



## Expert Testimony in Law Enforcement of Corruption in the Procurement of Goods and Services in Handling Emergencies

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### **Abstract**

The objective of this research is to examine the extent of regulations regarding the utilization of expert information in the investigation of corrupt criminal acts, as stipulated in Law Number 8 of 1981 on the Criminal Procedure Code. Additionally, it aims to analyze the use of expert information in the investigation of corrupt criminal acts related to the procurement of goods and services in emergency situations. The research employs normative legal research methods. The findings reveal the role of expert testimony in the criminal law enforcement process based on Law Number 8 of 1981 on the Criminal Procedure Code. Expert testimony can serve as evidence in a criminal case in two possible ways: as expert testimony itself or as documentary evidence. Expert testimony is presented in court under oath or affirmation according to the individual's religious beliefs. On the other hand, documentary evidence is provided during an examination by an investigator or public prosecutor, in the form of a report that takes into account the oath taken when assuming the position or job. Furthermore, the use of expert information in elucidating the investigation process of corrupt criminal acts in the procurement of goods and services during emergency situations holds non-binding power. Expert information serves as a tool to mitigate the potential for human negligence. By drawing upon the information provided by experts, a coherent narrative can be constructed to uncover the truth, with the expectation that the Mataram Police Criminal Investigation Unit can reach a judgment (*ratio decidendi*). From the expert statement from PBJ, the Mataram Police Criminal Investigation Unit obtained this expert statement which was able to explain the case currently being handled regarding a criminal act of corruption at the NTB Province Small and Medium Enterprise Cooperative Service, that there had been a conflict of interest of the parties involved, either directly or indirectly.

**Keywords:** *Expert Statement; Corruption; Procurement of Goods and Services*

### **Introduction**

The position of expert testimony as evidence, as regulated in the Criminal Procedure Code (KUHAP), does not stand alone. According to Article 184, there are five valid pieces of evidence, namely witness testimony, expert testimony, documents, exhibits, and the defendant's statement. Expert testimony cannot be separated from other pieces of evidence, as stated in Article 25 paragraph (2) of the National

Police Chief Regulation (*PERKAP*) Number 6 of 2019 on Criminal Investigations, which stipulates that before someone is designated as a suspect, it must be based on two valid pieces of evidence.

Procurement of goods and services (PBJ) is an activity to obtain goods and services by ministries/agencies/units of regional work units/other institutions, starting from needs planning to the completion of all activities to acquire goods and services. However, it is important to note in the practice or process of procurement that it should result in the right goods/services for every amount spent, measured by aspects of quality, quantity, time, cost, location, and provider. This ensures that fraudulent practices in the procurement of goods and services can be minimized. In line with this concept, state institutions such as the Corruption Eradication Commission (KPK) state that procurement of goods and services is one of the sectors prone to corruption. In the history of case handling by the KPK, procurement of goods and services is the sector where corruption occurs most frequently, accounting for 277 out of a total of 539 cases since the establishment of the KPK.

However, this situation, in its operational aspects, is highly ironic considering the emergency procurement of goods and services. It is known that in the implementation related to the procurement of masks by the NTB Provincial Government, strong suspicions of deviations are alleged to have occurred in both the planning and implementation stages. The procurement of goods/services (masks) by the Small and Medium Enterprises Cooperative Office of NTB Province in 2020 is under investigation by the Criminal Investigation Unit of Mataram City Police for alleged corruption in the procurement of Covid-19 masks, involving a budget of IDR 12.3 billion.

In the course of handling the case of alleged corruption in the procurement of goods and services mentioned above by the Criminal Investigation Unit of Mataram City Police, the investigative process refers to the normative order in Article 59 of Presidential Regulation Number 16 of 2018, with the material content described as follows:

1. Article 59 (1) determines "*Emergency handling is carried out for the safety/protection of the community or Indonesian citizens inside and/or outside the country, the implementation of which cannot be postponed and must be done immediately*"
2. Furthermore, Article 59 (2) states that emergencies include:
  - a) Natural disasters, non-natural disasters, and/or social disasters;
  - b) Implementation of search and rescue operations;
  - c) Damage to facilities/infrastructure that may disrupt public service activities;
  - d) Natural disasters, non-natural disasters, social disasters, political and security developments abroad, and/or the enforcement of foreign government policies that directly impact the safety and order of Indonesian citizens abroad; and/or
  - e) Providing humanitarian assistance to other countries affected by disasters.

In addition to considering the content of the above-mentioned *beleids*, the investigators of the Criminal Investigation Unit of Mataram City Police also refer to the Circular Letter of the Head of the Government Goods/Services Procurement Policy Agency Number 3 of 2020 concerning Explanations on the Procurement of Goods and Services in the Context of Handling Coronavirus Disease 2019 (Covid-19). However, as generally known, in the process of proving an investigation in a case, especially a corruption case, the principle of *actori incumbit onus probandi* is adhered to in order to strengthen the investigative argumentation in accordance with the Investigation Order Number: SP.Sidik/241/IX/RES.3.3/2023/Reskrim, dated September 19, 2023, to clearly find the material truth in

the process of investigating corruption in the procurement of masks at the Small and Medium Enterprises Cooperative Office of NTB Province in 2020 for Covid-19 handling. In this regard, the investigators use expert testimony, which is one of the pieces of evidence in examining a criminal case as stipulated in Article 184 of the Criminal Procedure Code (KUHP).

Based on the above description, the purpose of this research is to analyze the scope of the regulation regarding the use of expert testimony in the process of investigating corruption as regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP). Additionally, it aims to analyze the use of expert testimony in the process of investigating corruption in the procurement of goods and services during emergency situations.

### **Method**

This research employs a normative legal research approach with the method of interpretation. The approaches utilized in this study are the Statute Approach, Conceptual Approach, and Case Approach. The researcher uses various types and sources of data, including primary, secondary, and tertiary materials, as follows:

#### 1. Primary legal materials, including:

- a) Law Number 20 of 2001, regarding amendments to Law Number 31 of 1999 concerning the Eradication of Corruption;
- b) Law Number 2 of 2002 concerning the Indonesian National Police;
- c) Law Number 1 of 2004 concerning the State Treasury;
- d) Law Number 5 of 2014 concerning Civil Servants (ASN);
- e) Law Number 23 of 2014 concerning Regional Governments;
- f) Law Number 30 of 2014 concerning Government Administration;
- g) Presidential Regulation Number 16 of 2018 concerning the Procurement of Goods and Services;
- h) Presidential Regulation Number 12 of 2021 regarding Amendments to Presidential Regulation Number 16 of 2018 concerning the Procurement of Goods and Services;
- i) LKPP Regulation Number 13 of 2018 concerning the Procurement of Goods and Services in Emergency Situations;
- j) LKPP Circular Letter Number 3 of 2020 regarding Explanations on the Implementation of Goods/Services Procurement in the Context of Handling Coronavirus Disease 2019 (Covid-19);
- k) LKPP Circular Letter Number 4 of 2020 regarding Procedures for Qualification/Clarification and Negotiation in the Selection of Providers during the Coronavirus (Covid-19) Outbreak.

#### 2. Secondary materials such as official documents, relevant scholarly books, legal expert opinions, legal doctrines, and legal journal articles

#### 3. Tertiary legal materials include the Indonesian General Dictionary and Legal Dictionary

In this research, the data collection method employed is literature review. The findings from both literature and field research are discussed through a descriptive analysis. The researcher utilizes argumentation to provide prescriptions or evaluations regarding the correctness or incorrectness, or what should be according to the law, concerning the facts or legal events resulting from the research presented in this study (Muhaimin, 2020). The next stage involves data processing, where the analysis is conducted using a comparative qualitative method. This involves breaking down and comparing the findings of literature research (secondary data) with the results of the investigation report (*Berita Acara Pemeriksaan* or BAP). This process aims to demonstrate that the use of expert testimony in the investigation of corruption can clearly and distinctly uncover elements of the criminal act (Muhaimin, 2020) and address the issues raised in this research, ultimately proving the objectives of the study.

## **Results and Discussion**

### **The Position of Expert Testimony in The Criminal Law Enforcement Process System**

#### **a. Evidence in Criminal Law**

In the context of criminal law, the principle of legality means that an individual cannot be punished unless the act is recognized as a criminal offense by the law in force at the time the action is committed. This implies that crimes and criminal law are applicable only if an individual's actions are governed and prohibited by the prevailing laws.

The concept of the judge's knowledge as evidence here means not only the judge's legal knowledge but also extends to an understanding of the developments of the time, especially those related to the subject matter under examination. Indonesia itself does not recognize evidence of observation or the judge's knowledge. Instead, Indonesia acknowledges the existence of evidentiary clues, which were not regulated in the Dutch Code of Criminal Procedure. However, with the passage of time, the evidence used in court proceedings is not limited to those specified in Article 184 of the Criminal Procedure Code (KUHAP) alone (Hutabarat et al., 2022). An example is the evidence used in terrorism cases. In the law on the eradication of terrorism, evidence is recognized beyond what is stipulated in Article 184 of the KUHAP, such as information spoken, sent, received, or stored electronically with optical tools or similar devices. Other evidence includes data, recordings, or information that can be seen, read, and/or heard, produced with or without the aid of a device, whether on paper, physical objects, or anything other than paper, or recorded electronically, including but not limited to voice or image recordings, maps, designs, photos, or the like, letters, assumptions, symbols, or perforations that have meaning or can be understood by those who read or comprehend them.

Evidence is anything related to an act, and with such evidence, it can be used as proof to convince the judge of the truth of a criminal act committed by the defendant. Any person presenting evidence that is not regulated by the law is not allowed and cannot be accepted by the judge in the trial. The panel of judges, public prosecutor, defendant, or legal counsel are bound and limited to using only the evidence stipulated in the law.

#### **b. The Essence of Proof in the Indonesian Criminal System**

As widely known, the criminal evidence system in Indonesia adheres to the negative *wettelijk bewijs* theory (Wicaksono, 2009), where the burden of proof must meet two conditions:

- a) Evidence must be based on recognized legal instruments or valid evidence as specified in Article 184 of the Criminal Procedure Code (KUHAP), which includes witness testimony, expert testimony, documents, exhibits, and the defendant's statement.

- b) Negative proof, as intended by the law, signifies that the judge's conviction alone is not sufficient to declare someone guilty. The judge's conviction must be formed from at least two supporting pieces of evidence (Wicaksono, 2009).

The understanding of the nature of unlawfulness is as follows: firstly, the nature of general unlawfulness is interpreted as a general condition for an act to be punishable. Secondly, the nature of specific unlawfulness is usually stipulated in the formulation of the offense. Therefore, specific unlawfulness is a written requirement for an act to be punishable. Thirdly, formal unlawfulness implies that all elements of the offense formulation have been fulfilled. Fourthly, substantive unlawfulness has two perspectives: the nature of unlawfulness seen from the act itself, and the nature of unlawfulness seen from its legal source. These perspectives aim to protect public interests, and the act is considered contrary to unwritten laws or laws that exist in society (Hiariej, 2006).

### c. The Urgency of Expert Testimony in Criminal Law

Expert testimony is a valuable form of evidence in the trial process. It involves the statement of an individual with specialized knowledge about a disputed matter or a legal event under litigation. In criminal cases, expert testimony holds the same weight as other pieces of evidence, as stated in Article 184 paragraph (1) letter b of the Criminal Procedure Code (KUHAP). When combined with other valid evidence, expert testimony serves as an independent piece of evidence that helps meet the burden of proof or minimum evidence required to convince the judge of the occurrence of a criminal act and the guilt of the accused. It is important to note that judges are not obligated to solely rely on expert testimony.

In cases involving allegations of unlawful acts, the statements made by experts carry significant implications. These experts should be respected, appreciated, and protected for their contributions in assisting law enforcement by providing their expertise to clarify a case.

Expert testimony is frequently called upon in the legal context, particularly in cases involving technical evidence such as forensic or medical sciences. It helps the court understand the implications of the evidence and provides explanations within the context of the case. Expert testimony plays a crucial role in addressing complex cases as it offers detailed perspectives, in-depth analysis, and accurate recommendations that are essential in cases requiring expert testimony.

### d. Legal Arrangements for Expert Testimony as Evidence

The law of evidence is a part of criminal procedural law that regulates various valid pieces of evidence according to the law, the system employed in proving, the requirements and procedures for presenting evidence, as well as the judge's authority to accept, reject, and assess the evidence (Sasangka & Rosita, 2003).

Article 1 number 28 of the Criminal Procedure Code (KUHAP) defines expert testimony as a statement provided by someone who has special expertise in matters necessary to elucidate a criminal case for the purpose of examination. The main idea behind the effort to seek evidence by obtaining expert testimony is to clarify the criminal act.

In the Criminal Procedure Code (KUHAP), several articles contain provisions regarding expert testimony, namely:

- a) Article 1 point 28 KUHAP, which states that "Expert testimony is a statement provided by someone who has special expertise in matters necessary to elucidate a criminal case for the purpose of examination." In the Explanation of Article by Article, it is explained that expert testimony is a statement provided by someone with special expertise in matters necessary to clarify a criminal

case for examination purposes.

- b) Article 120 paragraph (1) states that when an investigator deems it necessary, they may seek the opinion of an expert or someone with special expertise.
- c) Article 133 consists of 3 (three) paragraphs. In paragraph (1), it is stated that when an investigator, for the interest of justice, handles a victim, whether injured, poisoned, or deceased, suspected due to a criminal act, they have the authority to request expert testimony from forensic medical experts or doctors and/or other experts. Article 133 paragraph (2) stipulates that the request for expert testimony, as referred to in paragraph (1), is made in writing, explicitly mentioning the examination of injuries, examination of corpses, and/or autopsy. The explanation states that the testimony provided by forensic medical experts is considered expert testimony, while the testimony provided by non-forensic medical experts is termed testimony. Furthermore, Article 133 paragraph (3) specifies that a corpse sent to forensic medical experts or doctors in a hospital must be treated with respect and labeled with the corpse's identity, with an official stamp affixed to the big toe or another part of the corpse.
- d) Article 180 KUHAP consists of 4 (four) paragraphs. In paragraph (1), it is determined that when necessary to clarify issues arising in a court session, the presiding judge may request expert testimony and may also request the submission of new materials by interested parties. In Article 180 paragraph (2) KUHAP, it is stated that in the event of valid objections from the defendant or legal counsel regarding the results of expert testimony as referred to in paragraph (1), the judge orders a reexamination. Furthermore, in Article 180 paragraph (3) KUHAP, it is stated that a judge, by virtue of their position, can order a reexamination as mentioned in paragraph (2) (paragraph 3). Finally, Article 180 paragraph (4) KUHAP specifies that the reexamination, as mentioned in paragraphs (2) and (3), is conducted by the original institution with a different personnel composition and another institution authorized for it.
- e) Article 186 KUHAP stipulates that expert testimony is what an expert state in a court session.
- f) Article 179 consists of two paragraphs. In paragraph (1), it is stated that anyone requested for their opinion as an expert in forensic medicine, doctor, or other experts must provide expert testimony for the sake of justice. Paragraph (2) specifies that all provisions mentioned above for witnesses also apply to those providing expert testimony, with the condition that they swear or promise to provide the best and truest testimony based on their knowledge in their field of expertise.

#### e. Expert Appointment

Some argue that the appointment or designation of experts based on the request of one party is not binding on the judge; the judge is free to assess whether, objectively and realistically, a report or testimony from an expert is still relevant. If the judge believes that all the issues in question are already clear and evident, it is sufficient grounds for the judge to reject the request. According to Article 154 paragraph (1) of the HIR and Article 216 Rv, the purpose of expert examination is to obtain information that can clarify the issues in the case. This means that if everything is already clear, there is no longer a need for an expert report or testimony. On the contrary, some argue that the request to present an expert is: (Harahap, 2017)

- a) A right granted by the law to the parties involved in the case,
- b) Viewed from the legal procedural doctrine approach, every procedural and procedural right granted by procedural law must be fulfilled if the holder of that right intends to exercise it.

In terms of doctrine, if a party requests the appointment or designation of an expert as a procedural right under Article 154 paragraph (1) of the HIR, the judge should not reject it. However, if no party makes such a request, the judge has the discretion to consider it based on their ex officio authority granted by Article 154 paragraph (1) of the HIR.

A balanced approach can be taken, where the decision to grant the request is made proportionally. If expert testimony is genuinely necessary to clarify something essential and substantial, the request should be accepted. Conversely, if everything has been adequately explained objectively on a case-by-case basis, the request may be denied. It is crucial to prevent the judge from behaving arrogantly and arbitrarily. However, parties should not abuse the proceedings by requesting something disproportionate and leading to tyrannical actions. Regarding the possibility of parties disagreeing with the expert proposed under Article 216 Rv, the judge has the authority to appoint or designate an expert based on their position.

#### f. The Position of Expert Testimony in the Indonesian Criminal Law Enforcement Process System

Article 154 (3) of the HIR states that the qualification of being heard as an expert is not granted to everyone. Similar restrictions that are applicable to witnesses are also extended to expert testimonies, which are frequently utilized to acquire a more profound understanding of technical subjects. Consequently, the weight of evidence is contingent upon the judge's discretion and conviction (Mulyadi, 2002).

Article 184 paragraph 1 of the Criminal Procedure Code (KUHAP) explains the recognized levels of valid evidence in court. In its position, expert testimony is placed second after the testimony of witnesses. This is because expert testimony is a crucial piece of evidence to provide an understanding and clarity of a criminal act. According to Article 1 point 28 of KUHAP, expert testimony is given by someone with special expertise necessary to elucidate a criminal case for examination purposes.

Article 186 of KUHAP defines expert testimony as what an expert state in a court hearing. According to Waluyadi, not all expert testimonies can be considered as evidence; only those given in the courtroom can meet the criteria for testimony (Mulyadi, 2002). Interview results regarding expert opinions on the comparison of the status between one form of evidence and another, discussion on the relationship between physical evidence and evidence in a Judge's decision according to the provisions of KUHAP, whether it is a criminal conviction or a non-conviction decision. Thus, it raises questions about the relationship between the evidence mentioned in Article 184 paragraph (1) of KUHAP and the term "evidence" in the criminal conviction decision in Article 197 paragraph (1) of KUHAP. Regarding evidence, it is necessary to reconsider the provisions on evidence in Article 183 and 184 paragraph (1) of KUHAP.

In Article 5 paragraph 1 of the Information and Electronic Transactions Law (ITE Law) namely Law No. 11/2008 jo Law No. 19/2016, it is mentioned that electronic information and/or electronic documents and/or their printouts are valid legal evidence. Meanwhile, in Article 5 paragraph (2), it is stated that the evidence mentioned in Article 5 paragraph (1) is an extension of evidence as regulated in KUHAP. Thus, based on these two legal sources, investigators have six types of evidence that can be used to determine a suspect. From these six types of evidence, at least two pieces of evidence, combined with the examination of the suspect, are sufficient to designate someone as a suspect. Therefore, the designation of a suspect is based on the examination of several pieces of evidence, the testimony of the suspect, the case title, and then the designation of the suspect emerges. In the process of designating a suspect, there has already been pre-prosecution by the public prosecutor so that all processes are followed. Thus, it is impossible for the designation of a suspect to be based on one piece of evidence alone.

The legal status of expert testimony in proving criminal cases in court is based on Article 184 paragraph 1 of KUHAP, which explains the recognized levels of valid evidence in court. The position of expert testimony in the Criminal Procedure Code Law No. 8/1981 does not specifically define expert testimony. In Article 1 point 28, it is mentioned that expert testimony is given by someone with special expertise on matters necessary to clarify a criminal case for examination purposes. Additionally, Article 186 of KUHAP states that expert testimony is what an expert state in a court hearing.

Expert testimony is an essential component in criminal proceedings, as outlined in the Criminal Procedure Code (KUHAP). However, it is not considered as standalone evidence but rather intertwined with other forms of evidence. The designation of a suspect cannot solely rely on expert testimony; valid evidence must be present before making such a decision. Furthermore, according to Article 25 paragraph (2) of the Chief of Police Regulation (PERKAP) of the Republic of Indonesia Number 6 of 2019 regarding Criminal Investigation, a case title must be established before designating someone as a suspect based on two valid pieces of evidence, except in cases of being caught in the act. This process involves assessing evidence, investigative procedures, and internal oversight from the police organization (Article 32 paragraph (2)), PERKAP Number 6 of 2019.

Expert testimony can be requested by the investigator, prosecutor, or the defendant/their legal representative. The expert provides testimony based on their objective expertise, free from bias. While the investigator may consider expert testimony in the suspect designation process, it is secondary to witness testimony. Expert testimony plays a crucial role in providing clarity and understanding of a criminal act. Therefore, in every criminal case, the public prosecutor presents an expert to strengthen and clarify the evidence, aiding the judge in determining the occurrence of a criminal act.

In today's modern age, new criminal activities like trading and cybercrimes have emerged, requiring experts in relevant fields to explain and support evidence in criminal cases. Although expert testimony cannot stand alone, it complements other evidence, enhancing the overall clarity of a criminal act.

## **The Use of Expert Testimony in Clarifying the Investigation Process of Corruption in The Procurement of Goods and Services in Handling Emergency Situations**

### **a. Evidence by Experts in Corruption Crime**

Referring to the Criminal Procedure Code (KUHAP), the authority for investigation lies with the Indonesian National Police (POLRI) officials and certain civil servants, abbreviated as PPNS, who are granted specific authority by the law (Article 6 paragraphs (1) and (2) of KUHAP). This is what distinguishes KUHAP from HIR. During the HIR era, the term "*penyelidikan*" (preliminary investigation) did not exist. Only "*penyidikan*" (investigation) was recognized, where the police played a role as an assistant to the investigator. According to HIR, the investigator is also the prosecutor. Investigation according to HIR can be conducted by prosecutors or other officials. The investigative model in HIR is somewhat similar to the investigation model of corruption crimes in the present era. Investigation of corruption crimes differs from the investigation of general crimes where not only the police act as investigators but it can also be carried out by the public prosecutor's office and the Corruption Eradication Commission (KPK) (Kurnia et al., 2020).

According to Yahya Harahap, expert testimony plays a role in the resolution of criminal cases due to the development of science that also influences the quality of crime methods. The evolution of criminal modus operandi requires law enforcement to be carried out with improved quality and methods of proof supported by knowledge, skills, and expertise (Alamri, 1997).



Based on the author's observations, in the cases mentioned above and even in other criminal cases, in practice, legal experts are often called upon by investigators to provide their expertise. Sometimes, if investigators do not include the testimony of a criminal law expert in the case file, they may be asked by the prosecutor to complete the case file by including the testimony of a criminal law expert. Occasionally, investigators themselves take the initiative to present the testimony of a legal expert based on the opinions derived from the case title.

#### b. Blinding Parameters in Criminal Cases

In criminal law doctrine related to evidence, Eddy O.S. Hiariej mentions that the parameters of proof in the field of criminal law consist of "*bewistheorie, bewijsmiddelen, bewijsvoering, bewijslaat, bewijskracht, and bewijs minimum.*" Here are the details:

- a) *Bewijstheorie* is a method of proof used as the basis for judges' decisions in court. There are four known proof theories in practice. First is the *positief wettelijk theorie*, where judges are positively bound to evidence based on the law. Second is Conviction intime, meaning pure conviction, where the basis for a decision is solely the judge's belief. Third is conviction *raisonce*, where the basis of proof is the judge's belief within certain logical limits. Fourth is the *negatief wettelijk bewijstheorie*, generally adopted in the Criminal Procedure Code (KUHAP), where the basis of proof is the judge's belief arising negatively from the evidence in the law.
- b) *Bewijsmiddelen* are the means of proof used to demonstrate the occurrence of a legal event and are legally formal and juridical. In Indonesian criminal procedural law based on Article 184 of the KUHAP, valid evidence in criminal proceedings includes testimony of witnesses, expert testimony, documents, indications, and the defendant's testimony.
- c) *Bewijsvoering* is a method of testing how law enforcement agencies present evidence to the judge in court. Parameters applied in the KUHAP obligate investigators not to violate the law when seeking evidence, meaning they should not infringe upon the rights and interests of the suspect. However, modern legal developments and the complexity of crimes may allow some deviations from suspects, such as the authority granted to the Corruption Eradication Commission (KPK) for wiretapping.
- d) *Bewijslaat* or burden of proof is the division of the burden of proof mandated by the law to prove a legal event. In criminal proceedings, both the public prosecutor and the defendant share an equal burden of proving their positions. If the prosecutor is obliged to prove the allegations, the defendant also has the right to prove that the charges are incorrect. This condition is known as the principle of balanced reversal of proof or the term "exculpatory evidence."
- e) *Bewijskracht* is a concept in criminal evidence where each piece of evidence in the chain of assessments proves a stated allegation. The evaluation is the authority of the judge, who assesses and determines the compatibility between one piece of evidence and another. The strength of proof also depends on the evidence presented—whether it is relevant to the case being tried. If the evidence is relevant, the strength of proof then focuses on whether the evidence is admissible. In criminal procedural law, all evidence has equal strength, meaning there is no hierarchy between them. However, the law requires that each piece of evidence has relevance.
- f) *Bewijs Minimum* is a concept that determines the minimum evidence required in proof. In criminal procedural law, there is a minimum limit of evidence needed to prove a defendant's guilt. In the Indonesian context, to convict a defendant, there must be at least two pieces of evidence that make the judge convinced of the defendant's guilt. This is stipulated in Article 183 of the KUHAP, indicating that at least two pieces of evidence are required to impose a sentence.

c. The Practice of Law Enforcement of Mataram Police with the Use of Experts in Corruption in the Procurement of Goods and Services in Handling Emergencies

a) Chronology of Legal Events

It is suspected that a Corruption Crime occurred in the Procurement of Masks at the Small and Medium Enterprises Cooperative Office of the West Nusa Tenggara Province in 2020, funded by the Regional Budget from the Unanticipated Expenditure (BTT) for the year 2020, according to the DPA Number: 54/DPA/TAPD/2020, dated April 14, 2020, amounting to IDR 12,325,000,000. The funds were transferred by the Regional Financial and Asset Management Agency (BPKAD) of West Nusa Tenggara Province to the Treasurer of the Small and Medium Enterprises Cooperative Office of West Nusa Tenggara Province, totaling IDR 12,315,000,000. The procurement was carried out by the Small and Medium Enterprises Cooperative Office of West Nusa Tenggara Province, located at Jl. Airlanga No. 36, Mataram, in three phases. In Phase I (Adult Masks), the Commitment Maker Officer (PPK) was Drs. WIRAJAYA KUSUMA, MH (Head of the Small and Medium Enterprises Cooperative Office of West Nusa Tenggara Province), with a price of IDR 9,900 per mask. In Phase II (Adult Masks) and Phase III (Children's Masks), the Commitment Maker Officer (PPK) was KAMARUDDIN, S.Sos, MH, with a price of IDR 7,500 per children's mask. The total quantity of masks for Phases I, II, and III was 1,295,000 masks. The procurement process was as follows:

- 1) Phase I was carried out by 31 SMEs, producing a total of 100,000 masks with a budget realization of IDR 990,000,000.
- 2) Phase II was carried out by 84 SMEs, producing a total of 945,000 masks with a budget realization of IDR 9,344,304,000.
- 3) Phase III was carried out by 32 SMEs, producing a total of 250,000 masks with a budget realization of IDR 1,875,000,000.

From the budget of IDR 12,315,000,000, the realized amount was IDR 12,209,304,000, and the remaining budget was returned to the regional treasury amounting to IDR 105,696,000.

b) Expert Competence in Goods and Services Procurement (PBJ) LKPP

The Procurement Expert requested for testimony by the Criminal Investigation Unit of the Mataram City Police has been asked to provide testimony as an Expert in various cases of corruption, including:

- 1) March 21, 2013, in the alleged corruption case of the North Minahasa Road Project at the KPPU;
- 2) April 16, 2013, in the alleged corruption case of the Sei Ambawang River Terminal Project at the KPPU;
- 3) May 23, 2013, in the alleged corruption case of the Drug Procurement at RSKD Duren Sawit at the Metro Police;
- 4) July 8, 2013, in the alleged corruption case of the Procurement of Printing Goods and Teaching Aids at the South Tapanuli Education Office at the KPPU;
- 5) July 17, 2013, in the alleged corruption case of the Procurement and Lease of Transponders and Satellites at the West Kalimantan Province Hubkominfo Office at the West Kalimantan Police;
- 6) August 16, 2013, in the alleged corruption case of the Procurement of Medical Equipment CT

Scan at RSUD Duren Sawit at the East Jakarta Prosecutor's Office;

- 7) August 26, 2013, in the alleged corruption case of the Procurement of Medical Equipment CT Scan at RS Palembang Bari at the South Sumatra Attorney General's Office;
- 8) September 13, 2013, in the alleged corruption case of PDAM Riau at the Riau Police;
- 9) September 27, 2013, in the alleged corruption case of the Procurement of Heavy Equipment Crawler Dozer at the City Planning and Tourism Office of Metro Lampung at the Metro Lampung Police;
- 10) September 27, 2013, in the corruption case of the Procurement of the Construction of BLK Agro Wisata at the Ministry of Transmigration and Manpower located in Belitung Regency, at the Bangka Belitung Police;
- 11) October 11, 2013, in the alleged corruption case of the Procurement of Educational Teaching Aids for SMP in Tangerang Regency at the Metro Jaya Police;
- 12) October 17, 2013, in the alleged corruption case of the Procurement of Genset Machines and Installations at BLKD South Jakarta at the South Jakarta High Prosecutor's Office;
- 13) October 17, 2013, in the alleged corruption case of the Procurement of Data Collection and Preparation of the Education Master Plan at the Jambi Provincial Education Office for the 2011 Budget Year at the Jambi Police;
- 14) October 25, 2013, in the alleged corruption case of the implementation of event organizer service spending at the North Utan Kayu Utara Sub-district Office, Matraman, East Jakarta for the 2012 fiscal year at the East Jakarta Police;
- 15) October 25, 2014, in the alleged corruption case of the implementation of the Regional Assistance Fund (BDB) spending of the Binjai City APBD for the 2012 fiscal year at the Binjai City Public Works Office for the Heavy Market Rehabilitation Project in Binjai City in 2012 at the Binjai Police, North Sumatra, and various other procurement cases.

c) Results of Analysis of Mataram Police Law Enforcement with the Use of Experts

In the case of criminal acts of corruption in the procurement of masks at the Office of Cooperatives, Small and Medium Enterprises of West Nusa Tenggara Province in 2020, to find the light of a criminal act, expert testimony on the procurement of goods and services is used. The results of the BAP of goods and services procurement experts by the Mataram Police Criminal Investigation Unit investigators:

- 1) As an expert in the field of goods and services procurement, please explain what is meant by the procurement of goods and services using the APBN / APBD, and where it is regulated? In accordance with the provisions in the Presidential Regulation of the Republic of Indonesia Number 16 of 2018 concerning Government Procurement of Goods / Services and its amendments in Article 1 paragraph (1) that Government Procurement of Goods / Services, hereinafter referred to as Goods / Services Procurement, is the activity of Procurement of Goods / Services by Ministries / Institutions / Regional Apparatus funded by the APBN / APBD whose process is from identification of needs, up to the handover of work results. Further explained in Article 2 paragraph (1) Procurement of Goods / Services within Ministries / Institutions / Regional Apparatus that use the Budget from APBN / APBD.

- 2) In order for experts to explain how the procurement of Goods/Services, funded by the 2020 Regional Budget (APBD), is implemented and regulated, it is important to note that, in accordance with the provisions of Presidential Regulation of the Republic of Indonesia Number 16 of 2018 concerning Government Procurement of Goods/Services, including its amendments in Article 3 paragraph (1), the procurement of Goods/Services in this Presidential Regulation covers: a. Goods; b. Construction Work; c. Consulting Services; and d. Other Services. As stated in paragraph (2), the procurement of Goods/Services as referred to in paragraph (1) can be carried out in an integrated manner, and as mentioned in paragraph (3), the procurement of Goods/Services as referred to in paragraph (1) is implemented through: Self-Management (*Swakelola*), and/or Providers.
- 3) Can the expert explain the actors in the procurement of Goods/Services, as well as the duties and responsibilities of each party, especially the Procurement Committee (PA), Procurement Planning Committee (KPA), Procurement Implementing Committee (PPK), and the Provider? Please elaborate. In accordance with the provisions of Presidential Regulation of the Republic of Indonesia Number 16 of 2018 concerning Government Procurement of Goods/Services, including its amendments.
- 4) Regarding the procurement of Goods/Services in the handling of Emergency Conditions (Covid-19) within the government sector conducted in the year 2020, what regulations are applicable? Explain: The Procurement in Emergency Conditions is subject to the following provisions:
  - Presidential Regulation of the Republic of Indonesia Number 16 of 2018 concerning Government Procurement of Goods/Services, including its amendments;
  - Regulation of the Government Goods/Services Procurement Agency Number 13 of 2018 concerning Procurement of Goods/Services in Emergency Conditions;
  - Circular Letter of the Government Goods/Services Procurement Policy Agency Number: 3 of 2020 regarding Explanation of the Implementation of Goods/Services Procurement in the Context of Handling Corona Virus Disease 2019 (Covid-19).
- 5) Can the expert explain what is meant by the state of emergency in relation to the procurement of goods and services, and what regulations govern this emergency status? Please elaborate. The expert may explain that, based on the Regulation of the Government Goods/Services Procurement Policy Agency Number 13 of 2018 concerning procurement of goods/services in emergency conditions, in Article 1, number 5, the Emergency Status is defined as a condition designated by the authorized official for a specific period to address emergencies.
- 6) Do epidemics and disease outbreaks fall under the criteria of an emergency as regulated in the Regulation of the Government Goods/Services Procurement Policy Agency Number 13 of 2018 concerning procurement of goods/services in emergency conditions, specifically in Chapter II, Emergency Criteria, Article 5, paragraph (2)? Please explain. According to the Annex I of the Regulation of the Government Goods/Services Procurement Policy Agency Number 13 of 2018 concerning procurement of goods/services in emergency conditions, under Point 1.3, Emergency Criteria, an emergency situation includes Disaster Emergency. Disaster emergency is a condition that threatens and disrupts the lives and livelihoods of a group of people/society, requiring immediate and adequate response. It can be caused by natural disasters such as earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, landslides; non-natural disasters such as technological failures, modernization failures, epidemics, disease outbreaks; and social disasters such as social conflicts between groups or communities, terrorism. Therefore, epidemics and disease outbreaks fall into the category of disaster emergencies.

- 7) Can the expert explain who determines and declares the state of emergency and the procurement procedures for goods/services during an emergency? Please elaborate. The determination of the Procurement Procedures for Goods/Services during an emergency is based on the declaration of the State of Emergency by the authorized party. In emergency situations, such as the Covid-19 pandemic, the Presidential Decree number 11 of 2020 on the Declaration of Public Health Emergency Covid-19 has been issued. This is in accordance with the Regulation of the Government Goods/Services Procurement Policy Agency Number 13 of 2018 concerning Procurement of Goods/Services in Emergency Conditions, which states in Article 1 numbers 2 and 5 that: Number 2: Procurement of Goods/Services in Emergency Conditions is the procurement activity during the emergency status determined by the authorized party. Number 5: State of Emergency is a condition established by the authorized official for a specific period to address emergencies.
- 8) Can the expert explain how government procurement of goods/services for handling the Covid-19 emergency is conducted as outlined in the Circular Letter from the Head of the Procurement Policy Agency Number 3 of 2020 regarding Explanation of the Implementation of Goods/Services Procurement in the Context of Handling Corona Virus Disease 2019 (Covid-19)? Please elaborate. Government procurement of Goods/Services for handling the Covid-19 emergency is carried out as follows: Ministers, Heads of institutions, and Regional Leaders take further steps to accelerate the procurement of Goods/Services for Emergency Handling in the context of managing Covid-19. Budget Users (PA) or Authorized Budget Users (KPA) determine the needs for goods/services in the context of emergency handling for Covid-19 and instruct the Commitment Officer (PPK) to carry out the procurement of goods/services.
- 9) In the procurement of Goods/Services for Emergency Handling (Covid-19), who is responsible for appointing the Service Provider to carry out the procurement work, and where is this regulated? Please explain. The Procurement Implementing Officer (PPK) is responsible for appointing the Service Provider to carry out the work, as stated in the Circular Letter from the Head of the Procurement Policy Agency Number 3 of 2020 regarding Explanation of the Implementation of Goods/Services Procurement in the Context of Handling Corona Virus Disease 2019 (Covid-19). The PPK takes the following steps, among others: Appoints a Service Provider who has previously provided similar goods/services in a government agency or is listed as a Provider in the Electronic Catalog. The appointment of the provider is made even if the estimated price has not been determined.
- 10) How does the PPK appoint a provider of Goods/Services in the Emergency Handling of Corona Virus Disease (Covid-19) in 2020, and where is this regulated? As per the Circular Letter from the Head of the Procurement Policy Agency Number 3 of 2020 regarding Explanation of the Implementation of Goods/Services Procurement in the Context of Handling Corona Virus Disease 2019 (Covid-19), the PPK takes the following steps: a. Appoints a Service Provider who has previously provided similar goods/services in a government agency or is listed as a Provider in the Electronic Catalog. The appointment of the provider is made even if the estimated price has not been determined. For Goods Procurement: 1). Issues an approved Purchase Order to the Provider. 2). Requests the Provider to provide evidence of the reasonableness of the price of the goods. 3). Makes payment based on the received goods. Payment can be made as an advance or after the goods are received (in installments or in full).
- 11) What is the Expert's opinion, if in a Procurement of Goods/Services for Emergency Handling (Covid-19) through a Provider where the appointment of the Provider/UKM is not carried out by the Commitment Making Officer (PPK) but by the PPTK and the Head of the SME Division of the NTB Province SME Cooperative Office? What is the legal basis and where is it regulated?

Explain. As previously described, the one who appoints the Provider is PPK. It must be seen the legal basis for the appointment made by the PPTK and the Head of the UKM Division, whether there is authority given to the parties in question. In addition, PPTK has limited authority as stated in Article 11 paragraphs 1 and 3 of PR 16/2018: Paragraph 1: PPK in the Procurement of Goods/Services as referred to in Article 8 letter c has duties:

- Formulating procurement planning;
- Conducting Consolidation of Procurement of Goods/Services;
- Determining technical specifications/Scope of Work (KAK);
- Determining contract drafts;
- Determining the Estimated Contract Value (HPS);
- Determining the amount of advance payment to be paid to the Provider;
- Proposing changes to the activity schedule;
- Implementing E-purchasing for values of at least Rp200,000,000.00 (two hundred million Indonesian rupiahs) or more;
- Controlling the contract;
- Storing and maintaining the integrity of all implementation documents;
- Reporting on the implementation and completion of activities to PA/KPA;
- Delivering the results of activity implementation to PA/KPA with a handover report;
- Evaluating the performance of the Provider;
- Determining support teams;
- Determining expert teams or experts; and
- Issuing a Letter of Appointment for Goods/Services Providers.

12) According to experts, if the Commitment Maker Officer (PPK) creates a Unit Price Analysis for masks, but the Head of the Cooperative and SME Agency of NTB Province as PA/KPA sets a price above the one determined by the PPK, could it result in a state loss related to the price difference? Explain. As mentioned earlier, the Estimated Price (HPS) is determined by the PPK, and the PPK is not obligated to set HPS in emergency conditions. If, in an emergency situation, the PPK still prepares HPS, it must be based on clear and accountable data and information. Setting an HPS without clear and accountable data, as per government procurement regulations, leads to financial losses for the state. Article 11 paragraph 1 letter e of Presidential Regulation 16/2018 states: The PPK in Procurement of Goods/Services, as referred to in Article 8 letter c, has duties (among others): Setting the HPS. Regarding the reasonableness of the price of goods/services, Circular Letter of the Head of LKPP Number 3 of 2020 regarding Explanation of the Implementation of Procurement of Goods/Services in the context of handling Corona Virus Disease 2019 (Covid-19) states that the PPK should request evidence of the reasonableness of the price from the Providers, and to ensure the reasonableness of the price after payment, the PPK requests an audit by APIP or BPKP.

- 13) In a Procurement of Goods/Services in a Government Institution for Emergency Handling of Corona Virus Disease (Covid-19) in 2020, does the Budget User (PA) or Authorized Budget User (KPA) have to appoint a specific Commitment Maker Officer (PPK) for Emergency Handling, or with a prior Appointment Decree, and if the PA/KPA is transferred/mutated, does the appointment decision of the PPK still apply? Where is this regulated? Explain. The Commitment Maker Officer (PPK) is determined by the PA/KPA following the applicable procedures in the relevant organizational unit. The PPK is not appointed by personnel but by the official performing the duties and authority as PA/KPA. Therefore, even in the case of personnel mutations/rotations, as long as there is no Decree of termination/replacement of the PPK, the Decree remains valid. Article 1 number 10 of Presidential Regulation 16/2018 states that the Commitment Maker Officer, abbreviated as PPK, is an official authorized by PA/KPA to make decisions and/or take actions that can result in the expenditure of state/ regional budget funds.
- 14) According to the testimony of witness Y, who was the PPK at the Cooperative and SME Agency of NTB Province at that time, the Commitment Maker Officer (PPK) could not perform the duties for the procurement Phase I because from the beginning of the procurement, the PPK was not involved, and some SMEs had already brought masks to the SME sector. Due to health conditions, information was obtained that the agency consulted the Inspectorate. In the consultation results, it was stated that the PPK (Commitment Maker Officer) must be involved. To anticipate this, the Head of the Cooperative and SME Agency of NTB Province once made specifications and Unit Price Analysis for the masks with a price of IDR 8,000 per piece (including VAT). This price was obtained from a survey and coordination with SMEs. During a joint meeting with SMEs, the Head of the Agency, Deputy Head, SME Chief, Section Head, and SME staff presented the Unit Price Analysis for the masks, but some SMEs provided feedback. At that time, the meeting was closed by the Head of the Cooperative and SME Agency of NTB Province, and the price was set at IDR 10,000 per piece. Can the action of the PA/KPA, namely the Head of the Cooperative and SME Agency of NTB Province, be justified based on the above-mentioned provisions, and could the actions of the PA/KPA result in a state loss due to the price difference? Explain. The actions of the PA/KPA determining the HPS, especially without clear and accountable data, are not in accordance with government procurement regulations and result in financial losses for the state. As mentioned earlier, the HPS is determined by the PPK, and the PPK is not obliged to set HPS in emergency conditions. If, in an emergency situation, the PPK still prepares HPS, it must be based on clear and accountable data. Setting an HPS without clear and accountable data, as per government procurement regulations, leads to financial losses for the state. Article 11 paragraph 1 letter e of Presidential Regulation 16/2018 states: The PPK in Procurement of Goods/Services, as referred to in Article 8 letter c, has duties (among others): Setting the HPS. Regarding the reasonableness of the price of goods/services, Circular Letter of the Head of LKPP Number 3 of 2020 regarding Explanation of the Implementation of Procurement of Goods/Services in the context of handling Corona Virus Disease 2019 (Covid-19) states that the PPK should request evidence of the reasonableness of the price from the Providers, and to ensure the reasonableness of the price after payment, the PPK requests an audit by APIP or BPKP.
- 15) What is the expert's opinion on the creation of a procurement Purchase Order that is backdated, and what is the basis or reference for the providers to carry out the work, and what are the consequences of creating documents that do not align with the executed facts? Explain. A Purchase Order is promptly issued by the Commitment Maker Officer (PPK) after ensuring the needed items (type, scope of work, technical specifications, quantity/volume, and estimated completion time) and identifying a Provider that meets the requirements and capabilities to complete the work. The issuance of a Purchase Order should not be backdated. The basis for the Provider to carry out the work is the Purchase Order containing information about the required

items/tasks to be fulfilled/performed by the Provider (type, scope of work, technical specifications, quantity/volume, and estimated completion time). Documents that do not align with the executed facts violate procurement principles and ethics, and are not in accordance with the Government Procurement of Goods/Services (PBJ) regulations.

16) The Procurement Officer (PPTK) provided mask specifications for Phase I and II with predetermined prices of IDR 9,900 and IDR 9,240 (including VAT). How does the expert view the specifications of masks that have already been determined/stated with prices before SMEs prove the reasonableness of the mask prices? Explain. Based on Attachment I to the Regulation of the Government Procurement Policy Agency Number 13 of 2018 regarding the procurement of goods/services in handling emergency situations:

- On Procurement Actors states that the Procurement Officer (PPK) appoints the Provider. If other parties (such as PPTK) are involved in interacting with the Provider, they must be known and under the coordination of the PPK. Because the PPTK's role is as a supporting team for the PPK, working independently without coordination with the PPK contradicts the above provisions.
- Technical specifications can be one of the outputs of the needs identification conducted by the PPK. However, regarding the price, the PPK can appoint a Provider without a Budgeted Cost (HPS) if a rapid procurement process is needed in emergency conditions. As a form of price accountability, the Provider is required to provide evidence of the reasonableness of the item prices, and an audit will be conducted by APIP or BPKP. If, in emergency conditions, the PPK still prepares HPS (the authorized party to set HPS is the PPK, not the PPTK), it must be based on clear and accountable data. Setting an HPS without clear and accountable data is not in accordance with the regulations of Government Procurement of Goods/Services and can result in financial losses for the state.

17) According to experts, can a goods provider/MSME be appointed to carry out procurement if they do not meet the requirements, and what is the legal basis? Explain. The Commitment Maker Officer (PPK) must not appoint a Provider without the capability to perform the work. Therefore, even in emergency situations requiring a fast process, the PPK ensures that the Provider has the qualifications and capabilities to carry out the work. This includes checking if the Provider has previously supplied similar goods/services to government agencies or is listed as a Provider in the Electronic Catalog. The PPK also conducts clarification/confirmation of the Provider's ability to complete the work. This is stated in Regulation of the Government Procurement Policy Agency Number 13 of 2018, Section 2.2.2 (Joint Inspection and Preparation Meeting), which specifies that, if necessary, the PPK and Provider inspect the work location to estimate the needs (type, scope of work, technical specifications, quantity/volume, and estimated completion time) and clarify/confirm the Provider's ability to complete the work. Additionally, Circular Letter of the Head of LKPP Number 3 of 2020 regarding Explanation of the Implementation of Procurement of Goods/Services in the context of handling Corona Virus Disease 2019 (Covid-19) outlines steps for the PPK, including appointing a Provider who has previously supplied similar goods/services to government agencies or is listed in the Electronic Catalog.

18) According to experts, if a company/MSME participating in a procurement of goods is a company/MSME prepared by someone outside the Procurement Actor who will be appointed as the work executor, where the company only acts as a warehouse for goods/masks and does not perform the work as specified in the SP/contract, does it potentially reduce the quality of the resulting goods, lead to financial losses for the state, and who is responsible for this? As previously explained, such actions are not in line with government procurement regulations and



can result in financial losses for the state. Parties involved are responsible according to their respective duties and authorities and based on the actions they have taken. Especially with the actions of responsible parties leading to procurement engineering, as conveyed (preparing activity executors where the company only acts as a warehouse for goods/masks and does not perform the work as specified in the SP/contract), this violates the principles, ethics, and regulations of government procurement.

- 19) As the expert explained earlier, with the actions of procurement engineering as a storage facility and goods/masks benefiting from the procurement, if so, are the parties entitled to benefit from procurement engineering contrary to government procurement regulations, and can this benefit be categorized as a financial loss to the state? Explain. The procurement engineering actions carried out by these parties are not in line with government procurement regulations. If the procurement actor transacts with the MSME as the activity executor, it should be direct, without any intermediary involved in the transaction. Especially if the invoiced work volume does not match the actual volume performed by the MSME, and the price invoiced/paid by the procurement actor to the MSME differs from the amount actually received by the MSME as the activity executor. It is also mentioned that the MSME, after receiving payment from the procurement actor, returns the money to the involved parties. The price difference that occurs should not happen and should not be a profit for the intermediary. Therefore, the price difference that occurs can result in financial losses for the state.
- 20) According to the expert, if the goods provided by the supplier were not actually produced by them, can they be accepted and invoiced? If not, and if the excess cannot be invoiced, can it be categorized as one of the financial losses for the state? Explain. If the data and information on the receipts from each MSME regarding the work volume and invoiced amount do not align with the volume of goods performed and the payment received by the MSME, it can be concluded that the documents used as the basis for invoicing do not correspond to the actual facts. Therefore, the volume of goods not performed by the MSME should not be invoiced on the receipts, and this can result in financial losses for the state.
- 21) Based on the facts explained by the inspector, it is known that in the procurement process, some MSMEs did not directly participate but were borrowed by others, receiving a fee of 2.5% to 3% of the procurement value after tax deduction. Additionally, some MSMEs did not participate in the procurement, but their business profiles/licenses were used by others. In reality, these MSMEs did not produce and supply masks as per the Purchase Order and Work Order, but the procurement/payment documents were invoiced according to the Purchase Order and Work Order. In such a case, is the procurement justified or not (please explain the legal basis), and can the invoiced volume be justified and paid, and can the profit received by the third party borrowing the MSME's license be categorized as a financial loss to the state? Explain. Similar to the previous explanation, if the data and information on the receipts from each MSME do not align with the volume of work and the invoiced amount compared to the volume of goods performed and the payment received by the MSME, it can be concluded that the documents used as the basis for invoicing do not correspond to the actual facts. Therefore, invoicing for the volume of goods not performed by the MSME can result in financial losses.
- 22) According to the expert, is it allowed in a procurement of Goods/Services during an Emergency Situation (Covid-19) at the Department of Cooperatives and SMEs of NTB Province in 2020 for the work executor to borrow another company to carry out the obtained work? What are the consequences, and who is responsible for this? No, it is not allowed. This action violates the principles, ethics, and regulations of government procurement. The procurement process becomes unaccountable. All parties involved in the borrowing and lending of companies are responsible.

23) Can the expert explain what is meant by the actions of parties that involve conflicts of interest and lead to procurement engineering, as explained above? Explain. Article 7 paragraph (1) letter e of Presidential Regulation 16/2018 states: All parties involved in Procurement of Goods/Services must adhere to ethics, including avoiding and preventing conflicts of interest of related parties, whether directly or indirectly, resulting in unhealthy business competition in the Procurement of Goods/Services. Article 7 paragraph (2) of Presidential Regulation 16/2018 states: Conflicts of interest of the related parties as referred to in paragraph (1) letter e, occur in situations where (among others):

- The Commitment Maker Officer (PPK), Tender Committee (*Pokja Pemilihan*), or Procurement Officer, either directly or indirectly, controls or operates the business entity of the Provider; and/or
- Some business entities participating in the same Tender/Selection, whether directly or indirectly, are controlled by the same party.

From the expert explanation on Government Procurement (PBJ), the Criminal Investigation Unit (*Sat Reskrim*) of the Mataram City Police received insights regarding the parties involved in the procurement of masks by the Small and Medium Enterprises Cooperative Agency, which did not comply with government procurement regulations. Consequently, accountability for the non-compliance in the implementation of the mask procurement falls on the involved parties. According to Article 1, number 10 of Presidential Regulation 16/2018, it states that the Commitment Maker Officer (PPK), abbreviated as PPK, is an official authorized by the PA/KPA to make decisions and/or take actions that may result in the expenditure of state/regional budget funds. Based on the expert testimony obtained by the Criminal Investigation Unit of the Mataram City Police regarding the corruption case of the Small and Medium Enterprises Cooperative Agency of NTB Province, it was explained that there was a conflict of interest among the parties involved, both directly and indirectly.

Article 7, paragraph (1) letter e of Presidential Regulation 16/2018 states: All parties involved in the Procurement of Goods/Services must adhere to ethics, including (among others) avoiding and preventing conflicts of interest of related parties, whether directly or indirectly, resulting in unhealthy business competition in the Procurement of Goods/Services.

Article 7, paragraph (2) of Presidential Regulation 16/2018 states: Conflicts of interest of the related parties as referred to in paragraph (1) letter e occur in situations where (among others):

- The Commitment Maker Officer (PPK), Tender Committee (*Pokja Pemilihan*), or Procurement Officer, either directly or indirectly, controls or operates the business entity of the Provider; and/or
- Some business entities participating in the same Tender/Selection, whether directly or indirectly, are controlled by the same party

In accordance with the above provisions, actions related to conflicts of interest include, among other things, the involvement of officials such as SKPD officials and/or Procurement Managers in SKPD (PA/KPA/PPK/PPTK/other internal officers) who directly control (self-controlled by the relevant officer) or indirectly control the Provider involved in procurement at that SKPD (involving family members, using other people's companies, or various other forms of indirect involvement). The term "specific engineering" refers to various efforts undertaken by the parties involved in the implementation of procurement (PA/KPA/PPK/PPTK/other internal officers) that can lead to unhealthy competition and/or abuse of authority in the form of actions intentionally taken outside the authority related to the procurement process and/or intentionally to gain personal/group benefits. One form of specific

engineering is the determination of unreasonable prices, resulting in a significant margin (a high difference between the set price (HPS or contract value or similar) and the actual price of the goods/services provided by the Supplier).

#### d. Objectivity of Goods and Services Procurement Expert Testimony in the Corruption Crime of Procurement of Goods and Services in Handling Emergencies

The lack of legal certainty regarding this expert will undoubtedly bring legal uncertainty for law enforcers. Agreements based on legal certainty in criminal law must be grounded in certainty in carrying out something that is prohibited or allowed. Thus, by analogy with the above, if something is not prohibited, it is allowed, and it can be done if there is no valid legal rule explicitly prohibiting it. In terms of the expert's testimony as evidence, it will have its own impact on certainty when viewed from the issues, permissibility, or not, in standardizing the provision of testimony from their expertise.

The expert's testimony, intended to obtain objective information related to their expertise, cannot be provided because it depends on the interests of the party who presents the expert. This context provides accurate consequences that are not influenced by the interests of certain parties. The presence of expert testimony can contribute to enhancing the credibility of the judicial system by providing more accurate and in-depth knowledge of the case being discussed, helping to avoid incorrect or unfair decisions. Lexically, objectivity, according to the Indonesian dictionary, means an honest attitude, not influenced by personal or group opinions and considerations when making decisions or taking actions; objectivity. When related to the writing in this section, objectivity is meant in terms of the value of an honest attitude, independent of an expert in providing testimony according to their expertise in order to provide an accurate picture of the legal facts existing for the clarity of material truth in the criminal case under study.

An expert should not be related to the case for which their testimony is sought. The connection mentioned refers to things that can affect their objectivity, such as family relationships or relationships that affect emotional attachment, leading to a conflict of interest. In this case, the procurement expert brought in by Sat Reskrim Polresta Mataram has no connection to the case being investigated by Sat Reskrim Polresta Mataram regarding the procurement of masks by the Department of Cooperatives and Small and Medium Enterprises of West Nusa Tenggara Province in 2020. Normatively, an expert witness is expected to be as objective as possible in explaining an issue due to their expertise.

### **Conclusion**

The role of expert testimony in the criminal law enforcement process system under Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP) has two potential functions: as expert testimony in court sessions through oath or affirmation, and as documentary evidence in reports during examination by investigators or public prosecutors.

Expert testimony plays a crucial role in uncovering corruption during emergency procurement processes. While not legally binding, it serves as a valuable tool in minimizing potential errors. By consolidating information provided by experts, a clear path to the truth can be established, aiding Polresta Mataram's Criminal Investigation Unit in making informed decisions. Recent expert testimony from the Procurement Unit at Sat Reskrim Polresta Mataram shed light on a corruption case within the Small and Medium Enterprises Cooperative Office of NTB Province, revealing conflicts of interest among various parties.

As suggestions, when participating in the investigative process, it is crucial for an expert to possess not only knowledge in a specific subject but also expertise that is relevant to the case. Therefore,

an expert who is presented during the investigation process should demonstrate academic proficiency, integrity, independence, morality, and professionalism in order to provide high-quality testimony throughout the legal proceedings and in court. In order to maintain the objectivity of expert testimony during all stages, including investigation, prosecution, and trial, it is essential to establish standardized criteria for experts. A system should be implemented to ensure that the testimony provided by experts is competent, objective, and independent. This could involve the creation of a registry of experts or the formation of a council responsible for evaluating their competence and establishing a code of ethics. Furthermore, regulations regarding the remuneration of experts who provide testimony in criminal cases should be addressed.

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