

Overlapping Authorities of the KPPU and the BPK in Supervising Government Procurement of Goods and Services

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Abstract

Government procurement of goods and services plays a crucial role in national development, yet it is highly susceptible to collusion and financial mismanagement. In this context, the Business Competition Supervisory Commission (KPPU) and the Audit Board of Indonesia (BPK) serve as key supervisory bodies. KPPU focuses on preventing unfair business practices such as tender collusion, while BPK emphasizes the efficiency and accountability of state finances. This study aims to analyze the overlapping authority between these two institutions and explore solutions for harmonizing their roles. Using a normative juridical method with a descriptive-analytical approach, the findings reveal overlapping areas of supervision that risk undermining effectiveness and creating legal uncertainty. Therefore, a clear regulatory framework—through new legislation or revisions to existing presidential regulations is essential to ensure a coordinated, fair, and efficient oversight system.

Keywords: KPPU; BPK; Procurement; Tender Collusion; Authority; Overlap.

INTRODUCTION

Indonesia's efforts to improve the quality of its economy and human resources include procuring goods and services through government agencies. Government procurement of goods and services is a crucial activity in realizing development in various sectors.¹ If viewed from an economic perspective, for example, the development of facilities and infrastructure to support economic growth is realized due to the existence of a government procurement mechanism for goods and services, including the provision of road facilities, bridges, telecommunications infrastructure and others.

Government procurement of goods and services is a vital instrument in national development and public service. This sector manages a very large state budget allocation, reaching trillions of rupiah annually. As a concrete example, based on the state loss audit report from the Financial and Development Supervisory Agency (BPKP) for the Kominfo BTS project, the Kominfo Base Transceiver Station (BTS) project cost up to Rp10 trillion, while the procurement of curtains for the official residences of members of the House of Representatives (DPR) alone reached Rp48.7 billion. This massive financial scale, although essential for infrastructure development and meeting basic needs, inherently places government procurement and services at a point of high vulnerability to various forms of irregularities.² Practices such as tender rigging, price manipulation, corruption and administrative irregularities often color the procurement of goods and services process, which ultimately harms state finances and damages public trust.³

The complexity of the procurement of goods and services becomes even more apparent when viewed within the framework of Max Weber's bureaucratic theory. Weber described bureaucracy as an ideal organizational form, characterized by the principles of rationality, efficiency, and predictability. One of the main pillars of the Weberian model is a clear division of tasks and functional specialization (division of labor). In an ideal bureaucracy, each position has a strictly defined scope of responsibility, minimizing ambiguity and overlap. The purpose of this division of tasks is to ensure accountability and efficiency in the implementation of public

¹ Ashari Abdasis Betham, Nasrun Hipan dan Firmansyah Fality, 'Analisis Yuridis Prosedur Pengadaan Barang/Jasa Pemerintah Serta Perlindungan Hukum Terhadap Pelaku Pengadaan Barang/Jasa', *Jurnal Yustisiabel*, 3.2 (2019), Hlm. 191.

² Hilman Fathurrahman W, 'Sidang Kasus BTS Kominfo, Anggaran Rp10 Triliun Cair Sebelum Tower Dibangun,' Tempo.Co, No. Kasus BTS Kominfo', 2023 <<https://www.tempo.co/hukum/sidang-kasus-bts-kominfo-anggaran-rp10-triliun-cair-sebelum-tower-dibangun-163236>> [accessed 7 May 2025].

³ Maya Shafira dan Sunarto DM Adam Khafi Ferdinand, 'Pemerintah Oleh Komisi Pengawas Persaingan Usaha', *Cepalo*, 4.2 (2020), Hlm. 28.

policy. However, the reality of procurement of goods and services in Indonesia often falls far short of Weber's ideals.⁴

Logically, the numerous parties involved in the procurement of goods and services indicate fragmented responsibilities and unclear roles among the various actors involved. These stakeholders include not only government procurement units but also goods/services providers, consultants, and even external parties influencing the process. When the boundaries of authority and responsibility are unclear, the potential for irregularities and violations increases. This ambiguity complicates identifying the root cause and determining accountability. For example, whether the irregularities occurred due to procedural weaknesses, deliberate action by committee members, or collusion by third parties. Without a clear division of tasks and effective coordination, oversight and enforcement efforts can become unfocused and overlapping, rather than complementary.

To maintain the integrity of government procurement and minimize irregularities, the Indonesian government has established and mandated several supervisory institutions. Each institution has a specific mandate and oversight focus. The Business Competition Supervisory Commission (KPPU), for example, is authorized to supervise and enforce Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, with a focus on preventing and prosecuting tender rigging.⁵ On the other hand, the Supreme Audit Agency (BPK) is an independent constitutional institution, tasked with auditing the management and accountability of state finances, with a focus on aspects of efficiency, effectiveness, and compliance with financial regulations, as well as potential state losses.⁶ The existence of these two institutions reflects the state's commitment to strengthening a comprehensive supervisory system, both in terms of market integrity and financial accountability.

However, as indicated, it is true that the spectrum of government procurement oversight bodies is very broad, and each has its own areas of overlap. The Ombudsman is authorized to oversee maladministration in public services, including government procurement,⁷ Meanwhile, the Corruption Eradication Commission (KPK), the Police (Polri), and the Attorney General's Office have the authority to

⁴ Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth dan Claus Wittich (Berkeley: University of California Press, 1978)

⁵ Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat, Pasal 36 dan Pasal 47.

⁶ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 23E; Undang-Undang Nomor 15 Tahun 2004 tentang Pemeriksaan Pengelolaan dan Tanggung Jawab Keuangan Negara; Undang-Undang Nomor 15 Tahun 2006 tentang Badan Pemeriksa Keuangan.

⁷ Undang-Undang Nomor 37 Tahun 2008 tentang Ombudsman Republik Indonesia, Pasal 6 dan Pasal 8.

prosecute criminal acts of corruption.⁸ The focus of this research on the KPPU and the BPK is based on the most fundamental and direct intersection of the substance of the government procurement issues. The KPPU focuses on the dimension of healthy business competition, which is a prerequisite for efficiency and fairness in tenders.⁹ If tender rigging occurs, a practice within the KPPU's oversight authority will undoubtedly result in budget inefficiency and potential state losses, which fall within the purview of the Supreme Audit Agency (BPK). In other words, the practice overseen by the KPPU (the collusion) is often the direct cause of the losses overseen by the BPK (the state losses). Therefore, the overlapping authority between the KPPU and the BPK is not merely duplication, but rather an essential intersection between the cause (the collusion) and the effect (the state losses/inefficiency) in the context of Government Procurement of Goods and Services.¹⁰

In contrast to other institutions, such as the Corruption Eradication Commission (KPK) which focuses on prosecuting corruption (which can be initiated from findings by the BPK or KPPU), or the Ombudsman which focuses more on maladministration aspects, the KPPU and BPK directly interact with the two main pillars of integrity in Government Procurement of Goods and Services, market integrity (competition) and financial integrity (state finances).¹¹ Without clear boundaries and effective coordination between these two institutions, the potential for "duplication of enforcement, ineffective oversight, and legal uncertainty for both business actors and government agencies" is very high. This situation not only wastes state resources but also has the potential to create double jeopardy, or unfairness for those being investigated.¹²

This phenomenon of overlapping authority between supervisory institutions is not merely a theoretical issue, but has been demonstrated in numerous concrete cases in the field. "The previous case study example related to the findings in the Mandala Krida Stadium contained in the KPPU Decision Case Number 10/KPPU-I/2017," is a clear illustration of this complexity. In this case that has surfaced to

⁸ Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi jo. Undang-Undang Nomor 20 Tahun 2001; Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia; Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.

⁹ Rosdalina Bukido and Laila F. Bamatraf, 'Peranan Komisi Pengawas Persaingan Usaha (KPPU) Dalam Menegakkan Undang-Undang Nomor 5 Tahun 1999 Tetang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat', *Jurnal Ilmiah Al-Syir'ah*, 15.1 (2017), Hlm. 58.

¹⁰ Nawang Xalma Kaldera, Muthi Aulia, and Hani Adila Faza, 'Peran BPK Sebagai Lembaga Pengawas Eksternal Pengelolaan Keuangan Negara', *Jurnal Fundamental Justice*, 1.2 (2020), Hlm. 20.

¹¹ Richo Andi Wibowo, 'Penyelesaian Sengketa Pada Rancangan Aturan Pengadaan Barang Jasa Publik: Apresiasi, Kritik, Rekomendasi', *Media luris*, 6.3(2003), Hlm. 497.

¹² Adam Khafi F., Sunarto DM, and Maya S., 'Penegakan Hukum Dalam Pengadaan Barang Dan Jasa Pemerintah Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dan Komisi Pemberantasan Korupsi (KPK)', *Jurnal Cendekia Hukum*, 4.2 (2021), Hlm. 117.

the public, several supervisory and law enforcement institutions were involved, including the Business Competition Supervisory Commission (KPPU), the Corruption Eradication Commission (KPK), and the Supreme Audit Agency (BPK). The Mandala Krida case demonstrates how a problem can attract the attention of various institutions with different mandates but intersecting within the same case object. The epicenter is how their tasks are divided in resolving the case.

In a situation like the Mandala Krida Stadium, critical questions arise: who has the primary authority or "epicenter" in resolving the case? Are the BPK audit results the primary basis for the KPK investigation? How are the KPPU's findings regarding tender collusion integrated into the criminal law enforcement process by the Prosecutor's Office or the Police? Without a clear coordination mechanism and authority boundaries, each institution can operate independently, leading to inefficiency, overlapping findings, and even potential inter-institutional conflict. This case study clearly illustrates that when multiple institutions are involved, the essence of the problem is not only the violation, but how the roles and duties of each institution are divided and coordinated to achieve an effective, efficient, and fair resolution. This is one of the challenges that must be addressed immediately so that the supervisory system can run harmoniously and on target. Therefore, an analysis and discussion are conducted regarding the authority of the KPPU and BPK in the context of procurement of goods and services and whether there is overlap in the implementation of supervision by both and how solutions can be harmonized.

RESEARCH METHODS

In this research, we use a doctrinal research method with a descriptive analytical approach, which is a problem-solving approach by examining and reviewing competent writings and applicable laws and regulations and analyzing facts to then be used as a basis for implementing problem-solving. The intended problem-solving is how the authority of the KPPU and the BPK in the context of procurement of goods and services, then whether there is an overlap in the implementation of supervision by both, and how to harmonize these authorities in the procurement of goods and services supervision system. The specification of this research is descriptive analytical, namely research whose purpose is to provide a description or overview of the supervisory mechanisms carried out by the KPPU and the BPK in the procurement of goods and services in Indonesia. The data used in this paper is secondary data, namely data obtained by conducting document studies consisting of laws and regulations, scientific studies and journals, books, and news articles

RESULTS AND DISCUSSION**1. The authority of the KPPU and BPK in the context of Procurement of Goods and Services**

Government procurement of goods and services is a crucial area that requires multifaceted oversight to ensure budget efficiency, accountability, and fair competition. In this context, the Business Competition Supervisory Commission (KPPU) and the Supreme Audit Agency (BPK) play central roles with specific but often overlapping authorities. This section will clearly outline the respective authorities, their limitations, the types of sanctions imposed, and the stages of their oversight.

1.1. Business Competition Supervisory Commission (KPPU)

The KPPU is an independent institution established under Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Anti-Monopoly Law). The KPPU was established to create a conducive business climate and prevent unfair business practices in Indonesia.¹³ As a special body, the KPPU has the function of enforcing competition law, which includes examining business actors, both based on public reports and on the KPPU's own initiative. The case handling mechanism is further regulated in the Business Competition Supervisory Commission Regulation (Perkom) Number 1 of 2019.¹⁴

In the context of Government Procurement of Goods and Services, the KPPU's authority is specifically directed at preventing and prosecuting collusive or collusive practices in tenders. Article 22 of the Antimonopoly Law explicitly prohibits business actors from colluding with other parties to arrange or determine tender winners, which can lead to unfair business competition. Presidential Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services also confirms that providers of goods and services may be subject to administrative sanctions if proven to have engaged in collusive or collusive practices as determined by the KPPU or authorized agencies.¹⁵

The forms of tender collusion that are the focus of KPPU supervision can be classified into four main types:¹⁶ namely: (a) Horizontal Collusion: Occurs between

¹³ Rosdalina Bukido and Laila F. Bamatraf, 'Peranan Komisi Pengawas Persaingan Usaha (KPPU) Dalam Menegakkan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat', *Jurnal Ilmiah Al-Syir'ah*, 15.1 (2017), Hlm. 58.

¹⁴ Apectriyas Zihaningrum, 'Penegakan Hukum Persekongkolan TenderBerdasarkan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monoili Dan Persaingan Usaha Tidak Sehat', *Jurnal Privat Law*, 4.1 (2016), Hlm. 108.

¹⁵ Peraturan Komisi Pengawas Persaingan Usaha No. 1 Tahun 2019 Tentang Tata Cara Penanganan Perkara Praktik Monopoli dan Persaingan Usaha Tidak Sehat, Pasal 2.

¹⁶ Komisi Pengawas Persaingan Usaha Republik Indonesia, Pedoman Pasal 22 tentang Larangan Persekongkolan dalam Tender berdasarkan Undang-Undang Nomor 5 Tahun 1999 tentang

fellow business actors or providers of goods/services who compete with each other. This creates a pseudo-competition among tender participants. (b) Vertical Collusion: Involving one or several business actors/providers with the tender committee, auction committee, users of goods/services, or employers. In this form, the tender committee collaborates with certain tender participants. (c) Joint Collusion (Horizontal & Vertical): Is a combination of the two types above, involving business actors and tender committees simultaneously. (d) Collusion in Other Forms: Involving one or more other parties, including parties who do not participate in the tender process, who function as scenario organizers, funders, liaisons, or other roles to organize and/or determine the tender winner.

As an administrative institution, the sanctions imposed by the KPPU are administrative in nature. These sanctions are imposed on business actors found to have violated the provisions of the Antimonopoly Law and Government Regulation Number 44 of 2021 concerning the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition. These administrative sanctions include:¹⁷ (a) Fine: Imposition of a financial penalty on a business actor. The amount of the fine is determined based on the impact of the violation, the continuity of business activities, and clear considerations. (b) Prohibition from participating in tenders: Business actors who are proven to have colluded may be prohibited from participating in tenders for the procurement of goods and services in the future. (c) Compensation: Order to pay compensation to the injured party. (d) Cancellation of agreement: Cancellation of an agreement resulting from collusive practices. (e) Order to cease activities: Order to business actors to cease activities that are proven to result in monopolistic practices or unfair competition.

Although the KPPU has the authority to take action against business actors involved in tender rigging, its authority over government officials or tender committees is limited. The KPPU cannot impose direct sanctions on tender committees or civil servants involved. They can only be named as defendants in the case. Sanctions against government officials can only be imposed by the civil servant's superior, usually in the form of disciplinary sanctions in accordance with applicable civil service laws and regulations. The KPPU has the authority to recommend disciplinary sanctions to civil service supervisors if the government official is negligent in carrying out an act that is part of their duties.¹⁸ This limitation

Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat, KPPU, 2009; Rocky Marbun, *Persekongkolan Tender Barang/Jasa* (Jakarta: Pustaka Yustisia, 2010), Hlm. 23.

¹⁷ Peraturan Pemerintah Nomor 44 Tahun 2021 tentang Pelaksanaan Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat, Pasal 6.

¹⁸ Adam Khafi F., Sunarto DM, and Maya S., 'Penegakan Hukum Dalam Pengadaan Barang Dan Jasa Pemerintah Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dan Komisi Pemberantasan Korupsi (KPK)', *Jurnal Cendekia Hukum*, 4.2 (2021), Hlm. 119.

often results in the KPPU having unequal authority in addressing tender collusion issues comprehensively, because it cannot directly take action against government elements involved.

1.2. Audit Board of the Republic of Indonesia (BPK)

The Audit Board of Indonesia is a high state institution authorized to conduct audits on the management and accountability of state finances, as regulated in Article 23E of the 1945 Constitution. The operational basis of the Audit Board of Indonesia is strengthened by four main laws: Law Number 17 of 2003 concerning State Finances, Law Number 15 of 2004 concerning Audits on the Management and Accountability of State Finances, Law Number 1 of 2004 concerning State Treasury, and Law Number 15 of 2006 concerning the Audit Board of Indonesia.¹⁹

The primary role of the Supreme Audit Agency (BPK) is to safeguard state assets by auditing the management and accountability of state finances by the central government, regional governments, state institutions, and other institutions or bodies that manage state finances. These audits are conducted based on state financial audit standards and can be divided into three main types:²⁰ (a) Financial Audit: Aims to provide an opinion on the fairness of the information presented in the financial reports of central and regional governments. (b) Performance Audit: Assesses the economic, efficiency, and effectiveness aspects of spending, including in the context of procurement of goods and services. The goal is to ensure that state-funded activities are carried out economically, efficiently, and achieve their targets effectively. (c) Audit with a Specific Purpose: Conducted for a specific purpose, outside of financial and performance audits. This includes investigative audits to uncover indications of state/regional losses and/or criminal elements.

Unlike the KPPU, which imposes administrative sanctions, the BPK does not have the authority to impose sanctions directly on individuals or institutions. Its function is more focused on audits and recommendations. However, BPK audit results are legally binding and serve as an important basis for enforcing accountability. Sanctions or consequences of BPK findings are more indirect, namely:²¹ (a) Determination of the Amount of State Losses: The BPK has the authority to assess and/or determine the amount of state losses resulting from unlawful acts (whether intentional or negligent) by treasurers, managers of BUMN/BUMD, or other state financial management institutions. (b)

¹⁹ Nawang Xalma Kaldera, Muti Aulia, dan Hani Adila Faza, 'Peran BPK Sebagai Lembaga Pengawas Eksternal Pengelolaan Keuangan Negara', *Jurnal Fundamental Justice*, 1.2 (2020), Hlm. 16

²⁰ Undang-Undang Republik Indonesia Nomor 15 Tahun 2006 Tentang Badan Pemeriksaan Keuangan, Bab 3, Pasal 6-7.

²¹ Undang-Undang Republik Indonesia Nomor 15 Tahun 2006 Tentang Badan Pemeriksaan Keuangan, Bab 3, Pasal 8-9.

Recommendations for System or Personnel Improvements: The BPK provides recommendations in the form of improvements to the financial management system, improvements to work or goods, or administrative actions to budget implementers. (c) Deposit of Money/Assets: If state losses are found, the BPK recommends depositing money/assets into the state/regional/company treasury. (d) Forwarding to Law Enforcement Officials (APH): If its audit finds criminal elements (corruption, collusion, nepotism), the BPK is required to report this to the authorized agency (KPK, Prosecutor's Office, National Police) within one month, and this report becomes the basis for the investigation.

The Supreme Audit Agency (BPK) focuses on auditing state financial management and potential state losses. The BPK's audits are conducted by government agencies/recipients and users of the state budget (APBN/APBD), not directly by private businesses. However, BPK findings regarding state losses in government procurement of goods and services may implicate the goods and services provider if the losses arise from unlawful acts by a third party. However, the determination of compensation for third parties is usually based on a legally binding court decision.

2. Potential Overlapping of the Authorities of the KPPU and the BPK

Guidelines for carrying out procurement of goods and services are explained in Presidential Regulation Number 16 of 2018 as amended by Presidential Regulation Number 12 of 2021 concerning Government Procurement of Goods and Services and Presidential Regulation Number 46 of 2022 concerning the Second Amendment to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services. For crucial regulations, this Presidential Regulation should be immediately made or issued as a Law on Government Procurement of Goods/Services, so that it is more binding and becomes the main guideline in the implementation of procurement of goods and services. Returning to the KPPU and BPK institutions which have the authority to supervise the procurement process of goods and services, the Presidential Regulation does not clearly discuss the supervisory system from external parties.

Table 1. Comparison of Overlapping Authorities of the KPPU and the BPK in Supervision of Government Procurement of Goods and Services

Aspect	BPK	KPPU	Overlapping
Focus of Supervision	Compliance and efficiency of state finances	Fair business competition (conspiracy article 22)	There are similarities in the objects of examination, so that engineered tenders will definitely be detrimental to the state and unfair.
Object of Examination	Government agencies, state-owned enterprises, budget implementers or related parties in budget users	Private business actors (goods/service providers) and the auction committee or working group	Government tenders definitely involve private sector involvement, so that business actors and budget users will both be examined as a whole.
Elements of Violation	Procedural and material focus on state losses	Conspiracy, collusion, cartel	Vertical collusion between the procurement committee and vendors can lead to collusion which causes state losses.
Follow-up	Recommendations for improvement, loss recovery	Administrative sanctions and fines	Both can submit cases to the law enforcement agency, which will determine the priority of supporting data for the investigation and which reports will be prioritized. This principle applies to the <i>ne bis in idem</i> principle.

The overlapping authority between the KPPU and the BPK in the context of Government Procurement of Goods and Services is rooted in the dual nature of procurement transactions themselves. Every Government Procurement of Goods and Services project has both a market economy dimension and a public accountability dimension. The KPPU, established under Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, holds the mandate to ensure the implementation of fair business competition, including in government tender processes. The KPPU's primary focus is to detect and prosecute bid rigging, cartels, and other practices that undermine competition. Conversely, the BPK, as an external auditor as stipulated in Article 23E of the 1945 Constitution, is

responsible for auditing the management and accountability of state finances to ensure efficiency, effectiveness, and compliance with financial laws and regulations.²²

Although their primary focuses differ, the point of intersection arises because both institutions can audit the same object: the entire procurement of goods and services. An infrastructure development project, for example, can be subject to a KPPU audit if there are indications of collusion between providers or between providers and the tender committee. At the same time, the project is also subject to an audit by the Supreme Audit Agency (BPK) to review price fairness, budget efficiency, and compliance with financial procedures. The KPPU looks for evidence of anti-competitive behavior (e.g., similar bidding patterns, shared IP addresses, or suspected winner-fixing), while the BPK verifies financial documents, reviews budget realization reports and identifies potential state losses.

This overlapping problem is further exacerbated by the independence of each institution in carrying out its functions. Procedurally and legally, "the BPK is not obligated to be bound by the KPPU's decision, nor is the KPPU obliged to forward its recommendations to the BPK or base its investigations on the BPK's Audit Report".²³ This means that the findings or decisions of one institution do not automatically form the basis or are binding for the actions of another institution. As a result, for the same object of supervision, the KPPU may find collusion and impose administrative sanctions, while the BPK also finds state losses caused by the same practice. A direct consequence of this overlapping authority and independence in decisions is the risk of double jeopardy. The term "double jeopardy" traditionally refers to the prohibition on someone being prosecuted or punished twice for the same crime. Although in the context of Government Procurement of Goods and Services often involves both administrative and auditing domains, the spirit of this prohibition on double prosecution is relevant. Unclear relationships between institutions "are prone to double prosecution against the same object".²⁴

A concrete example is when a tender rigging is proven by the KPPU and the business actor is fined in accordance with competition law. However, a BPK audit later finds that the conspiracy also caused state financial losses because the project price was higher than it should have been. In this situation, the business actor not only faces an administrative fine from the KPPU but also the potential for being sued

²² Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 23E; Undang-Undang Nomor 15 Tahun 2004 tentang Pemeriksaan Pengelolaan dan Tanggung Jawab Keuangan Negara; Undang-Undang Nomor 15 Tahun 2006 tentang Badan Pemeriksa Keuangan.

²³ Adam Khafi F., Sunarto DM, dan Maya S., 'Penegakan Hukum Dalam Pengadaan Barang Dan Jasa Pemerintah Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dan Komisi Pemberantasan Korupsi (KPK)', *Jurnal Cendekia Hukum*, 4.2 (2021), Hlm. 117.

²⁴ Lilik Mulyadi, *Hukum Pidana Indonesia: Teori dan Praktik* (Bandung: Citra Aditya Bakti, 2015), Hlm. 150-152.

for restitution of the state losses based on the BPK's findings, which could lead to criminal proceedings by law enforcement officials such as the Attorney General's Office or the Corruption Eradication Commission (KPK). This issue intersects with the principle of *ne bis in idem*, which means "not twice for the same thing." Although this principle is strictly applied to criminal law, the context of overlapping supervision of Government Procurement of Goods and Services raises serious questions regarding justice and legal certainty. Can the payment of administrative fines to the KPPU be considered a final settlement that frees business actors from demands for compensation for state financial losses or criminal prosecution? Or, should business actors have to bear the double burden of administrative sanctions from one institution and demands for restitution of state losses (which have the potential to be criminal) from another institution for essentially the same act? The absence of a harmonization and offset mechanism between these types of sanctions can create a disproportionate burden and damage the investment climate.

Presidential Regulation Number 46 of 2025 concerning the Second Amendment to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods and Services (hereinafter referred to as Presidential Regulation 46/2025) is the latest regulation that is expected to bring a breath of fresh air in efforts to increase the efficiency and accountability of Government Procurement of Goods and Services. Although this Presidential Regulation does not explicitly define a clearing house or coordination protocol between the KPPU and the BPK, several of its articles have important implications for efforts to harmonize supervision:

- a) **Ethical Affirmation and Collusion Prevention:** Article 7 paragraph (1) letters e and g of Presidential Decree 46/2025 expressly requires all parties involved in PBJP to "avoid and prevent conflicts of interest" and "avoid and prevent abuse of authority and/or collusion".²⁵ This affirmation strengthens the legal basis for the KPPU to take action against collusive practices and for the BPK to identify irregularities related to collusion that result in state losses.
- b) **Obligation to Report Indications of Corruption/Collusion:** Article 78 paragraph (1) letters b and c of Presidential Decree 46/2025 clearly states that election participants who are "indicated of collusion with other participants to set bid prices" or "indicated of corruption, collusion and/or nepotism in the selection of Providers" will be subject to administrative sanctions.²⁶ This provision is crucial because it directly links competition violations (the KPPU's

²⁵ Peraturan Presiden Republik Indonesia Nomor 46 Tahun 2025 tentang Perubahan Kedua Atas Peraturan Presiden Nomor 16 Tahun 2018 Tentang Pengadaan Barang/Jasa Pemerintah, Pasal 7 ayat (1) huruf e dan g.

²⁶ Peraturan Presiden Republik Indonesia Nomor 46 Tahun 2025 tentang Perubahan Kedua Atas Peraturan Presiden Nomor 16 Tahun 2018 Tentang Pengadaan Barang/Jasa Pemerintah, Pasal 78 ayat (1) huruf b dan c.

domain) and corruption violations (the BPK/Law Enforcement Officers' domain) with the same administrative consequences (blacklist sanctions).

c) **Supervision of State Finance and National Development:** Article 76A of Presidential Regulation 46/2025 states that "institutions tasked with carrying out government affairs in the field of state/regional financial supervision and national development carry out supervision, submit recommendations for improvement, and/or coordinate and implement synergy with the Internal Supervisory Apparatus of the Government of Ministries/Institutions."²⁷ The phrase "an institution tasked with administering government affairs in the field of state/regional financial oversight and national development" clearly refers to the Supreme Audit Agency (BPK) (for state/regional finance) and can also include other institutions such as the Financial and Development Supervisory Agency (BPKP), which also has a national development oversight function. Although it does not directly mention the KPPU, this provision opens up space for synergy and coordination of supervision between institutions, at least at the level of the Government Internal Supervisory Apparatus and state financial oversight institutions. Although there are several articles in Presidential Regulation 46/2025 that support the spirit of coordination and action against collusion/corruption practices, this Presidential Regulation does not provide an explicit mechanism for a clearinghouse or binding coordination protocol between the KPPU and the BPK when both institutions find indications of violations in the same object. The hope for an "inter-institutional coordination system (such as a clearinghouse)" remains a need that needs to be further regulated in implementing regulations, or in the form of a legally binding inter-institutional Memorandum of Understanding (MoU).

The theoretical differences in focus between the KPPU and the BPK could be attributed to the timing of their oversight. The KPPU, with its focus on tender rigging, ideally begins its oversight at the pre-tender stage (when documents, specifications, and qualifications potentially leading to rigging are being prepared) and during the tender implementation phase (when the supplier selection process, including bidding and evaluation, takes place). This is because collusion, both horizontal and vertical, is primarily designed and executed during the pre-contract phase.²⁸ In contrast, the BPK's focus on accountability and state losses is more dominant during the tender

²⁷ Peraturan Presiden Republik Indonesia Nomor 46 Tahun 2025 tentang Perubahan Kedua Atas Peraturan Presiden Nomor 16 Tahun 2018 Tentang Pengadaan Barang/Jasa Pemerintah, Pasal 76A.

²⁸ Rosdalina Bukido dan Laila F. Bamatraf, 'Peranan Komisi Pengawas Persaingan Usaha (KPPU) Dalam Menegakkan Undang-Undang Nomor 5 Tahun 1999 Tetang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat', *Jurnal Ilmiah Al-Syir'ah*, 15.1 (2017), Hlm. 58.

process (when state funds have been disbursed and used in contract implementation) and especially post-tender (through financial report audits and project performance evaluations). The BPK will examine physical realization, price fairness, and compliance with financial procedures during and after the project is underway.²⁹ However, the reality on the ground shows that "both parties are equally examining the entire pre-tender, implementation, and post-tender process." The KPPU can investigate pre-tender practices that lead to collusion, but the verdict is usually issued after the tender is completed.³⁰ The Supreme Audit Agency (BPK) can conduct planning audits (pre-tender), contract implementation audits, and post-tender performance/investigative audits to uncover state losses. This implies overlapping not only in the object but also in the oversight timeline. This reaffirms the urgency of coordination mechanisms and a clearinghouse to prevent duplication of efforts or conflicting findings.³¹

The Nusa Penida Port procurement case in Bali, as determined by the KPPU in Case Number 18/KPPU-L/2023, is a recent example that clearly illustrates the complexity and challenges of overlapping authority between supervisory institutions, particularly within the KPPU and the potential for overlap with other institutions. In this case, the KPPU successfully proved the existence of tender rigging and imposed administrative sanctions on the business actors involved.³² The KPPU's findings were based on strong indications of similarities in the tender documents between participants (e.g., identical IP addresses, identical application formats and wording, and similar descriptions and typos). Based on this evidence, the KPPU imposed administrative sanctions in the form of fines and a ban on participating in the tender on PT Sumber Bangun Sentosa and related parties found to have colluded.³³ Although the KPPU has imposed administrative sanctions, this case inherently has the potential to overlap with the authority of the Supreme Audit Agency (BPK) and law enforcement agencies (such as the Attorney General's Office or the Corruption Eradication Commission). If the tender rigging evidenced by the KPPU results in state financial losses (for example, due to project prices being higher than market value or markups), the BPK can step in to conduct an investigative audit to quantify those losses. Furthermore, if the BPK audit finds indications of corruption involving state officials, the case can be forwarded to the KPK or the Attorney General's Office for

²⁹ Nawang Xalma Kaldera, Muthi Aulia, dan Hani Adila Faza, 'Peran BPK Sebagai Lembaga Pengawas Eksternal Pengelolaan Keuangan Negara', *Jurnal Fundamental Justice*, 1.2 (2020), Hlm. 20.

³⁰ Richo Andi Wibowo, 'Penyelesaian Sengketa Pada Rancangan Aturan Pengadaan Barang Jasa Publik: Apresiasi, Kritik, Rekomendasi', *Media luris*, 6.3(2003), Hlm. 482.

³¹ Ibid, hlm. 498.

³² Jatimdetik, 'KPPU Buktikan Persekongkolan Tender Di Pelabuhan Nusa Penida', 2024, <https://www.jatimdetik.com/hukum-kriminal/kppu-buktikan-persekongkolan-tender-di-pelabuhan-nusa-penida/> [accessed 13 Mei 2025].

³³ Ibid.

further investigation and prosecution. The Nusa Penida Port case, similar to the broader Mandala Krida Stadium case (in which the KPK and BPK were also involved), demonstrates that the division of responsibilities in resolving the case is central. In this situation, the KPPU takes a role in enforcing competition aspects, but the financial impact could fall under the purview of the BPK, and the potential criminal consequences fall under the purview of law enforcement officials. Without a clear coordination mechanism and clearinghouse, each agency may conduct investigations separately, which can result in duplication of efforts, discrepancies in findings, uncertainty for the parties investigated, and obstacles to law enforcement. Therefore, this case underscores the urgency of clear regulations and an interagency coordination system (such as a clearinghouse) to ensure that every multifaceted Government Procurement case can be handled in an integrated and efficient manner.

In addition, what is no less important is the authority in terms of determining blacklist sanctions because after a provider is indicated to have committed a violation in the Procurement of Government Goods and Services, definite steps must also be taken. KPPU has the authority to impose sanctions in the form of a Blacklist to business actors who are proven to have committed tender collusion or other unfair business competition practices. This sanction is administrative and is stated in the KPPU's decision, however, in Article 78 paragraphs (1) and (3) of Presidential Regulation number 46 of 2025 concerning the legality of the blacklist, the authority to impose and determine is the KPPU in the context of Government Procurement of Goods and Services. The Government Procurement Policy Agency (LKPP) is responsible for developing and managing an information system that integrates supplier performance data, including blacklist data. Therefore, the challenge is how to automatically and integrated the KPPU's blacklist decisions into the National Blacklist system managed by the Government Procurement Policy Agency (LKPP). Presidential Regulation Number 46 of 2025, Article 78 paragraph (4b) and Article 91 paragraph (1) letter u delegate further regulations regarding National Blacklist sanctions to the Regulation of the Head of the Institution (Regulation of the Head of the LKPP). This means that the LKPP has a mandate to detail the formal procedures for the KPPU (and other law enforcement officers) to report blacklist decisions so that the data can be displayed on the LKPP website and accessed transparently by all Ministries/Institutions/Regional Devices. In addition, there is an expansion of the basis for imposing blacklist sanctions. Article 78 paragraph (1) and (3) of Presidential Regulation Number 46 of 2025 details actions that can be subject to blacklist sanctions, including:³⁴ (a) Submission of false/incorrect documents/information, (b) Indication of collusion with other participants to set the bid price, (c) Indication of

³⁴ Peraturan Presiden Republik Indonesia Nomor 46 Tahun 2025 tentang Perubahan Kedua Atas Peraturan Presiden Nomor 16 Tahun 2018 Tentang Pengadaan Barang/Jasa Pemerintah, Pasal 78 ayat (1) dan (3).

corruption, collusion and/or nepotism in selecting the Provider, (d) Resigning for unacceptable reasons, (e) Not carrying out the contract or defaulting, (f) Causing the building to fail, and (g) Submitting a guarantee that cannot be cashed in.

Significantly, Presidential Regulation Number 46 of 2025 explicitly includes "indications of conspiracy" and "indications of corruption, collusion, and/or nepotism" as grounds for imposing blacklist sanctions. This is a significant improvement over Presidential Regulation No. 12 of 2021, which tended to limit blacklisting to default or withdrawal from auctions. Thus, the previous issue stating that "blacklisting due to corruption does not exist, only blacklisting due to default or withdrawal from auctions" has been partially addressed by Presidential Regulation Number 46 of 2025 by including indications of corruption and conspiracy as grounds for blacklisting.

CONCLUSION

Oversight of government procurement of goods and services in Indonesia involves various institutions, with the Business Competition Supervisory Commission (KPPU) and the Supreme Audit Agency (BPK) playing central roles. The KPPU focuses on preventing unfair business competition practices, particularly tender rigging, and imposing administrative sanctions such as fines and prohibitions from participating in tenders. The BPK, on the other hand, has the authority to audit the management and accountability of state finances to ensure efficiency and accountability, as well as to identify potential state losses. Despite their different focuses, there is overlap in authority between the KPPU and the BPK in overseeing government procurement of goods and services because their oversight objects can be the same: the entire procurement process, including pre-tender, implementation, and post-tender activities.

This overlap creates the potential for ineffective oversight and legal uncertainty, as well as the risk of duplicate proceedings for business actors. Cases such as the Mandala Krida Stadium and Nusa Penida Port demonstrate how a single issue can attract the attention of multiple institutions with different but overlapping mandates within a single case, highlighting the importance of clear division of tasks and coordination. Presidential Regulation No. 46 of 2025 has attempted to address some of these issues by strengthening the legal basis for preventing collusion and corruption and expanding the basis for imposing blacklist sanctions to include indications of collusion and corruption/collusion/nepotism. However, this regulation does not yet provide an explicit mechanism for a clearinghouse or binding coordination protocol between the KPPU and the BPK. Furthermore, integrating KPPU blacklist decisions into the National Blacklist system managed by the LKPP remains a challenge that requires further regulation.

SUGGESTIONS/RECOMMENDATIONS

1. Establishment of clear, binding, and more comprehensive regulations, either through a new law or a more in-depth revision of the Presidential Regulation, to explicitly define the limits of authority and coordination mechanisms between the KPPU and the BPK in overseeing government procurement. These regulations should include a clearinghouse, a clear division of duties and harmonization of sanctions.
2. The need for increased inter-institutional synergy to encourage and implement a Memorandum of Understanding (MoU) or strong cooperation agreement between the KPPU, the BPK, the LKPP, and other law enforcement agencies (the Corruption Eradication Commission, the Prosecutor's Office, and the National Police). This is crucial for the exchange of information and data and cooperation in investigating violations in the procurement of goods and services.
3. Optimizing the National Blacklist System by ensuring that KPPU blacklist decisions are automatically and integrated into the National Blacklist system managed by the LKPP. The LKPP Head's regulations need to detail formal procedures for the KPPU to report blacklist decisions so that the data is transparent and accessible to all Ministries/Institutions/Regional Agencies.

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