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Abuse of Authority in Procurement Under the Corruption Law

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Abstract
Nowadays, the practice of corruption in government procurement of goods and services is becoming increasingly sophisticated, and it is not uncommon for perpetrators to hide behind formal procedures such as the determination of the Self-Estimated Price (Harga Perkiraan Sendiri/HPS). This becomes legally justifiable because Article 26, Paragraph (6) of Presidential Regulation No. 16 of 2018 states that the HPS is not the basis for calculating the amount of state financial loss. However, the crime of corruption in the context of procurement does not lie in the numerical difference, but rather in the malicious intent (mens rea) when abusing authority in the process of determining the HPS. This study uses a normative legal research method with a statutory and case approach. This research addresses the following issues: 1). Can the inflation of the Self-Estimated Price (HPS) fulfill the element of "abuse of authority" in Article 3 of the Corruption Eradication Law, even though it is not used as the basis for calculating state losses? 2). Is proving malicious intent (mens rea) in the HPS determination process more essential to prosecute corruption perpetrators compared to proving the amount of state financial loss? In this study, it was found that an unreasonable HPS is not a representation of state loss, but rather an instrumentum delicti a tool intentionally created to

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facilitate the crime. The main finding shows that the act of inflating the HPS perfectly fulfills the element of "abusing authority" in Article 3 of the Corruption Eradication Law, as this action creates a corrupt opportunity for other parties. Therefore, it is imperative that law enforcement officials prioritize investigations into the process and methodology of HPS formulation to prove conspiracy and abuse of authority, rather than being trapped in debates about calculating state losses based on estimations.

KEYWORDS
Abuse of Authority, Procurement of Goods and Services, Corruption.

Introduction

Government procurement of goods and services is one of the most vital sectors in the country's economic machinery, while also being the area most vulnerable to corrupt practices. Over time, the modus operandi of corruption crimes in this sector has continued to evolve, becoming increasingly sophisticated and covert. Perpetrators no longer commit corruption openly but rather hide behind gaps in formal procedures to legitimize their actions. One of the procedures most frequently abused is the process of determining the Self-Estimated Price (HPS).[1] The HPS, which is supposed to serve as a reference for fair pricing, is often deliberately inflated (marked-up) to create room for illegal profits.

This phenomenon has become increasingly complex with the existence of Presidential Regulation (Peraturan Presiden/Perpres) Number 16 of 2018 concerning the Procurement of Goods and Services by the Government. Specifically, Article 26 Paragraph (6) of the regulation states that the HPS (Self-Estimated Price) cannot be used as a basis for calculating the amount of state losses. This situation gives rise to a fundamental legal issue, namely a normative conflict (legal antinomy)

[1] Syahna Nabila Rachmania, "Kesalahan Penyusunan Harga Perkiraan Sendiri (HPS) Dalam Pengadaan Barang / Jasa Pemerintah Yang Berimplikasi Tindak Pidana," *Jurist-Diction* 3, no. 3 (2020), https://doi.org/10.20473/jd.v3i3.18641.

between the spirit of anti-corruption in Article 3 of the Law on Corruption Crime (UU Tipikor), which regulates the offense of abuse of authority, and the norm in Article 26 Paragraph (6) of the Perpres, which seems to serve as a legal shield for the perpetrators.

In the process of procuring goods and services by the government, whose funding comes from the State Budget (Anggaran Pendapatan dan Belanja Negara /APBD), the preparation of the HPS is a crucial step carried out before the spending process. However, before the HPS can be prepared, the initial step is to carefully formulate the Technical Specification document. This Technical Specification document serves as a detailed description of the procurement object, which can follow two approaches. First, the performance-based approach, which outlines the capabilities or expected outcomes of a good, service, or work. Second, the conformance-based approach, which specifically details the quality of materials, workmanship methods, and quality standards that must be met by the service provider.

After this clear specification is established, the HPS document is then prepared. HPS itself is a professionally calculated cost estimate and serves as a fundamental benchmark in the tendering process with two main functions: first, as the basis for setting the maximum acceptable bid, where any bid exceeding the HPS value will automatically be disqualified. Second, the HPS value serves as a reference to determine the amount of the Performance Bond, which is a financial guarantee from the tender winner to ensure their commitment to completing the work according to the contract. Thus, the Technical Specifications define "what" will be procured, while the HPS sets "how much" is a fair value for the procurement.[2]

In the context of investigating corruption in the government Goods and Services Procurement process, the Technical Specification Documents and the Owner's Estimate (HPS) play a crucial role as the starting point of

[2] Samsul Ramli, *BACAAN WAJIB MENGATASI ANEKA MASALAH TEKNIS PENDAGAAN BARANG/JASA PEMERINTAH* (Visi Media, 2014).

the investigation. Although both serve as primary references for investigators, it should be emphasized that these documents cannot be used as a legal basis to directly calculate the amount of financial loss to the state. The main function of the HPS is essentially as a measuring tool or benchmark to assess the reasonableness of the bids submitted by tender participants. In other words, the HPS helps determine whether a bid is too high, too low, or in line with a reasonable market estimate.

Therefore, an action in the new procurement process can be classified as a Corruption Crime if it is legally proven to meet specific criminal elements. A deviation in the HPS or technical specifications only becomes an entry point to examine whether the elements of corruption are fulfilled. These elements include four main pillars.

The four elements of corruption in the context of goods and services procurement are essentially a series of interconnected and inseparable actions. The process often begins with the abuse of authority, where a public official knowingly violates procedures and laws to manipulate the procurement process. The forms can vary, ranging from setting technical specifications that specifically favor a particular brand or vendor, leaking the HPS to colluding participants, to interfering with the tender committee to ensure a desired party wins.

This abuse of authority does not occur without reason; its main motive is to enrich certain parties. These illicit financial gains can flow directly to the officials themselves, to others (such as family members or campaign teams), or to the corporations that are 'favored.' This practice ensures that project profits are not based on healthy competition, but rather on the outcome of a conspiracy. To facilitate this scenario, bribery and gratuities often occur. Bribery becomes a transactional tool whereby private parties provide rewards in the form of money, goods, or facilities to induce the official to commit abuse of authority. It is this illicit transaction that acts as the lubricant for the functioning of the machinery of corruption.

The peak of a series of illegal actions in the procurement of goods and services always results in the most destructive impact, namely the losses suffered by the state's finances and economy. These losses are not abstract; they are concrete and can be measured in various forms, such as inflated procurement prices, work results whose quality is far below the contract standards, or even stalled projects that cannot be used at all by the public. As a result, state funds that should have been investments for public interest are instead wasted due to malicious collusion. Therefore, the roles of HPS and Technical Specifications must be correctly understood; both are instruments to identify early indications of fraud. However, to prove a case as a criminal act of corruption, the prosecuting attorney must be able to show that all elements of the crime have been fulfilled.

Several previous studies have examined the relationship between HPS and corruption, but some gaps remain. Guntur Rambey's research (2025), which outlined 16 modes of crime, stopped at the identification stage and did not proceed to an analysis of legal accountability arising from HPS.[3] Similarly, Vita Mahardhika's (2021) research, which examines corporate criminal liability, does not address the construction of individual officials' culpability in the process of preparing the HPS.[4]

Although Syahna Nabila Rachmania's (2020) research has made progress by emphasizing the importance of the element of intent (mens rea), it has not fully explained how to prove such malicious intent within the framework of abuse of authority as regulated in Article 3 of the Corruption Crime Act.[5] From a different perspective, Jamila Lestyowati's study (2019) tends to be administrative and preventive, thus it delves less

[3] Guntur Rambey and Harisman Harisman, "Kajian Hukum Pidana Bentuk Kejahatan Dalam Pengadaan Barang Dan Jasa Pemerintah," *IURIS STUDIA: Jurnal Kajian Hukum* 6, no. 2 (2025), https://jurnal.umsu.ac.id/index.php/sanksi/article/view/25438.

[4] Vita Mahardhika, "Pertanggungjawaban Pidana Pejabat Pembuat Komitmen Sebagai Upaya Pencegahan Korupsi Pengadaan Barang/Jasa Pemerintah," *Jurnal Hukum Samudra Keadilan* 16, no. 1 (2021), https://doi.org/10.33059/jhsk.v16i1.2636.

[5] Syahna Nabila Rachmania, "Kesalahan Penyusunan Harga Perkiraan Sendiri (HPS) Dalam Pengadaan Barang / Jasa Pemerintah Yang Berimplikasi Tindak Pidana," *Jurist-Diction* 3, no. 3 (2020), https://doi.org/https://doi.org/10.20473/jd.v3i3.18641.

into the repressive aspects or the criminal qualifications of errors in the preparation of HPS.[6] Finally, Muhammad Isnayanda's study (2018) highlights the difficulties in proving state losses but does not offer a solution for taking action against corruptors who exploit the HPS as a tool for crime if state losses become a matter of debate.[7]

This research offers significant novelty by shifting the focus of legal analysis in corruption cases related to the procurement of goods and services. While previous studies tended to revolve around modus operandi, corporate liability, or the problem of proving state losses, this research will build a legal construct asserting that errors in preparing the HPS (Owner's Estimate of Prices) based on malicious intent (mens rea) constitute an independent offense of abuse of authority, regardless of the debate over the final calculation of state losses. The novelty lies in positioning the HPS not as a representation of state losses, but as an instrument of crime (instrumentum delicti) intentionally created from the outset to facilitate corruption.

Ultimately, from the above discussion, the following issues arise:

1. Can the inflation of the Self-Estimated Price (HPS) fulfill the element of 'abuse of authority' under Article 3 of the Corruption Eradication Law (UU Tipikor), even if it is not used as the basis for calculating state losses?
2. Is proving malicious intent (mens rea) in the process of determining the HPS more essential for prosecuting corruption offenders compared to proving the extent of state losses?.

Methods

[6] Jamila Lestyowati, "Upaya Pencegahan Korupsi Pengadaan Barang Dan Jasa Pemerintah Melalui Instrumen Harga Perkiraan Sendiri," *NAGARI LAW REVIEW* 3, no. 1 (2019), https://nalrev.fhuk.unand.ac.id/index.php/nalrev/article/view/145.

[7] Muhammad Isnayanda Alvi Syahrin, Madiasa Ablisar, and M. Ekaputra, "PENGHITUNGAN KERUGIAN KEUANGAN NEGARA OLEH KANTOR AKUNTAN PUBLIK DALAM PERKARA TINDAK PIDANA KORUPSI (Studi : Putusan Pengadilan Tipikor Pada Pengadilan Negeri Medan No. 93/Pid.Sus-TPK/2016/PN.Mdn., Tertanggal 16 Februari 2017)," *USU Law Journal* 6, no. 1 (2018).

This study aims to analyze the legal qualification of the act of inflating the Self-Estimated Price (HPS) as fulfillment of the element of "abuse of authority" under Article 3 of the Corruption Eradication Law (UU Tipikor), even though HPS is excluded as a basis for calculating state losses. It also aims to formulate the urgency of proving malicious intent (mens rea) in the process of determining HPS as a more essential and effective approach for law enforcers in prosecuting perpetrators of corruption in goods and services procurement.

This study uses normative research, with a legislative approach and a case approach to review all relevant legislation, particularly Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption Crimes (especially Article 3) and Presidential Regulation Number 16 of 2018 on Government Procurement of Goods and Services (especially Article 26).

This research is prescriptive in nature, aiming to obtain an overview of the weaknesses in proving corruption related to the HPS that only focuses on state losses, as well as to formulate recommendations for law enforcement officers to prioritize proving the element of intent (mens rea).

In normative legal research, the data collection process is carried out entirely through literature studies or document studies. This method focuses on tracing, collecting, and analyzing relevant written materials. The collected data are then classified into three categories: primary legal materials that are authoritative, such as legislation and jurisprudence; secondary legal materials that provide in-depth explanations, such as books, academic journals, and expert doctrines; and tertiary legal materials, such as legal dictionaries and encyclopedias, which serve as supporting references to locate the first two types of legal materials.

The data analysis in this study was conducted using a prescriptive-analytical method. This method is used to collect, organize, and analyze data, and ultimately prescribe the data in the form of words to provide an accurate depiction of the scope of discussion as follows: The legal qualification of inflating the HPS (Owner's Estimate Price) as a form of abuse of authority under Article 3 of the Corruption Eradication Law (UU Tipikor), the urgency of proving the element of malicious intent (mens rea) in the process of determining the HPS as an instrument of crime (instrumentum delicti), and the reconstruction of the paradigm of proving corruption in goods and services procurement, which should be oriented toward mens rea, not merely state losses.

Result and Discussion

A. Legal Qualification of Inflating HPS as a Form of Abuse of Authority

Analysis of the inflation of the Owner's Estimate Price (HPS) as a criminal act of corruption often encounters formalistic arguments stating that HPS cannot serve as the basis for calculating state losses. However, this approach is flawed because it ignores the essence of the crime of corruption, namely the existence of a malicious intent (mens rea) in the misuse of authority. This is in line with the opinion of Abdul Fickar Hadjar, that for an act (actus reus) to be qualified and punished as a criminal offense, it must always be accompanied by the appropriate mens rea, including in cases of corruption.[8] Apart from its function in calculating state losses, substantively, HPS itself has actually met the elements of abuse of authority as regulated in the Law on the Eradication of Corruption Crimes.

Article 26 Paragraph (6) of Presidential Regulation (Perpres) Number 16 of 2018 indeed states that *'HPS is not used as the basis for calculating the amount of state losses.'* This provision is administratively intended to provide flexibility, considering that HPS is an estimate and not a fixed price. The purpose is to prevent auditors from rigidly concluding the existence of

[8] Abdul Fickar Hadjar, "Mens Rea Sebagai Dasar Pertanggungjawaban Pidana," hukumonline.com, 2025, https://www.hukumonline.com/berita/a/mens-rea-sebagai-dasar-pertanggungjawaban-pidana-lt68957a131ffb0/.

state losses solely based on the difference between the contract value and the HPS.

However, interpreting this article as a "protector" from criminal liability is a fundamental mistake. This error can be analyzed from several perspectives. First, in terms of regulatory hierarchy, the Corruption Eradication Law, as a statutory law, has a higher legal standing than a Presidential Regulation, so the norms in a Presidential Regulation cannot annul or nullify the criminal elements regulated in the Law.

Secondly, the regulated substance is fundamentally different; Presidential Regulation No. 16 of 2018 falls within the domain of administrative law that governs procurement procedures, where Article 26 Paragraph (6) specifically addresses the methodology for auditing state losses. In contrast, the Corruption Eradication Law belongs to the domain of criminal law, which focuses on criminal acts, such as abuse of authority under Article 3. Therefore, the focus on corruption in this context is actually not merely on the "numerical discrepancy," but on the process and malicious intent (mens rea) when an official sets the HPS. Consequently, Article 26 Paragraph (6) of Presidential Regulation 16/2018 becomes irrelevant as a justification for eliminating criminal sanctions for the abuse of authority itself.

The correlation between this juridical analysis and judicial practice becomes very clear in the Sabang Dock corruption case involving the Regent of Bener Meriah, Ruslan Abdul Gani. In its considerations, the panel of judges explicitly stated that one of the defendant's criminal acts was "ordering the Commitment Making Officer (Pejabat Pembuat Komitmen/PPK) to create the HPS based on an inflated (marked-up) price." This ruling shows that the court did not get caught up in debates regarding the administrative function of the HPS, but instead directly addressed the core of the case, namely the abuse of authority in the HPS determination process.[9]

Ruslan's actions in intervening and ordering the creation of an unreasonable HPS are seen as fulfilling the elements of illegality and abuse of authority themselves. This case becomes a concrete precedent indicating that the focus of law enforcement is on the wrongful act in its process, not on the formal status of the HPS as the basis for calculating state losses. The verdict against Ruslan proves that the court recognizes the inflation of the HPS as a criminal act standing on its own within the series of corrupt actions.

In criminal law, it is important to distinguish between the object of a crime and the instrument of a crime. Inflated HPS is not the object being stolen, but rather a tool intentionally created to facilitate the crime (instrumentum delicti).

A simple analogy is like making a counterfeit key to rob a safe. The counterfeit key itself is not the treasure being robbed, but it is a crucial instrument that enables the robbery to occur. Similarly, an unreasonably inflated HPS is a "counterfeit key" created by authorized officials to open the door for certain prospective providers to win the tender with an unreasonable price offer, which ultimately harms state finances. Therefore, the focus of law enforcement should not only be on "what is missing from the safe," but also on the illegal act of making the counterfeit key itself.

Another case is the Mataram Corruption Court decision in the case of corruption in the procurement of the marching band, which implicated PPK Muhammad Irwin. Similar to the previous case, the focus of the judge's ruling was not on a formal debate regarding the function of HPS, but rather on the process and malicious intent behind its preparation.

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[9] hukumonline, "Vonis 5 Tahun Plus Bayar Uang Pengganti Rp4,36 M Untuk Bupati Bener Meriah," hukumonline.com, 2016, https://www.hukumonline.com/berita/a/vonis-5-tahun-iplus-i-bayar-uang-pengganti-rp4-36-m-untuk-bupati-bener-meriah-lt58357c5eb4b50/.

In its verdict, the judge explicitly stated that 'the conspiracy began at the stage of preparing the HPS.' This phrase is crucial because it indicates that the court identified the beginning of the corruption act occurring at the moment of abuse of authority, namely when Irwin, as the procurement officer (PPK), colluded with the goods provider, Lalu Buntaran alias Ading.[10]

The abuse of authority was clearly proven through several actions. First, the outsourcing of authority, where Irwin handed over the price survey results, which should have been internal confidential data, to Ading, a prospective supplier. Second, order-based HPS, where Irwin then used the price list prepared by Ading as the basis for setting the official HPS amounting to Rp212 million per unit. This is a concrete form of regulated HPS (reverse engineering) to lock in the winner and the price from the beginning.

This case serves as strong jurisprudential evidence that the court consistently views the process of determining a fraudulent HPS as a concrete manifestation of abuse of authority and unlawful acts as stipulated in Article 2 of the Corruption Eradication Law. Thus, regardless of its administrative function, when the HPS is prepared through malicious collusion, it has transformed into an instrument for legitimizing corruption.

Based on the analysis of the cases of Ruslan Abdul Gani and Muhammad Irwin, it is very clear that the practice of inflating the Self-Estimated Price (HPS) can be classified as a criminal act of corruption that meets the elements of abuse of authority. Although both cases were prosecuted under Article 2 of the Corruption Law regarding "unlawful acts," the substance of the act is essentially the core of Article 3.

The judges' rulings in both cases consistently demonstrate a focus on the process and the malicious intent (mens rea) behind the preparation of

[10] Dhimas Budi Pratama, "Hakim Vonis 5 Tahun PPK Proyek Pengadaan 'Marching Band' Dikbud NTB," antaranews, 2024, https://www.antaranews.com/berita/3987411/hakim-vonis-5-tahun-ppk-proyek-pengadaan-marching-band-dikbud-ntb.

the HPS, rather than the administrative status of the HPS as the basis for calculating state losses. The actions of officials who ordered markups or colluded with providers to manipulate the HPS are a concrete form of abuse of office. The selection of Article 2 by public prosecutors is a common strategy because the scope of 'unlawfulness' is broader and often easier to prove; however, this does not diminish the fact that the essence of the crime committed is the abuse of authority to facilitate corruption.

These practices of abuse of authority are not merely theoretical, but rather a real manifestation clearly illustrated in jurisprudence, as seen in the cases of Ruslan Abdul Gani and Muhammad Irwin. These two cases serve as concrete examples of how the modus operandi mentioned above occurs in practice.

In the case of marching band corruption in NTB, the practices of "Collusion with Prospective Providers" and "Fictitious Surveys" effectively took place. The defendant, Muhammad Irwin, as the project commitment officer (PPK), openly handed over the market survey results to the prospective provider, Lalu Buntaran, who then used them to compile the order price list. These prices were then adopted by Irwin as the official HPS. This is a form of perfect collusion where the HPS no longer functions as a state estimate, but rather as a figure that has been mutually agreed upon to legitimize unreasonable profits.

Meanwhile, in the case of the Sabang Dock, the practice of "Collusion" was also very evident. The defendant, Ruslan Abdul Gani, as the Budget User Authority (Kuasa Pengguna Anggaran/KPA), actively instructed the PPK to prepare the HPS based on prices that had already been inflated (marked up) by the provider. This instruction indicates intervention and abuse of authority to direct the procurement process for the benefit of certain parties. These two case examples prove that corruption in the preparation of the HPS occurs and is completed at the moment the authority is abused, long before any payment or state loss audit takes place.

B. The Urgency of Proving Mens Rea in Corruption Involving Inflated HPS

The basis of criminal law lies in the Latin adage, *actus non facit reum nisi mens sit rea*, which means that an act does not make a person guilty unless there is a guilty mind (Mens Rea).[11] This theory separates crime into two elements: the wrongful act (actus reus) and the guilty mind (mens rea). In the context of HPS corruption, the actus reus is the act of abusing authority in the HPS determination process, while the mens rea is the intent to manipulate the process for personal gain or for the benefit of others.

In addition to the theories of actus reus and mens rea, there are at least two theories that align with the actus and mens rea concepts. First, the Evil Will Theory (Dolus Malus), which asserts that the moral core of a crime is the presence of the will or awareness to commit a blameworthy act.[12] HPS corruption is not an administrative negligence, but a betrayal of public trust based on malicious intent to collude and manipulate projects. Secondly, the Theory of Abuse of Power (Detournement de Pouvoir), although originating from administrative law, is highly relevant. Detournement de pouvoir occurs when an official uses legally granted authority for an illegitimate purpose or beyond the purpose for which the authority was given.[13] The authority to determine the HPS (Owner's Estimate Price) aims to obtain a fair price for the state, not to serve as a tool to favor a particular partner. The misuse of this authority beyond its intended purpose is the essence of the criminal act.

After establishing that the inflation of the HPS is a form of abuse of authority, the focus on evidence becomes crucial. Until now, many

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[11] David Lind Budijanto Njoto, "Interpretasi Asas Actus Non Facit Reum Nisi Mens Rea Dalam Tindak Pidana Korupsi" (Universitas Katolik Darma Cendika, 2019), https://repositori.ukdc.ac.id/584/.

[12] Ade Adhari, "Analisis Ketiadaan Niat (Mens Rea) Dalam Pemidanaan Pada Putusan Pengadilan Negeri Jakarta Pusat Nomor 844/PID.B/2019/PN.JKT.PST. Edo Bintang Joshua," *Jurnal Hukum Adigama* Vol 4 Nomo (2021), https://journal.untar.ac.id/index.php/adigama/article/view/17975.

[13] Firna Novi Anggoro, "Ius Constituendum Harmonisasi Kontrol Yudisial Terhadap Penyalahgunaan Wewenang Pejabat Pemerintahan," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 13, no. 1 (2024), https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/1591.

corruption cases, including those related to goods and services procurement, have been trapped in a proof paradigm that is overly focused on state losses. In fact, the core of a crime (delict) is the presence of malicious intent (mens rea). This is why proving mens rea in the process of determining the HPS is far more essential and urgent than merely debating the figures of state losses.

1. Weaknesses of the Proof Paradigm Focused on State Losses

The paradigm that places the proof of state losses as a central element in procurement corruption cases has several fundamental weaknesses that can actually allow perpetrators to escape legal penalties.

First, the Complicated and Lengthy Expert Debate. Proving state losses often turns into a "show of strength" between auditors from the prosecution (such as the Financial and Development Supervisory Agency (Badan Pengawasan Keuangan dan Pembangunan/BPKP) or the Supreme Audit Agency (Badan Pengawasan Keuangan/BPK)) and experts presented by the defendant. This process is time-consuming, highly technical, and prone to creating doubts in the judge's mind (in dubio pro reo), which ultimately can benefit the defendant.

Second, Creating a Loophole for Freedom Due to Technical Reasons. The defendant can be acquitted not because it was proven that they did not abuse their authority, but because the calculation of state losses was considered by the judge to be not concrete or not final. This is very ironic, because the main crime (abuse of authority) is overlooked merely due to debates over audit methodology.

Third, Obscuring the Core Crime. Focusing too much on 'how much money was lost' can obscure the real crime, which is the betrayal of public trust committed by officials when they collude and manipulate the procurement process. Corruption is an official crime,[14] where the

[14] Chan Dwirisa Silitonga, Refly Singal, and Marthin Doodoh, "Penegakan Hukum Pidana Terhadap Pungutan Liar Menurut Undang- Undang Tindak Pidana Korupsi," *Lex Crimen* 12, no. 3 (2023), https://jurnal.umsb.ac.id/index.php/smb12lj/article/view/6885.

malicious intent to abuse power is the essence, not merely a crime that results in financial loss.

2. Identifying Malicious Intent (Mens Rea) in Collusion to Set HPS

Malicious intent or mens rea does not need to be explicitly stated; rather, it can be proven through a series of facts and actions of the defendant (circumstantial evidence). In the context of determining the HPS, malicious intent can be identified from various indicators. Unusual communication between officials and prospective providers before the auction, such as in the case of Muhammad Irwin, who actively exchanged price data with Lalu Buntaran, is strong evidence of collusion.

Mens rea is also evident when officials ignore internal procedures, such as failing to use the results of their own team's surveys,[15] or when the HPS is set without a logical basis and adequate documentation. Furthermore, intervention by superiors to enforce inflated HPS figures, as in the case of Ruslan Abdul Gani, clearly demonstrates a malicious intent to manipulate the project. By focusing evidence on indicators like these, law enforcement officials can effectively prove the existence of a malicious conspiracy in the setting of the HPS, allowing corruption crimes to be tackled at their root, not just at the branches (state losses).

C. Reconstruction of the Proof Paradigm: Towards Law Enforcement Oriented on Mens Rea

Analysis of the weaknesses in the state loss paradigm demands a reconstruction in the law enforcement approach, especially in the corruption of goods and services procurement. To be more effective, law enforcement officers need to shift their focus from proving the actus reus (state loss) to proving the mens rea (evil intent). This shift means viewing the criminal act of corruption as complete the moment an official abuses

[15] Toni Pickard, "Culpable Mistakes and Rape: Relating Mens Rea to the Crime," *The University of Toronto Law Journal* 30, no. 1 (1980), https://doi.org/10.2307/825666.

their authority to manipulate the HPS through collusion, with state loss positioned as an aggravating consequence rather than a primary element.

The legal implication is that the prosecutor must construct charges based on a conspiracy narrative supported by circumstantial evidence, while the auditor can provide expert testimony regarding procedural deviations. To support this, an ideal proactive investigation model is required, prioritizing digital forensics to track illegal communications, conducting procedural audits to identify process irregularities, and analyzing networks to uncover conflicts of interest, so that corruption can be uprooted.

1. Shift of Focus from Actus Reus (State Loss) to Mens Rea (Evil Intent)

The reconstruction of the paradigm begins with a fundamental shift in the way the HPS corruption offense is viewed. Law enforcement officers must stop seeing state losses as the starting point or an absolute prerequisite for an investigation. Instead, the starting point of the investigation should be the suspicion of collusion or criminal intent (mens rea) in the HPS determination process.

This paradigm shift means that law enforcers must view that the crime of corruption has occurred[16] and is complete (voltooid) at the moment an official conspires to manipulate the HPS. The main wrongful act (actus reus) is primarily the manipulation of the process itself, not the state financial loss, which is merely a consequence of the act. Thus, state financial loss remains important to prove, but its role is shifted to an aggravating factor for sentencing or as a basis for calculating restitution, rather than as a constitutive element that determines the existence of a criminal act. Focusing on mens rea and fraudulent processes will ensure that law enforcers do not hesitate to act against conspiracies, even if the state financial loss is difficult to calculate mathematically.

[16] Iniobong UMOTONG, "The Hypocrisy of Value and the Fight Against Corruption," *GNOSI: An Interdisciplinary Journal of Human Theory and Praxis* 6, no. 2 (2023), https://gnosijournal.com/index.php/gnosi/article/view/239.

This approach, which is oriented towards mens rea and abuse of office, is not new and has been effectively applied in other countries, one of which is the United Kingdom through a common law offense called 'Misconduct in Public Office'.[17] This crime focuses on a public official who deliberately misuses their position or is negligent in their duties to a degree that undermines public trust.

Interestingly, to prove this offense, the prosecutor is not required to demonstrate a specific loss to the state. The primary harm is considered to occur to the integrity and public trust in the office. An official can be punished for giving a contract to a friend unfairly (favoritism), even if the contract price is reasonable and there is no financial loss to the state. This shows that the legal system can prioritize malicious intent (mens rea) and abuse of power as the core of the crime, a model that is highly relevant to be reconstructed in law enforcement in Indonesia.

2. Juridical Implications for Law Enforcement Officers

The shift in the paradigm of proving from actus reus (state loss) to mens rea (malicious intent) carries significant legal and practical implications for all law enforcement officers, from investigators and prosecutors to auditors. This change requires adaptations in investigation strategies, prosecution approaches, and perspectives on evidence. Inter-agency collaboration becomes increasingly crucial, not just within functional silos, but in a unified effort to prove the existence of malicious collusion in the procurement process.

For investigators and prosecutors, the most fundamental implication is the necessity to build indictments based on the construction of proving malicious intent, rather than relying entirely on the results of state loss audits as the main requirement.[18] Charges must now be woven from a series

[17] Simon Parsons, "Misconduct in a Public Office—Should It Still Be Prosecuted?," *Journal of Criminal Law* 76, no. 2 (2012), https://doi.org/10.1350/jcla.2012.76.2.763.

[18] Gregory A. Pasco, *Criminal Financial Investigations: The Use of Forensic Accounting Techniques and Indirect Methods of Proof* (CRC Press, 2012), https://books.google.co.id/books?hl=id&lr=&id=T29kqfjirN8C&oi=fnd&pg=PP1&dq=For+investig

of strong circumstantial evidence. Prosecutors are required to be more skilled in presenting a logical conspiracy narrative before the judge, systematically demonstrating patterns of illicit communication, process anomalies, job intervention, and conflicts of interest that prove the existence of malicious intent to manipulate the project from the outset.

On the other hand, the role of auditors such as BPK or BPKP has not disappeared, but has transformed into a more substantive one. Auditors no longer merely act as 'calculators' of state losses, but also as experts in processes and procedures. In this new paradigm, expert testimony from auditors regarding how the preparation of the HPS process has violated principles of accountability, transparency, and fairness (best practice) becomes a very strong piece of evidence. Their testimony can prove that serious procedural deviations have occurred, which serves as a basis for prosecutors to strengthen claims of abuse of authority.

Ultimately, these implications create a new, more effective synergy. Prosecutors and investigators focus on proving the existence of a meeting of minds among the perpetrators, while auditors provide technical legitimacy that the process carried out was fundamentally flawed. Thus, proving corruption becomes stronger as it attacks the crime from two sides simultaneously:[19] from the side of the perpetrators' malicious intent (mens rea) and from the side of the wrongful act (actus reus) reflected in the deviant process, thereby closing loopholes for perpetrators to hide behind technical debates over the state's financial losses.

3. Formulating an Ideal Investigation Model to Uncover HPS Corruption

To support a paradigm oriented towards mens rea, the investigative model must be more proactive and sophisticated, starting from the intelligence stage. The ideal investigation no longer waits for reports but

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[19] Paola Maggio, "A Critical Analysis of Corruption and Anti-Corruption Policies in Italy," *Journal of Financial Crime* 28, no. 2 (2020), https://doi.org/10.1108/JFC-12-2019-0168.

begins with proactive analysis of e-procurement data to detect anomalies, such as monotonous patterns of tender winners, bid values always close to the ceiling price HPS, or drastic spikes in HPS without justification. This data analysis is then deepened with Network and Link Analysis to map professional and personal relationships between officials, tender committees, and winning companies, in order to uncover potential conflicts of interest that often serve as entry points for collusion.

After initial suspicions arise, the next crucial step is Digital Forensics and Communication Tracking. In many modern corruption cases, malicious intent (mens rea) often leaves digital traces.[20] Therefore, the primary priority for investigators is to analyze the digital devices of the parties involved. Communication traces through emails, instant messages, or call histories that occurred before and during the bidding process can serve as key evidence (golden evidence) directly indicating conflicts of interest, specification arrangements, and price agreements, which are at the core of collusion.

Furthermore, the intelligence and forensic findings must be validated through a thorough Procedural Audit. At this stage, auditors or procurement experts are involved to examine all documents and the flow of the HPS preparation process. Unlike a state loss audit, the focus of this audit is to identify procedural violations and the absence of logical justification for the established HPS figures. The lack of adequate market survey minutes, the use of price quotations from unreliable sources, or the disregard for cheaper comparative data serve as objective evidence that the process was not conducted in good faith.

As a closing of the evidence presentation, the Examination of Expert Witnesses plays a vital role in framing all findings within a scholarly context that convinces the judge. Experts from professional associations, academia,

[20] Sidik Sunaryo and Asrul Ibrahim Nur, "Legal Policy of Anti-Corruption Supervisor Design: A New Anti-Corruption Model in Indonesia," *Bestuur* 10, no. 2 (2022), https://doi.org/10.20961/bestuur.v10i2.65105.

or industry practitioners can provide an assessment regarding the reasonableness of the HPS value itself. Expert testimony concluding that "the HPS figure is highly unreasonable according to industry standards and sound business practices" serves to strengthen the prosecutor's argument that such an HPS could not arise without malicious intent, while simultaneously securing the proof of mens rea comprehensively.

Conclusion

From the discussion of the problems that have been outlined, the following conclusions can be drawn:

1. The inflation of the Self-Estimated Price (HPS) can substantively be classified and meets the element of "abuse of authority" as regulated in Article 3 of the Corruption Eradication Law (UU Tipikor), even though Article 26 Paragraph (6) of Presidential Regulation No. 16 of 2018 excludes it from the basis for calculating state losses. This conclusion is based on three fundamental arguments: first, the superiority of the hierarchy of the UU Tipikor over the Presidential Regulation. Second, the distinction between the realms of criminal law (UU Tipikor) and administrative law (Presidential Regulation). Third, the positioning of the manipulated HPS is not as a representation of state losses, but as an instrument of crime (instrumentum delicti). This is reinforced by jurisprudence, such as in the cases of Ruslan Abdul Gani and Muhammad Irwin, where judges consistently focus on the malicious act in the process of preparing the HPS as the core of abuse of authority.
2. Proving malicious intent (mens rea) in the process of determining the Estimated Price (Harga Perkiraan Sendiri/HPS) is juridically more essential and strategic for apprehending corruption perpetrators compared to focusing solely on proving the amount of state losses. A paradigm that relies too heavily on state losses has proven to have weaknesses, such as opening gaps for complex technical debates and obscuring the core crime, namely the betrayal of public trust. Conversely, focusing on proving mens rea through

circumstantial evidence such as illegal communications, procedural violations, and positional interventions allows law enforcement to unravel malicious conspiracies from their root. Therefore, this study recommends a reconstruction of the law enforcement paradigm that prioritizes investigation of processes and malicious intent, a model that has proven effective in other legal systems and is better able to address modern corruption schemes that hide behind formal procedures.

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