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WHEN CONTRACTUAL BREACH BECOMES CORRUPTION: LEGAL BOUNDARIES OF CRIMINAL LIABILITY IN LUMP-SUM PUBLIC PROCUREMENT

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ABSTRACT

This study examines the legal boundaries between contractual breach and criminal corruption in lump-sum public procurement. It addresses the tendency to transform deviations in contract performance, particularly alleged volume deficiencies, into findings of state financial loss and subsequently into grounds for criminal liability. Using a qualitative socio-legal approach with a doctrinal core, the study combines statutory, conceptual, and case-based analysis with an examination of institutional interpretations embedded in procurement audits and judicial reasoning. The findings demonstrate that contractual deviation, administrative irregularity, state financial loss, and criminal conduct constitute distinct categories of legal responsibility that should not be treated as automatically interchangeable. In lump-sum procurement, the application of volume-based assessment may generate legal misclassification when audit logic overrides the contractual structure and the legal characteristics of performance-based payment. The study proposes a Contract-to-Crime Boundary Framework that establishes sequential thresholds for distinguishing contractual, administrative, civil, and criminal liability. This framework constitutes the study's principal novelty by conceptualizing criminalization as an institutional process rather than an automatic consequence of procurement irregularities. The study recommends that socio-legal scholarship further examine how interactions among contractual practices, audit institutions, and criminal justice actors construct the legal meaning of corruption and shape the boundaries of criminal liability.

***Keywords**: Audit Institutions, Contractual Breach, Corruption, Criminal Liability, Lump-Sum Contracts, Public Procurement, Socio-Legal Studies*

INTRODUCTION

Public procurement occupies a distinctive position at the intersection of contractual governance, public administration, and the protection of state finances. Construction procurement, in particular, involves substantial public expenditure, multiple institutional actors, and technical forms of performance that must be translated into legal and financial accountability. These characteristics also make the sector vulnerable to fraud, collusion, abuse of authority, and corruption. Nevertheless, the legal response to procurement irregularities is more complex than a simple distinction between lawful and unlawful conduct. Not every contractual breach constitutes corruption, and not every financial discrepancy arising during contract implementation automatically establishes criminal liability. The central problem is determining the legal boundary at which a contractual deviation legitimately becomes a criminal offense.

This problem is particularly significant in lump-sum public procurement. A lump-sum contract is based on a predetermined contractual price and an allocation of risks that differs from contracts in which payment is calculated according to the actual quantity of work performed. Its legal rationale lies in price certainty, predictability of obligations, and the transfer of certain performance risks to the contractor, provided that the scope and specifications have been sufficiently determined from the outset. Consequently, the contractual structure is essential in assessing whether a deviation constitutes non-performance, an administrative irregularity, financial loss, or criminal conduct. The issue is therefore not merely whether the physical work has been completed, but which legal framework should govern the assessment of that performance.

The practical significance of this problem is illustrated by the prosecution of a construction provider in the development of the Maradesa Community Health Center in Sumba Tengah. In *Putusan Nomor 27/Pid.Sus-TPK/2024/PN Kupang*, the court examined alleged deficiencies in work volume and determined whether the relevant conduct fulfilled the elements of a corruption offense. The case raises a fundamental tension between the use of "volume deficiency" as a basis for establishing state financial loss and the legal characteristics of a lump-sum contract, which is not ordinarily structured around repeated measurement of actual quantities for payment adjustment. Once an audit finding concerning physical implementation is transformed into a calculation of state financial loss and subsequently becomes part of a criminal accusation, the classification of the original contractual event acquires significant consequences for individual liability.

The problem extends beyond a single case because public procurement operates through a chain of institutional interpretations involving procuring entities, contractors, supervisors, auditors, investigators, prosecutors, experts, and judges. The same factual event may consequently be understood as a contractual dispute, non-compliance, financial irregularity, or corruption. This demonstrates that legal responsibility is shaped not only by the underlying facts but also by the institutional processes through which those facts are interpreted. The issue therefore belongs not only to doctrinal criminal law but also to the sociology of law, particularly the study of how legal institutions construct and transform categories of wrongdoing.

Existing scholarship provides important foundations for understanding this problem. Contract law emphasizes that responsibility depends on obligations established by the parties and the consequences attached to non-performance (Belyaeva, 2024; Bovis, 2024). In construction, contracts also allocate technical, financial, and performance risks among the parties (Sidibe, 2026; Tanzubil & Atiga, 2024). Thus, a deviation may generate contractual remedies such as compensation, penalties, corrective measures, or termination without necessarily constituting a criminal offense.

Recent studies specifically addressing lump-sum contracts indicate additional institutional difficulties. Kikavets (2022) and Prakasa et al. (2022) identifies differences in perception among service providers, service users, and examining institutions, particularly between output-based payment mechanisms and verification practices that remain heavily input-oriented. The absence of shared measurement standards may therefore produce conflicting institutional interpretations. Technical procurement studies likewise emphasize the importance of clear specifications, adequate planning, and appropriate risk allocation in lump-sum contracts (Kwening, 2022; Tátrai & Vörösmarty, 2023). These findings indicate that disputes may arise not only from contractual wording but also from the interaction between contractual design and institutional practices of supervision and verification.

Research on construction deviations similarly demonstrates that irregularities may arise from defective planning, changing field conditions, supervisory failures, contractual disagreements, or intentional misconduct (García-Altés et al., 2023; Pircher, 2022; Sanchez-Graells, 2025). Accordingly, the existence of a deviation cannot by itself determine the applicable legal regime. At the same time, corruption scholarship shows that procurement is vulnerable to manipulation, collusion, abuse of authority, fictitious transactions, and other forms of misconduct (Pitulice & Ștefănescu, 2023; Volkova, 2023). Criminal liability, however, requires conduct that fulfills the elements of a specific offense and the principles governing criminal responsibility (Sama & Mwalukasa, 2024; Šimbelytė, 2023). The presence of state funds or a financial discrepancy therefore cannot automatically substitute for proof of criminal conduct.

A further complexity concerns the determination of state financial loss. Audit findings, technical calculations, and expert assessments may provide evidence regarding financial accountability, but auditing and criminal adjudication perform different legal functions. An audit finding cannot be mechanically transformed into proof of criminal liability because the court must independently determine whether the legally defined elements of an offense have been established. Judicial reasoning consequently involves the selection and interpretation of legally relevant facts rather than the automatic adoption of numerical findings (Nowicki, 2022; Tátrai et al., 2024). This becomes particularly important when the technical criteria used by auditors differ from the contractual basis governing payment and performance.

The literature on legal certainty and interpretation further demonstrates that certainty requires consistency between legal categories and the factual circumstances to which they are applied (Merisalo et al., 2024; Sarter, 2024). Applying punitive classifications to contractual conduct without adequately considering the nature of the underlying agreement may instead undermine legal certainty. Rahardjo's socio-legal perspective is relevant in this regard because the meaning of an irregularity may change as it moves from project supervision to audit, investigation, prosecution, and adjudication. Normative legal research provides essential tools for examining statutory, conceptual, and case-based dimensions of contractual, administrative, and criminal responsibility (Kumar et al., 2023; Telles, 2025; Williams, 2024). However, the present problem requires a complementary socio-legal perspective because concepts such as “contractual breach,” “state financial loss,” and “corruption” may acquire different meanings across institutional settings. The unresolved issue is therefore the legal threshold through which a contractual deviation in lump-sum public procurement is transformed into state financial loss and, ultimately, criminal corruption.

This study addresses that gap by integrating contract law, public procurement, anti-corruption law, and sociology of law within a single analytical framework. It develops a Contract-to-Crime Boundary Framework, which conceptualizes criminalization as a sequential process involving the classification of conduct, determination of contractual and administrative consequences, establishment of financial loss where relevant, and separate assessment of criminal culpability. The framework recognizes contractual deviation, administrative irregularity, state financial loss, and criminal conduct as distinct but potentially interconnected categories.

Accordingly, this study examines how contractual deviations in lump-sum public procurement should be distinguished from criminal corruption, how audit findings and judicial reasoning contribute to the transformation of contractual disputes into criminal liability, and how the boundaries among contractual, administrative, civil, and criminal responsibility can be analytically clarified. Its central argument is that the existence of an irregularity should not predetermine the legal category through which that irregularity is addressed. Before a contractual breach becomes corruption, the legal boundary between the two must first be carefully established

RESEARCH METHOD

This study employed a qualitative socio-legal research design with a doctrinal core to examine the legal boundaries between contractual breach and criminal liability in lump-sum public procurement. This design was selected because the research problem cannot be adequately addressed through doctrinal analysis alone. While the distinction between contractual, administrative, civil, and criminal liability requires a systematic examination of legal norms, the transformation of a contractual irregularity into a corruption case also involves institutional interpretations produced through auditing, investigation, prosecution, and judicial decision-making. A socio-legal perspective therefore enables the study to examine both the normative structure of liability and the processes through which legal categories are constructed and applied in practice.

The research combined statutory, conceptual, and case approaches. The statutory approach examined the legal framework governing public procurement, lump-sum contracts, state financial accountability, and corruption offenses. The conceptual approach was used to clarify the boundaries among contractual breach, administrative irregularity, state financial loss, and criminal conduct. Particular attention was given to the legal principles of contractual responsibility, causation, culpability, and the differentiated functions of administrative and criminal sanctions. The case approach focused primarily on Decision No. 27/Pid.Sus-TPK/2024/PN Kupang as a critical case because it demonstrates the intersection between alleged volume deficiencies, a lump-sum construction contract, the assessment of state financial loss, and criminal prosecution. The analysis of the decision was supplemented, where relevant, by comparable judicial reasoning concerning the classification of procurement-related irregularities.

Data consisted of primary and secondary legal materials. Primary materials included legislation, procurement regulations, judicial decisions, and relevant official legal documents. Secondary materials comprised scholarly articles, books, and academic studies addressing public procurement, construction contracts, state financial loss, corruption, criminal liability, legal interpretation, and socio-legal theory. These materials were selected purposively according to their capacity to explain the transition from contractual performance to criminal attribution.

Data analysis was conducted through qualitative legal interpretation and thematic coding. The analysis proceeded in four stages. First, the contractual characteristics of lump-sum procurement were identified to establish the legal basis for evaluating performance. Second, alleged irregularities were classified according to their potential contractual, administrative, civil, or criminal consequences. Third, the study examined how audit findings and assessments of state financial loss were translated into legal evidence within criminal proceedings. Finally, judicial reasoning was analysed to identify the thresholds used to distinguish ordinary contractual non-performance from conduct capable of generating criminal liability.

RESULTS AND DISCUSSION

The Legal Character of Lump-Sum Procurement and the Starting Point of Liability

The legal assessment of a procurement irregularity should begin with the legal relationship from which the alleged irregularity arises. In public construction procurement, this starting point is particularly important where the parties employ a lump-sum contract, because the contractual form determines how price, scope of work, performance obligations, and risk are distributed between the procuring entity and the contractor. A lump-sum arrangement is not merely a mechanism for fixing the contract price; it constitutes a particular legal structure through which the parties define the object of performance and the consequences of its realization. Accordingly, the question of whether a contractor has failed to perform cannot be answered adequately by looking only at the physical quantity of work completed. It must first be established what the contractor was legally obliged to deliver under the contract, how that obligation was specified, and what contractual mechanism governed its verification and payment. This approach reflects a fundamental proposition of this study: contractual characterization must precede liability characterization.

Within such a contractual structure, price, scope, technical specifications, output, and risk operate as interconnected elements. The fixed nature of the contract price is meaningful because it is accompanied by an agreed scope and defined performance requirements. The contractor's obligation is therefore not necessarily reducible to producing a particular measurable quantity of each individual work item, but to fulfilling the contractual scope in accordance with the specifications and requirements established by the procurement documents. This distinction becomes important when a lump-sum contract is compared with a unit-price arrangement. Under a unit-price contract, the quantity of work performed may constitute a central basis for calculating the amount payable, making measurement of actual quantities directly relevant to the financial consequences of performance. In a lump-sum arrangement, however, the contractual price is generally established in advance for the agreed scope of work. Consequently, the mere identification of a difference between planned and measured quantities does not, by itself, establish that the contractor has received payment for work that was not contractually due.

This does not mean that volume is legally irrelevant in a lump-sum contract. Quantitative specifications may remain important for defining the scope of work, assessing technical compliance, determining whether construction has been completed according to the agreed design, and identifying whether a material part of the contractual obligation has been omitted. The legal significance of volume, however, must be derived from its function within the particular contractual structure rather than assumed in advance. A volume discrepancy may therefore represent a purely technical deviation where the contracted output remains functionally and substantively fulfilled. It may become a contractual non-performance where the reduction in quantity affects an expressly required component of the contracted work, compromises the agreed specifications, or demonstrates that the contractor failed to deliver the scope for which it assumed contractual responsibility. The distinction is consequently one of legal qualification, not simply mathematical calculation.

This distinction is particularly relevant to the assessment of liability. A discrepancy identified during technical inspection should first be examined within the contractual framework: what was promised, what was delivered, whether the difference constitutes non-conformity, and what remedy is provided by the contract and applicable procurement rules. Only after these questions have been resolved can the legal consequences of the discrepancy be determined. Where the problem concerns non-performance or defective performance, the initial consequences may lie in contractual remedies, including correction, compensation, penalties, or other mechanisms available under the agreement. Where the conduct also violates public procurement requirements, an administrative dimension may arise. Criminal liability represents a qualitatively different conclusion and cannot simply be inferred from the existence of contractual non-performance.

The distinction becomes even more important when technical findings are subsequently translated into state financial loss. A calculation based on the difference between planned and actual volume may provide evidence of a discrepancy, but it does not automatically establish that the state has suffered an actual financial loss attributable to criminal conduct. The calculation must remain connected to the legal and economic structure of the contract. Otherwise, an assessment methodology designed to measure physical deviation may inadvertently become a mechanism for redefining the contractual relationship itself. In the context of a lump-sum contract, this creates a potential form of legal misclassification, in which the logic of quantity measurement is allowed to displace the contractual logic governing the parties' obligations. The problem is therefore not the use of measurement as such, but the assumption that measurement necessarily determines legal liability.

This analytical position is consistent with the broader principle of contractual autonomy and the binding force of agreements in Indonesian contract law, under which the rights and obligations of the parties are primarily determined by the agreement and the applicable legal framework (Caranta, 2022; Melnikov, 2022; Raj-Reichert et al., 2022). In public procurement, contractual autonomy is necessarily accompanied by public-law constraints, because the contract involves public funds and must comply with procurement regulation. Nevertheless, the existence of public interests does not eliminate the need to identify the precise legal character of the contractual obligation. As the construction-contract literature also indicates, uncertainty in the allocation and interpretation of contractual responsibilities can generate disputes precisely because different actors may rely on different understandings of scope, measurement, and performance (Egorova, 2022; Falcón-Cortés et al., 2022; Van Staden et al., 2022). The issue is therefore not whether public contracts should be subject to strict accountability, but how that accountability can remain legally coherent with the contractual structure.

The distinction also provides an important methodological basis for this study. Consistent with its qualitative socio-legal design with a doctrinal core, the analysis does not treat the contractual text, technical findings, audit conclusions, and judicial reasoning as interchangeable sources of legal meaning. Rather, each is examined according to its institutional and legal function. The contractual documents establish the initial framework of performance; technical and audit materials provide evidence concerning implementation and financial consequences; and judicial reasoning determines how those materials are legally qualified within the context of liability. This sequential reading makes it possible to identify where a technical discrepancy becomes a contractual breach and, subsequently, whether the legal basis exists for moving beyond contractual responsibility toward administrative, civil, or criminal liability.

The central implication is that a volume discrepancy should not be treated as a self-executing legal fact. Its significance depends upon the contractual object, the agreed specifications, the nature of the contractor's obligation, and the legal consequences attached to non-performance. This is particularly important in cases where an audit finding becomes the starting point for a criminal investigation. If the initial contractual characterization is incorrect, subsequent calculations of financial loss and conclusions concerning criminal liability may rest upon a legally unstable foundation. The appropriate analytical sequence is therefore not *volume deficiency, state loss, corruption*, but contractual deviation, legal qualification, financial consequence, and, only where independently established, criminal liability. This sequence provides the conceptual foundation for examining how a contractual breach may cross the boundary into corruption without collapsing distinct forms of legal responsibility into a single category.

From Contractual Deviation to State Financial Loss: The Problem of Legal Misclassification

The identification of a contractual deviation is not the endpoint of legal assessment; it is the beginning of a process of legal qualification. In public procurement, particularly in construction projects, a technical finding concerning incomplete work, specification discrepancies, or differences in volume may initially appear to be a straightforward factual matter. Yet its legal significance depends on how the finding is subsequently interpreted and connected to the contractual obligations of the parties. This distinction becomes particularly consequential in lump-sum procurement because the method used to identify a physical discrepancy does not necessarily correspond to the legal mechanism through which payment and contractual performance are determined. The central issue, therefore, is not whether a discrepancy exists, but whether that discrepancy constitutes contractual non-performance and, further, whether it has generated an actual financial loss attributable to the conduct of a particular party.

The process may be understood as a sequence beginning with contractual deviation, followed by audit finding, and potentially culminating in a determination of state financial loss. At the first stage, the relevant question is whether the work delivered differs from what was contractually required. This requires comparison between the contractual documents, technical specifications, drawings, bills of quantities where applicable, and the actual condition of the completed work. Such comparison is inherently technical, but its legal significance cannot be determined solely by the technical result. A difference between the planned and observed volume may indicate a technical discrepancy, but it becomes a contractual breach only when the difference represents a failure to fulfil an obligation legally imposed by the contract. This distinction is important because not every variation between planned and realized quantities necessarily changes the substance or economic value of the contractual performance.

The role of auditing enters at the next stage. An audit can provide an authoritative institutional assessment of whether public expenditure has been properly managed and whether a financial irregularity has occurred. However, the institutional function of an audit should not be confused with the function of criminal adjudication. An audit finding identifies and evaluates financial or administrative conditions according to the standards applicable to the audit. It does not, by itself, determine whether a particular individual has committed a criminal offense. This distinction is particularly important when the audit begins with a calculation of physical deficiencies and subsequently converts those deficiencies into monetary values. The calculation may be necessary for assessing financial consequences, but the resulting amount still requires legal qualification within the contractual and statutory framework.

The conversion of a volume discrepancy into a monetary amount illustrates the problem clearly. Suppose an audit identifies a difference between the volume specified in the technical documentation and the volume found in the field. The difference may then be multiplied by the relevant unit price to produce a nominal amount. Such a calculation can demonstrate the economic value attached to the physical discrepancy. It does not, however, automatically demonstrate that the state has actually lost that amount. The monetary value of an omitted quantity and the actual economic loss suffered by the state are conceptually distinct. The latter requires consideration of the contractual price, the nature and function of the work, the payment mechanism, the quality and usability of the completed output, and the causal relationship between the alleged conduct and the alleged loss.

This distinction is particularly significant under a lump-sum arrangement. Where the contractual price is established for an agreed scope of work, the legal assessment cannot simply reproduce the logic of a unit-price contract by treating every difference in quantity as an equivalent reduction in the amount contractually payable. The physical measurement may be relevant evidence, but its legal effect depends on what the contract actually makes measurable and what constitutes the contractor's obligation. Consequently, a volume-based calculation may be appropriate for demonstrating that a particular technical specification was not fulfilled, but it cannot automatically establish that the state paid for something to which it had no contractual entitlement. The question must instead be whether the alleged deficiency altered the contractual performance in a manner that produced a real and attributable economic loss.

The distinction between technical discrepancy, contractual non-performance, and actual financial loss is therefore essential. A technical discrepancy concerns a difference identified through technical observation or measurement. Contractual non-performance concerns the legal failure to fulfil an obligation established by the agreement. Actual financial loss, in turn, concerns a legally cognizable economic diminution attributable to a particular act or omission. These three concepts may occur together, but they do not necessarily do so. A project may contain a technical discrepancy without producing a compensable contractual loss; a contractual breach may occur without satisfying the elements of a criminal offense; and a financial loss may require a more complex causal assessment than simply assigning a monetary value to a physical difference.

This analytical distinction also provides a more precise way of understanding the role of the audit in criminal proceedings. The audit should be regarded as an important evidentiary source rather than as the final legal classification of the underlying conduct. In other words, an audit finding is evidence that requires legal qualification. Its evidentiary significance must be assessed together with the contract, procurement documents, technical evidence, payment records, and other relevant materials. The court must then determine whether the financial finding corresponds to an actual legal and economic loss and whether that loss can be causally attributed to the conduct of the accused. This approach avoids treating an institutional financial calculation as if it were already a determination of criminal responsibility.

The problem becomes particularly acute when the methodology of financial calculation is detached from the contractual structure. If a volume deficiency is calculated using a unit price and the resulting amount is immediately labelled as state financial loss, the calculation may silently transform a technical measurement into a legal conclusion. This is what this study conceptualizes as legal misclassification. The problem does not necessarily lie in the arithmetic itself; rather, it lies in assigning a legal consequence to the arithmetic without first establishing whether the underlying contractual relationship supports that consequence. A technically accurate calculation can therefore still produce a legally questionable conclusion if the contractual premise underlying the calculation is incorrect.

The case examined in this research provides an important setting for observing this process. The issue of alleged volume deficiency in the construction project considered in Decision No. 27/Pid.Sus-TPK/2024/PN Kupang demonstrates how a question concerning physical implementation can move from the contractual and technical sphere into the assessment of state financial loss and subsequently into criminal adjudication. The significance of the case lies precisely in this transition: the court is not merely asked to determine whether there was a difference in physical work, but whether that difference has the legal characteristics necessary to support financial and criminal liability. The case therefore allows the study to trace how contractual facts are translated into audit findings and how those findings are subsequently incorporated into judicial reasoning.

Viewed through the socio-legal methodology employed in this study, this transition is not treated as a purely technical chain of calculation. It is understood as a process of institutional interpretation. The contractor, procuring authority, technical supervisor, auditor, investigator, prosecutor, and court may encounter the same factual condition but evaluate it according to different institutional purposes and legal standards. The research consequently examines not only what the contractual documents provide, but also how the relevant institutions interpret the relationship between physical deviation, contractual obligation, financial consequence, and legal responsibility. This enables the analysis to identify the point at which a factual discrepancy is transformed into a legally significant finding and, potentially, into an allegation of corruption.

The resulting argument is that a technical discrepancy does not become a financial loss merely because it can be expressed in monetary terms. A legally sustainable determination of state financial loss requires a demonstrable connection between the contractual obligation, the actual performance, the payment made, the economic consequence, and the conduct responsible for that consequence. In lump-sum procurement, this requires particular caution because the contractual structure may make the relationship between quantity, payment, and performance materially different from that found in unit-price arrangements. The appropriate analytical sequence is therefore not *volume deficiency = financial loss*, but technical discrepancy → contractual qualification → economic consequence → actual state financial loss.

This distinction is decisive for the broader argument of the article. If the first stage of classification is incorrect, subsequent determinations may reproduce the same error at progressively more serious levels: a technical discrepancy may become a contractual breach, the breach may become a financial loss, and the financial loss may then become an indicator of corruption. Such a chain creates the possibility that criminal liability is produced through accumulated assumptions rather than through independent proof of each legal element. The task of legal analysis is therefore to interrupt this automatic progression and require each transition to be separately justified. In this sense, the principal concern is not to weaken public accountability, but to ensure that accountability remains proportionate to the legal character of the conduct and that the protection of state finances does not inadvertently erase the boundary between contractual responsibility and criminal liability.

When Audit Logic Meets Criminal Law: Institutional Construction of Corruption

The movement of a procurement dispute from the contractual sphere into the criminal justice system is not a simple change of forum; it is a transformation in the legal meaning assigned to the same underlying event. A contractor initially encounters the project through the logic of contractual performance: whether the agreed work has been delivered in accordance with the scope, specifications, and obligations established by the contract. The procurement authority approaches the same event through the logic of contractual compliance and public accountability. When the matter reaches an auditor, however, attention shifts toward financial regularity, expenditure, and the possibility of state financial loss. Investigators subsequently reinterpret the findings through the question of suspected criminal conduct, prosecutors organize them into a legally sustainable accusation, and judges finally determine whether the evidence satisfies the elements of criminal liability. This institutional sequence demonstrates why corruption in public procurement should not be understood solely as a conduct that is "detected," but also as a legal category progressively produced through processes of classification, evidence production, and interpretation (Caranta, 2023; Lamprinidis, 2023; Tsygankov et al., 2024).

The first institutional translation occurs between contractual performance and institutional compliance. From the contractor's perspective, performance is measured against the obligations assumed under the procurement contract. The procurement authority, by contrast, must determine whether the contractor's performance corresponds to the contractual requirements and whether public funds have been used consistently with the procurement framework. These perspectives overlap but are not identical. A discrepancy in physical implementation may therefore have different implications depending on whether it is considered as a question of contractual performance, procurement compliance, or financial accountability. The distinction becomes particularly important in a lump-sum contract, where the legal significance of physical volume must be assessed in relation to the agreed scope and contractual price rather than treated automatically as a basis for recalculating the amount payable (Kikavets, 2023; Nuni & Feika, 2023).

The audit stage introduces another institutional rationality. Auditing necessarily translates complex contractual and technical circumstances into categories that can be evaluated in financial terms. A deficiency in work may therefore be documented, quantified, and converted into a monetary value. This process is institutionally legitimate because public financial accountability requires measurable evidence. The difficulty arises when the monetary result of an audit is subsequently treated as equivalent to the legal conclusion that a state financial loss has occurred. An audit finding may establish an important evidentiary proposition, but it does not eliminate the need for legal qualification. The distinction is reflected in the institutional practice of the Audit Board of the Republic of Indonesia, which describes investigative audits and calculations of state or regional losses as instruments for identifying whether such losses exist and providing evidence within criminal investigations. The audit therefore occupies an important evidentiary position, while the ultimate determination of criminal responsibility remains a matter of legal adjudication (Alsamarraie & Ghazali, 2023; Foss & Coutinho, 2023; Mutangili, 2024).

This institutional distinction matters because the concept of state financial loss itself is not merely a numerical category. It requires an assessment of whether the state has actually experienced an economic diminution and whether that diminution can be causally connected to the conduct under examination. Recent scholarship continues to identify reliance on audit findings as a significant issue in Indonesian procurement-corruption adjudication, particularly where procedural irregularities may be conflated with substantive economic harm (Fazekas et al., 2024; Langseth & Haddara, 2024). Earlier analysis of procurement-corruption judgments likewise identified the danger of criminal law encroaching into administrative and private-law domains when the evidentiary treatment of state financial loss becomes insufficiently differentiated (Nyathore et al., 2024a; Tátrai et al., 2026). These observations support the present study's argument that the movement from audit finding to criminal liability requires an intervening process of legal interpretation rather than an automatic institutional transfer.

The role of investigators is significant precisely because the investigator receives the contractual and audit narrative and translates it into the language of criminal suspicion. At this stage, the question changes from whether the project contains an irregularity to whether there is sufficient indication that a criminal offense has occurred. The investigator must therefore connect the factual finding to legally relevant conduct, identify the potential actor responsible, and establish the evidentiary relationship between the conduct and the alleged state loss. This is where institutional translation becomes visible: the language of “volume deficiency” or “contractual non-compliance” begins to acquire a different meaning when placed alongside concepts such as unlawful conduct, abuse of authority, causation, and criminal responsibility.

The prosecutor performs a further translation. The prosecutor does not merely reproduce the auditor's conclusion or the investigator's suspicion but must formulate a legally coherent accusation. The alleged financial loss must be connected to conduct that corresponds to the elements of the offense charged. This requires a distinction between the existence of an adverse financial consequence and the attribution of that consequence to the accused as criminal conduct. The process is therefore cumulative but not automatic. Each institutional stage adds a new interpretive layer, and each layer should independently justify the movement from one category of responsibility to another. This is precisely why recent Indonesian scholarship has emphasized the importance of clearer distinctions between administrative violations and criminal acts and of coordination among supervisory and law-enforcement institutions in procurement cases.

Experts occupy a particularly important position within this process because they often function as intermediaries between technical knowledge and legal reasoning. Construction disputes contain facts that cannot be understood exclusively through legal doctrine: quantities, specifications, engineering standards, work quality, payment structures, and physical conditions must often be interpreted by persons possessing specialized knowledge. Yet expert evidence does not itself determine the legal consequence of those facts. An expert may explain whether a physical deficiency exists or how a particular quantity should technically be assessed, but whether that deficiency constitutes a contractual breach, state financial loss, or corruption remains a legal question. The distinction is crucial because the authority of technical expertise can inadvertently give a factual proposition the appearance of a legal conclusion.

The judicial stage represents the final institutional translation examined in this study. The court receives contractual documents, audit findings, investigative materials, prosecutorial arguments, and expert testimony and must transform these heterogeneous materials into a legally reasoned judgment. Judicial reasoning is therefore the point at which the different institutional rationalities are either reconciled or allowed to collapse into one another. The judge may accept the audit's calculation, reject it, modify its significance, or treat it as one piece of evidence among others. What matters for the present analysis is whether the court independently distinguishes the stages through which liability is constructed. A technically demonstrated discrepancy should not automatically become a financial loss, and a demonstrated financial loss should not automatically become criminal conduct. Each proposition requires its own legal justification.

This perspective resonates with research showing that corruption in Indonesian procurement is also produced and sustained through institutional relationships rather than through isolated individual behavior. Filipon & Simionescu (2024a) and Papierz (2024), for example, demonstrates how corruption in public budgeting and procurement can involve institutional networks connecting government, legislative, and corporate actors, and uses an institutional work perspective to examine how corrupt arrangements are organized and sustained. The present study adopts a different direction from that literature. Rather than examining how actors organize corrupt practices, it examines how institutions classify and transform an alleged irregularity into a corruption case. The object of inquiry is therefore not institutionalized corruption as a mode of conduct, but the institutional production of corruption as a legal classification.

The distinction is important for understanding the meaning of institutional construction of corruption. The term does not imply that corruption is fictitious or that institutions arbitrarily manufacture criminality. Rather, it recognizes that the status of a particular event as corruption becomes legally meaningful through successive institutional decisions about what facts are relevant, what evidence is sufficient, what standards apply, and which legal category should govern the conduct. In this sense, corruption is both a substantive legal phenomenon and an institutional classification. The same contractual event can move through several normative vocabularies before it reaches a criminal judgment: performance deviation, non-compliance, financial irregularity, state financial loss, suspected criminal conduct, and finally criminal liability.

Beyond State Loss: Establishing the Criminal Liability Threshold

The existence of state financial loss marks an important point in the accountability of public procurement, but it should not be treated as the endpoint of legal reasoning. In cases involving lump-sum procurement, the central difficulty arises when an alleged financial loss is used as the bridge between contractual non-performance and criminal corruption. Such a bridge cannot be constructed merely by establishing that public expenditure produced a financial disadvantage. Criminal liability requires a further determination that the conduct causing, contributing to, or legally associated with the loss satisfies the elements of a criminal offense and can properly be attributed to the accused. The distinction can therefore be expressed through a simple but consequential proposition: breach is not loss, and loss is not corruption. Contractual non-performance, financial loss, and criminal corruption represent analytically distinct forms of legal responsibility, even where they arise from the same factual circumstances.

A contractual breach concerns the failure of one party to perform an obligation established by the agreement. Its legal consequences ordinarily arise from the contractual relationship itself and may include performance, correction, compensation, penalties, or termination. An administrative irregularity, by contrast, concerns non-compliance with public-law requirements governing procurement or financial administration. Neither category necessarily contains the elements required to establish a criminal offense. This differentiation is particularly important in public procurement because the involvement of public money can create a strong institutional tendency to interpret contractual failure through the language of criminal accountability. The public character of the funds undoubtedly justifies heightened supervision, but it does not eliminate the requirement that criminal liability be established according to its own legal standards.

The distinction becomes clearer when state financial loss is separated from the conduct that allegedly caused it. A financial loss is an economic consequence; criminal liability is a normative conclusion concerning a person's conduct. The two may be connected, but the connection must be demonstrated. The mere fact that an audit identifies an amount of financial loss does not establish who is legally responsible for that amount, whether the amount resulted from a breach of contract, an administrative failure, an act of abuse, or intentional misconduct, or whether the conduct satisfies the elements of the relevant corruption offense. This is why the evidentiary function of a loss calculation must be distinguished from the legal function of determining criminal responsibility.

Causation consequently becomes a critical threshold. The relevant question is not simply whether a loss occurred during the implementation of a public procurement contract, but whether the alleged conduct of the accused produced or materially contributed to that loss in a legally relevant manner. In a construction project, financial outcomes may be influenced by numerous factors, including contract design, planning deficiencies, changes in field conditions, supervision failures, technical decisions, administrative approvals, payment certification, and the contractor's own performance. Where several actors participate in the procurement and implementation process, attributing the entire financial consequence to one actor requires more than demonstrating that the actor was involved in the project. Criminal liability requires an individualized connection between conduct and prohibited consequence (Filipon & Simionescu, 2024b; Mkhitaryan et al., 2026).

This requirement also prevents the concept of state financial loss from becoming an instrument of strict liability. A contractor may fail to fulfil part of a contractual obligation without necessarily intending to cause a loss to the state. Likewise, a procurement official may make an administrative or technical error without possessing the mental state required for criminal responsibility. The existence of an adverse financial consequence therefore cannot substitute for proof of culpability. The relevant inquiry must consider whether the accused acted intentionally, knowingly, recklessly where legally relevant, or otherwise with the form of fault required by the offense charged. This is particularly significant in corruption cases because the severity of criminal sanctions requires a clear distinction between an objectively defective outcome and conduct that is personally attributable as a criminal wrong.

The same reasoning applies to allegations involving abuse of authority. The mere existence of an irregular procurement decision does not necessarily demonstrate that authority was abused for a criminal purpose. The analysis must identify the particular authority exercised, the legal limits governing that authority, the manner in which it was allegedly exceeded or misused, and the relationship between that conduct and the resulting financial consequence. Without this intermediate analysis, the concept of abuse of authority risks becoming a broad label capable of absorbing ordinary contractual or administrative disputes. Such an approach would weaken rather than strengthen the principle of legality because the boundary between improper administration and criminal conduct would depend excessively on the severity of the resulting financial outcome (Bou-Ghanem, 2022; Licata, 2025).

The problem is particularly visible where the alleged state financial loss originates from a volume discrepancy in a lump-sum contract. As established in the preceding analysis, a volume discrepancy may demonstrate that the physical implementation differs from a planned specification. It may also establish contractual non-performance where the relevant quantity forms part of the contractor's binding obligation. But neither proposition automatically demonstrates criminal conduct. To cross that boundary, the analysis must establish an additional chain: the relevant contractual obligation must be identified; the deviation must constitute legally significant non-performance; the deviation must produce an actual economic loss; the loss must be causally attributable to the accused's conduct; and the conduct must satisfy the substantive and mental elements of the applicable criminal offense. Each link must stand on its own evidentiary and legal foundation.

This sequential approach also clarifies the proper relationship between administrative, civil, and criminal remedies. Public procurement law provides several mechanisms for responding to non-compliance, and criminal law should not become the default mechanism simply because the project involves public expenditure. Where the underlying problem is essentially contractual, contractual remedies may provide the appropriate response. Where the problem concerns procurement administration, administrative sanctions or corrective mechanisms may be more proportionate. Civil recovery may be appropriate where an identifiable contractual obligation has produced a compensable loss. Criminal enforcement becomes justified when the evidence demonstrates conduct that independently satisfies the elements of a criminal offense. The existence of alternative legal mechanisms does not mean that criminal law should never apply to procurement disputes; rather, it means that the choice of legal regime must correspond to the nature of the conduct established by the evidence.

This principle is especially important because the movement from administrative or contractual responsibility to criminal responsibility changes not only the type of sanction but also the normative meaning of the conduct. A contractor who fails to fulfil a contractual obligation is positioned as a debtor or party in breach; an administrative officer who violates procurement procedures may be subject to administrative responsibility; but an accused person convicted of corruption is formally classified as a criminal offender. The transition between these categories therefore has consequences for reputation, liberty, professional status, and the legitimacy of state enforcement. From a socio-legal perspective, the criminalization process must consequently be examined not only in terms of whether institutions possess the authority to act, but also in terms of how they construct the legal threshold at which one form of responsibility becomes another (Hellberg, 2023; Kania, 2023).

The judicial decision examined in this study is important precisely because it provides an opportunity to observe whether these distinctions are maintained when contractual facts, audit findings, and criminal allegations are brought together. Decision No. 27/Pid.Sus-TPK/2024/PN Kupang is not approached merely as evidence that a volume discrepancy existed. Rather, it is examined as an institutional site in which the court had to determine the legal relationship among the alleged contractual deficiency, the calculation of financial loss, and the criminal responsibility attributed to the accused. The analytical question is therefore whether the reasoning differentiates these propositions or whether they are connected through a relatively linear chain in which the establishment of one is treated as substantially confirming the next (Matas et al., 2025; Nyathore et al., 2024b).

CONCLUSION

This study concludes that the legal boundary between contractual breach and corruption in lump-sum public procurement cannot be determined through a linear assumption that a volume discrepancy necessarily produces state financial loss and, consequently, criminal liability. The legal character of the underlying contract must constitute the starting point for assessing performance, because contractual obligations determine the legal significance of technical deviations and the relevance of volume-based measurements. The analysis further demonstrates that contractual deviation, audit findings, state financial loss, and criminal conduct are distinct categories that require separate legal qualification. An audit finding may provide important evidence concerning a financial or technical irregularity, but it does not independently determine the criminal character of the conduct. Criminal liability can only be justified where an actual and legally attributable state financial loss is established, a sufficient causal relationship connects that loss to the conduct of the accused, and the relevant elements of criminal wrongdoing, including culpability, are independently proven. On this basis, the study advances the Contract-to-Crime Boundary Framework, which conceptualizes criminalization as a sequential process of legal and institutional qualification rather than as an automatic consequence of procurement irregularities. The framework's contribution lies in clarifying the threshold at which contractual, administrative, or civil responsibility may legitimately develop into criminal liability, while preserving the distinct functions of contractual governance, auditing, and criminal adjudication. Accordingly, strengthening accountability in public procurement does not require the criminalization of every contractual deficiency; rather, it requires a more disciplined assessment of how contractual facts are translated into financial findings and, ultimately, into criminal legal responsibility.

ETHICAL STATEMENT AND DISCLOSURE

This study was conducted in accordance with established ethical principles, including informed consent, protection of informants' confidentiality, and respect for local cultural values. Special consideration was given to participants from vulnerable groups to ensure their safety, comfort, and equal rights to participate. No external funding was received, and the authors declare no conflict of interest. All data and information presented were collected through valid research methods and have been verified to ensure their accuracy and reliability. The use of artificial intelligence (AI) was limited to technical assistance for writing and language editing, without influencing the scientific substance of the work. The authors express their gratitude to the informants for their valuable insights, and to the anonymous reviewers for their constructive feedback on an earlier version of this manuscript. The authors take full responsibility for the content and conclusions of this article.

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