



Law Enforcement Against Abuse of Authority in the Procurement of Goods and Services in Jayapura City

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Abstract

This research, entitled "Law enforcement against abuse of authority in the procurement of goods and services in Jayapura City", was conducted with the aim of analyzing, explaining, the legal position of officials making commitments to the procurement of goods and services and law enforcement against abuse of authority in the procurement of goods and services. This study uses an empirical juridical approach, because it does not involve mere normative aspects but also examines how the law is real in people's lives. The results reveal that the fact that the legal position of the committees is as users of goods and services and can be interpreted as a function and as an organization, as a function, namely carrying out governmental duties and the government as an organization, the government assisted by the implementation of government tasks. The function of this government as a whole consists of actions, decisions, and provisions which are legal actions and real actions. Abuse of authority in the procurement of goods and services by government agencies is a crime, where the enforcement of the criminal law is part of criminal politics as one of the overall crime prevention policies. Therefore, the role of law enforcers must be able to ensure a balance between a sense of justice, benefit and legal concern.

Keywords: *Abuse of Authority; Procurement of Goods and Services; Jayapura City*

1. Introduction

In the implementation of state life, the government is always required to advance the general welfare. To carry out this obligation, the government has an obligation to provide for the needs of the people in various forms, both in the form of goods, services and infrastructure development. On the other hand, the government also needs these goods and services in carrying out government activities. Meeting the needs of goods and services is an important part of government administration. In relation to the fulfillment of this need, it becomes a routine practice (*routine practice*). The implementation of commercial transactions by both the central and local governments has therefore become a norm.¹

With Involves self to deep one transaction Commercial, government Tying self at one relationship Contractual. Kind relationship Contractual that Formed also Diverse. If views from side

¹ Hugh Collins. (1999). *Regulating Contracts*. Oxford University Press. London. p. 3.

budget, contract that Was by government that at Essentially get Grouped become two kind, that is contract that Is Spending and contract that bring acceptance income.² Procurement thing and service by government (*government procurement*) classified as at kind that first, While kind that second Include Various kind contract, Including exchange Exchange, rent rent, Sales state assets included stock, Publishing bond or Loan outside land (*loan agreement*).

The procurement of goods and services is carried out by the government in carrying out the functions of state administration. In this connection, the government involves itself in a contractual relationship with the private sector, namely by binding itself into a contract for the procurement of goods and services. The contractual relationship established by the government is also related to its obligation to provide, build and maintain *public utilities*. A contract formed is essentially a commercial contract even if it contains elements of public law. On the one hand its legal relationship is formed due to contracts, but on the other hand its content is loaded with rules for providers of goods and services.³⁴

Government needs met through procurement from the private sector include very large quantities and in a variety of qualities. Like Turpin, Sudjan views that procurement contracts have an important meaning in national economic development. He further stated:

*"It is not only by reason of its magnitude that government procurement is important to the economy, but a substantial part of the procurement is so oriented as to speed up the development of crucial sectors of industry which is a matter of national importance. It would not be wrong to say that government contracting is so planned as to be avant-garde of technological development of the country. While it can be asserted that many industries are dependent on government procurement, it would not be wrong to say, that the government also in its turns is dependent upon industry for meeting its requirements."*⁵

The procurement of goods and services by the government involves a huge amount of money. That is why it is said that the government is *the largest buyer* in a country. In this connection, the government has a responsibility so that policies in the field of procurement are able to support economic goals and set instruments in order to achieve these goals. One strategy that can be used by the government in relation to this procurement field is to make policies to empower small, medium and micro *enterprises (SMME'S)* for example by establishing a relatively easier procurement system, especially in the tender process.

The source of financing in procurement contracts generally comes from state finances in this case the APBN / APBD, in addition to funds derived from foreign loans / grants (PHLN). That these funds are widely perverted in procurement projects for goods and services is common knowledge. This phenomenon later became the reason for the World Bank in supporting government programs in various countries in the fight against corruption. And the results of research conducted by the World Bank together with the *Corruption and Fraud Investigations Unit (CFIU)* in November 2000, found the types of irregularities in procurement contracts funded by the World Bank, namely:

1. Contractual irregularities and violations of World Bank procurement guidelines;
2. Tender cheating;
3. Collusion by tenderers;
4. Misappropriation of tenders;
5. Misappropriation in the contract;

² Article 11 Law Number 17 years 2003 about Finance Country.

³ Colin Turpin. (1972). *Government Contracts*. Penguin Books. Harmonds. p. 9.

⁴ Term contract Commercial (commercial contracts) Used to distinguishing them with contract user (consumer contracts). 1994. Check Principles of International Commercial Contracts. UNIDROIT. Rome. p. 2.

⁵ M.A. Sudjan. (2003). *Law Relating to Government Contracts*. Universal Law Publishing Co., Pvt., Ltd. Delhi. p. 533.

6. Misappropriation in audit checks;
7. Product replacement;
8. Defects in the provision of prices or goods;
9. Impropriety in the application of the cost of work costs;
10. Bribery and receipt of commissions;
11. Misuse of World Bank funds or positions;
12. Fictitious journey;
13. Theft and embezzlement;
14. Rewards; and
15. Squandering of World Bank funds.

As a public law actor (public *actor*) state administrative body or official has the privilege and authority to use and exercise public power (public *authority*, *openbaar gezag*). Based on the intended use of public power, state administrative bodies or officials can unilaterally establish various regulations and decisions (*beschikkingen*) that bind citizens (together with civil legal entities) and the laying down of certain rights and obligations and therefore cause legal consequences for them. Of course, there are times when a citizen or legal entity does not like and is reluctant to obey a rule / decision that is binding on it, but he is still required to respect and obey the provisions of the regulation / decision even if necessary its implementation can be forced through the intervention of law enforcement officers (officials) such as police, prosecutors, and judges.

In the perspective of public law the state is the organization of office. Among these state offices there are government posts, which are the object of administrative law. Although this government position is attached to rights and obligations or authorized to take legal action, it cannot act alone. The office can perform legal acts, which are carried out through representatives (*vertegenwoordiging*) i.e. officials (*ambtsdrager*), who act on behalf of the office. According to P. Nicolai and friends mentioned that: "*Een bevoegdheid die aan een bestuursorgaan is toegekend, moet door mensen (reële personen) worden uitgeoefend. De handen en voeten van het bestuursorgaan zijn de handen en voeten van degene (n) die is/zijn aangewezen om de functie van orgaan uit te oefenen de ambtsdrager (s)*" (The authority given to the organs of government must be exercised by man. The energy and mind of the organs of government are the energies and minds of those appointed to carry out the functions of those organs, namely the officials).⁶

Regarding the government's position as a representative of public legal entities in the field of private law, Philipus M. Hadjon, who mentioned that: "In addition to legal ⁷*persons (legal persons, rechtspersoon)*, state administrative bodies or officials bind themselves to various civil agreements, such as sale and purchase agreements, lease agreements, contracting agreements, and even gifts. Here, state administrative bodies or officials carry out the role of civil law actors (*civil actors*). Legal acts carried out by state administrative bodies or officials are not regulated based on public law, but are based on civil law laws and regulations (*privaatrecht*), as is customary in the laws and regulations underlying civil law acts carried out by a citizen and a civil legal entity".

When the government acts in the civil field and is subject to civil law regulations, the government acts as a representative of a legal entity, not a representative of the office. Therefore, the government's position in civil law is no different from that of a private person or legal entity, does not have a privileged position, and can be a party to a civil dispute with the same position as a person or civil legal entity (*equality before the law*) in the general judiciary.

The participation of the government in various civil law actions also affects the civil law relationship that takes place in the general public, binding agreements entered into by the government

⁶ Ridwan H.R. (2003). Law Administration Country. UII Press. Yogyakarta. pp. 55-56.

⁷ Philipus M. Hadjon, Op Cit. p. 166.

with a person or civil legal entity. It is not impossible that various provisions of public law, in the form of state administrative law laws and regulations, will infiltrate and influence civil law laws and regulations. There are several laws and regulations that specifically regulate certain procedures that must be taken in connection with civil law actions carried out by the government.

In general, the existence of a civil relationship by binding oneself in agreements is based on Book III of the Civil Code which lays down the principles of contract law. In the procurement of goods and services, the agreement that occurs in civil relations between the government and private parties is based on Presidential Regulation Number 172 of 2014 concerning Government Procurement of Goods and Services.

In the procurement of government goods and services, in addition to the above laws and regulations, also in the procurement of government goods and services based on Law Number 18 of 1999 concerning Construction Services; Law Number 17 of 2003 concerning State Finance; Law Number 1 of 2004 concerning the State Treasury; and Government Regulation Number 58 of 2005 concerning Regional Financial Management.

The unavailability of legal instruments that specifically regulate commercial contracts by the government is also a factor in the weak procurement system of goods and services. Theoretically, there are various legal issues regarding procurement by the government that can be raised for further study.

The focus of this paper is to analyze the legal position of commitment-making officials in the procurement of goods and services, and law enforcement against abuse of authority in the procurement of goods and services.

2. Research Methods

The type of research used is hukum empiricalk research, because it is hindered by the idea that the law is inseparable from the life of the community in the form of values and attitudes / behaviors carried out (law is not autonomous). So that in the view of empirical legal science, the study of law does not only concern normative aspects, but law can be seen from its empirical aspects in people's lives.

To obtain the data needed in this study, the following data collection techniques were used:

a. Document Study

That is to obtain various documents related to the procurement of goods and services of government agencies.

b. Field Studies

The interviews in this study were conducted with the consideration that through interviews almost all the data and information needed in this study can be fulfilled because the interview is flexible. Interviews with respondents were conducted in a freely structured manner and in an atmosphere of openness.

As an empirical legal research, the data analysis technique used in this study is a descriptive analysis technique. Descriptive analysis techniques can be operationalized by means after field data are obtained with interview techniques, then arranged and categorized according to patterns and themes as long as they are interpreted and analyzed. Descriptive analysis ensures itself in the problems of the present that are actual, then the existing data is inferred, compiled, explained and analyzed by making abstractions. Analysis of field data is prepared to display an explanation of the meaning and relationship between the variables of procurement conditions and services with its main issues, then concluded.

3. Legal Position of the Committing Officer of the Procurement of Goods and Services

Government can be interpreted as a "function" and as an "organization". As a function, namely the activity of governing, is to carry out the duties of government, and government as an organization, a government that is burdened with the implementation of government tasks.

Based on the search of library materials, government can be understood through two senses, on the one hand in the sense of "government functions" (governing activities), on the other hand in the sense of "organization of government" (collection of government units). This function of government as a whole consists of a wide variety of governmental actions, decisions, statutes of a general nature, civil law actions and concrete actions. Only legislation and political and judicial rulings by judges are not included.

If understood in the narrow sense "government" is interpreted as an organ / body / institution that is also a tool or apparatus that performs executive functions, while understood from a broad meaning, then "government" includes legislative, executive and judicial powers. Thus, to talk about government is to be concerned with the organization and function of government. The term government referred to in this writing is limited to government in a narrow sense, namely as an organ / body or as a function that runs the government, which has a legal position as a government in the contract of procurement of goods and services.

Although there are legal experts who say that the exercise of power consists of further laws and regulations, namely general regulations on government, the regulations of the lower ruling party cannot be categorized in public law. This can also be seen from another angle. However, this opinion also needs further consideration and thought, that taking into account Law Number 10 of 2004 concerning the Establishment of Laws and Regulations allows government functions to form general laws, such as Government Regulations, Presidential Regulations (including Presidential Regulation Number 54 of 2010), Regional Head Regulations and other regulations to regulate the public interest in outside local laws and regulations.

Other functions of government, namely related to regulatory functions, service functions, empowerment functions and development functions can be explained as follows:

1. The regulatory function, commonly known as the regulatory function in all its forms, is intended as an effort to create appropriate conditions so that it becomes conducive to the continuation of various activities, in addition to the creation of a good social order in various people's lives.
2. The function of service, will lead to justice in society.
3. The empowerment function will encourage community independence and development to create prosperity in society.

These three functions are government tasks aimed at the public interest (*public service*) carried out by government tools. Thus, in general the functions of government carry out all activities outside the functions carried out by the legislature and judicial bodies under binding provisions and authorities.

Judging from the work done by the government apparatus, the functions of government have a very wide scope, even more so in the concept of the welfare state. In the welfare state, the basic concept of governance is focused on the realization of general welfare, because of this, government functions include, among others, planning functions, regulatory functions, governance functions, service functions, empowerment and development functions, functions of organizing state enterprises carried out by agencies, state institutions and companies, and the function of organizing general welfare.

In the perspective of public law the state is the organization of office. Among these state posts there are government posts, which become the object of state administrative law. There are several characteristics found in the position or organ of government, namely:

1. The organ of government exercises authority on its own behalf and responsibility, which in the modern sense is laid down as political and staffing responsibility or the government's own responsibility before the Judge. The organ of government is the bearer of the obligation of responsibility.
2. The exercise of authority in order to maintain and maintain the norms of administrative law, the organ of government can act as a party to the defendant in judicial proceedings, that is, in the event of any objection, appeal or resistance.
3. In addition to being a party to a defendant, the organ of government can also appear to be a disgruntled party, meaning as a plaintiff.
4. In principle the organs of government do not have their own property. The organ of government is a part (tool) of a legal entity according to private law with its wealth. The post of Regent or Mayor is the organs of the general body of the "County". It is under the rule of law that it is this general entity that can own property, not its organs of government.

Although this government position is attached to rights and obligations or authorized to take legal action, it cannot act alone. The office can perform legal acts, which are carried out through representatives, namely officials.

Between positions and officials have a close relationship, but between the two actually have different or separate legal positions and are regulated by different laws. Offices are governed by constitutional law and administrative law, while officials are governed by and subject to personnel laws. In addition, it appears that the official presents himself in two personalities, namely as a person and as the personification of an organ, which means that in addition to being regulated and subject to personnel law, he is also subject to special civil law in his capacity as an individual or a person. The legal action of government office is carried out by the government. Thus, the legal position of government under public law is that of a representative of a government office. Likewise, the legal position of the government in the public aspect in the procurement contract for goods and services based on Presidential Regulation Number 54 of 2010.

Furthermore, that the state in the perspective of civil law is as a public legal entity. If under public law the state is an organization of offices or a collection of state organs, in which there are organs of government, then under civil law, the state is a collection of legal entities, in which there are governing bodies.

The legal action of a governing body is carried out by the government just as humans and private legal entities are involved in the traffic of legal associations. The government sells and buys, rents and rents, mortgages and mortgages, enters into agreements, and has property rights. In its specific position, the government uses various provisions of private law in its associations. Sometimes they engage in civil relations traffic in the same position as private parties, without their specific standing as a government and who protect the public interest in the event of a dispute.

When the government acts in the civil field and is subject to civil law regulations, the government acts as a representative of a legal entity, not a representative of the office. Therefore, the government's position in civil law associations is no different from that of a private person or legal entity, does not have a privileged position, and can be a party to civil disputes with the same position as a person or civil legal entity in the general judiciary.

In the procurement of government goods and services based on Presidential Regulation Number 172 of 2014, the government has carried out legal actions not only from the public aspect but also from the civil aspect, namely the actions of legal subjects aimed at causing legal consequences that are deliberately desired by the legal subjects, in principle the legal consequences are determined also by law. The elements of a government's legal act are a will and a statement of will deliberately aimed at causing legal repercussions. Legal acts can be both active and passive. Even if a person does not do, but if from

his passive attitude it can be interpreted to contain a statement of will to cause legal consequences, then the passive act is also a legal act. Deeds become legal acts.

The government is a subject of law that is a supporter of rights and obligations. The supporter of those rights and obligations can be called a person as well as a contracting service provider, and in a legal sense a "person" consists of a personal element and a legal entity. Legal entities (including government agencies) are legal subjects in a juridical sense and have rights and obligations in procurement contracts for goods and services based on Presidential Regulation Number 172 of 2014.

In the implementation of government procurement contracts based on Presidential Regulation Number 172 of 2014, there are actions of other legal subjects that by law are connected with legal consequences, no matter whether the occurrence of legal consequences is desired or not desired by the parties concerned. The legal consequences that arise in no way depend on the will of the perpetrator. Some of these other acts are allowed and some are unlawful.

4. Law Enforcement Against Abuse of Authority in the Procurement of Goods and Services

4.1. Criminal Liability

Criminal acts and criminal liability are two very, very broad terms in the study of criminal law. Therefore, the author limits it only to know the limit, when is someone's act/action a criminal act? Although, according to van Hattum, between the deed and the person who committed the deed there is a close relationship and it is impossible to separate.⁸

Regarding criminal acts/ acts, Roeslan Saleh said that the acts included in the formulation of delict are a group of acts that are generally threatened with criminality. The term criminal act is a translation of⁹ *strafbaar feit* or *delict*, but in various applicable laws it is not uniform in translating it, such as criminal events, criminal acts and so on. According to Simmons, the element of criminal acts^{10,11} (*strafbaar feit*) is divided into two elements, namely:

1. Objective elements, which consist of:
 - a. People's deeds.
 - b. The result of the deed.
 - c. Certain circumstances that accompany the deed.
2. Subjective element, which consists of:
 - a. People who can afford to take responsibility
 - b. There are mistakes that accompany actions.

Meanwhile, according to Molejatno, the elements of a criminal act include:¹²

1. Elements of formil:
 - a. Human deeds.
 - b. The act is prohibited by a rule of law.
 - c. The ban is accompanied by threats (sanctions) in the form of certain criminal penalties.
 - d. The ban was violated

⁸ Roeslan Pious. (1983). Action Punishment and Liability Answer Punishment. Jakarta: Script New. p.23.

⁹ Ibid. p. 57.

¹⁰ Tolib Setiady. (2010). Points Law Intensifiers Indonesian Bandung: Alfabeta. p.10.

¹¹ Sudarto. (1990). Law Punishment I. Semarang: Foundation Sudarto. p.41.

¹² Tolib Setiady. Op.Cit. p.10.

2. Material elements

The act must be unlawful, that is, it must be truly perceived by the community as an inappropriate act.

In the perspective and teachings of criminal law, every act committed and fulfilling the elements of a *criminal act will* always be required to be held accountable in the form of imposition of criminal sanctions as long as it meets the *thesyarat* to be accountable. Criminal liability is seen as existing, unless there are reasons for criminal removal as stated. Except, there are reasons that eliminate the unlawful nature of the criminal act (justifying reasons) and reasons that eliminate guilt (forgiving reasons). This opinion is in line with Mezger's opinion which states that everything that receives attention and is interfered with by criminal law is deeds.¹³¹⁴

The imposition of a criminal sanction is a reaction to a delict in the form of a delict deliberately inflicted by the state on the maker of the offense for an act that has fulfilled the elements of a criminal act. This is a dimension of criminal liability, which in the theoretical framework there are two teachings, namely monoistic and dualistic teachings. According to Simons, monoistic teachings define a criminal act as an act that by law is threatened with law, contrary to the law, committed by a person who is guilty, and that person is held responsible for his actions. By mixing the elements of the act and the element of the maker, it can be said that the criminal act is united with the conditions of criminal conviction, so that it seems as if it is considered that if a criminal act occurs, then the perpetrator can definitely be convicted.¹⁵¹⁶

Meanwhile, the dualistic teaching is of the view that criminal acts only concern the issue of deeds. The issue of whether the person who performs is then accounted for, is another matter. This is based on the principle of *geen straf zander schuld*.¹⁷ The attention of criminal law in this case is divided in a balanced way, between the issue of the deed (criminal act) and the person who did it (criminal liability). This dualistic view is known as criminal law oriented towards deeds and their makers (*daad en dader strafrecht*).¹⁸

Punishment as the basis of the anti-corruption paradigm remains oriented towards three major groups of criminal objectives, namely the absolute theory or theory of retribution (*per geldings theorien*), the relative theory or theory of purpose (*doel theorien*), and the theory of combining (*verenigings theorien*).¹⁹

In particular, Herbert L. Packer stated that there are two conceptual views, each of which has different moral implications for each other, namely the *retributive* view and the *utilitarian view*.²⁰ The retributive view presupposes punishment as a negative reward for deviant behavior carried out by citizens of society, so this view sees punishment only as retribution for mistakes committed on the basis of their respective moral responsibilities. This view is said to be *backward-looking*.

Meanwhile, the *utilitarian* view looks at punishment in terms of its benefits or usefulness where what is seen is the situation or circumstances that it wants to produce with the imposition of the crime. On the one hand, sentencing is intended to correct the attitude or behavior of the convict. On the other hand,

¹³ Chairul Huda. Op.Cit. h.62.

¹⁴ Roeslan Pious. (1979). Some Note About Action and Error Deep Law Punishment. Jakarta: Script New. p.14.

¹⁵ Roeslan Pious. (1983). Stelsel Punishment Indonesian. Jakarta: Script New. p.9.

¹⁶ Rantawan Djanim. 2006. Corporation and Accountability Punishment. Semarang: BP UNDIP. p.60

¹⁷ Chairul Huda. Op. Cit. p. 6.

¹⁸ Chairul Huda. (2005). Basics Theory and Philosophy Design Book Law Law Punishment. Material Delivered on Dies Natalis XVII and Graduation IX STHI Jakarta. pp.2-3.

¹⁹ Bambang Poernomo. Op.Cit. p. 27.

²⁰ ELSAM. (2005). Conviction, Punishment and Action deep Design Criminal Code. Position Paper Advocacy Criminal Code Bill 2005. Jakarta: ELSAM. Cet. First. p.10.

the conviction was also intended to prevent others from possibly committing similar acts. This view is said to be *forward-looking* and at the same time has a deterrent nature.

Corruption will always be related to power. It is like two sides of one coin, corruption always accompanies the journey of power and vice versa power is the entrance to corruption. This reality is reminiscent of the opinion of the Professor of Modern History of the University of Cambridge-England, who lived in the 19th century, Lord Acton (John Emerich Edward Delberg-Acton) in his letter to Bishop Mandell Creighton, that power²¹ *tends to corrupt and absolute power corrupts absolutely*. That is, power tends to corruption and absolute power tends to absolute corruption. In this regard, Miriam Budiardjo also said that humans who have power tend to abuse it. However, humans who have absolute power will definitely abuse it. Likewise, with Indriyanto Seno Adji who said that the characteristics of corruption crimes are generally related to the deviant and despicable use of power. This close relationship between corruption and power was also alluded to by Adami Chazawi, who stated that corrupt practices are increasingly sophisticated with very neat public policies, so that the unlawful nature of the law becomes invisible.^{22,23,24}

Similarly, Sutherland also stated that every corruption case must involve officials who occupy certain positions within an agency. Because of their position, they are people who are often respected in society. And because of that position, the crimes committed are not just crimes of a²⁵ *street crime*, but crimes with a more complicated mode with a greater number and have a significant impact on the welfare of the people in a country.

Robert Klitgaard then formulated it that: $C = M + D - A$, corruption (C) [²⁶*corruption*] is equal to *monopoly power* (M) plus *discretion by officials* (D) minus *accountability* (A) [accountability]. He further explained that, if a person holds a monopoly on goods or services and has the authority to decide who is entitled to the goods or services and their quantity, and there is no accountability in the sense that others can witness what the person holding that authority decides then there is most likely corruption. Anti-corruption strategies should explore ways to reduce monopoly power, explain and limit authority, and increase openness, while taking into account the direct and indirect harm of those means.²⁷

The terms power, position and *discretion by officials* (authority of officials) are terms that are always related to the administration of the State which is commonly called government. Therefore, these terms are basically within the scope of state administrative law, which is precisely regulated in Law Number 31 of 1999 concerning Corruption Crimes. At. In Article 3 of this Law, it can be seen that the element of "abusing authority" as a species delict of the 'unlawful element' as a *genus of delicts* will always be related to the position of a public official (*public official*). Meanwhile, the term State financial loss is actually defined and regulated in detail in Law Number 1 of 2004 concerning the State Treasury and Law Number 15 of 2006 concerning the Financial Audit Agency, both of which are also within the scope of State administrative law in the context of carrying out government functions. "State/Local losses are shortages of money, securities, and goods, which are real and definite in amount as a result of unlawful acts either intentionally or negligently."^{28,29}

²¹ Ermansyah Djaja. Op.Cit. p.1.

²² Miriam Budiardjo. (1977). Basics Science Politics. Jakarta: Gramedia. p.99.

²³ Indriyanto Seno Adji. (2002). Corruption and Law Punishment. Jakarta: Office Lawyer and Consultation Prof. Law Oemar Seno Adji, SH and Colleague. p.180.

²⁴ Adami Chazawi. (2005). Law Punishment Materially and Formil Corruption in Indonesia. Hapless: Bayumedia Publishing. p. 410.

²⁵ Partnership (partnership). Op.Cit. p.85.

²⁶ Robert Klitgaard. instead of language Masri Maris. Op.Cit. p.29.

²⁷ Ibid. pp.29-30.

²⁸ Komariah S. Sapardjadja deep H. Abdul Latif. (2014). Law Administration: Deep Practice Follow Punishment Corruption. Jakarta: Prenada Media Group. p.4.

In this regard, Philipus M. Hadjon explained the function of the government in carrying out public legal acts. For the government, the basis for carrying out public law is the existence of authority related to office³⁰ (*ambt*). Positions are obtained through three sources, namely attribution, delegation and mandate will give birth to authority (*bevoegdheid, legal power, competence*). In addition, the government also has the authority of wisdom (*freis ermessen! pouvoir discretionnaire*). *Freis ermessen* is given to the government³¹ in view of the function of the government or state administration to administer the general welfare, which is different from the function of the judiciary to resolve disputes between residents. Government decisions prioritize the achievement of their goals or objectives (*doelmatigheid*) rather than conformity with applicable law (*rechmatigheid*). Likewise, in the matter of state financial losses as a result of the exercise of authority in the field of state finance, it is carried out through the granting of delegations or mandates. That is, this issue is also an integral part of the office in the doctrine of state administrative law as outlined.³²

Nevertheless, the principles of responsibility and accountability remain attached simultaneously. Any grant of authority to a government official is implied therein to be about the accountability of the official concerned. In the concept of public law, it is known the principle of *geen bevoegdheid (macht) zander verantwoordelijkheid* (no authority or power without accountability). Therefore, the responsibilities of officials in carrying out their functions are distinguished between the responsibilities of the post and personal responsibilities.³³

The responsibility of the office relates to the legality (validity) of government acts. In administrative law, the issue of the legality of government acts is related to the approach to governmental power. Personal responsibility relates to the functionary approach or behavioral approach in administrative law. Personal responsibility with respect to maladministration in the use of authority and *public service*. The responsibilities of officials in carrying out their functions are distinguished between the responsibilities of the office and personal responsibilities. This distinction carries consequences related to criminal liability, civil liability and State administrative liability (TUN). Specifically, according to Tatiek Sri Djatmiati, in the context of state administrative law, corruption is the personal responsibility of officials, with the main parameters being abuse^{34,35} of power and *unreasonableness*. In the event that there is an element of *abuse of power* and *unreasonableness*, then there is an element of maladministration, and of course there is an element of unlawful acts, and the act is the personal responsibility of the official who committed it.

It can be said that substantially, the criminal acts of corruption and financial losses of the state are in different disciplines. Corruption as a criminal act is based on the doctrine of criminal law, while the financial losses of the State, especially state finances related to its management and responsibilities, are based on the doctrine of state administrative law which is certain that there are different principles, although then both are integrated in the criminal act of corruption: state financial losses, as one of the seven groups of corruption crimes as outlined.

²⁹ See: Article 1 number 22 Law Number 1 Year 2004 and Article 1 number 15 Law Number 15 Year 2006

³⁰ Philipus M. Hadjon, et al. (1993). Introduction Law Administration Indonesian. Yogyakarta: Gadjah Mad University Press. p.139.

³¹ Bahsan Mustafa. (1990). Points Law Administration Country. Bandung: Citra Aditya Filial Piety. p. 55.

³² W. Riawan Tjandra. (2013). Law Finance Country. Jakarta: Kompas Gramedia. p.29.

³³ Sri Soemantri. (1987). Procedure and System Change Constitution. Bandung. Alumni. p.7.

³⁴ Philipus M. Hadjon, et al. (2011). Law Administration and Follow Punishment Corruption: Legal Grids Administration Deep Context Follow Punishment Corruption. Yogyakarta: Gadjah Mad University Press. p.16.

³⁵ Tatiek Sri Djatmiati, et al. (2011). Law Administration and Follow Punishment Corruption: Pelayanan The public and Follow Punishment Corruption. Yogyakarta: Gadjah Mad University Press. p.49.

4.2. Criminal Law Enforcement Process

Law Enforcement according to Soerjono Soekanto. argues that conceptually the core and meaning of law enforcement lies in the activity of harmonizing the relationships of values described in solid rules and answering from the attitude of action as a series of elaboration of final stage values, to create, maintain, and maintain the peace of life.³⁶

The main problem of law enforcement actually lies in the factors that influence it. Such factors are as follows:

- a. Its own legal factors, namely legislation;
- b. Law enforcement factors, namely parties who form or apply the law;
- c. Factors of means or facilities that support law enforcement;
- d. Community factors, namely the environment in which the law applies or is applied;
- e. Cultural factors, namely as a result of work, creation, and taste based on human nature in the association of life.

These five factors are closely related, because they are the essence of law enforcement, they are also a benchmark of law enforcement effectiveness.

Sajipto Raharjo,³⁷ argues that law enforcement is a process for legal wishes to come true. Legal desires are the thoughts of the law-making body formulated in the regulations of the law. The law enforcement process extends also to lawmaking.

Activities to implement and apply the law and take legal action against any violations or deviations of law committed by legal subjects, either through judicial procedures or through arbitration procedures and other dispute resolution mechanisms (*alternative disputes or conflicts resolution*). In fact, in a broader sense, law enforcement activities also include all activities intended so that the law and normative rules that regulate and bind legal subjects in all aspects of social and state life are truly obeyed and truly carried out as they should be. In a narrow sense, law enforcement concerns the enforcement of any violations or irregularities in laws and regulations, especially narrower ones, through criminal justice processes involving the roles of judicial officers, prosecutors, advocates or lawyers, and judicial bodies.

Therefore, in a narrow sense, the main actors whose role is particularly prominent in the law enforcement process are the police, prosecutors, advocates and judges. These law enforcement tools can be seen first, as people or human elements with their own qualities, qualifications, and work cultures. In this sense, the issue of law enforcement depends on the actor, perpetrator, official or law enforcement officer himself. Second, law enforcement can also be seen as an institution, agency, or organization with its own bureaucratic qualities. In that connection, it can be seen that law enforcement and institutional glasses which, in fact, have not been rationally and *impersonally institutionalized*. However, both perspectives need to be understood comprehensively by looking at their relationship with each other and their relationship to various factors and elements related to the law itself as a rational system.³⁸

In the modern state structure, the task of law enforcement is carried out by the executive component and carried out by the bureaucracy and executive, so it is often called the law enforcement bureaucracy. Since the country interferes in many areas of activity and service in society, legal interference has also intensified, such as in the fields of health, housing, production, and education. Such

³⁶ Soerjono Soekanto. (2008). Factors that Influencing Law. p. 5.

³⁷ Sajipto Raharjo. (2009). Enforcement Law One Review Sociological. p. 24.

³⁸ Jimly Assidsqie, p. 221

a type of state is known as *the welfare state*. The executive with its bureaucracy is part of the chain to realize the plans listed in the legal (regulatory) that deal with these areas.³⁹

The law enforcement process in tackling crime through penal policies or criminal law is very important. This aspect is implied through the 3rd Criminology seminar in 1976 where it was stated that "criminal law should be maintained as a means of *social defense* in the sense of protecting society against crime (*rehabilitatie*) by repairing or restoring the maker without compromising the balance of interests of the individual (maker) and society". Efforts to combat crime with criminal law are essentially also part of law enforcement efforts (especially criminal law enforcement). Therefore, it is often said that criminal law politics or policy is also part and parcel of law *enforcement policy*.⁴⁰

According to Satjipto Rahardjo, to realize the law as ideas turns out to require a fairly complex organization. The state that must intervene in the embodiment of abstract laws turns out to have to convene a wide variety of bodies for such purposes. We are not about the existence of a law office or a law office, but rather: courts, prosecutors, police, correctional officers and also statutory bodies. These bodies that appear to be stand-alone organizations essentially carry out the same task, which is to realize the law or enforce the law in society. If this is the case, then of course, in order to talk about law enforcement, there cannot be missed talking about this aspect of organization.⁴¹

Linked to the countermeasures of violent crimes such as robbery, murder, persecution and brawling, among other law enforcement agencies, the law enforcement tools that must first confront directly with the perpetrators of violent crimes on the ground are not prosecutors or judges, but police. As Satjipto Rahardjo argues, the police are called street-class law enforcement, while prosecutors and judges are given the title of swaddling class law enforcement. As for Sadjipto Rahardjo's opinion, it is quoted in full by Achmad Ali, as follows:⁴²

"Even if they are together in the ranks of law enforcement, but the police deserve to be given their own place and judgment because of their so different qualities. Such a situation is first of all due to the fact that He can be called a body of a people's nature. Such a trait relates to the nature of his work which must be in the midst of the people. Therefore, it maintains intensive contacts with its social environment. The quality of such work is very different from that carried out by other bodies, such as prosecutors and judges. These last two bodies put themselves at considerable distance from the people, from direct and intensive contacts I refer to as law enforcement" while the police as "street" law enforcement.

"The mention of the police as street law enforcement is an important symbol that symbolizes the work of law enforcement done by the police. The symbol was chosen to accommodate law enforcement who are naked, such as visiting and conducting direct inspections at crime scenes. hunting and arresting criminals, conducting reconnaissance, all with a fairly high risk that we all understand. Therefore, perhaps He is not only a quality law enforcement naked, but also hard".

Criminal law enforcement is part of criminal politics as one part of the overall crime prevention policy. Indeed, criminal law enforcement is not the only fulcrum of hope to be able to solve or tackle crimes completely. This is natural because in essence the crime is a humanitarian problem and a social problem that cannot be overcome solely by criminal law. Although criminal law enforcement in the context of tackling crime is not the only fulcrum of hope, its success is highly expected because it is in this field of law enforcement that meaning and the state are at stake based on the law.

³⁹ Satjipto Raharjo Op Cit. p. 181

⁴⁰ Lilik Mulyadi. (2003). *Capita Selecta Law Punishment, Criminology & Victimology*. p. 30.

⁴¹ Satjipto Raharjo. (2009). *Enforcement Law One Review Sociological*. pp. 11-12.

⁴² Ibid

On another occasion, MuLadi argued that law enforcement must be interpreted within the framework of three concepts, namely the concept of total enforcement (*total enforcement concept*) which demands that all values behind the legal norms be enforced without exception, which is full *enforcement concept*). Realizing that the concept of total must be limited by procedural law and so on, for the protection of individual interests and the concept of actual enforcement (*actual enforcement concept*) that arises after it is believed that there is discretion in law enforcement due to limitations, both related to infrastructure, the quality of human resources, the quality of legislation and the lack of community participation.

The Guidelines for the Implementation of the Criminal Procedure Code, state that law enforcement is one of the efforts to create order, security and tranquility in society, whether it is a preventive effort or an eradication or enforcement after a violation of the law, in other words, both preventively and repressively. If the laws that form the legal basis for the movements and actions and tools of law enforcement are not in accordance with the philosophical basis of the state and the outlook on life of our nation, it is certain that law enforcement will not achieve its goals.

Preventive law enforcement is the process of implementing criminal law by law enforcement tools in an effort to prevent the possibility of a crime from occurring, both in the narrow sense of being a preventive obligation and authority by the police and in a broad sense by all bodies dealing with the prevention of crime in the criminal law system. Prevention efforts that are preventive are not solely through a juridical approach, but can be accompanied by sociological, psychological, criminological and cultural approaches. On the contrary, repressive law enforcement is the process of implementing criminal law which is the act of law enforcement tools after a crime occurs by conducting or not conducting an investigation, conducting or not prosecuting and imposing or not imposing a crime.

The process of enforcing material criminal law against criminal acts, especially the procurement of goods and services, is carried out in accordance with the criminal procedural law. In essence, the purpose of the criminal procedural law as formulated in PP Number 27 of 1983 as amended by PP Number 53 of 2010 concerning Guidelines for the Implementation of the Criminal Procedure Code, that the purpose of criminal procedural law is to seek and obtain or at least approach the material truth, is the complete truth of a criminal case by applying the provisions of the criminal procedure law honestly and appropriately, with the aim of finding out who the perpetrator can be charged with a violation of the law, and further requesting an examination and verdict from the court to determine whether it is proved that a criminal offence has been committed and whether the person charged is to blame.

To be able to achieve the objectives of the law, especially the purpose of criminal law and the purpose of criminal procedural law, it will give birth to the function of the law itself. Based on the view of the doctrine of criminal law, the function of criminal procedural law is to seek and find the truth, to give and implement the decisions of judges, is largely determined by law enforcement tools within the framework of the criminal justice system, starting and the police as the leading law enforcement tool, prosecutors as public prosecutors and judges as case breakers.

Romli Atmasasmita, argued that the criminal justice system was first allowed by legal experts and experts in⁴³ *criminal justice science* in the United States in line with dissatisfaction with the working mechanisms of law enforcement officials and law enforcement institutions. Romli Atmasasmita writes that this discontent is evident and the rise of criminality in the United States of the 1960s. At that time, the approach used in law enforcement was law *and order approach* and law enforcement in the context of this approach was known as "*law enforcement*". This term indicates that the legal aspects of crime prevention are put forward with the police as the main support. However, in law enforcement practice, the

⁴³ Hery Tahir. (2010). Fair Legal Process Deep System Judicial Punishment in Indonesia. Laksbang Pressindo. p. 8. See also in deep Lilik Mulyadi. (2004). Capita Selecta Law Punishment Criminology and Victimology. p. 1.

police face various obstacles both operational and legal procedures and then these obstacles do not provide optimal results in an effort to reduce the increase in crime rates, and vice versa.

There is a difference in understanding between the criminal justice process and *the criminal justice system*. *Criminal justice* process is any stage of a verdict that confronts a suspect into a process that leads him to a criminal conviction. Meanwhile, the criminal justice system is an interconnection between the decisions of each agency involved in *the criminal justice* process. On the other hand, Mardjono Reksodipuro wrote that the criminal justice process is a series of units (*continuum*), starting and investigating, arresting, detention, prosecution, being examined by the court, being decided by a judge, being convicted and finally returning to society.

Gradually and substantially, the terminology of the criminal *justice system* is a term that denotes the mechanism of work in tackling crime by using the basis of the systems approach. Remington and Ohlin emphatically put forward the following:

"*The Criminal Justice System* can be interpreted as the use of a systems approach to the administrative mechanisms of criminal justice, and the judiciary as a system is the result of interactions between laws and regulations, administrative practices and social attitudes or behaviors. The notion of the system itself contains the implications of a process of interaction that is prepared rationally and in an efficient way to give a certain result with all its limitations".

The criminal justice system has the following characteristics:

- a. The emphasis is on the coordination and synchronization of the components of criminal justice (police, prosecutors, courts and prisons);
- b. Supervision and control of the use of power by the judicial component;
- c. The effectiveness of the crime prevention system is more important and the efficiency of solving cases;
- d. The use of law as an instrument to establish *the administration of justice*.

By pointing to the aforementioned opinion, in principle the purpose of the criminal justice system is oriented towards aspects, as follows:⁴⁴

- a. Preventing society from becoming an object/victim of crime;
- b. Can solve cases of crimes that occur so that the community is satisfied that justice is upheld and the guilty have been convicted; and
- c. As a prevention therapy so that the perpetrator of the criminal act does not repeat the crime again.

MuIyadi, stated that the criminal justice system is a ⁴⁵*judicial network* which is a material criminal law, formal criminal law and is a criminal implementation law. "*Integrated criminal justice system*" is a synchronization or opportunity and alignment that can be distinguished in:

- a. *Structural synchronization* is the uniformity and alignment within the framework of the relationship between law enforcement agencies;
- b. *Substantial synchronization* is a visibility and alignment that is vertical and horizontal in relation to positive law.
- c. *Cultural synchronization* is the appearance and harmony in living out the views, attitudes and philosophies that underlie the course of the criminal justice system.

⁴⁴ Lilik Mulyadi, Op. Cit. p. 8

⁴⁵ Yesmin Anwar & InterceptOp. Cit. pp. 37-38.

In the framework of the criminal justice system, the Police is a sub-system that has duties, functions and authorities in the field of investigation and investigation of criminal acts that are regulated in accordance with the criminal procedure law. The police are the leading law enforcement tool in handling a criminal act filed at the prosecution or judicial stage. The results of the court hearing are inseparable from the evidence found by the police at the investigation and/or investigation stage. As Elizabeth Ellis points out, police are like "⁴⁶gatekeepers". Elizabeth Ellis, argues that:

"Clearly, the police play a major role in the administration of criminal justice. Indeed, their role is so important that they have been described as the gatekeepers of the criminal justice process. This is because:

- 1) *The police select which individuals enter the criminal justice process by deciding, for example, how seriously to treat a crime report, and whether or not to make an arrest.*
- 2) *The police provide the earliest opportunity for an offender to be diverted from the criminal justice process by deciding, for example, not to proceed with a prosecution or by cautioning rather than charging a young offender.*
- 3) *The police can have a significant effect on court proceedings by deciding, for example, the nature of the charge to be laid. In addition, the outcome of the trial may depend heavily on police evidence, even when the evidence has been obtained improperly or unlawfully".*

To be able to process the duties, functions and authorities of investigating and investigating criminal acts, the police have a working relationship with other sub-systems in the criminal justice system in Indonesia, namely with the prosecutor's office and with the court. The relationship between sub-systems in the criminal justice system in Indonesia is regulated in the criminal procedure law.

Awaloedin Djamin, explained that the birth of the Criminal Procedure Code is an effort to reform the law because it is characterized by a fundamentally positive legal change imbued with the placement of human beings in proportion to the dignity and dignity, the spectrum of efforts to develop the whole person. Apart from that, the Criminal Procedure Code affirms in principle the division of functions, duties and authorities of each law enforcement tool and therefore in its implementation it is absolutely necessary to increase the harmony of labor relations and horizontal coordination between officials, so that it boils down to the so-called "⁴⁷integrated criminal justice system." which views the process of settling criminal cases as a link in the chain of a unified series of investigations — prosecutions — prosecutions — terminations of cases — convictions and their implementation in a unified manner. The Criminal Procedure Code, which is considered the "masterpiece" of the Government and the House of Representatives, is indeed a criminal justice system that prioritizes the protection of human rights where people can live up to their rights and obligations. In the field of investigation, it is stated, among other things, to guarantee the rights of suspects and the proper treatment of suspects as subjects.

Regarding the role of the police and the perspective of the criminal justice system, it is clear, namely as an integral part and criminal justice system in Indonesia. The status and position of the police as a component or sub-system of criminal justice as described above is regulated in the Criminal Procedure Code and the Polri Law in relation to law enforcement tools.

The role of law enforcement must be able to guarantee a balance between a sense of justice, usefulness or expediency and legal certainty in the conduct of law enforcement to find satisfaction for those who yearn for justice. Law enforcement should be guided by useful justice or provide legal expediency and certainty and legal certainty and fair expediency.

⁴⁶ Elizabeth Ellis. (1988). Thinking About Crime and Justice. p. 47.

⁴⁷ Awaloedin Djamin. (2007) Position Police State of the Republic of Indonesia Deep System Constitutional: First, Now and Tomorrow. pp. 22-23.

The process of handling criminal acts, law enforcement agencies or tools that are members of the criminal justice system is guided by the criminal procedure law as regulated in the Criminal Procedure Code and certain laws and regulations that specifically regulate the criminal procedural law.

The Criminal Procedure Code, which regulates the national criminal procedure law, is based on the philosophy/outlook on life of the nation and the basis of the state, thus reflected the protection of human rights, especially victims and suspects of trafficking crimes. The principles governing the protection of the nobleness of human dignity and dignity have been contained in various laws and regulations, including in the Criminal Procedure Code, which includes:

- a. The same treatment of everyone before the law by not having a distinction of treatment;
- b. Arrests, detentions, searches and seizures are carried out only by written order by officials authorized by law and only in the case and in the manner provided for by law;
- c. Any person who is suspected, arrested, detained, prosecuted and or confronted before a court hearing, shall be presumed innocent until a court ruling declares his guilt and obtains permanent legal force;
- d. A person who is arrested, detained, prosecuted or tried for no reason under the law and or because of a mistake regarding his person or the law applied shall be compensated and rehabilitated from the level of investigation from law enforcement officials, who intentionally or through his negligence caused the principle of law to be violated, prosecuted, convicted and or subject to administrative punishment;
- e. A trial that must be conducted quickly, simply and at a light cost and is free, honest and impartial must be applied consequently at all levels of the judiciary;
- f. Every person caught in a case must be given the opportunity to obtain legal assistance solely to carry out the interests of the defense against him;
- g. To a suspect, from the moment of arrest and or detention in addition to being obliged to be informed of the indictment and what legal basis is charged, to him, must also be informed of his rights including the right to contact and seek the assistance of legal counsel;
- h. The court examines the criminal case in the presence of the accused.
- i. Court hearings are open to the public except in matters provided for in the statute;
- j. Supervision of the implementation of court decisions in criminal cases is determined by the chief justice of the district court concerned.

PoIri as part of the criminal justice system in Indonesia, in the implementation of its duties, functions and authorities as an investigator and as an investigator has a cooperative relationship with the sub-system and criminal justice system. The employment relationship, with the criminal law enforcement apparatus has been regulated in the Criminal Procedure Code, which includes, the following:

a. Relationship between Police Investigators and Public Prosecutors

- 1) In the event that the investigator has begun to investigate an event that is a criminal act, the investigator notifies the public prosecutor (Article 109 Paragraph (1) of the Criminal Procedure Code);
- 2) In the event that the investigator stops the investigation because there is not enough evidence or the event turns out not to be a criminal act or the investigation is stopped for the sake of the law, the investigator notifies the public prosecutor, the suspect or his family (Article 109 Paragraph (2). On the contrary in the event that the public prosecutor stops the prosecution, he gives a derivative of the decree to the investigator (Article 140 Paragraph (2) letter c of the Criminal Procedure Code);
- 3) The investigator submits the case file to the public prosecutor (Article 8, Article 14 letter a, and Article 110 Paragraph (1) of the Criminal Procedure Code);

- 4) The public prosecutor granted an extension of detention at the request of the investigator (Article 14 letter C, Article 24 Paragraph (2) of the Criminal Procedure Code);
- 5) In the event that the public prosecutor believes that the results of the investigation are incomplete, he immediately returns it to the investigator along with his instructions and the investigator completes it by conducting additional investigations (Article 14 letter b, Article 110 Paragraph (2) and Paragraph (3) of the Criminal Procedure Code);
- 6) The public prosecutor gives a derivative of the letter of transfer of the case, a letter of indictment to the investigator (Article 143 Paragraph (4) of the Criminal Procedure Code). Similarly, in the event that the public prosecutor amends the letter of indictment he gives a derivative of the amendment of the indictment to the investigator (Article 144 Paragraph (3) of the Criminal Procedure Code);
- 7) In the event of a quick examination, the investigator, on the power of the public prosecutor (for the sake of law), presents the case file and confronts the accused, witnesses/experts, interpreters of the evidence at the trial court. Consequently, the investigator notifies the day of the hearing to the defendant (Article 207 Paragraph (1) of the Criminal Procedure Code) and delivers the verdict to the convict (Article 214 Paragraph (3) of the Criminal Procedure Code).

b. Police Investigator's Relationship with the Judge

- 1) The chief justice of the district court by his decision granted an extension of the detention of the suspect, as referred to in Article 29 of the Criminal Procedure Code at the request of the investigator;
- 2) At the request of the investigator, the chief justice of the district court refused or granted a warrant for house search or seizure or special permit for the examination of letters (Article 33 Paragraph (1), Article 38 Paragraph (1), Article 43 and Article 47 Paragraph (1) of the Criminal Procedure Code);
- 3) The investigator must immediately report to the chief justice of the district court for the conduct of a house search or seizure carried out in very necessary and urgent circumstances (Article 34 Paragraph (2) and Article 38 Paragraph (2) of the Criminal Procedure Code);
- 4) The investigator provided to the clerk the evidence that a letter of judgment had been delivered to the convict (Article 214 Paragraph (3) of the Criminal Procedure Code);
- 5) The Registrar notifies the investigator of the existence of resistance and the accused (Article 214 Paragraph (7) of the Criminal Procedure Code);

c. Relationship of Police Investigators with Legal Advisors or Advocates

- 1) Legal counsel. has the right to contact the suspect from the moment of arrest or detention at all levels of examination according to the procedures prescribed in the Criminal Procedure Code (Article 69 of the Criminal Procedure Code);
- 2) Legal counsel reserves the right to contact and speak with the suspect at any level of examination and at any time for the purposes of defending his case. If there is evidence that the legal counsel abused his or her right in conversation with the suspect (at the investigation stage), the investigator warns the legal counsel. If the warning is not heeded, then the relationship is overseen by investigators. If after being supervised, the right is still abused, then the relationship is witnessed by the investigator and if after that it remains violated then the next relationship is prohibited (Article 70 of the Criminal Procedure Code);
- 3) Legal counsel, according to the level of examination, in dealing with the suspect is supervised by the investigator, without hearing the content of the conversation. In the case of crimes against state security, the investigator can hear the content of the conversation while the legal counsel can see but cannot hear the examination of the suspect (Article 71 of the Criminal Procedure Code and Article 115 of the Criminal Procedure Code).

With the existence of Law Number 18 of 2003 concerning Advocates, the position of the advocate's status is as law enforcement, free and barren guaranteed by laws and regulations.

d. Relationship between Police Investigators and Civil Service Investigators

- 1) PPNS investigators have the authority in accordance with the laws on which they are the basis of their respective laws and in carrying out their duties are under the coordination and supervision of Police investigators (Article 7 Paragraph (2) of the Criminal Procedure Code);
- 2) Police investigators provide instructions and provide necessary investigative assistance (Article 107 Paragraph (1) of the Criminal Procedure Code);
- 3) The report recognizes the start of the investigation, the termination of the investigation or the submission of the investigation hash to the public prosecutor, through the PoIri investigator (Article 107 Paragraph (2) and Paragraph (3) and Article 109 Paragraph (3) of the Criminal Procedure Code).

Conclusion

1. The legal position of the commitment-making official for the procurement of goods and services can be interpreted as a "function" and as an "organization". As a function that is to carry out the duties of government, and government as an organization, the government is burdened with the implementation of government duties. This function of government as a whole consists of a wide variety of governmental acts of decisions, statutes of a general nature, civil law actions and concrete actions.

In its specific position, the government uses various provisions of private law in its associations. Sometimes they engage in the traffic of civil struggles in the same position as private parties, without a specific position as a government and that protects the public interest in the event of a dispute.

2. Abuse of authority in the procurement of goods and services of government agencies is a crime, where criminal law enforcement is part of criminal politics as one part of the overall crime prevention policy.

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