

**REALIZE STATE GOALS THROUGH HALAL PROCUREMENT LAW  
(NARRATIVE DEVELOPMENT OF CORRUPTION-FREE INFRASTRUCTURE  
LAW)**

Iman Wijaya

Sultan Agung Islamic University, Indonesia

[mbah.rifai1981@gmail.com](mailto:mbah.rifai1981@gmail.com)

**Abstract.** Could is known together that Settings related with penalty criminal to perpetrator criminal corruption procurement goods in development infrastructure still many have gap and have enough sumirity \_ high . View this could seen in Settings criminal procurement goods related construction infrastructure in Constitution Number 1 Year 2004 Related State Treasury . In Article 62 and Article 64 no explained type criminal in problem procurement goods and services , on explanation Constitution neither is this explained with clear regarding type penalty punishable crime . \_ Besides law \_ Number 1 of 2004, then in Constitution neither is this formulated with clear the subject in question with criminal procurement goods and services , obscurity Settings crime is also visible in regulation executor related . That thing could seen in the form of no arranged provision penalty clear crime \_ to perpetrator crime corruption procurement goods To use development infrastructure in Article 78, Article 79, and Article 80 to Article 81 Regulation President Number 16 of 2018 About Procurement Government goods /services . So that part big case procurement goods and services often charged provision Constitution eradication corruption . This thing clear result in not justice for public especially the affected parties \_ noose case procurement goods and services related development infrastructure . state as well as violating principle *maqsid sharia* which in the end result in not Halal in law development infrastructure .

**Keywords:** Halal , Law, Procurement Goods , Corruption

## 1. BACKGROUND

The State of Indonesia is a state of law , this give birth to consequence that all action every party in this country must based on applicable law , view \_ this To use ensure realization the ideal state order with based on respect and protection Right basic Human . In maintenance life nation , government sued for advance well-being fair public \_ social for whole Indonesian people . Then for realize Thing that , the government obliged provide need people in various form in the form of goods , services , and development infrastructure . On the other hand, the government also needs goods and services that in doing activity government . Fulfillment need goods and services is important part \_ in maintenance government .<sup>247</sup> As a state based on Pancasila as well

---

<sup>247</sup>Sogar Simamora , *Contract Law , Contracts Procurement Government Goods and Services in Indonesia* , Wins & Partners Law Firm and LbJ , Surabaya. 2013, p . 1.

as a developed country , Indonesia has obligation for run the law at a time ensure realization even distribution development , so that at one side procurement goods To use development development - oriented infrastructure \_ centric , but on the other hand this country must also capable ensure law through mechanism procurement such thing \_ complicated can also be realized .

So that clear that procurement goods To use development infrastructure no capable inseparable with the rules law related . birth system law and system mechanism procurement more and more stuff tight , basically caused height act criminal corruption in procurement goods To use development infrastructure in the country . The electronic mass media, [nasinal.kontan.co.id](http://nasinal.kontan.co.id) , noted that that in 2017 it has been there is state losses of 1.5 trillion Rupiah due to existence corruption in procurement goods To use development infrastructure .<sup>248</sup>

Then in 2019 the number case corruption procurement goods To use development infrastructure of 174 cases with total perpetrator of 389 people with total loss caused \_ of Rp. 957, 34 Billion Rupiah.<sup>249</sup>This thing clear showing that line procurement goods and services related development infrastructure in this country is very line \_ strategic for the perpetrators corruption in operate the crime that . So that political law criminal corruption procurement goods To use development infrastructure have pending position . This thing Becomes base that political law criminal corruption procurement goods To use development infrastructure need tightened up again . Could is known together that Settings related with penalty criminal to perpetrator criminal corruption procurement goods in development infrastructure still many have gap and have enough sumirity \_ high . View this could seen in Settings criminal procurement goods related construction infrastructure in Constitution Number 1 Year 2004 Related State Treasury . In Article 62 and Article 64 no explained type criminal in problem procurement goods and services , on explanation Constitution neither is this explained with clear regarding type penalty punishable crime . \_ Besides law \_ Number 1 of 2004, then in Constitution neither is this formulated with clear the subject in question with criminal procurement goods and services , obscurity Settings crime is also visible in regulation executor related . That thing could seen in the form of no arranged provision penalty clear crime \_ to perpetrator crime corruption procurement goods To use development infrastructure in Article 78, Article 79, and Article 80 to Article 81 Regulation President Number 16

---

<sup>248</sup>[nasinal.kontan.co.id](http://nasinal.kontan.co.id), Accessed December 12 , 2020.

<sup>249</sup> <https://anticorupsi.org/sites/default/files/documents> . Retrieved December 12 , 2020.

of 2018 About Procurement Government goods /services . So that part big case procurement goods and services often charged provision Constitution eradication corruption . This thing clear result in not justice for public especially the affected parties \_ noose case procurement goods and services related development infrastructure . remember party second as provider service often become a victim of punishment although has follow existing mechanism . \_

## **2. FORMULATION OF THE PROBLEM**

As for the issues that will discussed in this article is related implementation provision sentencing in case corruption procurement goods To use development infrastructure .

## **3. APPROACH USED**

Approach used \_ in this article is approach normative where studies carried out related with incident rules and norms law .

## **4. DISCUSSION**

### **1. Penalty Criminal In Case Corruption Procurement Goods For Infrastructure Development Moment This**

Based on principle ultimate remedy , then pattern eradication corruption with make it easy penalty criminal only as long this applied not enough effective because no stop deed corruption by others . Punish perpetrator just stop deed corruption committed by the convicted person course . deed corruption by others continues \_ walk . Although punish perpetrator with penalty serious crimes and even \_ until with punishment dead as determined in Article 2 paragraph (2) of Law Number 31 of 1999 as has changed with Law No. 20 of 2001, no will effective for prevent deed corruption . Commission Eradication Corruption (KPK) is a special agency \_ formed for eradicate corruption , it turns out still not able stop rate corruption . The problem because eradication only put forward aspect criminal that is punishment course . From the corner theory scare / effect deterrent , indeed severe punishment \_ could slow down rate corruption , but no could stop deed corruption . Implication from prioritize and rely on pattern eradication corruption with law criminal just make officials \_ reluctant Becomes office in procurement goods and services good as PPK or Service Unit Procurement (ULP)/ Committee Procurement . Implication from Thing the is in the absorption of the APBN / APBD. This thing impact on inhibition development consequence existence problems in the procurement process

goods and services . Obstacles this caused dilemma in implementation the most common punishment no appropriate target .<sup>250</sup>

This thing because a lot gap between the parties do corruption or as means drop party against political power or as means kill character a office . Existence fact that case procurement goods often Becomes means someone in political power could seen with existence fact that post birth system surveillane to procurement goods To use development tight infrastructure \_ with involve Commission Eradication Corruption in this country , resulted in part office reluctant Becomes office Maker Commitment or PPK.

Handling case deviation procurement goods and services , should be started with identify and classify is deviation the including in realm law administration or law civil or law criminal . Steps of identification and classification this urgent for knowing rule which law ( rechtsregel ) will applied to the in - concreto case . Characteristics Follow criminal corruption no could equated with crime conventional other . Corruption always given white collar crime label because his deed always experience dynamic mode of operation from all side so that said as a very invisible crime difficult detected . because of that , pattern eradication no could only conducted with severe punishment \_ or punishment dead only , punishment criminal just ultimate remedy .<sup>251</sup>

## **2. Weaknesses In Implementation Criminal Corruption Procurement Goods Use Infrastructure Development Moment This**

### **1. Weakness Legal Regulation**

In development provision criminal procurement goods in Constitution Number 1 of 2004 concerning State treasury is regulated in :

Article 62

- 2) If in inspection state/ regional loss as meant paragraph (1) found element Criminal Investigation Agency State Finance to follow up in accordance with regulation applicable legislation . \_

Article 64

---

<sup>250</sup> <https://media.neliti.com/media/publications/113690-ID-berantasan-korupsi-dalam-pengadaan-ba.pdf> , accessed on 12 December 2020.

<sup>251</sup> *Loc, cit.*

- 1) Treasurer , civil servant isn't it treasurer , and other officials who have set for country/ region could charged penalty administrative and/ or penalty criminal .
- 2) Decision criminal no free from demands change loss .

On both terms above \_ seen clear that in the Act Number 1 of 2004 concerning The State Treasury does not arrange by clear elements criminal procurement goods as no criminal law \_ special and also not arrange with clear related type punishment that can be imposed . Besides Constitution Number 1 of 2004 concerning State Treasury , regarding criminal procurement goods in development infrastructure is also in or in Regulation President Number 16 of 2018 About Procurement Goods /Services, Article 8 Regulation President Number 16 of 2018 About Procurement Goods /Services stated that " in " Thing occur violation as meant in Article 78 paragraph (1) letter a to letter c and Article 80 paragraph (1) letter a to letter c, UKPBJ reports by criminal ." On terms neither is this set with clear regarding type punishable crime . \_ Then inside \_ reality often cases \_ corruption procurement goods only put on the perpetrators from element existence abuse power for look for profit economical from existence organizing procurement goods and services in development infrastructure . So that proof only focused on there or whether or not abuse authority and boundaries through administration that is corrupt , collusive , and also based on nepotism so that result in state losses in development infrastructure . However deepening correct or whether or not the procurement process goods as meant Constitution Number 1 of 2004 and Regulations President Number 16 of 2018 which special discuss related procurement goods no touchable , thing this because Constitution Number 31 of 1999 Jo. Constitution Number 20 of 2001 is intended special for act criminal corruption . Not for procurement goods and services .

This thing could impact on parties organizer only service \_ apply as partner government in Thing implementation development infrastructure on the ground . remember party partner often follow entangled case corruption even though party partner no holder authority and not could said capable by authoritative harm the country. state thereby clear far from hope Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia . The

above explanation showing that system in the rules about penalty sentencing in case corruption procurement goods To use development infrastructure experience problem . In development obscuring Settings related criminal in Constitution Procurement Goods could caused implementation criminal in case corruption procurement goods To use construction infrastructure no appropriate target . and can caused not justice for organizer service construction designated partner \_ in project procurement goods To use development infrastructure . This thing clear result in contradiction between Pancasila, the 1945 Constitution of the Republic of Indonesia as *Staatsfundamentalnorm* (State Fundamental Norms) with political law penalty criminal procurement goods in development infrastructure as *Formell Gezets* ( Formal Law ).

## 2. Weakness Law Enforcement

Due to no existence clear arrangement \_ related element actions and types penalty criminal procurement goods , execution enforcement law in case corruption procurement goods in development neither infrastructure \_ have certainty in Thing looking at position party administrator service procurement goods and services in development infrastructure in Indonesia. Besides that enforcement law in case procurement goods and services in development infrastructure often use Constitution Number 31 of 1999 Jo. Constitution Number 20 of 2001 is intended special for act criminal which corruption only focus on punishment office with base existence abuse state authority and losses , while aspect procurement goods and services often not \_ once Becomes balance and basis law in demand nor cut in front court .

This thing seen in Decision Number : 06 / Pid . Sus. K / 2017 / PN. Mdn . In decision the Brother Denny Emil Pakpahan as convict case corruption procurement goods in development infrastructure Health Department in Batu Bara District was sentenced with base Article 2, Article 3 and Article 18 of the Law Number 31 of 1999 Jo. Constitution Number 20 of 2001, can known together that Denny Emil Pakpahan is Commissioner CV. ANTOR PRAJA should be no worn criminal case corruption , because findings by BPK exist state loss of Rp. 231,072,354.50 ( two hundred three twenty one million seven twenty two thousand three hundred and fifty four rupiah fifty cents ), no solely caused by the convict but also from from existence disability bureaucracy

government , so party convict must punished based on political law procurement goods and services that is staged first before penalty criminal is penalty administrative , remember criminal to procurement goods for party organizer service procurement goods and services character ultimate remidium no character main like for perpetrator act criminal corruption pure .<sup>252</sup> Due to CV. ANTOR PRAJA take action with law civil agreement partners and not have authority in do actions that are detrimental to the state due to no is institution state property .

This thing the more increase quaint remember moment this procurement goods often based on Digitization , Weaknesses \_ means or facility supporter covers device software and devices hard , According Soerjono Soekanto that the enforcers law no could work with ok , if no be equipped with vehicles and tools proportional communication . \_ because of that , means or facility have very important role important inside \_ enforcement law . Without existence means or facility that , no will Possible enforcer law harmonize the role that should be with actual role . \_ The lack of supporting instruments enforcement law will impact on enforcement law too.<sup>253</sup>

This thing the more increase quaint with existence the problem of KKN in the stronghold enforcement law so that funnel laws that have weakness Becomes the more damaged and caused not justice . Anis stated that something damage state system including part the smallest that is procurement goods To use development infrastructure the more mushrooming because crisis enforcement law . Anis with assertive state that :<sup>254</sup>

destruction system law the more mushrooming with existence intertwined corruption , collusion and nepotism \_ with interest moment apparatus enforcer law ( even office bureaucracy ) throughout level judiciary , start police , prosecutors and judges .

### **3. not fair Implementation Penalty Criminal Case \_ Corruption Procurement Goods Use Infrastructure Development In Progressive Legal View**

---

<sup>252</sup> [www.pn-medankota.go.id](http://www.pn-medankota.go.id) , Accessed December 12 , 2020.

<sup>253</sup> Soerjono Soekanto , *Affecting Weaknesses \_ Law Enforcement* , PT. King of Grafindo Persada , Jakarta, 2007, p . 5.

<sup>254</sup> Anis Mashdurohatur , *Enforcement of Criminal Law in the Field of Illegal Logging for Sustainability Environment Life And Effort Countermeasures* , Journal of Law Vol XXVI, No. 2, August 2011.

Problem as has explained he above also contradicts with thinking law progressive who wants existence effort real for change by hurry up , do fundamental reversal \_ in theory and practice law , as well as do various breakthrough . Liberation is based on the principle that law is for human and not otherwise and law that no there is for herself alone , but for something more \_ wide that is for price self human , happiness , prosperity , and glory human .<sup>255</sup>

Definition as put forward by Satjipto Rahardjo the means law progressive is series radical action , with \_ change system law ( including change the rules law when necessary ) so that the law more useful , especially in lift price self as well as ensure happiness and well- being human . by more simple law progressive is the law that does liberation , fine in method think nor Act in law , so capable let law that flow just for finish his job subserve to man and humanity . So no there is engineering or partiality in enforce law . Because According to him , law aim for create justice and prosperity for all people .

Satjipto Rahardjo try highlight above conditions \_ to in situation sciences social , including knowledge law , though no as dramatic in knowledge physics , but basically \_ happen phenomenal change \_ about the law that is formulated with sentence from simple \_ Becomes complicated and from the compartmentalized Becomes one unity . This is what it 's called as view holistic in science ( law ) . View holistic the give awareness visionary that something in arrangement certain have interlocking parts \_ related good with part other or with the whole . So that clear political law procurement goods related enforcement case corruption moment this not yet reflect Mark justice and humanity and can Becomes tool To use realize destination political , so the law aimed at for realize justice and happiness man no capable materialized .

#### **4. Implementation Penalty Criminal Case \_ Corruption Procurement Goods Use Infrastructure Development In Islamic Law Perspective**

Destination law according to Islam basically set in principle *maqsid al-Sharia*, on the principle of *maqsid al-Sharia* explained that law must capable protect five things , as for five things the are :<sup>256</sup>

6) Religion;

---

<sup>255</sup> Satjipto Rahardjo , *Legal Studies ; The Search , Liberation and Enlightenment* , Surakarta: Muhammadiyah Press University, 2004, p . 43.

<sup>256</sup> *Ibid*, p . 48.



- 7) Intellect;
- 8) Soul;
- 9) Treasure objects ;
- 10) Descendants .

Then realize justice , justice according to Islam in Thing this is liken something with other things \_ good by Mark nor by size so that no heavy adjacent or siding between one with the others . Next fair also has mean siding to truth .<sup>257</sup>

Basically Allah SWT is called as "The Most Just and Wise " to His servant , meaning that all deed man no will influence justice of Allah SWT, good and bad deed man precisely will accept balance individually . This thing could seen in the Quran Chapter 41 Verse 46 which states that " whoever does " pious charity \_ so the reward for himself and stuff who does \_ deed evil , then the sin for herself alone , and not once in a while your Lord persecutes His servants . "<sup>258</sup> Temporary that *Jumhur Ulama* agree state that whole The companions of the Prophet SAW are fair and not need discussed justice of the companions of the Prophet SAW who can seen in narration Hadith .<sup>259</sup>

Based on various type the explanation above \_ \_ glook clear that occur something linkages close Among destination law according to Islam, the goal law land , and goals law in context destination country as listed \_ in the Fourth Paragraph Preamble of the 1945 Constitution of the Republic of Indonesia. linkages that that is linkages in Thing semblance in existence mandate good on purpose law according to Islam, according to law land , and law national that religious and human values as well as justice need absorbed in political law national , in other words that political law national need based on Pancasila which is the crystallization from mandates that is born from culture and values public by dynamic . not explanation settings regarding sentencing procurement goods in case corruption development infrastructure has result in vulnerable party organizer service caught consequence from corruption committed \_ office authorized , thing this clear no fair including in Islamic perspective , because with not explanation law will result in wrong application law and will harmful the

---

<sup>257</sup> *Ibid*, p . 51.

<sup>258</sup> Tohaputra Ahmad, *Al-Qur'an and its Translation* , CV. As Syifa , Semarang, 2000, p . 185.

<sup>259</sup> *Ibid*, p . 1072

party who doesn't guilty good in aspect soul nor aspect treasure the thing . such thing clear far from law based on principles \_ halal according to Islam.

## 5. CONCLUSION

Implementation penalty criminal corruption procurement goods To use development infrastructure not yet based on politics law procurement goods , so penalty criminal position still sumir , because problem procurement goods should no could by live worn penalty criminal as ultimate remidium , remember procurement goods set with law administration no law criminal , as for threat criminal only as drug final when violation in the realm procurement goods in development infrastructure no under control . As for weakness in implementation penalty criminal corruption procurement goods To use development infrastructure in the form of obscurity Settings crime in politics law procurement goods and services , enforcement the law is also getting summary because regulation vague laws , and lack of facilities and equipment darana enforcer law as well as knowledge enforcer law will problem political law procurement goods by whole .

## BIBLIOGRAPHY

### Books

- Anis Mashdurohatun , *Enforcement of Criminal Law in the Field of Illegal Logging for Sustainability Environment Life And Effort Countermeasures* , Journal of Law Vol XXVI, No. 2, August 2011
- Barda Nawari Arief , 1984, *Some Aspect Policy Law Enforcement and Development* , University Diponegoro , Semarang
- \_\_\_\_\_, 1998, *Some Aspect Policy Law Enforcement and Development* , Citra Aditya Bakti , Bandung
- \_\_\_\_\_, 2013 , *Potpourri Legal Policy* , University Diponegoro , Semarang
- Esmi Warassih , 2011 , *Legal Institution , A study Sociologist* , Publishing Agency University Diponegoro , Semarang
- Hans Kelsen , 1935, *General Theory of Law and State* , Russell & Russell, New York
- Hans Nawiasky , 1948, *Allgemeine Rechtslehre als System der rechtlichen Grundbegriffe* , Printing 2 , Einseideln / Zurich / Cologne, Benziger
- LM Friedman, 1975, *Legal System*, Russell Sage Foundation, USA
- Maria Farida Indrati S., 2007, *Science Legislation : Type , Function and Material Loads , Book 1* , Canisius , Yogyakarta
- Satjipto Rahardjo , 2004, *Legal Studies ; Search , Liberation and Enlightenment* , Surakarta: Muhammadiyah Press University
- Rosjidi Ranggawidjaja , 1998, *Introduction Knowledge Indonesian Legislation* , Mandar Maju , Bandung
- Undergraduate , 2016, *State of Law Theory and Practice* , Thafamedia , Yogyakarta
- Soerjono Soekanto , 2007 , *Weaknesses Affecting Law Enforcement* , PT. King of Grafindo Persada , Jakarta

Sogar Simamora , 2013, *Law of Contracts , Contracts Procurement Government Goods and Services in Indonesia* , Wins & Partners Law Firm and LbJ , Surabaya  
Sri Endah Wahyuningsih , 2013, *Principles Individualization Criminal In Islamic Law and Indonesian Law Reform* , UNDIP , Semarang

### **Constitution**

the 1945 Constitution of the Republic of Indonesia ;

Constitution Number 31 of 1999 Jo. Constitution Number 20 of 2001;

Constitution Number 1 of 2004;

Regulation President Number 16 of 2018.

### **Internet**

[https:// anti- corruption .org/sites/default/files/documents](https://anti-corruption.org/sites/default/files/documents) . Accessed December 12 , 2020

<https://media.neliti.com/media/publications/113690-ID-berantasan-korupsi-dalam-pengadaan-ba.pdf> ,  
accessed on 12 December 2020

national.kontan.co.id, Accessed December 12 , 2020

[www.pn-medankota.go.id](http://www.pn-medankota.go.id) , Accessed December 12 , 2020