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Legal Limits of Procurement Officials' Liability for State Loss Risks in the HPS No-Chip E-Purchasing System

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Abstract

The digitalization of public procurement through the E-Purchasing system under Presidential Regulation Number 46 of 2025 has expanded the discretion of Commitment-Making Officers (PPK), particularly through the exemption of the Estimated Self-Price (HPS) requirement for certain transactions. While this policy is intended to accelerate budget absorption and improve procurement efficiency, it simultaneously increases the legal risks faced by PPKs concerning allegations of state financial losses. This study aims to analyze the legal liability of PPKs in digital procurement and to examine the legal boundaries of determining state financial losses in the absence of HPS. This research employs a normative legal method using statutory, conceptual, and case approaches. The results demonstrate that, in principle, transactions conducted through the government-managed electronic catalog should be assessed based on the presumption of legality and good faith, provided that the PPK acts within the scope of authority and applicable procedures. Consequently, price discrepancies arising from weaknesses in the supervision or management of the electronic procurement system cannot automatically be attributed as personal liability of the PPK. Furthermore, following Constitutional Court Decision Number 25/PUU-XIV/2016, the determination of state financial losses must be based on actual loss rather than potential loss and should first be examined through administrative accountability mechanisms before criminal law enforcement is pursued. Therefore, personal liability may only be imposed upon the PPK where there is evidence of abuse of authority, malicious intent (mens rea), or gross negligence (culpa lata).

INTRODUCTION

State financial management in the Indonesian constitutional system is a part of the budget that must be carried out based on constitutional principles as stipulated in Article 23 of the Constitution of the Republic of Indonesia in 1945. The implementation of management is further described through Law Number 17 of 2003 concerning State Finance, which emphasizes that all state budget expenditures must be carried out in an orderly manner, comply with laws and regulations, be efficient, economical, effective, transparent, and responsible by paying attention to the principles of justice and propriety.[1] In its development, along with the demands of bureaucratic reform, modernization of governance, and acceleration of national development, the government has carried out fundamental transformation in the procurement system through digitalization. Conventional procurement mechanisms for goods and services that tend to be bureaucratic have begun to be transferred to an internet-based digital ecosystem through *the E-Purchasing* and Electronic Catalog system managed by the Government Goods/Services Procurement Policy Institute (LKPP).

In this digital ecosystem, the Commitment Making Officer (PPK) holds a very strategic juridical position while being vulnerable to legal risks in the state's administrative structure. Based on Article 1 number 10 of Presidential Regulation Number 16 of 2018 concerning the Procurement of Government Goods/Services which has been last amended through Presidential Regulation Number 46 of 2025, PPK is defined as an official who is authorized by the Budget User (PA) or the Budget User Proxy (KPA) to make decisions and/or actions that may result in the expenditure of the state budget.[2] The position of the PPK is not just an administrative technical implementer, but a representation of public authorities that issue state administrative decisions (*beschikking*) and carry out material legal actions (*materiele daad*) through electronic transactions. Consequently, every policy or legal action taken by the PPK must rely absolutely on the principles of legality, the principle of prudence, and the General Principles of Good Governance (AAUPB) in order to ensure the effectiveness of public budget absorption.

However, the enactment of Presidential Regulation Number 46 of 2025 brings a very significant shift in legal norms in the form of expanding the discretionary authority of the PPK, one of which is through the exemption of the obligation to prepare Self-Estimated

[1] Law Number 17 of 2003 concerning State Finance, Article 3 paragraph (1).
[2] Presidential Regulation Number 46 of 2025 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning the Procurement of Government Goods/Services, Article 1 number 10.

Prices (HPS) for certain transactions in the electronic catalog.[3] On the one hand, this regulatory relaxation is intended as a legal stimulus to speed up government spending procedures, eliminate convoluted bureaucratic chains, and respond to the dynamics of market price fluctuations rapidly. On the other hand, the loss of the obligation to prepare HPS normatively has collapsed the limiting pillar and objective control instruments that have been the protective shield of the PPK in proving good *faith*. Without an HPS that functions as an upper limit of the fair price, the discretion of the PPK in executing digital transactions becomes highly biased and prone to be interpreted as an act of unilateral abuse of authority.

Empirically, the absence of standard parameters after the abolition of HPS triggers a real clash in the dimension of law enforcement in Indonesia when dealing with the findings of the audit results of the state financial audit agency. The Financial Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP) in their various audit reports often find anomalies in the form of price *mark-ups* between products listed in the LKPP electronic catalog and the real prices in the outside free market.[4] A complicated legal problem arises when Law Enforcement Officers (APH) use a rigid mathematical approach to assess the price difference as a tangible manifestation of the state's financial losses.

These problems are not just normative issues, but have become a concern in the practice of supervision and law enforcement of government procurement of goods/services. Based on the Overview of the Results of the Semester Audit of the Financial Audit Agency (BPK), the goods/services procurement sector still occupies a dominant position in the findings of non-compliance that have the potential to cause financial losses to the state. On the other hand, the development of the use of electronic catalogs and E-Purchasing which continues to increase every year shows that most government procurement transactions are now carried out through digital systems. This condition poses a legal dilemma when procurement officials, especially Commitment Making Officials (PPK), still have the potential to be held accountable for price differences or audit findings even though transactions are carried out through official systems provided by the government.

The sociological impact is that the PPK is often made the sole subject who must bear personal criminal responsibility, even though the transaction is carried out through an official application provided and validated directly by the government.

[3] *Ibid.*, Article 11 paragraph (2).
[4] Mudjisantosa, *Legal Risks for Commitment-Making Officials* (Jakarta: Prima, 2023), p. 45.

In order to map the position of scientific novelty (state of the art) of this research, a search was carried out on various studies that discuss the procurement of government goods/services, the accountability of procurement officials, and the concept of state financial losses.[5] A number of previous studies have generally focused on the responsibilities of Commitment Making Officials (PPK) in the conventional procurement system and E-Catalogue based on the regime of Presidential Regulation Number 16 of 2018 and its amendments. The study generally places the Self-Estimated Price (HPS) as the main instrument in measuring price fairness and as one of the indicators in assessing the prudence of procurement officials.[6]

Other research highlights the function of the Government Internal Supervisory Apparatus (APIP) as an instrument of supervision and preventive legal protection for procurement officials.[7] In addition, there is also a study that examines the concept of state financial losses after the Constitutional Court Decision Number 25/PUU-XIV/2016, especially regarding the change in approach from potential loss to actual loss in corruption crimes.[8] However, these studies are still being carried out in the context of procurement that requires the existence of HPS as a control instrument and have not specifically discussed the legal consequences of the elimination of HPS obligations on certain transactions through the E-Purchasing system.

Based on this search, no research has been found that specifically examines the relationship between the abolition of HPS in Presidential Regulation Number 46 of 2025, the limit of legal accountability of Commitment Making Officials in digital transactions, and the determination of state financial losses based on the principle of actual loss after the Constitutional Court Decision Number 25/PUU-XIV/2016.[9] Therefore, this study occupies a different position from previous research because it focuses on the reconstruction of the legal accountability limit of PPK in the digital procurement system after changes in government procurement regulations.

The novelty of this research lies in the analysis of changes in the construction of legal accountability of Commitment Making Officials (PPK) after the enactment of Presidential Regulation Number 46 of 2025 which abolishes the obligation to prepare Self-Estimated

[5] Y. Sogar Simamora, "Government Procurement of Goods/Services and Its Legal Problems", *RechtsVinding Journal*, Vol. 8, No. 3, 2019, p. 379.
[6] Mudjisantosa, *Understanding E-Purchasing and E-Catalog*, (Jakarta: Indonesian Procurement Functional Association, 2021), p. 98.
[7] Philipus M. Hadjon, *Legal Protection for the People in Indonesia*, (Surabaya: Bina Ilmu, 1987), pp. 82-84.
[8] Constitutional Court Decision Number 25/PUU-XIV/2016, pp. 111-112.
[9] Presidential Regulation Number 46 of 2025 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning the Procurement of Government Goods/Services, Article 11.

Prices (HPS) on certain transactions through E-Purchasing. This study not only highlights the accountability aspect of procurement officials, but also examines the relationship between the abolition of HPS, the principle of legal protection for government administrative officials, and the concept of state financial losses based on the Constitutional Court Decision Number 25/PUU-XIV/2016. Thus, this study offers a legal construction regarding the limits of position accountability and personal accountability of PPK in the digital procurement system that have not been widely discussed in previous research.

In addition, as a contribution to solutional thinking, this article offers recommendations for updates in the form of the adoption of an output-based budget flexibility model such as the Regional Public Service Agency (BLUD) system based on Permendagri Number 79 of 2018 to reduce the risk of policy criminalization. Based on this description, the formulation of the problem in this study is: What is the legal accountability of the Commitment Making Officer (PPK) in the procurement of goods/services through *the E-Purchasing* system? And what is the limit of state financial losses in E-Purchasing transactions without Self-Estimated Prices based on the principle of actual loss after the Constitutional Court Decision Number 25/PUU-XIV/2016?

METHODS

The research presented in this journal article is classified into a type of juridical-normative legal research, which places law as a complete system of written norms.[10] The problem approach applied to dissect the ambiguity of the norms after the abolition of HPS includes a statute *approach* and a *conceptual approach*.[11] The approaches used in this study include the statute approach, the conceptual approach, and the case approach. The legislative approach is used to examine various regulations related to the procurement of government goods/services, government administration, and state financial management. A conceptual approach is used to analyze the theory of legal accountability, abuse of authority, and legal protection of public officials. The case approach is used to examine the Constitutional Court Decision Number 25/PUU-XIV/2016 as a basis for determining the limits of state financial losses after the change in the character of corruption crimes from formal to material crimes.

The legislative approach is carried out by examining the vertical and horizontal consistency between Law Number 17 of 2003, Law Number 30 of 2014, Constitutional

[10] Peter Mahmud Marzuki, *Legal Research: Revised Edition* (Jakarta: Kencana, 2017), p. 35.
[11] Peter Mahmud Marzuki, *Legal Research: Revised Edition*, p. 93.

Court Decision Number 25/PUU-XIV/2016, and Presidential Regulation Number 46 of 2025. A conceptual approach is used to elaborate on the doctrine *of System Trust*, legal accountability theory, and the doctrine of abuse of authority in the legal realm of public administration. Primary and secondary legal materials obtained through literature studies are analyzed qualitatively by descriptive-analytical methods and deductive reasoning flows to produce precise, logical, and solutive conclusions.

RESULTS AND DISCUSSION

1. The Essence of Legal Accountability of Commitment Making Officials (PPK) in the Digital *E-Purchasing Ecosystem*

The authority of the Commitment Making Officer (PPK) is obtained through assignment or administrative delegation from the Budget User (PA) or Budget User Proxy (KPA) as stipulated in Presidential Regulation Number 16 of 2018 and its amendments. Based on the provisions of Article 11 of Presidential Regulation Number 46 of 2025, this authority delegation positions the PPK as an independent legal subject who bears the burden of full liability for all legal obligations it signs with third parties.[12] In the perspective of state administrative law theory, delegative delegation of authority transfers not only technical authority, but also transfers legal responsibility (liability) from the delegating party to the delegating party (PPK). The act of clicking on purchase approval in the E-Purchasing application is not just a computer operational activity, but a form of manifestation of the will of the state represented by the PPK as a state administrative official.

To unravel the complexity of the legal risks that overshadow the position of the PPK, it is important to refer to Peter Mahmud Marzuki's thoughts on the conceptual boundaries between responsibility and liability. Responsibility is placed in the domain of morality and general obligation attached to an official function to carry out duties as well as possible, while liability refers to the juridical readiness to receive legal sanctions or recover losses arising from violations or deviations from positive legal norms.[13] In the context of the procurement of digital goods/services, when the system gives birth to transactions that are considered problematic, law enforcement should not immediately jump to the conclusion of criminal liability without first testing the fulfillment of the limits of administrative responsibility from the PPK. The separation of these two concepts is crucial to uphold legal justice for the state's civil apparatus.

[12] Presidential Regulation Number 46 of 2025, Article 11.
[13] Peter Mahmud Marzuki, h. 142.

Furthermore, Philipus M. Hadjon introduced a very strict division in the realm of administrative law regarding the doctrine of office responsibility (ambtelijke aansprakelijkheid) and personal responsibility (pribadi aansprakelijkheid). The responsibility of the position is based on the principle that as long as a public official acts within the limits of official authority given by law and is based on good faith, then any legal defects, losses, or negative impacts born from such actions become the burden of state agencies.[14] Personal responsibility can only be personally attached to the individual official concerned if in his actions it can be proven that there is an element of abuse of authority (detournement de pouvoir), exceeding authority (ultra vires), or there is an element of malicious intent (mens rea) to enrich oneself or others.

In line with Hadjon's thought, the legal theories of fautes de service and fautes personales developed by Kranenburg and Vegting provide a strong dogmatic basis for assessing the malfunctions of the public system. The theory of fautes de service (official error) states that mistakes that stem from poor organizational management, regulatory weaknesses, or failures of state-managed electronic systems are the full responsibility of public or government organizations.[15] On the other hand, fautes pribadi (personal fault) arises if the loss incurred is driven by gross negligence (culpa lata) or intentionality that detaches itself from the noble purpose of public service. The application of this theory in the E-Purchasing system mandates that price data errors in the e-catalog are categorized as official errors.

In the modern digital procurement landscape, legal protection for PPK must be progressively reconstructed by adopting the doctrine of System Trust (trust in the legitimacy of the system). Considering that the interaction in E-Purchasing is carried out through an electronic catalog portal where the entire process of verification, curation, and viewing of vendors is managed centrally by LKPP, the PPK is in a legal position that is obliged to trust the validity of the system.[16] The PPK does not have an external formal instrument to track the absolute truth behind the work of the public e-catalog. Therefore, when the PPK transacts in accordance with the standard operating procedures of the application, the action is protected by the principle of presumption of validity (praesumptio iustae causa). Price differences or manipulative fraud committed by the

[14] Philipus M. Hadjon, *Legal Protection for the People in Indonesia* (Surabaya: Bina Ilmu, 1987), p. 82.
[15] Kuntjoro Purbopranoto, *Some Notes on Governance Law and State Administrative Courts* (Bandung: Alumni, 1981), p. 56.
[16] Mudjisantosa, *Understanding E-Purchasing and E-Catalog* (Jakarta: Indonesian Procurement Functional Association, 2021), p. 104.

provider vendor is a form of failure of the state supervision system, not the personal negligence of the PPK.

As a conclusion to this sub-chapter, In principle, the legal liability of the PPK in the E-Purchasing digital ecosystem is a form of office responsibility as long as the actions carried out are within the scope of authority, according to procedures, and no abuse of authority, conflict of interest, or intentional elements to gain personal gain or benefit certain parties, unless law enforcement succeeds in proving the existence of preliminary evidence It is enough about the evil conspiracy (collusion) between the PPK and the provider. If there is no evidence of real kickbacks or malicious intent, then all implications of financial losses due to e-catalog transactions must be resolved through administrative legal mechanisms and considered as state operational risks in carrying out digital transformation of governance.

2. Juridical Limitations on State Financial Losses on *E-Purchasing Transactions* Without HPS

The presence of Presidential Regulation Number 46 of 2025 which abolishes the obligation to prepare Self-Estimated Prices (HPS) for transactions of certain values in electronic catalogs has radically changed the legal anatomy of government procurement of goods/services. The abolition of this HPS theoretically reduces the function of preventive accounting control that has been used by the financial audit institution (BPK/BPKP) as a boundary line or determining instrument to measure the level of the cost of a state expenditure transaction.[17] The juridical implication is the loss of a single absolute number reference which is a juridical guideline for the PPK in assessing the fairness of the price offered by the service provider. The absence of this standard reference parameter has great potential to give birth to legal uncertainty, where external appraisers tend to use free market price standards unilaterally to accuse the PPK of wasting the state budget.

In order to prevent the spread of criminalization of digital procurement policies, legal limits on state financial losses must be returned to their constitutional tracks through the corridor of the Constitutional Court Decision Number 25/PUU-XIV/2016. Through this monumental decision, the Constitutional Court has revoked the phrase "can harm state finances" in Article 2 paragraph (1) and Article 3 of the Corruption Law, thus changing the nature of corruption crimes from formal to material crimes.[18] The legal consequence of this ruling is that state losses must no longer be based on assumptions, potentials, or

[17] Mudjisantosa, *Legal Risks for Commitment-Making Officials*, *op. cit.*, p. 78.
[18] Constitutional Court Decision No. 25/PUU-XIV/2016, p. 89.

theoretical estimates (potential losses), but must be real, definite, and have occurred in actual terms (actual loss) based on the results of competent expert calculations. In the context of E-Purchasing without HPS, the mathematical nominal difference between the price of the product in the electronic catalog and the conventional market price outside the system cannot be arbitrarily categorized as a state financial loss of criminal value.

Although the Constitutional Court Decision No. 25/PUU-XIV/2016 has emphasized that state financial losses must be proven as actual losses, in the practice of corruption crimes justice there are still differences in approaches in assessing the relationship between state losses and abuse of authority. Some court decisions still place the abuse of authority as an important element that must be proven at the same time as state losses, while other decisions focus more on the existence of real state losses as the basis for criminal liability. This condition shows that the shift from the concept of potential loss to actual loss has not completely eliminated the debate on the parameters of state losses in corruption cases, especially in the government procurement sector.

In the context of digital procurement through E-Purchasing, the debate has become increasingly relevant because the transaction mechanism is carried out through an electronic system that has been provided and validated by the government. Therefore, the assessment of the existence of state losses cannot be based only on price comparisons or findings of transaction value differences, but must consider whether there is an abuse of authority, violation of procedures, or actions that actually result in a reduction in state finances. Such an approach is in line with the principles of legal certainty and protection of administrative officials acting under legitimate authority.

The change in the character of corruption crimes from formal to material crimes after the Constitutional Court Decision Number 25/PUU-XIV/2016 has very significant implications for proving state financial losses in the procurement of government goods/services. Prior to the ruling, the phrase "may harm the state's finances" allowed law enforcement officials to use the potential loss approach as a basis for ensnaring public officials. However, after the Constitutional Court's decision, state losses must be proven in a real, definite, and measurable manner so that it is not enough to be based solely on the alleged price difference or the assumption of losses that may occur in the future. Thus, the proof of state losses must be based on factual conditions that indicate a reduction in assets, an increase in liabilities, or a loss of state rights that can be calculated in real terms.

In the context of E-Purchasing transactions without Self-Estimated Prices (HPS), the actual loss approach is becoming increasingly important considering that there are no longer internal comparison instruments used as price fairness limits. Therefore, the difference between the price listed in the electronic catalogue and the price found on the

public market cannot necessarily qualify as a state financial loss. The assessment of the existence of state losses must consider the legality of the transaction process, the suitability of procurement procedures, the benefits of goods or services received by the government, and the existence of a causal relationship between the actions of officials and the losses that actually occur. Without proof of these elements, the price difference can only be viewed as an administrative finding that requires a governance evaluation, not as an automatic basis for attracting criminal liability.

The absence of the HPS instrument requires a redefinition and reconstruction of the due diligence standards that must be met by the PPK to prove the existence of good faith. In the legal regime of Presidential Regulation Number 46 of 2025, the fulfillment of the principle of prudence by the PPK is no longer measured by the accuracy of transaction numbers with internal HPS, but is measured by procedural compliance in utilizing the features available in the digital procurement application, such as clicking on price negotiations if the feature is provided or analyzing price comparisons between vendors in the catalog.[19] As long as the PPK has carried out the formal stages carefully and objectively in accordance with the regulations, the criminal unlawful element (wederrechtelijk) will automatically be eliminated, and the transaction decision is completely legal as an act of administrative discretion protected by law.

In the perspective of fair law enforcement, Law Number 30 of 2014 concerning Government Administration has set strict limits through the principle of ultimum remedium, which places criminal law as the last weapon. Article 20 of the law mandates that if there are reports or findings regarding irregularities or indications of state losses in the implementation of the duties of public officials, then the testing and settlement process must first be submitted to the Government Internal Supervisory Apparatus (APIP). APIP is tasked with objectively testing whether the irregularities fall into the category of administrative errors that do not cause state losses, administrative errors that cause state losses (must be returned internally), or criminal errors.[20] Law Enforcement Officers (APH) are prohibited from intervening in criminal investigations directly before the APIP administrative testing forum is completed.

Comprehensively, the juridical limit of state losses in E-Purchasing transactions without HPS must be placed on proving the existence of a subjective element of material unlawful acts, namely the discovery of malicious intent (mens rea) to commit fraud or real corruption. If the price difference occurs purely because the dynamics of the LKPP

[19] Mudjisantosa, *Understanding E-Purchasing*, *op. cit.*, p. 115.
[20] Law Number 30 of 2014 concerning Government Administration, Article 20 paragraph (2).

e-catalog system are less adaptive to update the market price or due to negligence in curation by the LKPP, then this must be resolved through administrative legal channels in the form of compensation claims against the vendor provider or comprehensive system improvement. These strict legal limits are vital to ensure legal certainty, maintain the passion for bureaucratic innovation, and protect committed officials from the shadow of policy criminalization that can paralyze the wheels of national development budget absorption.

CONCLUSION

The legal accountability of Commitment Making Officials (PPK) in the E-Purchasing digital ecosystem after the enactment of Presidential Regulation Number 46 of 2025 is in principle a form of accountability for the position as long as the actions taken are within the scope of authority, in accordance with applicable procedures, and carried out in good faith. In the context of procurement through the government's electronic catalog, the personal liability of the PPK cannot be charged solely based on price differences or administrative findings alone, but must be supported by proof of abuse of authority, malicious intent (mens rea), or gross negligence (culpa lata).

The determination of state financial losses in E-Purchasing transactions without Self-Estimated Prices (HPS) must be guided by the principle of actual loss as affirmed in the Constitutional Court Decision Number 25/PUU-XIV/2016. Therefore, the price difference between the electronic catalogue and the market price cannot necessarily be qualified as a state loss in the absence of evidence of a real, definite, and measurable loss and a causal relationship with the actions of the official concerned. Settlement of alleged irregularities in digital procurement also needs to prioritize administrative supervision and accountability mechanisms before criminal law enforcement is carried out.

As a recommendation, the Government Goods/Services Procurement Policy Institute (LKPP) needs to develop more detailed guidelines regarding due diligence standards or prudential standards for Commitment Making Officials in E-Purchasing transactions without HPS to provide legal certainty in the implementation of digital procurement. In addition, the government needs to consider improving the regulations in Presidential Regulation Number 46 of 2025 to clarify the limits of legal accountability of procurement officials, so that a balance between the legal protection of the apparatus and the accountability of state financial management can be realized proportionately.

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