of state is known as a welfare state.

Satjipto Rahardjo stated, to create a law as the ideas it needed a complex organization. A state which needs to interfere in the embodiment of a law which is abstract, also needs to hold various kinds of authority for this purpose.

Criminal law enforcement is part of criminal politic as apart from crime prevention policy. Indeed, the criminal law enforcement is not only hope to solve the crime completely. This is still fair because in essence, a crime is a human and social problem which cannot be overcome just with criminal law. Even though the enforcement of criminal law to prevent a crime is not only the home to solve the crime, but its result is expected because in the field of law enforcement the meaning of a state based on the law.

The implementation of criminal law code directive stated that law enforcement is one of the efforts to create order, security, and peace in the community, both as prevention and enforcement effort after the violation of law, both preventive and repressive. Preventive law enforcement is a process of criminal execution by the law enforcer to prevent a crime, both in the narrow sense is the obligation and authority of prevention by the police and in the broad sense by all agencies which dealing with crime prevention in the criminal justice system. Otherwise, repressive law enforcement is a process of criminal execution which is an act of law enforcer after the crime is done by conducting or not investigating, carrying out or not carrying out a prosecution and imposing or not imposing a sentence. The process of material criminal law enforcement on a crime especially on procurement of goods and services is done by the criminal procedural law. In the essence, the purpose of the criminal procedural law is to find and obtain or at least close to the material truth, which is a complete truth from a crime case by applying a rule of criminal procedural law fairly and precisely, with an intention to find who's the perpetrator that can be indicted to done a law violation, then by requesting an examination and decision from the court to determine whether it is proven that a criminal act has been done and will those person which indicted can be accused.

The system of criminal court has several characteristics such as:

- a. An emphasis on the coordination and synchronization of criminal court components (police, prosecutor, court, and social institution).
- b. Supervision and control on the use of power by the court.
- c. The effectiveness of criminal prevention system is more important and the efficiency of case resolution.
- d. The application of law as the instrument to complete the administration of justice.

By using those opinion above as the starting point, in principle the purpose of criminal court is oriented on several aspects such as:

- a. Prevent people from being the object/victim of crime.
- b. Can resolve a crime which has been done, so that the community is satisfied that the law has been enforced and the guilty has been punished.
- c. As a prevention therapy so the perpetrator does not repeat the crime.

Within the framework of the criminal court system, then police are the sub-system which have a duty, function, and authority in the field of inquiries and examinations of criminal act which regulated as stated by the criminal procedural code. Police are the forefront of law enforcement in preventing a crime which is filed on the prosecution. The result of the court process cannot be separated from the evidence which has been found by the police on the inquiries and/or investigation stage.

The role of law enforcer must guarantee the balance between fairness, usefulness, or expediency and legal certainty on the implementation of law enforcement to find satisfaction for those who seek justice.

Conclusion

1. The position of law from the officials who create a commitment to procure goods and services can be known as “function” and “organization”. As a function which performs a government duty and the government as an organization, the government which burdened with a duty. This government’s function overall consists of several actions of the government and its decisions, general provisions, civil acts, and real actions. On its specific position, government used several regulations from private law. Sometimes they’re involved in a civil case which have the same position with a private party, without its specific position as government and protecting public interest which happened in case of dispute.
2. The abuse of authority in the procurement of goods and services for government agencies is a crime where the criminal law enforcement is the part of a criminal politic as one part of every crime prevention policy.

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