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Public Procurement Nexus Social for Mitigate the Corruption: Lesson from Indonesia

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Abstract *This study delves into the vulnerability of Indonesia's National Budget (APBN) to corruption, specifically in the Procurement of Goods and Services, with a particular focus on the potential for misallocation across regions. Building on significant scholarly contributions from both Indonesian and international researchers, the research undertakes a thorough examination of preventive measures against corruption in public procurement. Employing a Participatory Action Research (PAR) approach, the study integrates community solidarity into its corruption prevention*

model, utilizing a combination of data collection methods such as questionnaires, interviews, and focus group discussions (FGDs). A central topic in the study is the important role of e-procurement in combating corruption, advocating for its transparent and accountable application as a deterrent. To bolster preventive efforts, the research proposes mandatory declarations from tender participants, along with an enhanced auction rebuttal mechanism throughout the various stages of procurement. The preventative framework underscores the significance of civilian, academic, and journalistic supervision to proactively identify corruption and conflicts of interest. Recognizing the nuanced nature of fraud patterns at the provincial level, the study advocates for a region-specific approach to maximize the effectiveness of e-procurement. This regional focus aligns with the study's emphasis on the involvement of relevant agencies operating at the local level. In essence, this research contributes a targeted analysis to complement existing literature, aiming to curb corruption in public procurement through strategic and context-specific preventive measures.

Keywords *Corruption, Procurement of Goods & Services, Indonesian Government, Participatory Action Research*

1. Introduction

Corruption in Indonesia today involves the government and legislature (especially the DPR RI) as political elites who directly or indirectly commit acts of corruption, both in the aspect of procurement of goods and services, bribes, gratuities, etc. This includes the bureaucracy and licensing sector which causes the business climate in Indonesia to be very close to the practice of bribery and extortion, and this is exacerbated by corruption in the justice

sector which makes it difficult for these institutions to produce fair and impartial courts).¹

¹ Ortrun Merkle, *Indonesia Overview of Corruption and Anti-Corruption*. (Berlin: Transparency International, 2018). Available online at https://knowledgehub.transparency.org/assets/uploads/helpdesk/Country-profile-Indonesia-2018_PR.pdf. It is further explained that corruption in Indonesia is a multifaceted issue that involves various sectors, including the government, legislature, bureaucracy, licensing, and the justice system. Political elites, particularly those in the government and legislature, are implicated in corrupt activities, which can range from irregularities in the procurement of goods and services to accepting bribes and gratuities. These corrupt practices have far-reaching consequences, contributing to a business climate that is tainted by bribery and extortion. The government and legislative bodies, such as the DPR RI (People's Consultative Assembly), play a crucial role in shaping policies and overseeing public resources. When individuals within these institutions engage in corrupt acts, it undermines the effectiveness of governance and erodes public trust. Corruption in the procurement of goods and services can lead to inflated costs, substandard products, and unfair advantages for certain businesses, impacting the overall efficiency and integrity of public services. The bureaucracy and licensing sector are also implicated in corruption, making the business environment susceptible to bribery and extortion. Businesses may face hurdles in obtaining necessary licenses or permits without engaging in corrupt practices, creating an environment where unethical conduct becomes a norm. Moreover, corruption in the justice sector compounds the issue by impeding the ability of institutions to uphold the rule of law. When the justice system is tainted by corruption, it becomes challenging to ensure fair and impartial courts. This can result in a lack of accountability for those involved in corrupt practices, perpetuating a cycle of impunity. *See also* Odie Faiz Guslan, "Maladministration in Corruption Case: A Study of Limitation on the Criminal Action." *IJCLS (Indonesian Journal of Criminal Law Studies)* 3, no. 2 (2018): 147-156; Ellectrananda Anugerah Ash-shidiqqi, and Hindrawan Wibisono. "Corruption and Village: Accountability of Village Fund Management on Preventing Corruption (Problems and Challenges)." *Journal of Indonesian Legal Studies* 3, no. 2 (2018): 195-212; Mangaraja Manurung, and Dany Try Hutama Hutabarat. "Public Effort and Participation in the Enforcement of Corruption Eradication in Indonesia." *Pandecta Research Law Journal* 18, no. 1 (2023): 35-46; Shubhan Noor Hidayat, Lego Karjoko, and Sapto Hermawan. "Discourse on Legal Expression in Arrangements of Corruption Eradication in Indonesia." *Journal of Indonesian Legal Studies* 5, no. 2 (2020): 391-418; Atha Difa

Data on the prosecution of corruption by the Corruption Eradication Commission of the Republic of Indonesia (KPK-RI) as of December 31 2018 states that, in 2018 alone, the Corruption Eradication Commission handled acts of corruption with details: investigation of 164 cases, investigation of 199 cases, prosecution of 151 cases, *inkracht* 106 cases, and the execution of 113 cases², and of course, the problem of corruption in Indonesia is a very complex legal and social problem in Indonesia.

Indonesia's Corruption Perception Index (CPI) in 2022 released by Transparency International, put Indonesia's score at CPI Indonesia in the year 2022 is at a score of 34/100 and ranked 110 out of 180 countries surveyed. This score is down 4 points from 2021, or the most drastic drop since 1995. Meanwhile the Indonesia's situation in CPI 2022 is also sinking in the position of 1/3 of the most corrupt countries in the world and far below the average CPI score in Asia-Pacific countries which is 45. The largest country in Southeast Asia shares the position with Bosnia and Herzegovina, Gambia, Malawi, Nepal and Sierra Leone with a score of 34. While Indonesia's position in the Southeast Asia Region is ranked 7 out of 11 countries, far below a number of neighboring countries such as Singapore, Malaysia, Timor Leste, Vietnam and Thailand³

Saputri, and John Lee. "Law Enforcement of Corruption Crimes in the State-Owned Enterprises Sector in Indonesia." *Law Research Review Quarterly* 9, no. 1 (2023): 1-28.

² KPK RI. *Statistik Tindak Pidana Korupsi di Indonesia* (Jakarta: KPK RI, 2018). See also and compare with ICW, "Laporan Hasil Pemantauan Penindakan Korupsi Tahun 2022", *Online Report Indonesian Corruption Watch*, February (2023). Retrieved from <<https://antikorupsi.org/sites/default/files/dokumen/Tren%20Penindakan%20Tahun%202022.pdf>>

³ Transparency International, *Corruption Perception Index 2022: Corruption, Conflict, and Security*. (Berlin: Transparency International, 2023). Available at

The score is based on the persistence of corrupt practices both in government power, and law enforcement, and the permissiveness of Indonesian society towards corrupt practices. ICW's study regarding the trend of prosecution of corruption in 2022 reminds the public that corruption in the procurement of goods and services occupies the highest number of 579 corruption cases handled by law enforcement institutions, 250 cases or 43% of them had a public procurement dimension and were related to mark-ups and fictitious project activities, and misuse of local budgets, the amount of state losses incurred is IDR 42,747 billion.⁴

At least, there are several areas prone to corrupt practices that have a high risk of corrupt practices where the Indonesian people interact directly and have the potential to guard against these corrupt practices, these sectors namely: corruption in the procurement of goods and services, bribes and gratuities, bribes in the licensing sector, bribes in the aspect of General Elections, corruption in the justice sector, to corruption in village funds. This research tries to find the right social control⁵ pattern in efforts to prevent and eradicate corruption in Indonesia⁶, therefore, the State's ideals of realizing people's welfare and meeting people's needs can be fully fulfilled.

<<https://ti.or.id/indeks-persepsi-korupsi-indonesia-2022-mengalami-penurunan-terburuk-sepanjang-sejarah-reformasi/>>

⁴ Diky Anandya, Lalola Easter, and Kurnia Ramadhana. *Hasil Pemantauan Tren Penindakan Kasus Korupsi Semester I 2021*. (Jakarta: Indonesian Corruption Watch, 2021).

⁵ Satria Unggul Wicaksana Prakasa, "Analisis Politik Hukum Pengaruh Oligarki dan Budaya Korupsi di Kabupaten Bangkalan." *Media of Law and Sharia* 2, no. 4 (2021): 329-345.

⁶ Saryono Hanadi, MI Wiwik Yuni Hastuti, and Alef Musyahadah Rahmah. "Tindak Pidana Korupsi dalam Penyusunan APBD." *Jurnal Yudisial* 3, no. 1 (2010): 15-30.

In the context of corruption within the procurement process, the acquisition of goods and services assumes paramount importance in the state's endeavor to stimulate and enhance the national economy for the well-being of the Indonesian populace. The procurement of goods and services in the public sector intricately intertwines with the allocation of the state budget. Of particular concern is the critical assessment of the imperative and timeliness associated with the implementation of an efficient and effective procurement process. This assessment is pivotal to optimize the utilization of the budget, given that a substantial proportion of goods and services procurement is underwritten by state finances through both the National Budget (APBN) and Regional Budget (APBD).

Various studies on public procurement corruption in Indonesia have extensively examined the subject. Puspita and Gultom's research, covering 34 provinces and 103 Government Institutions involved in corruption cases handled by the KPK between 2005-2017, indicates a positive impact of e-procurement. This impact is noted in its ability to anticipate corrupt practices and support the implementation of good governance in public procurement.⁷

In a different line of inquiry, Agustin and Susilowati's findings emphasize that the utilization of blockchain technology can effectively prevent corrupt practices in public procurement. Their research underscores the construction of an asymmetric code of ethics among involved parties, enabling private entities to adhere to the principles of good corporate governance in the realm of public procurement.⁸

⁷ Anastasia Citra Puspita, and Yohanna ML Gultom. "The Effect of E-Procurement Policy on Corruption in Government Procurement: Evidence from Indonesia." *International Journal of Public Administration* (2022): 1-13.

⁸ F. Rien Agustin, and Dewi Susilowati. "Preventing corruption with blockchain technology (case study of Indonesian public procurement)." *International Journal of Scientific and Technology Research* 8, no. 9 (2019): 2377-2383.

Meanwhile, Prakasa et al. have expounded on the ineffectiveness of public procurement law policies in Indonesia. This deficiency is attributed, in part, to the influence of corrupt law enforcement officials and an irresponsible political elite. Consequently, the implementation of existing legal regulations is found to be deficient. Through a discerning examination of the roles played by various actors, it becomes evident that the strategy to eradicate corruption within the domain of public procurement has not achieved effective realization in Indonesia.⁹

Conducting a comprehensive literature review, Rakhel & Putra examined articles pertaining to corruption in public procurement extracted from the Scopus database spanning the years 2005 to 2020. Their investigation revealed a total of 295 articles addressing public procurement corruption. Notably, a significant proportion of these studies delved into macro-level aspects, encompassing criminality, transparency, and e-procurement. Conversely, a scant few explored behavioral dimensions, encompassing both organizational and individual behavior, in the context of innovative research aimed at establishing a corruption-resistant procurement ecosystem.¹⁰

This study is centered on the proactive dimension of combating corruption within the realm of public procurement. The primary objective is to delve into preventive strategies and propose mitigative measures to forestall the occurrence of corrupt practices. A distinctive feature of this study is its emphasis on individual behavior, intricately interwoven with an examination of pertinent Indonesian policies. The

⁹ Satria Unggul Wicaksana Prakasa, "Reduce Corruption in Public Procurement: The Effort Towards Good Governance." *Bestuur* 10, no. 1 (2022): 33-42.

¹⁰ Tiurma Melissa Rakhel, and Prakoso Bhairawa Putera. "Corruption in public procurement: A bibliometric analysis." *COLLNET Journal of Scientometrics and Information Management* 15, no. 2 (2021): 397-412.

envisaged outcome of this analysis is to contribute as a supplementary resource to the existing body of research on analogous subjects. Rooted in empirical evidence, this study is directed by two primary research inquiries: *Firstly*, to what extent do the policies enacted by the Indonesian Government contribute to the mitigation of corruption in the procurement of goods and services within the public sector, and *secondly*, what impediments and challenges are encountered in the preventive and anticipatory efforts to address corruption in the context of procuring goods and services within the Indonesian Budget.

2. Method

Participatory Action Research (PAR) is a participatory research method among citizens in a community, both elite and marginalized groups, with the spirit to encourage transformative actions to liberate society from the shackles of power (including mechanisms to mitigate corruptive practices). Thus, according to its term, PAR has three main pillars, namely research methodology, action dimension, and participation dimension. That is, PAR is carried out with reference to certain research methodologies, must aim to encourage transformative action, and must involve as many citizens or community members as possible as implementers of their own PAR¹¹

In PAR activities, PAR researchers/practitioners merge into the reality of the community under study, and work with residents in conducting PAR. PAR discusses the condition of society based on the

¹¹ Rambo Cronika Tampubolon, "Participatory Action Research (PAR)", *Online*, Lembaga Bantuan Hukum Jakarta, October 25 (2013). Retrieved from <https://bantuanhukum.or.id/participatory-action-research-par/>. See also Sean A. Kidd, and Michael J. Kral. "Practicing participatory action research." *Journal of counseling psychology* 52, no. 2 (2005): 187-195; Jennifer Keahey. "Sustainable development and participatory action research: a systematic review." *Systemic Practice and Action Research* 34, no. 3 (2021): 291-306.

system of meaning that applies there, not according to certain disciplines outside the culture of the community¹² PAR can no longer be "value-free" and impartial as required by science as a condition of objectivity, but must side with groups that are weak, poor, disadvantaged, and victims of corruptive practices which in this case are people who are victims of public procurement corruption.¹³

In addition, PAR does not stop at publishing research results (reports) and recommendations for future research, but is oriented towards changing the situation, increasing knowledge and the ability of the citizen community to understand and change their situation for the better. So that the PAR method is very appropriate to be used in research that is closely related to finding patterns of corruptive practices around the community, which are then followed up in advocacy patterns and real action patterns¹⁴

3. Result & Discussion

A. Concept of Public Procurement Corruption

Susan Rose Ackerman explained that conflicts of interest are at least problematic on two counts. The first is the different interests between on the one hand the interests of public officials and regulators, on the other hand are the interests of businesses run by individuals who have political access so it is difficult to distinguish

¹² Stephen Kemmis, Robin McTaggart, and Rhonda Nixon. *The Action Research Planner: Doing Critical Participatory Action Research*. (Singapore: Springer, 2014). <https://doi.org/10.1007/978-981-4560-67-2>

¹³ Imam Fatkuroji, and Selvi Diana. "Pilihan publik dalam serial kasus korupsi kepala daerah." *Integritas: Jurnal Antikorupsi* 7, no. 2 (2021): 345-358.

¹⁴ Kemmis, et.al, *The Action Research Planner: Doing Critical Participatory Action Research*. See also Zuber-Skerritt, Ortrun, ed. *Action research for change and development*. (London: Routledge, 2021); Ortrun Zuber-Skerritt, ed. *New directions in action research*. (London: Routledge, 2003).

which ones are in the public interest and which are in the private interests, so that those who are affected and What is disadvantaged from this practice is that the general public who do not have political access, in business activities also has an impact on unfair business competition.¹⁵

In addition, Guzzetta, et.al have categorized conflicts of interest into two distinct dimensions: "bottom-up" and "top-down." In the

¹⁵ Marc A. Rodwin, "Conflicts of interest, institutional corruption, and pharma: An agenda for reform." *Journal of Law, Medicine & Ethics* 40, no. 3 (2012): 511-522. See also Susan Rose-Ackerman, and Bonnie J. Palifka. *Corruption and government: Causes, consequences, and reform*. (Cambridge: Cambridge University Press, 2016). Susan Rose-Ackerman is a renowned scholar in the field of political science and law, particularly known for her extensive work on corruption, government, and institutional reforms. In her book titled "*Corruption and Government: Causes, Consequences, and Reform*," she delves into a comprehensive exploration of the multifaceted aspects of corruption within government systems. The book provides a nuanced analysis of the causes and consequences of corruption, offering insights into the factors that give rise to corrupt practices within governmental institutions. Rose-Ackerman's research delves into the intricate relationship between corruption and various socio-political and economic factors, shedding light on the complexities involved in understanding and addressing corruption. Moreover, she explores the far-reaching consequences of corruption on governance, public trust, and economic development. By examining real-world cases and theoretical frameworks, Rose-Ackerman contributes to the scholarly discourse on the detrimental effects of corruption on societies. One of the key strengths of Rose-Ackerman's work lies in her emphasis on reform strategies. She not only identifies the root causes and consequences of corruption but also proposes practical and theoretical approaches to combat and prevent corruption within governmental structures. Her insights on institutional reforms, transparency measures, and the role of legal frameworks provide policymakers and scholars with valuable perspectives on mitigating corruption. See also Susan Rose-Ackerman, "Democracy and Executive Power: Administrative Policymaking in Comparative Perspective." *Revista de Derecho Público: Teoría y método* 6 (2022): 155-182; Susan Rose-Ackerman, *Corruption: A Study in Political Economy*. (Cambridge, MA: Academic Press, 2013); Susan Rose-Ackerman, ed. *International Handbook on the Economics of Corruption*. (Cheltenham: Edward Elgar Publishing, 2007).

"bottom-up" dimension, a conflict of interest is characterized by a situation where an individual grapples with a dilemma between their personal interests and endeavors to manipulate public interests to justify actions that serve personal interests. These actions may result in losses for other parties, including their superiors. In this context, the individual may pursue activities that prioritize personal gains, even at the expense of others.

Conversely, in the "top-down" dimension, conflicts of interest take on a different connotation. In the classical sense, this dimension involves individuals with personal interests who utilize their power and positions to attain personal gains through various means, such as bribery/corruption, patronage/political closeness, and nepotism. This dimension underscores the misuse of authority and positions of influence for personal benefit, often at the detriment of public interests and ethical standards. Guzzetta's classification provides a nuanced understanding of conflicts of interest, capturing both the individual-level ethical dilemmas in the "bottom-up" dimension and the systemic abuse of power in the "*top-down*" dimension. This dual perspective enriches the discourse on conflicts of interest by encompassing varied scenarios and motivations associated with these ethical challenges in both personal and institutional contexts.¹⁶

The OECD offers a delineation of conflicts of interest, defining it as a circumstance wherein a public official encounters a conflict between their public duty and private interests. In such instances, the public official possesses private-capacity interests that could unduly influence the execution of their official duties and responsibilities. This dynamic invariably results in suboptimal public service delivery, creating an environment wherein the proclivities of public officials

¹⁶ Ni Wayan Rustiarini, et al. "Fraud triangle in public procurement: evidence from Indonesia." *Journal of Financial Crime* 26, no. 4 (2019): 951-968.

may lean towards embezzlement, acceptance of gratuities, and discriminatory practices in the provision of public services. The potential ramifications of these actions are substantial, encompassing adverse effects on investment and licensing within a country. This outcome contradicts fundamental principles of transparency and accountability in governance.¹⁷

In alignment with the United Nations Office on Drugs and Crime (UNODC) perspective, a conflict of interest is delineated as a condition where the impartiality and professionalism of public officials become pivotal for the integrity and efficacy of public

¹⁷ See Fianna Jesover, and Grant Kirkpatrick. "The revised OECD principles of corporate governance and their relevance to non-OECD countries." *Corporate Governance: An International Review* 13, no. 2 (2005): 127-136. In the further discussion, some scholars highlighted that conflicts of interest create a precarious situation where personal or financial considerations may compromise an individual's ability to make impartial decisions or fulfill their professional duties objectively. When these conflicts are not managed effectively, they can provide fertile ground for potential corruption. This may manifest in biased decision-making, favoritism, bribery, embezzlement, and other unethical practices that prioritize personal gain over the public good. The erosion of trust, skewed decision processes, and the misuse of authority are common consequences when conflicts of interest are not transparently addressed, leading to a higher risk of corruption in various sectors. Mitigating the potential for corruption involves implementing robust ethical frameworks, disclosure requirements, and codes of conduct. Transparency and accountability mechanisms are crucial to monitor and regulate decision-makers, ensuring that their actions align with the best interests of their organizations or the public. By promoting a culture of integrity and fostering trust through clear guidelines and oversight, institutions can significantly reduce the likelihood of corruption arising from conflicts of interest. See also Edward Spence. "Conflicts of interest and corruption." *Australian Journal of Professional and Applied Ethics* 5, no. 2 (2004): 25-36; Anna Tytko, et al. "Nepotism, favoritism and cronyism as a source of conflict of interest: corruption or not?." *Amazonia Investiga* 9, no. 29 (2020): 163-169; Yuval Feldman, and Eliran Halali. "Regulating "good" people in subtle conflicts of interest situations." *Journal of Business Ethics* 154 (2019): 65-83; Ahmad Khoirul Umam, "Understanding the influence of vested interests on politics of anti-corruption in Indonesia." *Asian Journal of Political Science* 29, no. 3 (2021): 255-273.

administration. The UNODC underscores the necessity of constructing public administration in adherence to principles such as integrity, transparency, and accountability, with the goal of enhancing transparency and forestalling conflicts of interest. The organization advocates for the practice of declaring outside activities, employment, investments, assets, and significant gifts or benefits, all of which could potentially lead to conflicts of interest. In emphasizing this stance, the UNODC places particular emphasis on conflicts of interest that extend into business and investment realms, emphasizing their potential to foster unfair trade competition.

A conflict of interest is a situation where a state administrator who is granted power and authority based on laws and regulations has or is suspected of having a personal interest in any use of his authority so that it can affect the quality and performance that should be. Regarding legal regulations in handling conflicts of interest in Indonesia, Indonesia does not yet have a legal umbrella in the form of a strong and binding law as a derivative of the UNCAC,¹⁸ but there is a political commitment to state law that needs to be appreciated for mechanisms to prevent conflicts of interest, both in Government Regulations, Ministerial Regulations, as well as included in several articles in the Act related to arrangements for public officials, arrangements related to conflicts of interest. For understanding regarding several laws, nature, differences and gap analysis as shown on Table 1.

¹⁸ Sudisman Sudisman, "Penegakan Hukum Tindak Pidana Korupsi dalam Penyusunan APBD Kab. Musi Banyuasin, Berdasarkan Putusan Pengadilan Tipikor Nomor: 48/PID-SUS-TPK/2015/PN", *Thesis* (Palembang: Universitas Sriwijaya, 2019).

TABLE 1. Identification of existing regulation regarding public procurement in Indonesia

Legal Basis	Nature	Differences & Gap Analyst
UNCAC Ratification in Law No.7 of 2006	Prevention of public procurement reform (Art.9) Civil service reform (Articles 7,8), Prevention private sector corruption relating public procurement (Art.12)	Public procurement and public finances are among the most corruption prone areas of public administration. In public procurement and in public finance has been highlighted by near to all Indonesian interlocutors as one of the most fundamental problems in Indonesia,
Law No. 23 of 2014 concerning Regional Government	Art. 297 regarding Commissions, rebates, deductions, or other receipts with any form –in relation Procurement of goods and services—constitute Regional revenue. Art.307: The implementation of the procurement of regional property is carried out according to financial capabilities and needs Areas based on the principles of efficiency, effectiveness, and transparency	Public procurement, which is a regional authority, the impact of decentralization provides loopholes and opportunities for the practice of public procurement corruption both in the sense of petty and big corruption for local governments
Presidential Decree No. 80/2003 in conjunction with No. 61/2004 Concerning Guideline for the Procurement of	Art. 2 to regulate the procurement of goods/services, either entirely or partly paid from APBN (State	The provisions associated with procedures for procurement and new contract are limited in

Legal Basis	Nature	Differences & Gap Analysis
Government Goods/Services:	Budget) / APBD (Regional Budget); he objective of enacting this Presidential Decree is the procurement of goods/services, either entirely or partly, financed by APBN (State Budget) / APBD (Regional Budget) in efficient, effective, open and competitive, transparent, fair / non discriminative and accountable way.	the administrative provisions (Presidential Decree), hence not giving any criminal sanction. The existing procedures have been in fact adequately supporting policies on prevention of crimes of corruption, but due to their supervision being handed over to the initial supervision institutions, the implementation is not yet effective.
Regulation of the Indonesian Ministry of Public Services No.37 of 2012 concerning General Guidelines for Handling Conflicts of Interest	Handling conflicts of interest in the procurement of goods & services carried out by public officials in order to prevent corrupt practices, both vertical and horizontal conflicts of interest	Legal regulations that contain positive obligations, but do not effectively show legal sanctions, both administrative and criminal.

The Indonesian legal system the prevention of public procurement corruption carried out, limited to public officials who abuse their power. In recent developments, the state should be able to make policies related to corruption in the procurement of goods and services involving the private sector.¹⁹

¹⁹ Antonio Sánchez Soliño, and Pilar Gago de Santos. "Influence of the tendering mechanism in the performance of public-private partnerships: A transaction cost approach." *Public Performance & Management Review* 40, no. 1 (2016): 97-118.

In the context of the procurement of goods and services where private parties are involved, of course, it is necessary to look at it comprehensively, considering that the private sector is very vulnerable to corrupt practices carried out, through bribery, gratification, and unhealthy business competition, of course it has a negative impact on healthy business competition.²⁰

Corruption in the private sector in general is not widely known in national legal systems, but it can be found in UNCAC where Indonesia ratified it into national law, in Article 21 (1) of the convention on private sector corruption are: *"Any person who leads or works in the private sector promises to give an improper advantage, either directly or indirectly. He or others intend to force the person to do or refrain from doing things contrary to their duties and obligations, which may be detrimental to economic or commercial activities."*

Private sector corruption occurs both actively and passively in the form of economic loss. Article 21 of the United Nations Convention Against Corruption requires participating countries to file criminal charges against corruption between companies (private) and governments (*public*), as well as corruption committed between the two or more companies (*private*). This delegated the prosecutor's duty and responsibility to file a lawsuit/claim against the private party in court, including in Indonesia.²¹

As delineated in Article 21 of the United Nations Convention Against Corruption, States Parties are either recommended or mandated to consider two key aspects: (a) the engagement in

²⁰ Schnequa N. Diggs, and Alexandru V. Roman. "Understanding and tracing accountability in the public procurement process: Interpretations, performance measurements, and the possibility of developing public-private partnerships." *Public Performance & Management Review* 36, no. 2 (2012): 290-315.

²¹ Rajeev K. Goel, Jelena Budak, and Edo Rajh. "Private sector bribery and effectiveness of anti-corruption policies." *Applied Economics Letters* 22, no. 10 (2015): 759-766.

promising, proposing, or providing an undue advantage to an individual holding a leadership or operative role within a private sector entity, with the explicit aim of influencing their behavior in contravention of their responsibilities, and (b) the actions of an individual occupying a leadership or operational role within a private sector entity who actively seeks or accepts an improper advantage to act against their obligations.²²

Drawing a comparative analysis, the United Kingdom, as the originating country of Rolls-Royce, has instituted the United Kingdom Bribery Act (UKBA). This legislative framework, mandated by the British Government, applies to various corporations operating both domestically and internationally. The primary objective is to establish a comprehensive anti-corruption compliance program, with a focus on averting corporate corruption, ensuring compliance with legal regulations in host nations, and mitigating the risk of corruption within ongoing business practices.²³

Furthermore, concerning corruption in the private sector, particularly bribery involving foreign affairs, the United Nations Convention against Corruption (UNCAC) serves as a regulatory framework. Within this framework, provisions address corruption in the business sector. Specifically, each State Party is obligated to enact legislative and other measures to classify, as a criminal offense, the intentional promise, offer, or provision—directly or indirectly—of an undue advantage to a foreign public official or an official of a public

²² Satria Unggul Wicaksana Prakasa, Achmad Hariri, and Ida Nuriya Fatmawati. "Social aid of Covid-19 corruption: strategy and mitigation policy of Muhammadiyah East Java." *Legality: Jurnal Ilmiah Hukum* 29, no. 1 (2021): 27-45.

²³ Guillermo Jorge, and Fernando Felipe Basch. "How has the private sector reacted to the international standard against transnational bribery? Evidence from corporate anticorruption compliance programs in Argentina." *Crime, Law and Social Change* 60 (2013): 165-190.

international organization. This is done with the objective of influencing the official to act or abstain from acting in the exercise of their official duties, thereby seeking to obtain or retain business or other improper advantages in connection with business operations and foreign investments.²⁴

In this context, it is important to reform Indonesian law related to the passage of laws on the procurement of goods and services in the public sector and its relation to corruption in the private sector to build a good ecosystem so that it cannot realize good government, both at the central and regional government levels. Also, ensuring that corruption in the private sector does not occur, so that healthy business competition can be realized and the Indonesian economy can grow. Thus, the impact on the welfare of the Indonesian people can be realized, considering that it is a big goal of organizing of State interest.

B. Enforcing Indonesian Government Policies for Mitigating Corruption in Public Procurement

In Indonesian legal regulations, there are provisions for preventing corruption in the procurement of goods and services (Public Procurement). the process is from identifying needs to handing over the results of the work (Article 1 paragraph (1)). Then the Tender/selection fails if all participants are involved in corruption, collusion, nepotism, and unfair business competition (Article 51 paragraph (2)).

Efforts to prevent corruption in public procurement necessitate the establishment of a robust framework encompassing both a Code of Ethics and Legal Services. The ethical dimension within public procurement obligates a prioritization of anti-corruption principles.

²⁴ See Art. 16 United Nations Convention Against Corruption

This includes a commitment to averting and addressing conflicts of interest among involved parties, whether direct or indirect, to mitigate the risk of fostering unfair business competition in the procurement of goods and services.

Various studies have identified a discernible corruption model inherent in the public procurement process, manifesting across distinct stages. Primarily, there is a notable absence of transparency and accountability during the planning-related processes of public procurement. Subsequently, issues arise concerning non-transparency and potential improprieties in the selection/determination of tender winners. The contract phase introduces further complexities, while challenges emerge during the implementation stage. Finally, concerns come to the forefront during the evaluation stage. Addressing corruption systematically at each of these stages is imperative for the establishment of a comprehensive and efficacious anti-corruption framework within the realm of public procurement.²⁵

In the planning stage, indicators of potential corruption include delayed announcements of the General Procurement Plan (hereinafter as *Rencana Umum Pengadaan*, RUP); the replication of bid documents through copy-pasting; the incorporation of additional, discriminatory, or leading terms and criteria; questionable emergency

²⁵ Muhammad Rezza Kurniawan, and Pujiyono Pujiyono. "Modus Operandi Korupsi Pengadaan Barang dan Jasa Pemerintah oleh PNS." *Law Reform* 14, no. 1 (2018): 115-131; Emmanuelle Auriol, "Corruption in procurement and public purchase." *International Journal of Industrial Organization* 24, no. 5 (2006): 867-885; Adam Graycar, "Mapping corruption in procurement." *Journal of Financial Crime* 26, no. 1 (2019): 162-178; Ni Wayan Rustiarini, et al. "Fraud triangle in public procurement: evidence from Indonesia." *Journal of Financial Crime* 26, no. 4 (2019): 951-968.

procurement practices; and budgeting plafonds that deviate minimally from estimated self-prices.²⁶

Moving to the contract stage, red flags encompass the presence of 'cameo participants' who consistently participate but seldom win bids; instances of copy-pasted offers; solitary participants without adequate justification; financial interventions by authorities; alterations in procurement methods; instances of failed or canceled packages; limited announcements and schedule modifications; manipulation of bandwidth; and the absence of timely blacklisting announcements.

During the Selection or Determination phase, corruption indicators include tender winners with poor track records; winners failing to comply with evaluation results or lacking essential requirements; excessive winning of multiple packages; discrepancies in addresses; irregularities or concealment of transactions; and other anomalous activities.²⁷

Another studies, unveil instances of corruption and propose a potential model for corruption in public procurement, with a specific focus on conflicts of interest observed in diverse regions of Indonesia.

²⁶ In Indonesia, it is commonly known as *Harga Perkiraan Sendiri (HPS)*. In the context of public procurement in Indonesia, HPS refers to the estimated cost or price that an entity, such as a government agency, anticipates or calculates for a particular project or procurement activity. The HPS is a crucial component of the procurement process as it serves as a baseline for financial planning and budgeting. It represents the organization's own estimated cost for the goods, services, or construction project it intends to procure. The estimation typically takes into account various factors, including the scope of work, materials, labor, and other relevant expenses. In the procurement cycle, the HPS is used as a reference point for conducting price negotiations, evaluating bids or proposals from suppliers or contractors, and ensuring that the procurement is conducted in a transparent and cost-effective manner. The accuracy and fairness of the HPS are essential for a successful and ethical procurement process.

²⁷ Prakasa, "Reduce Corruption in Public Procurement: The Effort Towards Good Governance."

Primarily, conflicts of interest prominently manifest in public procurement, particularly in cases involving family members holding public positions, exemplified by the notable case study featuring the Regent of Nganjuk and the Secretary of Jombang, who share a marital relationship. Furthermore, a distinct vulnerability to the abuse of power emerges when a former Regent's partner assumes the position, presenting significant opportunities for misconduct, notably within the domain of public procurement.²⁸

The involvement of certain community groups who are privileged and legitimized by the government is a big loophole for potential corruption, one of which is related to public procurement. Then, e-procurement and also e-catalogue has been running, but it is necessary to ensure the relevant steps so that the digital system is not manipulated because it is less transparent & accountable. Thus, the potential for public procurement corruption is very large to occur in several region in Indonesia, at the regional level it is quite minimal, so supervision must be strengthened also in regional level.

²⁸ Cinita Ayu Puspa Dewi, and Rida Perwita Sari. "Implementasi Sistem E-Procurement dan Sistem Pengendalian Internal Terhadap Pencegahan Fraud Pengadaan Barang dan Jasa di Kabupaten Jombang." *Journal of Economic, Bussines and Accounting (COSTING)* 6, no. 1 (2022): 200-213; Indra Surya Kurniawan, "Tinjauan Yuridis Terhadap Tindak Pidana Korupsi Proyek Pengkajian dan Pengembangan Potensi Daerah Jombang oleh PNS Pemda Jombang." *Thesis* (Jakarta: Universitas Trisakti, 2010); Wanda Febriani, "Pengaruh Moralitas Individu, Pengendalian Internal, dan Ketaatan Aturan Akuntansi Terhadap Kecenderungan Kecurangan Akuntansi Studi Kasus Pada Badan Pengelolaan Keuangan dan Aset Daerah Kabupaten Nganjuk". *Thesis* (Surabaya: UPN Veteran Jawa Timur, 2023). See also Sunil Kumar Sharma, Atri Sengupta, and Subhash Chandra Panja. "Mapping corruption risks in public procurement: Uncovering improvement opportunities and strengthening controls." *Public Performance & Management Review* 42, no. 4 (2019): 947-975.

C. Obstacles and Challenges in Preventing and Anticipating Corruption in the Procurement of Goods and Services in Indonesia

The sphere of anti-corruption civil society stands as a pivotal force in the forefront of endeavors to prevent and eliminate criminal acts of corruption. This prominence is underscored by Article 41 of Law Number 31 of 1999 regarding the Eradication of Criminal Acts of Corruption, elucidating the community's role in these efforts. According to the stipulations: (1) The community is empowered to contribute to the prevention and eradication of corruption; (2) Such community participation encompasses a spectrum of rights, including the right to seek, acquire, and provide information on corruption allegations, access to services for disseminating such information to law enforcement agencies handling corruption cases, the right to offer responsible suggestions and opinions to the said agencies, and the entitlement to receive responses within a maximum period of 30 days; (3) Furthermore, the community retains rights and responsibilities in the ongoing endeavor to prevent and eradicate criminal acts of corruption; (4) These rights and responsibilities are exercised within the parameters of principles and provisions delineated in prevailing laws and regulations, as well as adherence to religious and social norms; (5) Detailed procedures governing the implementation of community participation in preventing and eradicating criminal acts of corruption, as outlined in this study, are subject to further regulation through Government Regulation.

Furthermore, Indonesia presently operates the KPK Whistle Blower's System (KWS) platform, offering an online channel for members of the anti-corruption civil society to anonymously report instances of corruption in their vicinity. This platform is designed to ensure the security and confidentiality of data provided by civil society. Nevertheless, there exists a potential risk of disclosing the

reporter's identity, as organized networks of thugs and mafias, strategically aligned with corrupt individuals and their associates, possess the capability to intimidate or retaliate against civil society members who act as witnesses or hold legal evidence exposing various corrupt practices conducted by public officials, businessmen, and law enforcement authorities.²⁹

In this scenario, the position of civil society is notably vulnerable, despite their active participation through various empowerment initiatives. Civil society engages directly and indirectly, actively overseeing a spectrum of corrupt practices involving both public officials and businessmen. Their involvement extends to monitoring policy implementation infused with anti-corruption values. Therefore, the participatory role of the anti-corruption civil society proves to be profoundly influential in the collective endeavor to prevent and eradicate criminal acts of corruption, concurrently ensuring transparent and accountable development processes.³⁰

The safeguarding of civil society acting as whistleblowers in the endeavor to mitigate criminal acts of corruption is unequivocally ensured through legal provisions. Article 5 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims guarantees comprehensive protection encompassing physical, psychological,

²⁹ Satria Unggul Wicaksana Prakasa, "Garuda Indonesia-Rolls Royce Corruption, Transnational Crime, and Eradication Measures." *Lentera Hukum* 6, no. 3 (2019): 409-426.

³⁰ Serena Verdenicci, and Dan Hough. "People power and anti-corruption; demystifying citizen-centred approaches." *Crime, Law and Social Change* 64 (2015): 23-35.

information, and data confidentiality, extending even to a change in residence.³¹

Nevertheless, the vulnerability of the anti-corruption civil society persists due to threats and counterattacks orchestrated by corrupt individuals along with their networks of thugs and mafias. The collaboration between the LPSK and the KPK aims to fortify the protective measures, thereby preserving public participation in vigilance against corrupt practices. This collaborative effort strives to maintain the freedom and security of individuals reporting information and data related to corrupt practices involving public officials, businessmen, and law enforcement officers in our midst.³²

Within tertiary institutions, there exists a notable lack of familiarity with the intricacies surrounding the procurement of goods and services. This unfamiliarity poses a challenge to the community's involvement in overseeing or actively participating in procurement processes. Adding to the complexity, the absence of established regulations or a comprehensive legal framework for goods and services procurement further compounds the issue. Currently, institutions rely on a presidential regulation as a makeshift legal foundation. In the absence of a dedicated legal framework, a trustee system is employed to navigate the complexities of goods and services procurement.

Compounding the challenge is the fact that the anticipated Public Procurement Bill, designed to serve as a comprehensive and overarching regulation, has not been ratified. The absence of this critical legislation contributes to the less effective functioning of the

³¹ Simon Butt, and Sofie Arjon Schütte. "Assessing judicial performance in Indonesia: the court for corruption crimes." *Crime, Law and Social Change* 62 (2014): 603-619.

³² Kaushik Basu, and Tito Cordella, eds. *Institutions, Governance and the Control of Corruption*. (Switzerland: Palgrave Macmillan, 2018).

public procurement mechanism. Until a proper legal framework is established, the reliance on ad-hoc measures may hinder the transparency, accountability, and efficiency of the procurement processes within tertiary institutions. Addressing this gap is essential for fostering a more effective and legally grounded public procurement system in these educational settings.³³

The optimization of the digital platform in e-procurement necessitates a focus on promoting a transparent and accountable system. This involves mandatory declarations from each bidder and the effective utilization of the auction rebuttal mechanism throughout the various stages of public procurement, spanning from the initial planning to the evaluation of project implementation. This proactive approach is crucial to mitigate conflicts of interest and prevent any potential absolute requirements.³⁴

³³ Adi Susila. "Mencermati Rancangan Undang-undang Pengadaan Barang dan Jasa Pemerintah." *Jurnal Administrasi dan Kebijakan Publik* 1, no. 1 (2012): 39-54; Apri Listiyanto. "Pembaharuan Regulasi Pengadaan Barang dan Jasa Pemerintah." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 1 (2012): 113-133; Ahmad Rustan Syamsuddin. "Pembuktian Penyalahgunaan Wewenang dalam Perkara Tindak Pidana Korupsi Pengadaan Barang dan Jasa." *Jambura Law Review* 2, no. 2 (2020): 161-181; Ari Purwadi, "Praktik Persekongkolan Tender Pengadaan Barang dan Jasa Pemerintah." *Jurnal Hukum Magnum Opus* 2, no. 2 (2019): 99-113; Johan Arifin, and Toni Hartadi. "The implementation of probity audit to prevent fraud in public procurement of goods and services for government agencies." *Jurnal Akuntansi dan Auditing Indonesia* 24, no. 1(2020): 11-21; Mukti Fajar, et al. "Direct appointment of state-owned enterprises in the procurement of goods and services: unfair competition in tender in Indonesia." *International Journal of Procurement Management* 13, no. 6 (2020): 818-830.

³⁴ Aristotelis Mavidis, and Dimitris Folinas. "From Public E-Procurement 3.0 to E-Procurement 4.0; A Critical Literature Review." *Sustainability* 14, no. 18 (2022): 11252; Ariman Sitompul. "E-Procurement System In The Mechanism Of Procurement Of Goods And Services Electronically." *International Asia of Law and Money Laundering (IAML)* 1, no. 1 (2022): 57-63; Dhiona Ayu Nani, and Syaiful Ali. "Determinants of Effective E-Procurement System: Empirical Evidence from

Furthermore, enhancing oversight from civil society, academia, and journalism is imperative to anticipate and address instances of corruption and conflicts of interest in public procurement. The involvement of these external entities provides an additional layer of scrutiny, fostering a more vigilant and accountable environment. In adhering to these measures, the e-procurement system can be fortified against potential pitfalls, ensuring its integrity and aligning with principles of transparency and ethical conduct in public procurement processes

Fraudulent practices within public procurement often manifest at the district or city level, making it challenging to detect such patterns at the provincial level. Consequently, the optimization of the Electronic Procurement Service (LPSE) to counteract public procurement corruption is best executed at the district or city level, under the purview of the respective related agencies. Collaborative efforts between the Regional Government, Stakeholders, and Decision Makers, supervised by entities like the Corruption Eradication Commission, the Attorney General's Office, and relevant agencies, are crucial for stringent control and decisive actions in the implementation of public procurement processes.

A notable weakness in the procurement of goods and services lies in the absence of Regional Regulations and Laws governing this domain. This lacuna is compounded by discrepancies within the presidential regulation itself, leading to violations, such as those related to the construction services law, resulting in legal disharmony. This disharmony can precipitate conflicts due to regulatory disparities between the Presidential Regulation and the Law. For instance, discrepancies emerge in the handling of complaints, where the Presidential Decree assigns internal control officers, while various

Indonesian Local Governments." *Jurnal Dinamika Akuntansi dan Bisnis* 7, no. 1 (2020): 33-50.

laws bestow authority upon law enforcement officials (KPK, Chief of Prosecutes, Police) to participate in the resolution process. Addressing these discrepancies and fortifying regulatory frameworks is essential to enhance the efficacy and integrity of public procurement practices.

4. Conclusion

Finally, this study emphasized and concluded that to effectively prevent corruption in public procurement, it is imperative to optimize the use of e-procurement with a clear emphasis on transparency and accountability. This involves prioritizing a robust and accountable framework throughout the entire public procurement process, from project planning to the evaluation of implementation. To mitigate conflicts of interest and uphold integrity, it is essential to mandate declarations from all tender participants and enhance the auction rebuttal mechanism. Furthermore, to fortify these preventative measures, there is a critical need to reinforce the supervision role of civilians, academics, and journalists. This proactive approach is vital in anticipating and addressing instances of corruption and conflicts of interest that may arise during the procurement process. Recognizing the complexity of fraud patterns, particularly at the provincial level, the study underscores the importance of a region-specific strategy. By maximizing e-procurement practices and implementing corruption prevention measures, agencies at the regional level can effectively combat corruption in public procurement within their jurisdictions.

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The authors state that there is no conflict of interest in the publication of this article.

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Integrity, transparency and the fight against corruption have to be part of the culture. They have to be taught as fundamental values.

Angel Gurría

OECD Secretary General

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