

ABSTRAK

Sektor pengadaan barang/jasa pemerintah merupakan salah satu area paling rawan korupsi di Indonesia, dengan KPK melaporkan hampir 90% perkara korupsi berkaitan dengan sektor ini. Pengaturan hukum pengadaan berlandaskan Peraturan Presiden Nomor 16 Tahun 2018 jo. Peraturan Presiden Nomor 12 Tahun 2021 untuk aspek administratif, dan Undang-Undang Nomor 31 Tahun 1999 jo. Undang-Undang Nomor 20 Tahun 2001 untuk aspek tindak pidana korupsi. Ketidakjelasan batas antara kedua rezim tersebut menimbulkan ketidakseragaman persepsi aparat penegak hukum (APH) Hakim, Jaksa, Penyidik, dan Auditor dalam menentukan apakah suatu penyimpangan pengadaan termasuk kesalahan administratif atau tindak pidana korupsi.

Penelitian ini menggunakan metode hukum empiris dengan pendekatan sosio-legal, dilaksanakan di empat kabupaten di wilayah Madura, yaitu Bangkalan, Sampang, Pamekasan, dan Sumenep. Data primer diperoleh melalui wawancara mendalam dengan Hakim, Jaksa, Penyidik, dan Auditor, sedangkan data sekunder diperoleh melalui studi kepustakaan atas peraturan perundang-undangan, literatur hukum, dan hasil penelitian terdahulu. Data dianalisis secara deskriptif kualitatif dengan pendekatan *Economic Analysis of Law* (EAL).

Hasil penelitian menunjukkan bahwa persepsi aparat penegak hukum dalam memaknai regulasi pengadaan barang/jasa pemerintah terkait tindak pidana korupsi adalah bahwa seluruh APH sepakat pembuktian *mens rea* merupakan batas fundamental antara kesalahan administratif dan tindak pidana korupsi, namun perbedaan nyata muncul pada standar pembuktian, ambang batas nilai kerugian, dan mekanisme koordinasi antarlembaga, bahkan antarkabupaten dalam institusi yang sama. Perbedaan persepsi ini berimplikasi pada ketidakpastian hukum dan tingginya biaya transaksi. Penelitian merekomendasikan harmonisasi standar nasional pembedaan maladministrasi dan tindak pidana korupsi serta penguatan koordinasi APIP-APH secara sistematis.

Kata Kunci: Aparat Penegak Hukum, Pengadaan Barang/Jasa Pemerintah, Tindak Pidana Korupsi, Kepastian Hukum, *Economic Analysis of Law*.

ABSTRACT

The government procurement sector is one of the most corruption-prone areas in Indonesia, with the KPK reporting that nearly 90% of corruption cases are linked to this sector. Procurement law is grounded in Presidential Regulation No. 16 of 2018 as amended by Presidential Regulation No. 12 of 2021 for its administrative aspects, and Law No. 31 of 1999 as amended by Law No. 20 of 2001 for its criminal aspects. The unclear boundary between these two regimes gives rise to inconsistent perceptions among law enforcement authorities (LEAs) judges, prosecutors, investigators, and auditors in determining whether a procurement irregularity constitutes an administrative error or a criminal corruption offense

This study employs an empirical legal method with a socio-legal approach, conducted in four regencies in Madura: Bangkalan, Sampang, Pamekasan, and Sumenep. Primary data were obtained through in-depth interviews with judges, prosecutors, investigators, and auditors, while secondary data were obtained through a literature study of statutory regulations, legal literature, and prior research. Data were analyzed descriptively and qualitatively using an Economic Analysis of Law (EAL) approach.

The LEAs' perception in interpreting procurement regulation in relation to criminal corruption is that all LEAs agree that proof of mens rea is the fundamental boundary between administrative error and criminal corruption, yet real differences emerge in standards of proof, loss thresholds, and inter-agency coordination mechanisms, even across regencies within the same institution. These differing perceptions have implications for legal uncertainty and elevated transaction costs. The study recommends harmonizing national standards distinguishing maladministration from criminal corruption and systematically strengthening APIP-APH coordination.

Keywords: *Law Enforcement Authorities, Government Procurement, Corruption Offenses, Legal Certainty, Economic Analysis of Law.*