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Shifting from Maladministration Contract to Corruption

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ABSTRACT

Purpose – This paper seeks to review the legal case proceeding of a project concerning the uprating of a water treatment plant capacity owned by the PDAM K in 2015. The public tender for the project proceeded in 2015, and four bidders participated. Upon completion in 2016, handed over and fully paid, the project ended up in a corruption case.
Methodology/approach – A review of the lawsuit and the court proceeding published through the official MA Directory. The reviewer consulted one of the defendants, who was finally found guilty by the court. Examine the case, including others who were supposedly responsible for ensuring compliance of the "Goods and Services" practices with the administrative law.
Findings – The problematic "uprating" project was not included in the official list of approved projects for 2015. As the Budget User, the director submitted the technical justification for the project to be funded in 2016, which was approved. The second contract was signed with new dates in 2016, and the payment requests were paid. It is a maladministration project with a lack of due diligence.
Novelty/value – As experienced officers who are well-trained in the procurement law of "Goods and Services," the mal-administrative projects should not be allowed to proceed.

INTRODUCTION

In the third quarter of the 2015 fiscal year, PDAM K still had a balance of investment funds worth Rp 19 billion that had not been executed. For this reason, the President Director of the Local Water Authority (PDAM K) took the initiative to use part of the remaining investment funds to improve the service area in one of the branches. For this reason, an assessment and justification was carried out, the essence of which was the need to increase the capacity of the Water Treatment Plant, hereinafter referred to as "uprating" work. However, the project was not identified as one of the needs to be implemented in the current 2015 fiscal year. The project did not receive support from the Supervisory Board, so it was recommended that approval be obtained from the Head of the Regent, the local government.

While the water utility has not established the procurement unit, the public tender was carried out by the local government agency (ULP Pemda). There were four companies submitted their bids. Based on the conclusion of the bid evaluation, the contractor was selected, and both parties agreed with the terms. The contract, valued at Rp 4.9 billion, was prepared and signed by the parties in September 2015.

To overcome the non-budgeted project, the Project Users (PA/KPA) obtained budget approval for the uprating work in 2016. For this reason, a new contract was issued in accordance with the 2016 fiscal year. The service provider completed the project and conducted the necessary testing and operation before handing it over in mid-2016. The payment claim and the retention have been fully paid in four terms.

This case has finally shifted from maladministration to corruption cases in the district court and high court. Three people were found guilty, namely the president director of the water utility (KPA), the PPK (water utility engineer), and the director of the service provider. What is seen to be the most disadvantaged is the service provider, who was not only sentenced to 6 years in prison but must return state losses worth Rp. 2.6 billion or a substitution to a 3-year prison.

This law case began with maladministration in the implementation of the Presidential Regulation in the administration of Public Procurement of Goods and Services[1]. This case should be stopped at the stage where the activity is in the domain of administrative laws. What is regrettable is why the relevant authorities, among others, KPA, PPK, ULP Local Government, and the PDAM's Supervisory Board, did not use their authority to annul this project. It is impossible for the aforementioned parties not to have sufficient knowledge to categorize this project as a maladministration. Why is this project considered to have harmed the local government budgeting system? How did the court conclude that there had been a public asset loss as a result of this project and classified it as a corruption practice? The reviewer argued that the court proceeding should have made clear distinctions and categorically separated to apply for the roots of the problem and the people impacted by the maladministration practice not only in the project reparation stage but also in the full cycle of the project implementation. Two criminal law experts, Muzakkir and Gintings, encouraged courts to treat a PBJP contract in the domain of administration and civil law with due care. The court should have promoted the use of non-litigation solutions, particularly with regard to the service providers who have no power or control over the administration of the PBJP.

LITERATURE REVIEW

Maladministration as a Distinct Legal Category

Maladministration is generally defined as unlawful, unreasonable, or improper conduct by public administrators in the exercise of their duties, encompassing delay, procedural non-compliance, abuse of discretion, and negligent decision-making that falls short of criminal intent (Pratiwi et al., 2024). In the Indonesian context, maladministration is institutionally addressed through the Ombudsman of the Republic of Indonesia, established under Law No. 37 of 2008, which is empowered to receive complaints, investigate administrative irregularities in public service delivery — including those carried out by state-owned or regionally owned enterprises such as PDAMs — and issue corrective recommendations (Pratiwi et al., 2024). A persistent theme in this literature is that Ombudsman recommendations carry only moral or persuasive force rather than binding legal effect, meaning that administrative bodies frequently disregard them, which leaves purely administrative remedies structurally weaker than criminal or civil enforcement mechanisms in curbing procurement irregularities.

Conceptually, Pratiwi et al. (2024) position maladministration as a form of *onrechtmatige overheidsdaad* — an unlawful act by government — which can, depending on its elements, generate either administrative liability, civil liability, or, where intent and state financial loss are present, criminal liability. This layered classification is directly relevant to the PDAM K case: the absence of the uprating project from the 2015 approved project list, and its subsequent retroactive justification and re-contracting in 2016, could plausibly have been treated as a procedural or administrative defect subject to correction or sanction. Instead, the case proceeded to a criminal corruption prosecution, indicating

[1] Public Procurement of Goods and Services may be the closest term with the Pengadaan Barang dan Jasa Pemerintah (hereinafter called PBJP) and is under the so-called administration law.

that the reviewing institutions determined that the irregularity exceeded the threshold of mere maladministration.

The Legal and Institutional Framework of Goods and Services Procurement

Indonesian public procurement of goods and services is governed by successive presidential regulations intended to embed principles of efficiency, transparency, openness, competitiveness, fairness, and accountability into the tendering process. Yustiarini and Soemardi (2020) reviewed the legislative framework governing government infrastructure procurement and concluded that corruption vulnerabilities cluster at specific points in the procurement cycle — including project planning and budgeting, the tendering and bid evaluation stage, and the contract execution and payment stage — each of which corresponds to a stage implicated in the PDAM K project's trajectory: the (mis)placement of the project outside the approved 2015 plan, the tender in which four bidders participated, and the eventual completion, handover, and full payment.

A body of doctrinal literature further distinguishes procurement problems that remain administrative from those that escalate into criminal territory. Adhi, Arifin, and Sani (2025) trace how administrative irregularities in state procurement systems — such as non-compliance with planning documents, defective qualification processes, or irregular contract variations — can, when accompanied by state financial loss and elements of unlawfulness or abuse of authority under Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption, be prosecuted as criminal acts rather than resolved through administrative sanction alone. Their analysis reinforces that vulnerability to criminal reclassification is not confined to the planning stage; it extends through supplier qualification, contract administration, and payment authorization, closely mirroring the sequence of events documented in the PDAM K project, where the second, retroactively dated contract and its associated payment requests became central to the criminal case.

Theoretical Perspectives on Corruption in Procurement

Beyond the Indonesian doctrinal literature, comparative and theoretical scholarship helps explain why procurement is a structurally corruption-prone activity and how administrative deviations translate into corrupt outcomes. Auriol (2006) models public procurement corruption as arising from two related mechanisms: "capture," in which a firm bribes an official to secure a competitive advantage, and "extortion," in which a firm complies with a bribe demand to avoid exclusion, both of which distort quality and price outcomes relative to a competitive tender. Graycar (2019) extends this by developing an analytical framework distinguishing standard, customized, intangible, and complex procurements, arguing that customized and complex projects — such as technical infrastructure upgrades — are especially susceptible to the evasion or manipulation of existing procedural rules, a dynamic broadly consistent with an uprating project that fell outside the standard, pre-approved planning cycle.

Within the Indonesian setting specifically, Rustiarini, Sutrisno, Nurkholis, and Andayani (2019) applied the fraud triangle framework — pressure, opportunity, and rationalization — to individual behavior in public procurement, finding experimentally that fraudulent conduct increases when officials face high pressure combined with high opportunity, and that "displacing responsibility" is a common rationalization strategy among those involved. This offers a plausible behavioral lens on the PDAM K case: the Budget User's post hoc technical justification for funding the project in 2016 can be read as an attempt to construct administrative legitimacy for a decision that had already been substantively made, a pattern consistent with rationalization behavior documented in the fraud triangle literature. Complementing this individual-level account, Suardi et al. (2024) examined procurement governance mechanisms across the planning, preparation, and implementation phases of Indonesian public procurement, concluding that weak governance controls at the planning and preparation stages —

precisely where the PDAM K project's initial omission from the approved list occurred — create downstream conditions that are difficult to remedy once implementation and payment have proceeded.

From Administrative Defect to Criminal Liability: The Legal Threshold

A recurring question in this literature is what separates a procurement error that should be resolved through administrative correction from one that warrants criminal prosecution. The doctrinal consensus, reflected in Adhi et al. (2025) and in the broader Ombudsman-oriented literature (Pratiwi et al., 2024), is that the presence of demonstrable state financial loss (*kerugian negara*), coupled with an element of unlawful conduct or abuse of authority/position for personal or third-party enrichment, is what converts a procedural or administrative irregularity into an offense under Indonesia's anti-corruption statutes. In the PDAM K case, the facts as reviewed — a project absent from the approved plan, a technical justification produced after the fact by the very official responsible as Budget User, a second contract issued with altered dates, and full payment released against that contract — supply precisely the combination of procedural irregularity and apparent intentional circumvention that the literature identifies as the trigger for reclassification from maladministration to corruption.

This also raises the question of institutional responsibility beyond the immediately convicted party. The procurement governance literature emphasizes that public procurement compliance depends on a chain of actors — budget users, procurement committees, technical verifiers, and internal/external auditors — each bearing distinct obligations under procurement law (Suardi et al., 2024; Yustiarini & Soemardi, 2020). Where officers who are professionally trained in procurement law fail to exercise the due diligence their training presupposes, the resulting harm is not merely individual misconduct but a systemic governance failure, a point echoed in Graycar's (2019) observation that procurement corruption frequently arises not from the absence of rules but from their circumvention by those positioned to enforce them.

Discussion: Implications for the PDAM K Case

Read together, this literature supports the characterization of the PDAM K uprating project as a case that began as maladministration — an unbudgeted, unapproved project proceeding to tender — and was subsequently escalated into a corruption case once the retroactive contractual and payment arrangements were scrutinized. Three implications follow. First, consistent with Pratiwi et al. (2024), purely administrative oversight mechanisms such as the Ombudsman are structurally limited in their capacity to intercept irregularities of this kind before they mature into prosecutable offenses, since their recommendations lack binding force and are typically reactive rather than preventive. Second, consistent with Rustiarini et al. (2019) and Suardi et al. (2024), the presence of experienced, procurement-law-trained officers did not prevent the irregularity; rather, their technical competence appears to have been used to construct an after-the-fact justification, illustrating that formal expertise does not substitute for institutional checks and balances. Third, consistent with Adhi et al. (2025) and Graycar (2019), the case demonstrates that the legal threshold between maladministration and corruption in Indonesian practice turns less on the formal category of the initial defect and more on the presence of financial loss and intentional circumvention discovered through subsequent contractual conduct.

METHOD

This study employs a qualitative legal case study approach to examine the transition of a public procurement irregularity from maladministration into a corruption case. The approach was selected because the study focuses on understanding the chronology of events, administrative decision-making, responsibilities of public officials, procurement compliance, and the judicial reasoning underlying the PDAM K case. The case examined is the uprating project of a water treatment plant owned by PDAM K. The project was initially tendered in 2015 and involved four bidders. Following completion and handover in 2016, the project was fully paid but subsequently became the subject of a corruption proceeding. The case was selected because it provides an appropriate context for examining the boundary between administrative irregularities and criminal liability in public procurement. The study relies primarily on documentary analysis of official court records available through the Supreme Court of the Republic of Indonesia (Mahkamah Agung) Case Directory. The documents were examined to establish the chronology of the project, procurement procedures, contractual arrangements, budget approval, project implementation, payment, allegations, evidence, and judicial considerations. Particular attention was given to the project's absence from the approved 2015 project list, the subsequent technical justification for 2016 funding, the signing of a second contract, and the payment process. In addition, the researcher conducted a semi-structured interview with one defendant who was subsequently found guilty by the court. The interview was used as supplementary evidence to provide contextual information concerning the decision-making process and the implementation of the project. The interview findings were compared with the official court documents through source triangulation.Data were analyzed using qualitative content analysis and normative legal analysis. The analysis categorized findings into three dimensions: (1) administrative legality and compliance, (2) procurement governance and due diligence, and (3) criminal liability. The study distinguishes between administrative violations, maladministration, and corruption, recognizing that an administrative irregularity does not automatically constitute a criminal offense. The final analysis therefore examines how the sequence of administrative and contractual actions contributed to the escalation of the PDAM K case into a corruption proceeding.

RESULT AND DISCUSSION

The budgeting process of water utilities is based on the business plan, a collaborative and regulated process aligned with the local government's strategic development plan. It is based on the identified service needs and opportunities, and the effective commencement dates follow the current financial year. The cost of the investment must be prepared with due care and realistic, ensuring financial sustainability. While the PDAM K has not established an independent internal procurement unit, it is a common practice to use the local government facility, the so-called ULP Pemda. It is an experienced procurement unit that is supposedly in compliance with the PBJP and national and local regulations.

The PBJP project cycle may be divided into several stages, namely, planning, preparation, selection, contract implementation, handover, and payment obligations. All the activities, from the planning up to the parties entering into contract signing, are governed by administrative law. In Presidential Regulation number 16 of 2018, article 52 paragraph (2) as quoted, "*PPK is prohibited from entering into an agreement or signing a Contract with the service provider, in the event that there is no budget available or there is not enough budget available which may result in the exceeding of the limit of the available budget for activities financed by the State Budget/APBD*."

The purpose of the article is to avoid any mal and unlawful administration of the PBJP, both at the central and regional levels. Furthermore, PBJP officials may conduct an advanced procurement as accommodated in Government Regulation Number 50 of 2018. The main requirement remains unchanged, only for those that have been legally registered in the DIPA, but must be implemented in the next fiscal year[2]. The contract can be signed before the fiscal year but must be declared effective in the current fiscal year.

Cancellation VS Termination of Contract. The Public Procurement Policy Agency (LKPP) Regulation No. 12 of 2021 guides the Implementation of PBJP through service providers. Article 4.1

[2] DIPA is the Government Budget Implementation Document

regulates the termination of contracts in cases such as false information, fraud, influencing the PBJP, conspiration to regulate process, collusion, nepotism, and unacceptable justification for withdrawal. Thus, the articles of the said regulation cannot be used as a legal basis for canceling the contract. Contract cancellation is most likely the correct term for a legal flaw and void by law as per civil law no 1320 or 1265 as in the case of the uprating project.

During the procurement of the uprating project, four bidders submitted their bids in 2015. Bid preparation is costly and requires a team of experts to work on. However, participating in an unlawful project is a waste of resources for all. The ULP Pemda should have canceled the public tender at no compensation to participating bidders. All four bidders for the uprating project had the same probability of entering into a contract and ended up in unlawful and corruption allegations. Therefore, the PBJP officials who were directly and indirectly responsible for the maladministration practice must be sanctioned for the wrongdoing.

According to Khalid Mustafa, an experienced PBJP training facilitator, the majority of PBJP problems start from the planning stage, typically due to negligence of administration procedures. Both parties (the PPK and the service bidder) may enter into a contract in the subsequent year when the budget is officially approved. It allows the PPK to legally obtain the source of funds to be committed to the investment. The fact that both parties have signed the contract means that it must be immediately canceled at no cost to all. It was quite unfortunate in this case that the contractor had made substantial progress and no foreseeable mechanism to recuperate the big costs incurred. It remains questionable if the service provider has the right to claim compensation due to the fact that the water utility has increased the value of its fixed asset. The most likely authority to pay for the compensation is the regional government and the water utility, for example, using the savings reserve, and it is subject to legal proceedings.

PBJP Key Officials' Positions. Article 8 of Presidential Regulation 20 of 2018 identifies the key official positions of the PBJP, including PA, KPA, PPK, procurement officials, working groups, procurement agents, PjPHP/PPHP, and service providers. There were three key positions found guilty, namely KPA, PPK, and the director of the service provider. The supervisory board members of the local water utility supposedly supervise, coach, and evaluate the board of directors but have failed to stop the project before signing the contract. No evidence of due diligence, risk assessment, mitigation, and preventive measures were documented during the preparation of the contract. It was obvious that when the uprating case emerged, it resulted in confusion and multiple interpretations as to whether the treatment capacity was 50 lps or 100 lps.

Other parties were the UPL Pemda of the local Government and the PDAM K. Both parties were closely associated with the preparation of the project and were well aware that the proposed project was not listed in the financial year of 2015. There was no evidence of legal opinion from those to remind the ULP Pemda to halt the tender and signing of the contract and eventually trapped into a corruption case[3].

Signing the 2nd contract. In 2016, the budget user managed to obtain approval from the local government to fund the project. The 2nd contract was issued and signed by both parties. The project has finally been completed, tested, handed over, and fully paid in 4 terms on the basis of the 2nd contract. It was unclear what the faith of the 1st contract that was signed in September 2015. Obviously, there were 2 contracts for 1 same object and scope[4]. Six persons were also found to have received a small amount of "donation" but returned the money without any administrative sanction.

[3] Administrative sanctions shall be applied to those who were accountable for the wrongdoing.

[4] Noted: ref to the Putusan PT Bandung Nomor 25/PID.TPK/2020/PT BDG Tanggal 10 Desember 2020 — Pembanding/Terdakwa : Ir. Didi Pramadi, https:// Direktori Putusan

Defining the State Financial Losses. In the investigative audit, the prosecutor has also engaged an expert witness to define and calculate the financial losses. The expert stated that the uprating was to increase the treatment capacity from 100 to 150 lps instead of from 50 to 150 lps. However, the initial procurement document of the treatment plant capacity was found to be 50 lps. The court decision obligated the service provider to recuperate the financial losses equivalent to 50 lps or Rp 2.6 M, in substitution to a 3-year jail sentence. The value of the state loss was calculated based on grossing up the historical uprating of 3 projects[5]. The assessment method is considerably debatable and may be challenged on the basis of the purchase price of the initial plant. The assessment of financial losses in the case of corruption must be in accordance with the conditions, the form of allegations, and the circumstances (Gultom, 2018).

The State Financial law states that financial losses imply the shortage of state assets or regional assets due to unlawful acts by managing officials or other parties. To determine the state financial loss in the context of PBJP, particularly in the Design-Build modality contracts, shall be made cautiously. In the free market mechanism, the participating companies tender their bids by taking various aspects such as circumstances, the market price, opportunities, and demand-supply. Unlike the conventional construction contract, DB contractors bear the risks. The Presidential Decree 16 of 2018 and the LKPP Regulations No.9 of 2018 and No.12 of 2021 are to fulfill the goal, objectives, and expected outcomes that the state funds are used in the best possible way and applying the principles of good governance, promoting efficiency, accountability, healthy competition, transparency, preventing corruption, and abuse of power.

The closing of the contract requires all parties to ensure that contract requirements have been fulfilled according to article 57 (paragraphs 1,2,3) of the PBJP Law, handed over to the PPK. Further along the line, the PJPHP/PPHP, in accordance with Article 58 (paragraphs 1,2,3), is required to conduct final verification and prepare the report. The contract is terminated by law when the substitution between the rights and obligations of the contracting parties has been fulfilled[6]. In the case of the uprating project, it was obvious that the project was launched with the absence of due diligence, maladministration, abuse of power, and poor supervision demonstrated by the budget, project users, and supervisory board members. These are simply the roots of the problem and should be treated in the domain of administration law. The case may be dealt with accordingly and in the corridor of administration and civil law[7]. The PBJP project cycle must be governed by administrative and civil law with due care, proper monitoring, and supervision. Any implications of maladministration of the PBJP projects shall not simply be extended to service providers. It is incorrect to assume that maladministration is associated with criminal law. Unless the case has been trialed with obvious and unchallenged findings associated with violation of criminal law[8]. State financial losses have a specific definition but are seldom extended towards ambiguity and confusion, especially when associated with corruption cases[9].

CONCLUSION

The PDAM K case is more appropriately categorized as a maladministration practice that contradicts contract law. The shift of the case from the corridor of administration and contract regulations to

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[5] According to Law No. 31 of 1999 article 2

[6] In accordance with article 57 and article 53 of Law No. 18 of 2018 concerning PBJP. If article 57 is mentioned, it has been handed over 100%.

[7] Quoted from Mudzakkir, 2020, Mudjisantosa webinar training workshop.

[8] Webinar, Mudzakkir. July 1, 2020. Training on Procurement of Goods/Services. MudjiSantosa.

[9] Siswo Suyanto, 2020 which was delivered in the State Financial Law Webinar: State Losses.

unlawful acts was preventable at the earliest stage if the PBJP key officers applied due diligence in the planning and preparation stage. The project should have been fully defined, and the outputs should not be subject to multi-interpretation. The role of service providers during the planning and preparation of PBJP is minimal and passive. The PBJP key officers had at least three opportunities to cancel a contract: during preparation (administration law), right after the contract's signing (civil law), and while implementing the project. External parties, including the local water utility supervisory board and the local attorney's office, also participate in supervising and preventing unlawful acts. The success of the PBJP ultimately depends on the supervisory roles in the entire project cycle. A proper and verifiable owner's cost estimate prior to public procurement prevents the state's financial losses. It is not an appropriate way to mutilate the details of the agreed contract costs for the sake of asset recuperation. Many smart resolutions or mitigation measures may be agreed upon between parties prior to signing a contract, particularly with regard to the Design-Built (DB) contract model.[10]. The DB and conventional construction contract are two different models, and so the approach to conflict resolution may be revisited in the future. Those who fail to exercise their roles should be held accountable and shall be subject to administrative sanction for wrongdoing.

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