



## Corporate Criminal Liability in Procurement of Goods and Services in Hospital

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### Abstract

Procurement of goods and services for the benefit of the government is one of the tools to drive the wheels of economy in order to improve the national economy in order to create people's welfare and improve the quality of human resources. However, there are many problems in the implementation of the goods and services procurement program, such as mark-ups that exceeded the limit and law enforcement which was considered problematic, this resulted in the difficulty of determining which administrators were responsible for violations in the procurement of goods and services, given the complex form of management in a corporation that raises doubts about the possibility of the corporation to be held criminally liable and sentenced. Especially in hospitals which, at every level, every subject who carries out their duties and functions, can represent the hospital as a corporation. This article discusses corporate criminal responsibility for violations committed by Directors, Budget User Authorities, procurement committees and/or project executors in the procurement of goods and services in hospitals. This study will answer how is the criminal responsibility for violations committed by the Director and Committee in the procurement of goods and services at the Hospital and how is corporate criminal responsibility towards third parties for violations committed in the procurement of goods and services at the Hospital. The method used is qualitative and the approaches used are statute, conceptual, and case. The result is that the action of the producer of procurement of goods and services influences other legal subjects in every way in order to fulfill their necessity that contradicts the terms and condition in the contract or law constitution.

**Keywords:** Corporation; Hospital; Procurement of Goods and Services.

### Introduction

According to the 1945 Constitution of the Republic of Indonesia it is emphasized that the Indonesian state is based on law (*rechtstaat*), not based on mere power (*machstaat*). That the Republic of Indonesia is a democratic legal state

based on Pancasila and the 1945 Constitution of the Republic of Indonesia, upholds human rights, and guarantees that all citizens have the same position before law and government and are obliged to uphold this law and government without exception.<sup>1</sup>

Therefore, if a party commits a crime, that party could be subjected to punishment according to the crime he committed.<sup>2</sup> In the case that will be discussed in this article, the researcher discusses criminal acts in the procurement of goods and services. Procurement of goods and services for the benefit of the government is one of the tools to drive the wheels of the economy in order to improve the national economy in order to create people's welfare and improve the quality of human resources.<sup>3</sup>

Procurement of goods/services or better known as auctions (procurement) has been carried out by many parties. Procurement of government goods/services is held to obtain goods/services by Ministries/Institutions/Regional Work Units/Institutions whose process starts from planning needs to obtaining goods/services.<sup>4</sup> Corruption in the procurement of goods and services sector is the biggest loss the nation has. This situation is caused by budget ineffectiveness and allegations of collusion in the implementation of government goods/services procurement.<sup>5</sup>

Hospital is a health service institution that provides complete individual health services. It provides inpatient, outpatient and emergency services. The management should be able to utilize existing resources (man, money, material, machine, method) to be processed effectively and efficiently so as to produce the desired output. One of the important resources in the hospital is logistics resources including goods and services. Fulfillment of logistics in hospitals or government institutions, must be

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<sup>1</sup> Evi Hartanti, *Tindak Pidana Korupsi* (Sinar Grafika 2012).[1].

<sup>2</sup> CA Sayu, S Aprilianto and MK Romadhona, 'A Criminological Review of Dextromethorphan Abuse By Adolescents' (2023) 19 Malaysian Journal of Medicine and Health Sciences 51 <<https://www.scopus.com/inward/record.uri?eid=2-s2.0-85159222139&partnerID=40&md5=90aa97684a21c3fb50e2af7da3d20097>>.

<sup>3</sup> Ahmad Rustan Syamsuddin, 'Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang Dan Jasa' (2020) 2 Jambura Law Review.[163].

<sup>4</sup> Rendra Alfonso Sitorus, et.al., 'Tinjauan Yuridis Pertanggungjawaban Pidana Korupsi Pengadaan Alat Kesehatan Rsud Sidikalang : Studi Putusan Pengadilan Negeri Medan No. 61/Pid. Sus-Tpk/2016/PN-Mdn' (2019) 7 USU Law Journal.[81].

<sup>5</sup> Abba Gabrillin, 'Negara Rugi Hampir Rp 1 Triliun Dari Korupsi Pengadaan Barang Dan Jasa' (*Kompas.com*, 2016) <<https://nasional.kompas.com/read/2016/06/27/17234861/negara.rugi.hampir.rp.1.triliun.dari.korupsi.pengadaan.barang.dan.jasa>> accessed 27 December 2022.

carried out in accordance with rules that have been determined or determined by the local government. It aims to produce the right goods and services for every money spent such as quality, quantity, time, cost, location and provider.<sup>6</sup>

Budget inflation (mark-up) in the procurement of goods and services is one of the biggest opportunities for acts of corruption. This opportunity usually occurs in the procurement of goods and services, procurement of medical devices in hospitals and education departments. As was the case with the procurement of CT Scan Catheterization Equipment at the Abdul Wahab Sjachrani Samarinda Regional General Hospital (RSUD AW Sjachrani) in 2006. Based on the results of an audit by the Financial and Development Supervisory Agency (BPKP) of the East Kalimantan Representative, the standard price of medical equipment for heart photographs is estimated to be around Rp. 12.3 Billion. While the project implementers spent a budget of Rp. 20 billion from the 2006-2007 East Kalimantan Regional Budget.<sup>7</sup>

The progress of a country can be seen from its ability and success in carrying out development that cover all aspects of life in society. There were many problems in the implementation of the goods and services procurement program, such as mark-ups that exceeded the limit and law enforcement which was considered problematic, this resulted in determining which management was responsible for violations in the procurement of goods and services, given the complex form of management in a corporation that raises doubts about the possibility of corporations being held criminally liable and sentenced.

Based on the background of the problems, this study will answer how is the criminal responsibility for violations committed by the Director and Committee in the procurement of goods and services at the Hospital and how is corporate criminal

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<sup>6</sup> Sasongko et.al., 'Pengaruh Pengadaan Barang Dan Jasa Pada Masa Pandemi Corona Virus Disease 2019 (COVID-19) Terhadap Kondisi Keuangan Rumah Sakit Di RSUP Dr. Kariadi Semarang' (2019) 1 Jurnal Ekonomi Kesehatan Indonesia.[39].

<sup>7</sup> Fay, 'Kasus Korupsi Alkes, Direktur RSUD Samarinda Divonis Bebas' (*Detik.com*, 2011) <<https://news.detik.com/berita/d-1665123/kasus-korupsi-alkesdirektur-rsud-samarinda-divonis-bebas>> accessed 26 November 2022.

responsibility towards third parties for violations committed in the procurement of goods and services at the Hospital.

### Method and Materials

This study uses qualitative method and three different kinds of approaches in order to answer the problems. The first one is statute approach which analyses all constitutional law and regulations in correspondence to law issues. The second one is conceptual approach which provides an analysis point of view of solving problems in legal research seen from the aspects of the legal concepts behind them, or even from the values contained in the normalization of a regulation in relation to the concepts used. The last one is case approach which is done by conducting research on cases related to the problems faced and then used as a reference for a legal issue. The problem or issue must be in accordance with a court decision that has permanent force.

Materials used in this study is the case regarding corruption of procurement of Computerized Tomography Scanner Multi Slice (CT Scan Multi Slice) Tool at Abdul Wahab Sjachrani Samarinda Regional General Hospital (RSUD A.W. Sjachrani) in 2006. There are also other materials analyzed to support the result which includes: (1) The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945);<sup>8</sup> (2) Criminal Code (KUHP); (3) Law No. 8 of 1981 concerning criminal law (KUHP); (4) Law Number 31 of 1999 concerning Eradication of Corruption Crimes; (5) Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission; (6) Law Number 44 of 2009 concerning Hospitals; and (7) Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services in conjunction with Presidential Regulation Number 12 of 2021 concerning Amendments to

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<sup>8</sup> R Amalia, SF Aprilia and MK Romadhona, 'Health Service Disparities: Repressive Problems and Solutions' (2023) 19 Malaysian Journal of Medicine and Health Sciences 1 <<https://www.scopus.com/inward/record.uri?eid=2-s2.0-85159231247&partnerID=40&md5=ee25a103980d13ae09c46dcc37f86cc0>>.

Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services (Lembaran Negara Republik Indonesia Tahun 2021).

## Discussion

### 1. Criminal liability for violations committed by the Director and Committee in the procurement of goods and services at the Hospital

The hospital is a legal entity in this case, namely a corporation where this institution is given by law the power to support rights and obligations. This has been confirmed in Article 29 and Article 30 of Law Number 44 of 2009 concerning Hospitals (hereinafter referred to as the Hospital Law), which provide supporting powers namely rights and obligations. Even though the hospital does not have a soul as a human legal subject, the supporters of the rights and obligations attached to the hospital create the position of the hospital as a legal entity.<sup>9</sup>

The main concept in criminal responsibility is the teaching of guilt or what is known as *mens rea* which is based on the principle that an act does not result in a person being guilty unless the person's thoughts are evil. Based on this principle, in order to convict a person, two main conditions are required, namely the existence of an outward act that violates (*actus reus*) and the presence of an inner attitude or malicious intent (*mens rea*).<sup>10</sup>

Referring to Moeljatno's opinion that criminal responsibility will always have an error, either in the form of intentional or negligent, it relates to the unwritten principle of criminal law "geen straf zonder schuld" which means that no crime without fault is a very fundamental principle in criminal responsibility.<sup>11</sup>

Particularly with the existence of corporate crimes that have a harmful impact on society (public welfare offences), on the other hand proving the existence of wrongdoing in a corporation tends to be impossible. In order to overcome the

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<sup>9</sup> Eko Pujiyono, 'Kedudukan Korporasi Rumah Sakit Dalam Tanggung Gugat Kelalaian' (2021) 2 Jurnal Hukum dan Etika Kesehatan.[179].

<sup>10</sup> Adriano, *Me-Review Konsep Pertanggungjawaban Pidana Korporasi* (Scopindo Media Pustaka 2019).[28].

<sup>11</sup> *ibid.*

development of crimes that are increasingly occurring, it is necessary to reform the law, namely by not only applying the principle of guilt as the only principle used, but in modern criminal law criminal responsibility can also be given to someone even though that person's actions do not have an element of wrongdoing.<sup>12</sup>

Furthermore, with regard to the criminal responsibility of hospital management in the procurement of goods and services, basically it is criminal responsibility that is borne by directors and/or employees of corporations or hospitals, at every level who carry out their duties and functions and can represent the Hospital as a corporation. Both the corporation and the employees personally can be held criminally responsible.<sup>13</sup>

In the Article 118 of Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services it is formulated that if there is a violation and/or fraud in the goods/services of procurement process, the Procurement Service Unit (Indonesia: ULP) is subject to administrative sanctions, demanded compensation, and/or reported criminally.<sup>14</sup> Providers (partners) of goods and services are also not spared from criminal behavior, for example committing falsification of documents including borrowing fictitious flags and addresses from providers, broken promises to do work (defaults) so that there is an element of unlawful act which results in losses for the state.<sup>15</sup>

In the procurement of goods and services, budget inflation (mark-up) is a very big opportunity for acts of corruption. In decision No. 184 PK/PID.SUS/2016 that Defendant I. Awang Rusliansyah, Defendant II. Abdul Wahab Syahrani, and Defendant III. The defendants carried out, or participated in doing so, with the aim of benefiting themselves or another person or a corporation. They also abused the

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<sup>12</sup> Dewa Suartha, 'Pertanggungjawaban Pidana Korporasi Di Indonesia, Jurnal Ilmiah FH Unair' (2010) 34 Jurnal Ilmiah FH Unair.[33].

<sup>13</sup> Sutan Remi Sjahdeini, *Pertanggungjawaban Pidana Korporasi* (Grafiti Pers 2006).[45].

<sup>14</sup> Defid Tri Rizky and Mochamad Kevin Romadhona, 'Prinsip Pembuktian Perkara Tindak Pidana Pencucian yang Berdiri Sendiri (Stand Alone Money Laundering)' (2022) 5 Media Iuris. [381].

<sup>15</sup> Ita Susanti dan Sri Murnianti, 'Analisis Yuridis Terhadap Aspek Hukum Pengadaan Barang/Jasa Pemerintah Beserta Akibat Hukumnya' (2018) 2 Jurnal SIGMA-Mu.[71].

authority, opportunities or facilities available to them because of their position or position which could be detrimental to the State's finances or the State's economy, which the defendants carried out.

As a result of the actions of Defendant I, Defendant II, and Defendant III together with witness Br. Marsono, witness Mr. Awang Rusliansyah, witness, Ms. Mashertuty Hany Dahlia, witness Mr. A. Wahab Syahrani as the Committee for Procurement of Multi Slice CT Scan Medical Devices at the A. W Syahrani Samarinda Hospital and witness Br. dr. H. Ajie Syirafuddin, witness, Ms. Hj. Saidah, S.H., and Witness Br. Abdul Jamal Balfas, has caused the State/Regional Finance to suffer a loss of IDR 7,643,016,500.00 (seven billion six hundred three million sixteen thousand and five hundred rupiah) or at least around that according to the audit certificate of ownership of East Kalimantan Province Number LAP384/PW.17/5/2008 dated 21 October 2008.

In this case, the defendant as the committee was sentenced to a criminal sentence because there existed the criminal act or "actus reus" and an error or "mens rea" which was manifested in the form of intent and negligence. Thus, the parameter of a person's criminal responsibility is measured by the existence of the element of unlawful act by abuse of authority that is based on mistakes (intentional and negligent) which results in losses to state finances and the country's economy.

## **2. Corporate criminal liability to third parties for violations committed in the procurement of goods and services at the Hospital**

It is stated in Article 1 paragraph (8) of the Presidential Regulation of the Republic of Indonesia Number 8 of 2006, concerning the Fourth Amendment to Presidential Decree Number 80 of 2003 concerning Guidelines for Implementation of Government Procurement of Goods/Services, that:

"The procurement committee is a team appointed by the Budget User/Budget User Authority/BI Board of Governors/BHMN Head/BUMD Director/ BUMD Director, to carry out the selection of goods/services providers".

A procurement committee must be formed for all procurements with a value above IDR 50,000,000.00 (fifty million rupiah). For procurement up to a value of IDR



50,000,000.00 (fifty million rupiah) that is carried out by the procurement committee or officials, can be carried out by the Procurement Service Unit (ULP). Procurement committee members/procurement officials/ULP members come from civil servants, both from their own agencies and other technical agencies. The committee/procurement officials/ULP members must meet the following requirements:<sup>16</sup>

Have moral integrity, discipline and responsibility in carrying out duties;

- a. Understand the entire job description;
- b. Understand the specific type of work that is the task of the relevant procurement committee/official/ULP;
- c. Understand the contents of procurement documents/procurement methods and procedures based on presidential decrees;
- d. Does not have a family relationship with the official who appointed and appointed him as a procurement committee/official/member of ULP;
- e. Have a certificate of expertise in procurement of government goods/services.

The duties, authority and responsibilities of the procurement committee/officials/ULP members include the following:<sup>17</sup>

- a. Arranging the schedule and determine the method of implementation and the location of the procurement;
- b. Arranging and preparing self-estimated prices (HPS);
- c. Preparing procurement documents;
- d. Announcing the procurement of goods/services in national and/or provincial newspapers and/or official bulletin boards for public information, and endeavor to be announced on the national procurement website;
- e. Assessing provider qualifications through pre-qualification or post-qualification;
- f. Evaluating incoming bids;
- g. Proposing potential winners;
- h. Making a report on the procurement process and results to the official making the commitment and/or the official who appointed it; and
- i. Signing the integrity fact before initiating the procurement of goods/services.

The committee consists of at least 3 (three) people who understand the procedures for procurement, the substance of the work/activity concerned and other fields required, both from elements within and outside the agency concerned. The procurement official consists of only 1 (one) person who understands the

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<sup>16</sup> Novita Mointi, 'Tanggung Jawab Pemegang Lelang Berdasarkan Kontrak Pengadaan Barang Dengan Jasa' (2022) 10 *Lex Privatum*. [61-62].

<sup>17</sup> *ibid.*



procedures for procurement, the substance of the work/activity concerned and other fields required, both from elements within and from outside the agency concerned.

Prohibited from sitting as a committee/procurement official/member of ULP:<sup>18</sup>

- a. Commitment Making Officials (PPK) and treasurer;
- b. Employees at the Financial and Development Supervisory Agency (BPKP)/ Departmental Inspectorate General/Primary Inspectorate of Non-Departmental Government Institutions/Provincial/District/City Regional Supervisory Agency, BI/BHMN/BUMN/BUMD Internal Supervisor unless they are committee members/procurement officials/ULP members for procurement of goods/services needed by the agency;
- c. The official in charge of verifying the request for payment and/or the official in charge of signing the payment order.

In Article 118 of Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services it is formulated that if violations and/or fraud occur in the goods/services procurement process, the Procurement Service Unit (ULP) is subject to administrative sanctions, demanded compensation, and/or reported criminally.

Goods/services provider is a party (could be a business entity or individual) that supplies or produces goods or performs work or performs services based on a work contract agreed with the goods/services user. Contracts for the procurement of goods and services based on the method of payment are contracts made based on the fees or costs incurred for the implementation of the procurement of goods and services. This is because the procurement is based on a lump sum form, only including the price or total contract value, so the contract does not include a unit price for each element of work with certain specifications. This will make it easier for the parties when bidding a price.<sup>19</sup>

Legal responsibility to providers (partners) of goods and services applies to individual businesses and businesses in the form of legal entities, from participating

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<sup>18</sup> Andasmita Komar, *Hukum Pemborongan Melakukan Pekerjaan Tertentu* (Alumni 1993).[21].

<sup>19</sup> *ibid.*[136].

in the tender process to carrying out the work. For individual businesses, getting a job is only done by direct appointment from the user of the goods and services by looking at the existing requirements, then he must be responsible for the results of his work. Likewise, businesses in the form of legal entities in obtaining work through direct appointment or following the auction process must be responsible for the results of their work.<sup>20</sup>

Article 56 Presidential Regulation Number 54 of 2010, states that related to the acts or actions of goods/services providers that can be subject to sanctions, namely:

- a. Attempting to influence ULP/Procurement Officials/Other Authorized Parties in any form and manner, either directly or indirectly to fulfill their wishes that are contrary to the provisions and procedures stipulated in the procurement/contract documents, and/or provisions of laws and regulations.;
- b. Conspiring with other providers of goods and services to set bid prices outside the procedures for implementing the procurement of goods and services, thus reducing/inhibiting/minimizing and/or eliminating fair competition and/or causing harm to others.<sup>21</sup>

In addition, for goods/services providers who falsify documents or information to be able to participate in the procurement of goods/services, they will be included in the blacklist made by Ministries/Institutions/Regional Work Units/Institutions). It contains the identity of the goods and services provider which is subject to sanctions by the Ministries/Institutions/Regional Work Units/Institutions).<sup>22</sup>

In article 80 of Presidential Regulation Number 16 of 2018, actions that can be subjected to sanctions against providers of goods and services have been regulated, including:

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<sup>20</sup> Filiberto J. D. Rengkung, 'Tanggung Jawab Hukum Terhadap Penyedia Barang Dan Jasa Dalam Pelaksanaan Jasa Kontruksi Berdasarkan Undang-Undang Nomor 2 Tahun 2017 Tentang Jasa Kontruksi' (2017) 9 Jurnal Lex Crimen.[127-128].

<sup>21</sup> Rika Susilawaty S, 'Analisis Yuridis Terhadap Perbuatan Mark-Up Yang Dilakukan Oleh Panitia Pengadaan Barang Dan Jasa Dalam Proyek Pemerintah, Tesis' (Universitas Muhammadiyah Sumatera Utara Medan 2020).[86-87].

<sup>22</sup> *ibid.*

- a. Conspiring with other providers of goods/services to set bid prices;
- b. Creating or submitting documents or information that is untruthful to meet the requirements for the procurement of goods/services;
- c. Withdrawing from the execution of the contract for reasons that cannot be accounted for.<sup>23</sup>

If the actions mentioned above are carried out by goods/services providers, they may be subject to sanctions in the form of administrative sanctions, blacklisting sanctions, civil lawsuits, and criminal reporting to the authorities.<sup>24</sup>

In an action, the management of the corporation, in this case including the management of the Hospital with regard to their responsibility, must be ensured that they fulfill the authority or order to commit a crime (crime) with the corporation by wishing to carry out the action (*mens rea*) which is meant by the management, namely the corporate organ that carries out the management of the corporation concerned in accordance with the articles of association, including those who in fact have the authority and participate in deciding corporate policies that can qualify as a crime. In this case the management of the corporation is the administrator who has the authority to run the corporation. So that in this case the authority becomes an important element in an accountability.<sup>25</sup>

The criminal responsibility of a hospital as a corporation has a close relationship with the criminal responsibility of its directors and/or employees. Directors and/or employees who in fact or physically commit the criminal act will be held criminally responsible along with the corporation, as participating actors. In order for a corporation to be held accountable for what has been done by its management or employees, several conditions must be met, namely:

- a. The act must be carried out within the scope of his/her authority;
- b. The act was done deliberately;
- c. The act was carried out by an actor who is capable of soul or mentality; and

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<sup>23</sup> *ibid.*

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

d. This act was done for the benefit of the corporation.<sup>26</sup>

Third party criminal responsibility based on Decision Number 70 PK/PID.SUS/2016 that the actions of the Defendant as the Main Director of PT. Axis Timur Utama as well as a user of the budget has abused the authority, opportunities or facilities available to him because of his position or position, namely by not properly overseeing the implementation of the SKPD budget he leads, by continuing to approve payments for the procurement of medical devices in the form of CT Scan Multi Slices at AW Hospital Syahranie Samarinda even though there is an expensive price. The actions of the Defendant as stipulated and punishable by law in Article 3 in conjunction with Article 18 of Law Number 31 of 1999 as amended and supplemented by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code.

Based on this, the author agrees with the application of Supreme Court law based on Decision Number 70 PK/PID.SUS/2016. But it still does not reach corporate criminal responsibility as a means of realizing the criminal act of corruption in the procurement of goods and services committed by the Main Director of PT. Main Eastern Axis. Then as a subject of criminal law, corporations that are legal entities, in this case hospitals, can be held criminally responsible as stipulated in the law on corruption. However, this criminal liability can be requested if an element of guilt is found for his actions. In Article 20 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, it regulates criminal responsibility for corruption, that corporations that are legal entities are one of the subjects of criminal law that are recognized by law, including in the law. corruption crime. The recognition of corporations as subjects of criminal law in the corruption law means that corporations in the procurement of goods and services in hospitals can be held criminally responsible if there is an act or action that violates the law, especially criminal law.

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<sup>26</sup> Hasbullah F. Sjawie, *Direksi Perseroan Terbatas Serta Pertanggungjawaban Pidana Korporasi* (Kencana 2017).[154].

## Conclusion

Authorized officials are responsible from an administrative point of view, namely corporations (hospitals) that commit violations get blacklisted sanctions and cannot carry out or participate in the process of procuring goods and services. Third parties who jointly (participate) commit criminal acts of corruption in the procurement of goods and services, namely medical devices. Considering that the management is a corporate organ in accordance with the articles of association or law that has the authority to represent the corporation, including those who do not have the authority to make decisions, but in reality can control or participate in influencing corporate policies or participate in deciding corporate policies that can qualify as a crime.

Corporate criminal responsibility in the procurement of goods and services is basically criminal responsibility that is borne by the directors and/or employees of the corporation or hospital, at every level who carry out their duties and functions and can represent the hospital as a corporation. Both to the corporation and together with its employees personally can be held criminally responsible. The responsibility of the management or directors of the Hospital is primarily collegial. In the case of a third party (corporation), the executor of the cooperative project is not punished but is punished personally who did contribute to the realization of criminal acts of corruption and corporations as a means of committing or the realization of criminal acts.

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