LEGAL ASSISTANCE FOR CORRUPTION CRIMES IN PROCUREMENT OF GOODS IN GOVERNMENT AGENCIES

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ABSTRACT

Objective: The objective of this study is discussion the normative legal analysis of the status of legal aid for state civil servants involved in corruption cases.

Method: The research used in this process uses normative legal research using library materials or secondary materials collected. Legal research is also a process to determine legal rules, principles, and doctrines to answer the legal issues faced. The basic materials used in this study came from library data.

Results and Discussion: The results of the study show that, in reality, civil servants still do not understand the right to obtain legal aid, so it is essential to carry out legal aid counseling for civil servants, especially in their positions as actors procuring goods and services in regional government agencies.

Originality/Value: This study offers to provide legal assistance to State Civil Servants who are entangled in legal problems, especially in cases of criminal acts of corruption, where legal norms are often unclear (Unclean Norm O Law) and give rise to legal uncertainty in responding to problems faced by actors procuring goods and/or services in the government and What is the future legal policy regarding legal certainty in providing legal assistance to civil servants in carrying out their rights and obligations, especially in positions as agents of goods and/or services in regional government agencies that are just.

Keywords: Legal Aid, Civil Servants, Goods and Services Procurement.

ASSISTÊNCIA JURÍDICA PARA CRIMES DE CORRUPÇÃO NA AQUISIÇÃO DE BENS EM AGÊNCIAS GOVERNAMENTAIS

RESUMO

Objetivo: O objetivo deste estudo é discutir a análise jurídica normativa da situação da assistência judiciária aos servidores públicos estaduais envolvidos em casos de corrupção.

Método: A pesquisa utilizada neste processo utiliza pesquisas normativas jurídicas utilizando materiais de biblioteca ou materiais secundários coletados. A pesquisa jurídica também é um processo para determinar regras, princípios e doutrinas jurídicas para responder às questões jurídicas enfrentadas. Os materiais básicos utilizados neste estudo vieram de dados de biblioteca.

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**Resultados e Discussão:** Os resultados do estudo mostram que, na realidade, os funcionários públicos ainda não compreendem o direito à obtenção de apoio judiciário, pelo que é essencial realizar aconselhamento de apoio judiciário aos funcionários públicos, especialmente nas suas posições como actores adquirentes de bens e serviços em agências governamentais regionais.

**Originalidade/Valor:** Este estudo oferece assistência jurídica aos Servidores Públicos Estaduais que se encontram enredados em problemas jurídicos, especialmente em casos de atos criminosos de corrupção, onde as normas jurídicas muitas vezes são pouco claras (Norma Impura O Direito) e geram insegurança jurídica na responder aos problemas enfrentados pelos intervenientes que adquirem bens e/serviços no governo e Qual é a futura política jurídica em matéria de segurança jurídica na prestação de assistência jurídica aos funcionários públicos no cumprimento dos seus direitos e obrigações, especialmente em posições como agentes de bens e/serviços em agências governamentais regionais que são justas.

**Palavras-chave:** Assistência Judiciária, Funcionários Públicos, Aquisição de Bens e Serviços.

**ASISTENCIA LEGAL POR DELITOS DE CORRUPCIÓN EN ADQUISICIONES DE BIENES EN AGENCIAS GUBERNAMENTALES**

**RESUMEN**

**Objetivo:** El objetivo de este estudio es discutir el análisis jurídico normativo del estatus de la asistencia jurídica gratuita para los servidores públicos estatales involucrados en casos de corrupción.

**Método:** La investigación utilizada en este proceso utiliza investigación jurídica normativa utilizando materiales de biblioteca o materiales secundarios recopilados. La investigación jurídica también es un proceso para determinar reglas, principios y doctrinas legales para responder a las cuestiones jurídicas que se enfrentan. Los materiales básicos utilizados en este estudio provinieron de datos de biblioteca.

**Resultados y Discusión:** Los resultados del estudio muestran que, en la realidad, los servidores públicos aún no comprenden el derecho a obtener asistencia jurídica gratuita, por lo que es fundamental realizar asesorías de asistencia jurídica a los servidores públicos, especialmente en sus posiciones como actores procuradores de bienes y servicios en agencias gubernamentales regionales.

**Originalidad/Valor:** Este estudio ofrece brindar asistencia jurídica a los Servidores Públicos del Estado que se ven envueltos en problemas legales, especialmente en casos de actos delictivos de corrupción, donde las normas jurídicas muchas veces son poco claras (Norma Sucia O Ley) y dan lugar a inseguridad jurídica en responder a los problemas que enfrentan los actores que adquieren bienes y/o servicios en el gobierno y ¿Cuál es la política jurídica futura en materia de seguridad jurídica en la prestación de asistencia jurídica a los funcionarios públicos en el cumplimiento de sus derechos y obligaciones, especialmente en posiciones como agentes de bienes y/o servicios? servicios en agencias gubernamentales regionales que sean justos.

**Palabras clave:** Asistencia Jurídica, Funcionarios Públicos, Contratación de Bienes y Servicios.

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**1 INTRODUCTION**

Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia confirms that "the State of Indonesia is a state of law." The Constitution guarantees the rights of every citizen to obtain recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law, including access to justice through legal aid (Herawati, 2022). Justice
is a protected human right, guaranteed in Article 28D paragraph (1), which states, "Everyone has the right to recognition, guarantees, protection, and fair legal certainty as well as an equal treatment before the law." In principle, the law was created to give people confidence in their different interests and to realize prosperity and justice. Law Number 16 of 2011 concerning legal aid is used to achieve convenience and special treatment as affirmative action (action carried out directly by the government) to create equality and justice for every citizen of the Republic of Indonesia. The principle of legal certainty is a form of protection for justice (seekers of justice) against arbitrary actions, which means that a person will and can obtain something they hope for in certain circumstances (Wahyudi & Mochtar, 2022).

Access to justice in the Indonesian context refers to the conditions and processes in which the state guarantees the fulfillment of fundamental rights based on the 1945 Constitution and universal human rights principles and guarantees access for every citizen (claim holder) to justice. The ability to know, understand, realize, and use these fundamental rights through formal and informal institutions, supported by the existence of a public complaints mechanism that is easily accessed and responded to by the community, in order to obtain optimal benefits to improve the quality of their own lives (Teichmann et al., 2023). In criminal acts of corruption, people generally believe that there are no decisions other than the maximum criminal penalty, so every decision handed down by the court is always considered unfair and injures the public's sense of justice (Ross, 2018). Regarding the examination of criminal corruption cases, in their decisions, judges are expected to be able to fulfill the values of the legal objectives themselves, such as justice, legal certainty, and benefit. Moreover, it is applied in the In Concreto case, where each party demands to get a portion of justice and benefits, and on the other hand, there are those who demand that legal certainty must take priority (Budiono, 2018).

Aid is a legal service provided explicitly to those who need good defense outside and inside the court in criminal, civil, and state administration from someone who understands the ins and outs of legal defense, legal principles, and rules, as well as human rights (de Vries & Anderson, 2022). The legal assistance provided to suspects or defendants, especially for criminal acts of corruption, is not merely to defend the interests of the suspect or defendant to be free from all charges (Herawati, 2022). However, the aim of defense in criminal cases is essentially to defend legal regulations so that these legal regulations are wrong or are not implemented in the case. a thing. Thus, in each event report process, the aim of defense in criminal cases is to provide legal assistance to law enforcement officers or enforcers in making or deciding a fair and correct decision according to applicable legal regulations (Olujobi, 2021).
It is not uncommon for government officials to abuse their authority when making decisions by using existing authority. Regarding allegations like this, officials who do not accept them can use the provisions in Article 21 of Law Number 30 of 2014 concerning Government Administration to test allegations of abuse of authority. These provisions may be related to corruption, as in Article 3, paragraph (1). P origin 18 paragraph 1 letter a and letter b Republic of Indonesia Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended and supplemented by RI Law Number 20 of 2001 concerning Amendments to RI Law Number 31 of 1999 concerning Eradication of Corruption Crimes. P origin 12 letter e Law Number 20 of 2001 also regulates matters relating to criminal acts of corruption, which states that "civil servants or state administrators who to benefit themselves or others unlawfully, or by abusing their power force someone gives something, pays, or receives payment with a discount or to do something for himself."

A civil servant is any official with a public service relationship with the state. According to the Law, the State Civil Apparatus is a civil servant and government employee with a work agreement appointed by a civil service management official, assigned to a government position, or assigned to other state duties and paid based on statutory regulations. As stated in paragraph (2) and paragraph (9) of Article 21 of Law Number 20 of 2023 concerning State Civil Apparatus, from now on referred to as Law Number 20 of 2023 juncto. Article 308 paragraph (3) Government Regulation Number 11 of 2017 concerning Management of Civil Servants, from now on referred to as Government Regulation Number 11 of 2017, states that the government is responsible for providing legal assistance to Civil Servants (PNS) in cases related to the implementation of his duties. Article 3 paragraph (1) of Law of the Republic of Indonesia Number: 17 of 2003 concerning state finances regulates that "State Finances are managed in an orderly manner, in compliance with statutory regulations, efficiently, economically, effectively, transparently and responsibly by paying attention to the sense of justice and propriety."

Government procurement activities of goods/services viewed from the perspective of Indonesian Law have an essential meaning with the following arguments: first, procurement of goods and services has strategic meaning in terms of orientation and preferences for domestic business actors; secondly, procurement of goods and services (Santoso, 2011). The government is a significant sector in efforts for economic growth. Third, a government goods and/or services procurement system that can implement the principles of good governance will encourage the efficiency and effectiveness of public spending while conditioning the behavior of the 3 (three) pillars, namely the government, the private sector, and the community (Indrawan et al., 2020).
Fourth, the scope of government procurement of goods and services covers various sectors in various aspects of nation-building.

Implementing the procurement of goods and services has caused many problems, from planning to the work handover process. The procurement department has significant risks, especially related to legal issues (Santoso, 2011). On the other hand, the task is just a chore and an addition with rewards that must be commensurate with its risks and responsibilities. Not a few procurement actors, especially those who hold positions in the procurement of goods and services, are caught in corruption cases. Negligence in exercising authority means not being careful in carrying out authority as it should be exercised. The perpetrator is generally charged with Article 3 paragraph (1) juncto. Article 18 paragraph 1 letter a and letter b Republic of Indonesia Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended and supplemented by RI Law Number 20 of 2001 concerning Amendments to RI Law Number 31 of 1999 concerning Eradication of Corruption Crimes (Iskandar Yahya Arulampalam Kunaraj P.Chelvanathan, 2023).

Typologically, corruption can be divided into seven different types, namely transactional corruption crimes, extortion corruption crimes, inventive corruption crimes, kinship corruption crimes, defensive corruption crimes, autogenic corruption crimes, and support corruption crimes (Muqsith et al., 2022; Prihatini, 2019; Rahman et al., 2021). Corruption crimes prone to occur in the procurement of goods and services are transactional crimes, which means there is a benefit for both parties and achieving benefits for both, involving the business world and the government, both central and regional. Weak legal protection for those procuring goods or services creates concerns for those procuring goods and/or services. There is no guarantee that procurement implementers will not be investigated by law enforcement officials, even if no indications of criminal acts of corruption are found. Apart from the modes of corruption related to procurement above, generally, irregular practices in the implementation of government procurement of goods and/or services, which often occur and have criminal legal consequences for corruption, include bribery, splitting or combining packages, price mark-ups, reducing the quality and quantity of goods and services, direct appointment, and collusion between providers and managers of goods and services.

Cases of criminal acts of corruption, especially those who have positions in the procurement of goods and/or services such as Budget Making Officials (PA) and Budget User Proxy (KPA), Commitment Making Officials (PPK), Procurement Officials/Procurement Service Units (ULP), Officials/ The Employment Results Recipient Committee (PPHP) is vulnerable to being involved in corruption cases. Corruption is not always the official's fault;
the opposite could be true for staff under the responsible official. In procuring goods and services to benefit oneself, one commits a criminal act of corruption. As a result, civil servants who have positions in procuring goods and services must be held responsible. Like the case of a civil servant who became a defendant in his position as Budget User Authority / Commitment Making Officer based on the Regional Head's Decree regarding the Appointment of Budget User Authority Officials in the Service Environment, with Case Classification: Crime of Corruption accompanied by a non-PNS Advocate Legal Advisor, Data Source: SIPP (pn-palangkaraya.go.id), because the circumstances in the field forced the defendant to exercise discretion and not to do so to benefit himself, another person or a corporation which resulted in state losses or state profits. Based on various studies, research on legal assistance for corruption defendants from civil servants is still rarely studied. So, in this research, we will discuss the normative legal analysis of the status of legal aid for state civil servants involved in corruption cases.

How to provide legal assistance to State Civil Servants who are entangled in legal problems, especially in cases of criminal acts of corruption, where legal norms are often unclear (Unclean Norm O Law) and give rise to legal uncertainty in responding to problems faced by actors procuring goods and/or services in the government and What is the future legal policy regarding legal certainty in providing legal assistance to civil servants in carrying out their rights and obligations, especially in positions as agents of goods and/or services in regional government agencies that are just (Sabrina, 2016).

2 METHODOLOGY

The research used in this process uses normative legal research (Van Hoecke, 2016) using library materials or secondary materials collected. Legal research is also a process to determine legal rules, principles, and doctrines to answer the legal issues faced. The basic materials used in this study came from library data. Everything related to data analysis is narrated holistically so that a complete combination is found and conclusions can be drawn in a balanced and structured manner using a deductive method.
3 RESULT AND DISCUSSION

3.1 PROVIDING LEGAL ASSISTANCE TO PERPETRATORS OF PROCUREMENT OF GOODS AND/OR SERVICES IN CASES OF CRIMINAL ACTS OF CORRUPTION

Corruption Crimes are regulated in the Republic of Indonesia Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended and supplemented by RI Law Number 20 of 2001 concerning Amendments to RI Law Number 31 of 1999 concerning Eradication of Corruption Crimes. Several aspects that cause Corruption Crimes are:

1. Individual Aspects of the Actor;
2. Organizational Aspects;
3. Individual Aspects in the Organization where he is located.

Apart from the opinion above, other causes include (Mamitova et al., 2016):

1. Weak religious and ethical education;
2. Colonialism;
3. Lack of ethical and moral education;
4. There are no harsh and firm sanctions;
5. A fertile environment for anti-corruption behavior;
6. Government structure;
7. Radical change;

It is not an easy job to eradicate the crime of corruption. On the one hand, corruption may be a moral issue, but practical steps to combat it must go beyond efforts that must be seen as a moral issue, namely include efforts to reform the law and society as a whole; there must be a will (Munyai & Agbor, 2020). Strong political will to declare war on corruption, followed by concrete steps (political action) with the support of consistent law enforcement.

The right to obtain legal assistance is closely related to achieving a fair legal process (due process of law) and avoiding arbitrary legal processes based solely on the power of law enforcement officials (Arbitrary process). Providing legal aid is an essential element in the justice system in Indonesia because the right to legal aid is a form of human rights protection for every citizen (Rifai & Tisnanta, 2022). Legal aid is a means of finding truth and justice guaranteed by the state in the form of assistance to provide legal protection and advocacy regarding the rights of the suspect or defendant.
In the life of the State Civil Apparatus, intentionally or unintentionally, they often come into contact with the law in carrying out their duties; at this time, the state must be present in providing legal assistance by considering the legal principle of *Presumption of Innocence* or the term presumption of innocence, everyone must be treated equally without any differences before the law.

Constitution Republic of Indonesia Number 5 2014 concerning the State Civil Apparatus on 31 October 2023 has been revoked and replaced with Law of the Republic of Indonesia Number 20 of 2023 concerning the Civil Apparatus, which was ratified in Jakarta and promulgated in Jakarta in the State Gazette on 31 October 2023 in the State Gazette of the Republic of Indonesia 2023 Number 141 and other Legislative Regulations relating to the Provision of Legal Aid, as regulated in Article 308 paragraph 1 (one) letter d, paragraph 3 (three), and paragraph 4 (four) of Government Regulation Number 11 of 2017 concerning Management Government employees.

Law Number 20 of 2023 concerning ASN provides restrictions on legal assistance to State Civil Apparatus who commit extraordinary crimes (*extraordinary crimes*) in carrying out their duties which indirectly legalizes discrimination in providing legal assistance to ASN where this is contrary to the main principles of justice is the certainty of fair law and equal treatment before the Law (Rodliyah, 2023). Article 2 of Law Number 16 of 2011 concerning Legal Aid explains as follows:

1. Justice: ensuring the rights and obligations of each person proportionally. Appropriate, correct, excellent and orderly;
2. Equality of standing under the Law: Everyone has the same rights and treatment before the law and the obligation to uphold the law;
3. Openness: providing access to the public to obtain complete, correct, honest, and impartial information in obtaining guarantees of justice based on constitutional rights;
4. Efficiency: maximizing the provision of legal assistance through the use of existing budget resources;
5. Effectiveness: determining the appropriate achievement of the objectives of providing legal assistance;
6. Accountability: Every activity and final result of the activities of the legal aid provider must be accountable to the community.

Article 3 of Law number 16 of 2011 concerning legal aid confirms 4 (four) main things in the aim of providing legal aid, namely:

1. Guarantee and fulfill the rights of legal aid recipients to obtain access to justice;
2. Realizing the constitutional rights of all citizens by the principle of equality under the law;
3. Ensure certainty that the provision of legal aid is carried out evenly throughout the territory of the Republic of Indonesia and;
4. Realizing an effective and accountable judiciary. (Muhamad Abas, 2022)

As explained above, the researcher thinks that civil servants must be provided legal assistance, considering that the case or matter at hand is not an ordinary criminal case. It is not sure that the perpetrator of the procurement of goods and/or services affected by a criminal act of corruption will be found guilty and entitled to be given legal assistance as stated in regulated in Law Number 20 of 2023 concerning State Civil Apparatus.

3.2 LEGAL CERTAINTY IN LEGAL ASSISTANCE FOR CIVIL SERVANTS EXERCISING THEIR RIGHTS AND OBLIGATIONS, ESPECIALLY IN THEIR POSITIONS AS AGENTS OF GOODS AND/OR SERVICES IN REGIONAL GOVERNMENT AGENCIES

The right to legal aid has been universally accepted as guaranteed in the International Covenant on Civil and Political Rights (ICCPR). Articles 16 and 26 of the ICCPR guarantee that everyone has the right to obtain legal protection and must be protected from all forms of discrimination (Wahyudi & Mochtar, 2022). The principle of legal certainty is a form of protection for justice (seekers of justice) against arbitrary actions, which means that someone will and can obtain something they hope for in certain circumstances. Van Apeldoorn said that legal certainty has two aspects: the ability to determine the law in concrete terms and legal security. This means that parties seeking justice want to know what the law is in a particular matter before they start a case and protection for justice seekers (Boister, 2012).

Regulation Number 12 of 2021 regarding amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services explains the perpetrators of goods and/or services as follows:
1. Budget User (PA): official who holds the authority to use the budget of State Ministries/Institutions/Regional Apparatus;
2. A Budget User Authority (KPA) is an official who obtains authority from the Budget User (PA) to carry out some of the authority, duties, functions, and responsibilities for budget use in State Ministries/Institutions/Regional Apparatus depending on the budget source, namely APBN or APBD;
3. A commitment Officer (PPK) is an official who is authorized by the Budget User (PA)/Budget User Authority (KPA) to make decisions and/or take actions that may result in the expenditure of the state/regional budget;

4. Procurement Officer, administrative officer/functional/personal official in charge of carrying out direct procurement. Direct appointment and/or E-Purchasing;

5. Selection Working Group (Pojka Election), human resources appointed by the head of the Goods/Services Procurement Work Unit (UKPBJ) to manage the selection of providers;

6. Procurement Agent, Goods/Services Procurement work Unit (UKPBJ), or Business Actor carrying out part or all of the Goods/Services Procurement work which is entrusted by the Ministry/Institution/Regional apparatus as the work provider;

7. Self-Managed Organizer: the team that organizes activities in a self-managed manner. The team consists of a Preparation Team, Implementation Team, and/or Supervisory Team;

8. Provider: Business Actor who provides goods/services based on a contract. Business actors are entities or individuals who carry out business and/or activities in specific fields.

The provision of legal assistance to Civil Servants as perpetrators of criminal acts of corruption has been regulated in various laws and regulations, namely:

1. Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP);

2. Republic of Indonesia Law of 2011 concerning Legal Aid;

3. Republic of Indonesia Government Regulation Number 42 of 2013 concerning requirements and procedures for Providing Legal Aid and Distribution of Legal Aid Funds;

4. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2015 concerning Regulations for Implementing Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds

5. Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates;

6. Republic Law Number 20 of 2023 concerning State Civil Apparatus.

As executors of the state budget, managers of goods and services face liability and lurking legal risks, considering that the procurement implementation process often does not go as expected. Almost all implementation of the procurement of goods and services is an aspect of criminal law, primarily criminal law specifically for corruption crimes. The weak legal
protection for procurement managers worries budget users (PA) and actors procuring goods and services within the government because, up to now, there is no guarantee that the police will not investigate organizers regarding cases experienced by either officials/actors procuring goods and/or services—that with the existence of regulations. The more dynamic the duties and functions of civil servants, the more likely civil servants will face legal problems. Legal assistance provided to civil servants does not mean exempting them from punishment but ensuring that the rights of civil servants involved in problems are fulfilled and that legal mechanisms comply with applicable regulations.

4 CONCLUSION

The right to obtain legal assistance is closely related to achieving a fair legal process (due process of law) and avoiding arbitrary legal processes based solely on the power of law enforcement officials (Arbitrary process). Legal assistance must be provided to civil servants, considering that the case or matter at hand is not an ordinary criminal case. It is not sure that the perpetrator of the procurement of goods and/or services affected by a criminal act of corruption is declared guilty and has the right to be given legal assistance as regulated in law—number 20 of 2023 concerning State Civil Apparatus. Legal assistance provided to civil servants does not mean exempting them from punishment but ensuring that the rights of civil servants involved in problems are fulfilled and that legal mechanisms comply with applicable regulations.

REFERENCES


