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Criminal Law Enforcement Against the Practice of Rigging Auction Winners in the Regional Infrastructure Project Sector

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Original Article

Abstract

Regional infrastructure development depends heavily on the integrity of government procurement processes, particularly the tendering mechanism, which remains vulnerable to collusion, manipulation, and abuse of authority. This study examines the implementation of public procurement and regional financial management, the operation of tendering mechanisms, and the implications of procurement irregularities for criminal law enforcement in Indonesia. It employs a normative legal research method using statutory, conceptual, and case approaches, supported by primary, secondary, and tertiary legal materials. The findings reveal that the digitalization of procurement through the Electronic Procurement System (SPSE) has improved transparency but has not fully eliminated horizontal collusion, vertical intervention, bid evaluation manipulation, or irregularities in contract implementation. Procurement violations that satisfy the constituent elements of criminal offenses may result in criminal liability for both individuals and corporations. This study concludes that strengthening integrated oversight mechanisms, ensuring accountability throughout the procurement process, and consistently enforcing criminal law are essential to safeguarding state finances and ensuring the effective implementation of regional infrastructure development.

Keywords: *Public Procurement, Infrastructure Tendering, Bid Rigging, Criminal Law Enforcement*

Abstrak

Pembangunan infrastruktur daerah sangat bergantung pada integritas pengadaan barang dan jasa pemerintah, khususnya mekanisme lelang yang rentan terhadap persekongkolan, manipulasi, dan penyalahgunaan kewenangan. Penelitian ini bertujuan menganalisis penyelenggaraan pengadaan dan pengelolaan keuangan daerah, mekanisme tender, serta implikasi penyimpangannya terhadap penegakan hukum pidana di Indonesia. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus melalui analisis bahan hukum primer, sekunder, dan tersier. Hasil penelitian menunjukkan bahwa digitalisasi tender melalui SPSE meningkatkan transparansi, tetapi belum sepenuhnya mencegah kolusi horizontal, intervensi vertikal, manipulasi evaluasi, dan penyimpangan pelaksanaan kontrak. Penyimpangan yang memenuhi unsur tindak pidana dapat menimbulkan pertanggungjawaban pidana individual maupun korporasi. Penelitian menyimpulkan bahwa penguatan pengawasan terpadu, akuntabilitas pengadaan, dan konsistensi penegakan hukum diperlukan untuk melindungi keuangan negara dan menjamin keberhasilan pembangunan infrastruktur daerah.

Kata kunci: *Pengadaan Barang dan Jasa, Tender Infrastruktur, Persekongkolan Tender, Penegakan Hukum Pidana*

1. INTRODUCTION

Infrastructure is a fundamental instrument for promoting equitable development, enhancing interregional connectivity, attracting investment, and expanding public participation in social and economic activities. Adequate infrastructure not only determines a region's capacity to realize its economic potential but also directly affects the quality of public services and the equitable distribution of social welfare. Infrastructure, including roads, bridges, educational and healthcare facilities, and other public amenities, is closely associated with economic productivity and the effectiveness of public governance.[1] Infrastructure development should not be understood merely as the construction of physical facilities but rather as an integral component of a broader development strategy that requires the effective and efficient allocation and management of public resources.

The increasing demand for infrastructure financing has compelled governments to optimize public procurement as an instrument for implementing development policies. Under the Indonesian legal framework, Article 1, point 1, of Presidential Regulation No. 16 of 2018, as subsequently amended, most recently by Presidential Regulation No. 46 of 2025, defines government procurement of goods and services as a series of activities extending from the identification of needs to the final handover of completed work, financed through the state budget (Anggaran Pendapatan dan Belanja Negara or APBN) or regional budgets (Anggaran Pendapatan dan Belanja Daerah or APBD). This regulatory framework demonstrates that public procurement extends beyond an administrative procedure or a contractual relationship between the government and service providers. Rather, it constitutes an essential mechanism for managing public finances that must ensure the relevance of identified needs, the quality of deliverables, budgetary efficiency, and accountability for development outcomes.

The importance of procurement is particularly evident in the construction services sector, where the successful implementation of infrastructure projects depends heavily on provider competence, appropriate contractor selection, and compliance with applicable legal requirements. The bidding or tendering process serves as a critical mechanism for ensuring that contractors are selected through transparent, competitive, objective, and accountable procedures.[2] The competition intended to promote efficiency and ensure construction quality can be undermined by various forms of

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[1] James Cristofer Mendoza Hermoso et al., "The Effects of Infrastructure Investments on Services and Wholesale/Retail Productivity: A Panel-Data Evidence from the Philippines," *Malaysian Journal of Social Sciences and Humanities* 6, no. 12 (2021): 233–46, https://doi.org/10.47405/mjssh.v6i12.1186; Faicha Nurhasna and Ferhan Dani, "Impact of Infrastructure Development on Social and Economic Change in Community," *Bina Bangsa International Journal of Business and Management* 5, no. 1 (2025): 160–91, https://doi.org/10.46306/bbijbm.v5i1.121.

[2] Eko Gantika et al., "Optimization Strategy for Winning Construction Management Consultant Services Tenders in Indonesia: Delphi and SWOT Studies," *Astonjadro* 14, no. 3 (2025): 760–78, https://doi.org/10.32832/astonjadro.v14i3.17925.

misconduct, including bid rigging, predetermined contract awards, abuse of authority, the use of front companies, and interference by procurement officials.

Such practices not only undermine fair competition but also create risks of state financial losses, construction defects, project delays, and violations of the public's right to adequate infrastructure. Consequently, regional infrastructure procurement involves multiple legal dimensions, including administrative law, competition law, public finance law, contract law, and criminal law. The central legal questions concern how each stage of the procurement process is implemented, how irregularities in tendering procedures should be legally characterized, and how criminal liability should be imposed on the parties involved. The effectiveness of regional infrastructure development therefore depends not solely on budgetary availability but also on the integrity of procurement procedures and the consistent enforcement of applicable laws.

Research on government procurement has increasingly examined bid rigging, corruption, anticompetitive practices, and criminal liability as fundamental issues in infrastructure governance. Ferdinand et al., for example, identify a relationship between bid rigging and corrupt practices in government procurement. Their study specifically examines the division of law enforcement authority between the Indonesian Competition Commission (Komisi Pengawas Persaingan Usaha or KPPU) and the Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK). Although these institutions operate under distinct legal mandates and jurisdictional frameworks, their respective oversight and enforcement functions may complement one another. This analysis provides an important conceptual foundation for understanding that irregularities in public procurement are not necessarily confined to violations of competition law; depending on their circumstances and constituent elements, such conduct may also constitute criminal acts of corruption.[3]

Wibowo further examined this issue by analyzing bid rigging in the electronic procurement of goods and services for government construction projects. The study demonstrates that the adoption of electronic procurement does not automatically eliminate the risk of procurement irregularities, as the involvement of procurement committees and business entities may still create opportunities to manipulate the selection of winning bidders. Wibowo emphasizes the need for stronger regulatory frameworks and more effective law enforcement to ensure fair business competition.[4] Similarly, Azhar et al. investigated bid rigging under Article 22 of Law No. 5 of 1999. Their findings highlight the various forms, consequences, and legal sanctions associated with predetermined bidding outcomes, a practice that may cause financial losses to the

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[3] Adam Khafi Ferdinand et al., "Penegakan Hukum Dalam Pengadaan Barang Dan Jasa Pemerintah Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dan Komisi Pemberantasan Korupsi (KPK)," *Cepalo* 4, no. 2 (2020): 111–28, https://doi.org/10.25041/cepalo.v4no2.2006.

[4] Sigit Wibowo, "Persekongkolan Tender Dalam Pengadaan Barang Jasa Secara Elektronik Pada Pengadaan Pekerjaan Jasa Konstruksi: Analisis Kasus Putusan Perkara Nomor: 24/Kppu-I/2020," *Jurnal Hukum Caraka Justitia* 2, no. 1 (2022): 75–94, https://doi.org/10.30588/jhcj.v2i1.1043.

state and deprive the government of opportunities to obtain high-quality goods and services at competitive prices.[5]

Amanda and Nugroho examined the relationship between bid rigging and the principles of good governance by analyzing Indonesian Competition Commission (Komisi Pengawas Persaingan Usaha or KPPU) Decision No. 17/KPPU-L/2022 concerning the revitalization project of Taman Ismail Marzuki. Their study demonstrates that manipulation of the tendering process undermines transparency, accountability, efficiency, and fair competition.[6] Meanwhile, Shelviana focused on the challenges of enforcing competition law in the infrastructure sector, particularly regulatory limitations and constraints on the investigative authority of the KPPU.[7] Expanding this discussion, Rahman and Sinaga examined the use of third-party corporate identities in government procurement, highlighting the potential criminal liability of both individuals and corporations involved in such practices.[8]

Pambudi and Yusuf demonstrated how intervention by regional heads in procurement processes can create power dynamics that facilitate bribery and the acceptance of illicit gratuities.[9] Similarly, Mantiri et al. identified various challenges in enforcing anti-corruption laws in government procurement.[10] Bulqis, meanwhile, examined the criminal liability of individuals and corporations, emphasizing the importance of establishing connections between specific stages of the procurement process, the modus operandi employed, and the applicable models of criminal liability.[11]

Despite these contributions, previous studies have generally examined bid rigging, procurement-related corruption, business competition, and criminal liability as separate or fragmented issues. Limited research has integrated the implementation of public procurement and regional financial management for infrastructure development, tendering mechanisms, and the implications of procurement irregularities for criminal law enforcement within a unified analytical framework. This study addresses this gap

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5 Muhammad Kholidul Azhar et al., "Tinjauan Hukum Terhadap Persekongkolan Tender Dalam Pengadaan Barang Dan Jasa Pemerintah," *Referendum: Jurnal Hukum Perdata Dan Pidana* 1, no. 4 (2024): 1–10, https://doi.org/10.62383/referendum.v1i4.195.

6 Niken Dwi Amanda and Andriyanto Adhi Nugroho, "Legal Analysis of Collusion in Government Goods/Services Procurement Tenders From the Perspective of Good Governance Principles in Support of Sustainable Development: Case Study No 17/Kppu-L/2022," *Academia Open* 10, no. 2 (2025): 1–16, https://doi.org/10.21070/acopen.10.2025.12937.

7 Devy Shelviana, "Persekongkolan Tender Di Sektor Infrastruktur Sebagai Tantangan Penegakan Hukum Persaingan Usaha," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 3 (2025): 2342–48, https://doi.org/10.38035/jihhp.v5i3.4084.

8 Aulia Rahman and Lidya Devega Br Sinaga, "Pertanggungjawaban Pidana Korupsi Pengadaan Barang Dan Jasa Pemerintah Menggunakan Perusahaan Orang Lain," *Judge: Jurnal Hukum* 6, no. 4 (2025): 1246–59, https://doi.org/10.54209/judge.v6i04.1862.

9 Phokus Rilo Pambudi and Hudi Yusuf, "Analisis Yuridis Tindak Pidana Korupsi Suap Pengadaan Barang Dan Jasa Di Kabupaten Purbalingga," *Jurnal Intelek Dan Cendikiawan Nusantara* 2, no. 6 (2026): 14009–16.

10 Rizart Felix Philep Mantiri et al., "Penegakan Hukum Bagi Pelaku Terhadap Tindak Pidana Korupsi Dalam Pengadaan Barang Dan Jasa Oleh Pemerintah," *Jurnal Penelitian Ilmiah Multidisiplin* 8, no. 10 (2024): 434–47.

11 Bulqis Bulqis, "Pertanggungjawaban Pidana Dalam Tindak Pidana Korupsi Pengadaan Barang Dan Jasa Di Lingkungan Pemerintahan," *Governance: Jurnal Ilmiah Kajian Politik Lokal Dan Pembangunan* 13, no. 9 (2026): 51–66, https://doi.org/10.56015/gjikplp.v13i9.1311.

by developing an integrated analysis of the relationships among procurement governance, legal irregularities, and criminal liability. Its originality lies in explaining how weaknesses in procurement implementation and financial management can create opportunities for tender irregularities and how such irregularities may subsequently trigger criminal liability under Indonesian law.

This study aims to: (1) examine the implementation of government procurement of goods and services and the management of state and regional finances in supporting regional infrastructure development, with particular emphasis on the governing principles, procedural stages, and accountability mechanisms; (2) analyze the tendering mechanisms employed in regional infrastructure projects, particularly in relation to transparency, fair business competition, and potential procurement irregularities; and (3) assess the legal implications of irregularities in the tendering process for criminal law enforcement in Indonesia, including the legal characterization of unlawful conduct and the criminal liability of the parties involved.

2. RESEARCH METHODOLOGY

This study employs a normative legal research method that focuses on examining legal norms, doctrines, principles, and statutory provisions governing government procurement of goods and services, bidding and tendering procedures, state and regional financial management, and criminal law enforcement in the context of regional infrastructure development. The study adopts three complementary legal approaches: the statutory approach, the conceptual approach, and the case approach.

The legal materials consist of primary, secondary, and tertiary sources. Primary legal materials include relevant statutory provisions and judicial decisions. Secondary legal materials comprise books, peer-reviewed journal articles, and findings from previous studies, while tertiary legal materials serve as supplementary references to support the identification and interpretation of relevant legal concepts. Legal materials were collected through library research, which involved systematically identifying, compiling, and classifying relevant sources according to the research questions.

The collected legal materials were subsequently analyzed using qualitative legal analysis, incorporating legal interpretation and prescriptive reasoning. This analytical process was designed to assess the conformity of procurement practices with applicable legal provisions, identify potential irregularities in the tendering process, and examine their legal consequences, particularly with respect to the establishment and attribution of criminal liability to the parties involved. The findings are presented descriptively and analytically to formulate systematic legal arguments and develop recommendations for strengthening procurement governance and criminal law enforcement in Indonesia.

3. RESEARCH RESULT AND DISCUSSION

3.1. Implementation of Public Procurement and State and Regional Financial Management in Supporting Regional Infrastructure Development

The implementation of public procurement is an integral component of regional development planning and financial management. These two mechanisms are functionally interconnected: development planning identifies infrastructure needs and establishes program priorities; budgeting allocates the necessary financial resources; and procurement translates these priorities into tangible outcomes through the selection of service providers and the implementation of projects in accordance with applicable legal requirements. Accordingly, the effectiveness of regional infrastructure development depends largely on the consistency and coordination of planning, budgeting, procurement implementation, and financial accountability.

Regional infrastructure development is governed by an interconnected legal framework. Article 274 of the Regional Government Law regulates regional development planning, while Article 275 establishes the legal basis for monitoring and evaluating development activities. Furthermore, Article 283 requires regional financial management to be conducted in an orderly manner and in compliance with applicable laws and regulations, while adhering to the principles of efficiency, economy, effectiveness, transparency, and accountability, as well as fairness, propriety, and public benefit.

Fiscal relations between the central and regional governments are further regulated under Articles 164 and 165 of the Law on Financial Relations between the Central Government and Regional Governments. These provisions demonstrate that regional infrastructure development is not merely an administrative responsibility of regional governments but also an integral component of the national fiscal system, which regulates the allocation of financial resources, the distribution of governmental authority, and the coordination of responsibilities across different levels of government.

Government Regulation No. 12 of 2019 concerning Regional Financial Management establishes the operational framework for preparing the Regional Revenue and Expenditure Budget (Anggaran Pendapatan dan Belanja Daerah or APBD), executing the budget, and administering regional expenditures. Articles 89–92 and Article 141 contain provisions governing the budgeting process and the implementation of regional expenditures. Accordingly, public procurement must be based on properly identified requirements supported by valid budget allocations. Regional governments cannot initiate infrastructure projects solely on the basis of physical development needs; they must also ensure the availability of financial resources, consistency with established planning documents, and compliance with applicable regional financial management procedures. Deficiencies in planning and budgeting may create opportunities for irregularities during the procurement process, particularly when project requirements

are not objectively determined or budget allocations are influenced by particular vested interests.[12]

Government procurement of goods and services is primarily regulated by Presidential Regulation No. 16 of 2018, as amended by Presidential Regulation No. 12 of 2021 and subsequently by Presidential Regulation No. 46 of 2025. This regulatory framework defines procurement as a comprehensive process extending from the identification of needs to the final handover of completed work. The fundamental principles governing public procurement—including efficiency, effectiveness, transparency, openness, fair competition, equity, and accountability—constitute normative standards that must guide all parties involved throughout the procurement process.

These principles have substantive implications because they directly affect contractor selection, the reasonableness of bid prices, construction quality, and the appropriate allocation and utilization of public funds. Therefore, the success of public procurement should not be assessed solely in terms of procedural compliance or the completion of administrative requirements. Rather, it should also be evaluated based on the quality of project outcomes, the efficient use of public resources, and the actual benefits delivered to the community.

Electronic tendering, facilitated through the Electronic Procurement System (Sistem Pengadaan Secara Elektronik or SPSE) and supported by regional procurement institutions, including the Procurement Service Unit (Unit Kerja Pengadaan Barang/Jasa or UKPBJ), constitutes an important instrument for enhancing transparency and reducing direct interactions that may create opportunities for conflicts of interest. Nevertheless, digitalization alone does not guarantee the integrity of the procurement process. Collusion among bidders, manipulation of evaluation criteria, bid-price coordination, the use of front companies, and intervention by public officials to secure contract awards for particular providers remain significant potential risks.[13] Procurement technology provides procedural mechanisms for transparency and oversight; however, the integrity of procurement officials, the independence of the evaluation process, and the effectiveness of institutional supervision remain decisive factors in ensuring procurement accountability.

The findings of this study are consistent with Wibowo, who demonstrated that the implementation of electronic procurement has not entirely eliminated bid rigging in government construction projects.[14] They also corroborate the findings of Azhar,

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[12] Suhartono Suhartono et al., "The Alignment Challenges of Development Planning and Budgeting: Insights from Indonesia," *Technium Social Sciences Journal* 34 (2022): 54–83, https://doi.org/10.47577/tssj.v34i1.7106.

[13] Regis Signor et al., "Detection of Collusive Tenders in Infrastructure Projects: Learning from Operation Car Wash," *Journal of Construction Engineering and Management* 146, no. 1 (2020): 05019015, https://doi.org/10.1061/(ASCE)CO.1943-7862.0001737.

[14] Wibowo, "Persekongkolan Tender Dalam Pengadaan Barang Jasa Secara Elektronik Pada Pengadaan Pekerjaan Jasa Konstruksi (Analisis Kasus Putusan Perkara Nomor."

Ansori, and Syahputri concerning the adverse effects of predetermined tender outcomes on fair business competition.[15] However, the present study extends these earlier contributions by demonstrating that the risk of procurement irregularities does not arise exclusively during the contractor selection stage; rather, it may originate as early as the identification of project requirements and the preparation of budget allocations. Procurement oversight must adopt a comprehensive approach that extends beyond the tendering process to encompass the entire procurement cycle.

With respect to accountability, every expenditure associated with infrastructure development must be traceable throughout the procurement cycle, from initial planning and budget documentation to provider selection, contract execution, verification of work performance, payment, and the final handover of completed projects. This accountability framework involves the Commitment-Making Official (Pejabat Pembuat Komitmen or PPK), the procurement selection working group, the budget user or authorized budget user, the service provider, and the government's internal supervisory bodies, each operating within its respective statutory authority and responsibilities. Irregularities may constitute administrative violations, anticompetitive practices, or criminal offenses, depending on their nature and the applicable legal provisions. Importantly, not every procedural irregularity automatically constitutes a criminal act of corruption. Criminal liability must be established through proof of the constituent elements of the relevant offense and the applicable legal requirements for attributing liability to the parties involved.

The success of regional infrastructure development is determined not merely by the amount of budgetary allocations or the adoption of electronic tendering systems but, more fundamentally, by the integration of development planning, regional financial management, competitive procurement procedures, and effective legal accountability. Procurement integrity must be safeguarded from the initial identification of project requirements through the completion and utilization of the resulting infrastructure. Strengthening internal oversight, ensuring transparency in procurement information, preserving the independence of the tender evaluation process, and consistently enforcing applicable laws are essential conditions for ensuring that public expenditures translate into high-quality infrastructure that delivers tangible and sustainable benefits to local communities.

3.2. Tendering Mechanisms in the Procurement of Goods and Services for Regional Infrastructure Development

The tendering mechanism serves as both a legal and an economic instrument for ensuring that contractors are selected through objective, competitive, efficient, and

[15] Azhar et al., "Tinjauan Hukum Terhadap Persekongkolan Tender Dalam Pengadaan Barang Dan Jasa Pemerintah."

accountable procedures. Its strategic importance lies in the fact that the outcome of a tender determines which party is awarded the contractual right to implement a project financed with public funds. Accordingly, the integrity and quality of the tendering process directly affect the utilization of regional public finances, the quality of construction work, and the government's ability to meet public infrastructure needs.

The tendering process conducted by regional governments is governed by Presidential Regulation No. 16 of 2018, as amended by Presidential Regulation No. 12 of 2021 and Presidential Regulation No. 46 of 2025. Electronic procurement, implemented through the Electronic Procurement System (Sistem Pengadaan Secara Elektronik or SPSE), serves as a principal instrument for increasing transparency in procurement information, expanding access for prospective service providers, and reducing direct interactions that may create opportunities for conflicts of interest.

The implementation of the tendering process involves several government procurement officials and institutional bodies, including the Commitment-Making Official (Pejabat Pembuat Komitmen or PPK), the Procurement Selection Working Group (Kelompok Kerja Pemilihan or Pokja Pemilihan), and the Goods and Services Procurement Unit (Unit Kerja Pengadaan Barang/Jasa or UKPBJ). Their respective responsibilities and decision-making authorities are determined by applicable laws and regulations. The tendering process comprises a sequence of interrelated stages, each incorporating specific control mechanisms intended to prevent procurement irregularities and ensure procedural accountability.

The first stage involves procurement planning and the publication of the General Procurement Plan (Rencana Umum Pengadaan or RUP), as regulated under Articles 18 and 19 of the Presidential Regulation on Government Procurement of Goods and Services. At this stage, regional governments identify infrastructure needs, formulate preliminary technical specifications, estimate procurement costs, and publish procurement plans through the designated information system. Transparency from the planning stage is essential for facilitating public oversight and enabling business entities to participate in procurement opportunities. Conversely, procurement planning designed to accommodate the interests of particular contractors may result in discriminatory requirements that restrict competition and limit the participation of other qualified providers. Thus, the risk of tender manipulation does not necessarily originate during bid evaluation; it may emerge much earlier through the formulation of project requirements and technical specifications.

The second stage concerns the preparation of provider selection documents, including technical specifications or Terms of Reference (ToR), the Owner's Estimate (OE), known in Indonesia as Harga Perkiraan Sendiri (HPS), and the draft contract, which are prepared under the responsibility of the Commitment-Making Official (PPK). This stage establishes the technical and quality standards for the project, determines the

reasonableness of estimated costs, and defines the respective rights and obligations of the contracting parties. Specifications that favor particular brands, impose restrictive experience requirements, or establish disproportionate technical qualifications may be used to limit competition and create advantages for predetermined contractors. Similarly, an Owner's Estimate that is not supported by reliable market surveys and objectively justifiable cost analyses may result in unreasonable bid prices and increase the risk of inefficient public spending. Accordingly, the independence of the PPK and the accuracy and objectivity of procurement documentation are essential to maintaining the integrity of the tendering process.

The third through fifth stages involve the announcement of the tender, registration of prospective participants, the clarification process (aanwijzing), and the submission of bid documents through the Electronic Procurement System (SPSE). These procedures are intended to guarantee equal access to procurement information and provide all qualified providers with fair opportunities to compete. The use of electronic documentation and secure bid-submission mechanisms helps protect the confidentiality of submitted bids until the designated opening time. Nevertheless, electronic procurement systems cannot entirely eliminate the possibility of illicit communication among bidders, the exchange of confidential bid information, or the coordination of bidding strategies designed to create the appearance of genuine competition, commonly referred to as sham competition.[16] Therefore, technological transparency must be accompanied by effective oversight of relationships among participating bidders and rigorous scrutiny of the integrity and independence of officials responsible for administering the selection process.

The sixth stage involves bid and qualification evaluation, as stipulated in Articles 39 and 41. At this stage, the Procurement Selection Working Group (Pokja Pemilihan) examines the administrative, technical, financial, and qualification documents submitted by bidders against the evaluation methods and requirements established in the procurement documents. This stage is particularly vulnerable to abuse of authority because decisions to accept or disqualify bids directly determine the outcome of the tender. Manipulation of evaluation results, the inconsistent application of evaluation standards across bidders, or the deliberate overlooking of deficiencies in the documents submitted by particular providers can undermine the objectivity and integrity of the selection process. Accordingly, all evaluation decisions must be based on previously disclosed criteria and supported by adequate documentation and reasoned justifications capable of withstanding legal scrutiny.

The seventh and eighth stages involve the determination of the successful bidder and the submission of objections, as regulated under Articles 51 and 53. The objection

[16] Adilson Sampaio et al., *Anticompetitive Practices on Public Procurement: Evidence from Brazilian Electronic Biddings*, WIDER Working Paper no. 2022, vol. 2022, WIDER Working Paper (UNU-WIDER, 2022), https://doi.org/10.35188/UNU-WIDER/2022/173-0.

mechanism provides bidders with an opportunity to challenge selection decisions when they identify alleged procedural violations or deficiencies in the evaluation process. The ninth stage involves the issuance of the Letter of Appointment of the Goods or Services Provider (Surat Penunjukan Penyedia Barang/Jasa or SPPBJ), followed by contract execution, pursuant to Articles 52 and 54. The designation of a successful bidder is not merely an administrative determination; rather, it establishes the legal basis for creating a contractual relationship between the government and the selected provider. Where a contract award is obtained through collusion or manipulation, the resulting legal consequences may extend to the validity of administrative decisions, contractual liability, violations of competition law, and potential criminal liability, provided that the constituent elements of the relevant criminal offense are established.

These findings are consistent with Wibowo, who observed that the implementation of electronic procurement has not fully eliminated collusive practices in government construction project tenders.[17] They also corroborate the findings of Azhar, Ansori, and Syahputri, who examined bid rigging as an anticompetitive practice prohibited under Article 22 of Law No. 5 of 1999.[18] Similarly, Amanda and Nugroho demonstrated that tender collusion undermines transparency, accountability, efficiency, and fair competition.[19] The present study extends these contributions by identifying potential irregularities across all nine stages of the tendering process, thereby establishing specific points of vulnerability that require targeted and proportionate oversight.

The effectiveness of a tendering mechanism cannot be assessed solely by reference to compliance with electronic procurement procedures. It must also be evaluated in terms of the substantive integrity of competition, the independence of decision-making, and the transparency of accountability mechanisms. Transparency without objective evaluation may create the appearance of competition without ensuring genuine competitive conditions, while electronic procurement systems operating without effective institutional oversight remain vulnerable to collusion and manipulation.

Procurement oversight must be strengthened from the initial planning stage through contract execution, while the institutional functions of the Goods and Services Procurement Unit (UKPBJ) and the Government Internal Supervisory Apparatus (Aparat Pengawasan Intern Pemerintah or APIP) must be optimized. Furthermore, effective coordination between the Indonesian Competition Commission (Komisi Pengawas Persaingan Usaha or KPPU) and other law enforcement agencies is necessary

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17 Wibowo, "Persekongkolan Tender Dalam Pengadaan Barang Jasa Secara Elektronik Pada Pengadaan Pekerjaan Jasa Konstruksi (Analisis Kasus Putusan Perkara Nomor."

18 Azhar et al., "Tinjauan Hukum Terhadap Persekongkolan Tender Dalam Pengadaan Barang Dan Jasa Pemerintah."

19 Amanda and Nugroho, "Legal Analysis of Collusion in Government Goods/Services Procurement Tenders From the Perspective of Good Governance Principles in Support of Sustainable Development (Case Study No 17/Kppu-L/2022)."

to address procurement irregularities that may involve violations of competition law or criminal offenses. Ultimately, the integrity of the tendering process is essential to ensuring that regional infrastructure projects are awarded to competent providers, implemented through the responsible use of public funds, and capable of delivering optimal and sustainable benefits to the community.

3.3. Tendering Irregularities in Regional Infrastructure Projects and Their Implications for Criminal Law Enforcement in Indonesia

The tendering process serves not merely as an administrative mechanism for selecting contractors but also as an instrument for protecting public funds and maintaining public trust. From a philosophical perspective, this function can be understood through the Public Trust Doctrine, which holds that public officials administer state resources under a fiduciary obligation to safeguard the public interest and ensure that such resources are used for the common good.[20] Tender manipulation intended to secure personal or collective benefits constitutes more than a procedural deviation from procurement regulations. It represents a fundamental distortion of the purpose of public budgeting, transforming public resources intended to promote social welfare into instruments for obtaining illicit gains.

An examination of the characteristics of procurement irregularities reveals that bid rigging generally occurs through two principal forms: horizontal collusion and vertical collusion. Horizontal collusion arises when multiple bidders coordinate their actions to predetermine the successful bidder, submit complementary or cover bids, or manipulate bid prices, thereby reducing genuine competition to a mere procedural formality. By contrast, vertical collusion involves coordination between bidders and government officials. Such practices may include interference in the preparation of technical specifications, the disclosure of confidential bidding information, manipulation of evaluation results, or the payment of kickbacks to secure a contract award for a particular company.

These two forms of collusion may intersect and develop into a systematic pattern of procurement manipulation. In regional infrastructure projects, such practices can result in the selection of unqualified contractors, inflated project costs, substandard construction quality, and financial losses to the state or regional governments. These circumstances demonstrate that the central challenge for law enforcement is not simply identifying procedural violations but establishing the relationship between the conduct of the parties involved, their underlying objectives, the benefits obtained, and the resulting legal consequences. Such an approach is essential to distinguishing isolated

[20] Raphael D. Sagarin and Mary Turnipseed, "The Public Trust Doctrine: Where Ecology Meets Natural Resources Management," *Annual Review of Environment and Resources* 37, no. 1 (2012): 473–96, https://doi.org/10.1146/annurev-environ-031411-165249.

procedural irregularities from coordinated conduct that may constitute an administrative violation, an anticompetitive practice, or a criminal offense.

Not every administrative irregularity occurring during the tendering process can automatically be classified as an act of corruption. The determination of criminal liability must be based on proof of the constituent elements of the relevant offense, as prescribed under Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001. Article 2(1) and Article 3 are particularly relevant to examining unlawful conduct and the abuse of authority, subject to the distinct elements and requirements of each provision. Furthermore, Articles 5, 11, and 12 provide legal grounds for examining bribery-related conduct involving the offering, giving, or acceptance of improper benefits in connection with public procurement. Accordingly, establishing criminal liability requires an examination of the specific conduct involved, the legal authority or obligations allegedly violated, the applicable form of culpability, the causal relationship where required, and the resulting consequences, in accordance with the statutory elements of the offense charged.

The element of *mens rea*, or criminal intent, is particularly important in distinguishing administrative maladministration from conduct that may give rise to criminal liability. Administrative irregularities may result from negligence, a failure to exercise due care, or differences in interpreting procurement regulations. By contrast, conduct involving a deliberate intention to obtain an unlawful benefit for oneself, another individual, or a corporation, or to misuse official authority for improper purposes, may satisfy the culpability requirements of a relevant criminal offense. Nevertheless, the existence of criminal intent cannot be established solely on the basis of an individual's official position or the occurrence of procedural violations. Rather, it must be substantiated through relevant evidence, including communications between the parties, agreements to manipulate the tender, financial transactions, conflicts of interest, falsification or manipulation of procurement documents, and other concrete actions demonstrating deliberate misconduct.[21] This evidentiary approach is essential to preventing the criminalization of mere administrative errors while ensuring that individuals who deliberately manipulate public procurement processes cannot evade criminal accountability by invoking procedural formalities.

Beyond irregularities occurring during the contractor selection process, the risk of corruption may persist into the post-award stage, particularly after the successful bidder has been selected and the contract has been executed. Irregularities at this stage may include inflated prices during contract implementation, unauthorized adjustments to work volumes that do not reflect actual project conditions, payments for incomplete

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[21] Dian Aryani Kusady, "Non-Compete Clauses in Dealer Agreements and Vertical Integration: A Doctrinal Analysis of the Normative Interaction Between Article 14 and Article 19 of Indonesian Competition Law in Light of Kppu Decision No. 18/Kppu-L/2024 (Sany Truck Case)," *Multidiciplinary Output Research For Actual and International Issue* 6, no. 3 (2026): 3673–88, https://doi.org/10.5281/ZENODO.20706908.

work, the use of materials that fail to meet contractual specifications, and the procurement of fictitious goods or services. Other forms of misconduct may involve improper direct appointments, the artificial division of procurement packages to circumvent competitive tendering requirements, the payment of bribes or illicit gratuities, and collusion with project supervisors or auditors.

The selection of a winning bidder through an administratively valid procedure does not, in itself, guarantee that subsequent contract implementation will be free from criminal conduct. Accordingly, procurement oversight and law enforcement must extend across the entire procurement cycle, encompassing planning, contractor selection, contract implementation, payment, and the final acceptance and handover of completed work. This broader approach also demonstrates that criminal liability may extend beyond officials responsible for administering the tendering process to include service providers, corporate executives, and other parties who knowingly participate in or contribute to the commission of criminal offenses, subject to the applicable legal requirements.

Between January and December 2023, the Indonesian Attorney General's Office reported estimated asset recovery during the investigation and prosecution of corruption and money laundering cases amounting to IDR 26,416,510,499,878. Furthermore, pursuant to final and legally binding court decisions, the value of assets subject to forfeiture reached IDR 156,745,494,830, seized funds totaled IDR 191,456,153,690, fines amounted to IDR 791,539,388,328.32, and restitution payments to compensate for state losses reached IDR 23,300,070,128,088.20. Meanwhile, the amounts actually recovered through enforcement included forfeited assets valued at IDR 2,026,288,324,440, seized funds totaling IDR 187,633,835,107.07, fines amounting to IDR 36,170,986,551.32, and restitution payments to recover state losses totaling IDR 2,240,132,022,234.31.

Table 1. *Non-Tax State Revenue Generated from the Enforcement of Corruption Cases in 2023*

Revenue Category	Target (IDR)	Actual Revenue (IDR)
Seized funds	60,526,316,000	48,163,407,807
Restitution (recovery of state losses)	176,340,096,000	2,203,632,858,502
Proceeds from the sale of forfeited assets	58,758,850,000	1,227,606,964,387
Fines imposed in corruption cases	66,217,855,000	24,098,455,091
Recovery of state funds	8,785,142,000	75,822,458,586
Total	**370,628,259,000**	**3,579,324,144,373**

Source: 2023 Annual Report of the Attorney General's Office of the Republic of Indonesia, based on data presented in this study.

Criminal law enforcement is not exclusively concerned with punishing offenders; it also encompasses the recovery of state assets through asset seizure, restitution, the imposition of fines, and the enforcement of asset forfeiture orders. The realization of

Non-Tax State Revenue (Penerimaan Negara Bukan Pajak or PNBP), amounting to approximately IDR 3.57 trillion and substantially exceeding the target of IDR 370.63 billion, demonstrates the significant contribution of asset recovery mechanisms to state revenue. Nevertheless, these figures represent aggregate data from corruption and money laundering cases handled nationwide and should not be interpreted as reflecting losses or recoveries specifically attributable to irregularities in regional infrastructure procurement. Accordingly, the data provide an empirical indication of the capacity and importance of criminal law enforcement and asset recovery in safeguarding state finances, rather than evidence that the entire amount originated from corruption in infrastructure tendering.

The distinction between individual and corporate criminal liability is essential. Government officials may be held criminally liable if evidence establishes that they abused their authority or engaged in conduct satisfying the elements of a criminal offense. Similarly, service providers may incur criminal liability if they are proven to have intentionally participated in collusive arrangements, offered bribes, falsified or manipulated procurement documents, or engaged in corrupt practices. Corporations, in turn, may be held criminally liable when an offense is committed within the scope of their business activities and the applicable statutory requirements for corporate criminal liability are satisfied. Accordingly, the evidentiary process should not be limited to identifying the individual who formally signed procurement documents. Rather, investigations must trace the chain of responsibility to identify those who issued instructions, exercised decision-making control, obtained benefits, or derived proceeds from the criminal conduct.

These findings are consistent with Ferdinand, Sunarto DM, and Shafira, who examined the relationship between bid rigging and corruption, particularly in relation to the division of law enforcement authority between the Indonesian Competition Commission (Komisi Pengawas Persaingan Usaha or KPPU) and the Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK).[22] The present study also reinforces the findings of Rahman and Sinaga concerning the potential criminal liability of individuals and business entities involved in the unauthorized use of another party's corporate identity in procurement activities.[23] Furthermore, Pambudi and Yusuf demonstrate that intervention by regional heads in procurement processes may create power dynamics that facilitate bribery and the acceptance of illicit gratuities.[24] Unlike these earlier studies, the present research integrates procurement irregularities, from contractor selection through contract implementation, with the legal

[22] Ferdinand et al., "Penegakan Hukum Dalam Pengadaan Barang Dan Jasa Pemerintah Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dan Komisi Pemberantasan Korupsi (KPK)."

[23] Rahman and Sinaga, "Pertanggungjawaban Pidana Korupsi Pengadaan Barang Dan Jasa Pemerintah Menggunakan Perusahaan Orang Lain."

[24] Pambudi and Yusuf, "Analisis Yuridis Tindak Pidana Korupsi Suap Pengadaan Barang Dan Jasa Di Kabupaten Purbalingga."

characterization of unlawful conduct, the establishment of mens rea (criminal intent), the attribution of individual and corporate criminal liability, and the recovery of state financial losses.

The tendering process for regional infrastructure projects has significant implications for the effectiveness of criminal law enforcement because procurement irregularities may form part of a broader pattern of conduct that undermines the public interest. Law enforcement efforts must extend beyond establishing procedural violations to demonstrating the relationship between unlawful conduct, the requisite intent or form of culpability, abuse of authority, illicit benefits, and, where required by the applicable offense, resulting state financial losses. Strengthening coordination among the KPPU, KPK, Public Prosecution Service, National Police, and government internal supervisory bodies, within their respective statutory mandates, is therefore essential. These efforts should be complemented by the use of investigative audits, financial transaction tracing, digital forensics, and effective asset recovery mechanisms. Ultimately, the integrity of regional infrastructure procurement depends not merely on administrative compliance but also on the capacity of the legal system to detect irregularities, establish criminal responsibility through sufficient evidence, and impose proportionate legal consequences on the parties involved.

4. CONCLUSION

The successful implementation of regional infrastructure development depends on the integration of development planning, budgeting, procurement implementation, and accountability, guided by the principles of transparency, efficiency, fair competition, and public accountability. Although electronic tendering through the Electronic Procurement System (SPSE) has enhanced procedural transparency, it has not entirely eliminated collusion, manipulation of bid evaluations, intervention by public officials, or irregularities during contract implementation. Procurement irregularities that satisfy the constituent elements of criminal offenses may give rise to criminal liability for both individuals and corporations. Procurement integrity constitutes a fundamental prerequisite for safeguarding state finances and protecting the public interest.

Theoretically, this study contributes to the development of legal scholarship on public procurement governance and criminal liability by establishing the relationship between procurement irregularities, unlawful conduct, criminal intent, and the attribution of individual and corporate responsibility. Practically, its findings provide a basis for strengthening procurement oversight and improving the effectiveness of criminal law enforcement throughout the procurement cycle. Nevertheless, the study is limited by its reliance on secondary legal materials and its normative legal research approach, which does not directly examine the implementation of procurement oversight mechanisms in practice. Therefore, the government should strengthen

supervision at every stage of procurement, improve transparency through digital systems, and enhance coordination among relevant law enforcement and oversight institutions. Future research should adopt empirical and comparative approaches to investigate the effectiveness of procurement oversight mechanisms and examine patterns of individual and corporate criminal liability in regional infrastructure projects.

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