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Subcontractors in Public Procurement: An Analysis of Potential Risks and Fraud Factors in Procurement Practices in Indonesia

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Keywords

Public procurement; subcontracting; corruption; fictitious subcontractors; fraud; LKPP Regulation No. 12/2021; cashflow fraud theory; don't care theory; breach of contract

ABSTRACT

Government procurement of goods and services (pengadaan barang dan jasa or PBJ) constitutes a strategic sector while simultaneously being one of the most vulnerable to corruption. Monitoring data from ICW in 2023 recorded 791 corruption cases, causing state losses amounting to IDR 28.4 trillion, with the most dominant modus operandi being fictitious projects and falsified accountability reports. One critical loophole lies in the subcontracting mechanism, which is frequently misused through the inclusion of fictitious subcontractors. This research employs a normative juridical method using a statutory approach and case study analysis. The analysis focuses on the Decision of the High Court of Bandung No. 5/Pid.Sus-TPK/2024/PT BDG (Amarta Karya case) and the Decision of the Central Jakarta District Court No. 59/Pid.Sus-TPK/2020/PN.Jkt.Pst in conjunction with the Supreme Court Decision No. 944 K/Pid.Sus/2022 (Waskita Karya case), in connection with LKPP Regulation No. 12 of 2021, the theory of cashflow fraud in contractual chains, and the "don't care" theory in contractual relations. The findings demonstrate that subcontract fraud arises due to weak factual verification, lengthy contractual chains that enable fictitious invoices, and the limited authority of the Budget User (PA) in supervising subcontractors. Subcontract fraud is not only categorized as a criminal act of corruption but may also be qualified as a breach of contract (wanprestasi) under civil law.

INTRODUCTION

Government procurement of goods and services (pengadaan barang dan jasa or PBJ) is one of the principal instruments of state administration, as it absorbs a substantial portion of the public budget. These legal systems have an impact on regulations. The allocation of state expenditure is, among others, channeled through government procurement, which constitutes a fundamental component in realizing good governance (ADEKOYA, 2024, 2024; Koeswayo et al., 2024). However, alongside its strategic importance lies a high vulnerability to corruption (Fazekas & Blum, 2021; Magakwe, 2023). Data from Indonesia Corruption Watch (ICW) indicate that, in 2023 alone, there were 791 corruption cases resulting in state losses of approximately IDR 28.4 trillion. The most prevalent forms of fraud involved fictitious projects and falsified accountability reports, both of which are closely tied to procurement practices (Levi, 2016; Ngovi, 2019; Rendon & Rendon, 2016; Ross, 2015). To contextualize this phenomenon within a broader global framework, research by Nicolazzo et al. (2024) on transnational corruption schemes demonstrates that procurement fraud is not unique to Indonesia but represents a systemic vulnerability across both developed and developing nations.

Similarly, the World Bank's Global Indicators of Regulatory Governance highlight procurement as a universal corruption hotspot, with similar patterns of document manipulation and fictitious contracting observed in countries across Africa, Asia, Latin America, and Eastern Europe. Comparative studies in the European Union reveal that, despite advanced regulatory frameworks and digital monitoring systems, member states continue to experience procurement-related corruption, with contract manipulation and subcontractor fraud identified as persistent challenges (European Court of Auditors, 2019). This international evidence

underscores that integrity issues in PBJ are not isolated incidents specific to Indonesia's governance context but, rather, systemic and persistent problems embedded within procurement ecosystems globally, requiring coordinated international responses and knowledge-sharing on effective preventive mechanisms.

Academic studies further confirm the deep-rooted vulnerabilities in PBJ across multiple dimensions and stages. Yustiarini and Soemardi (2020) conducted a comprehensive review demonstrating that fraud risks emerge as early as the planning stage—such as through manipulation of the Owner's Estimate (HPS)—and extend into the implementation phase, particularly through subcontracting arrangements. Puspita and Gultom (2024) examined the impact of e-procurement policies on corruption prevention, finding that while digital systems improve transparency, they remain insufficient without robust verification mechanisms and enforcement capacity. Widjaja (2025) analyzed transparency challenges in government procurement, identifying persistent information asymmetries and limited public access as critical enablers of corrupt practices. Mahardhika (2021) investigated the criminal liability of Commitment-Making Officials in procurement fraud, revealing how regulatory ambiguities and overlapping jurisdictions create accountability gaps that perpetrators exploit. These scholarly contributions collectively establish that, despite the relatively comprehensive legal framework governing PBJ, weak factual verification and insufficient internal oversight have allowed procurement-related corruption to persist and remain difficult to eradicate.

More specifically, the modus operandi of fictitious projects in PBJ is often carried out by listing subcontractors or vendors that exist only administratively, without any physical execution of work. Accountability documents are fabricated to appear legitimate, while, in reality, no work is performed. Nasution (2020) provides a detailed analysis of fictitious projects as a systemic corruption pattern, demonstrating how administrative documents are meticulously fabricated to create appearances of legitimacy while concealing the absence of actual project implementation. Cahyani (2022) examines preventive strategies against procurement corruption, emphasizing that current regulatory approaches focus excessively on formal compliance rather than substantive verification of work performance. Sukarmi and Dewantara (2024) identify potential corruption vulnerabilities throughout the procurement lifecycle, with particular emphasis on HPS manipulation and vertical collusion patterns that facilitate fictitious contracting. Syamsuddin (2020) analyzes the evidentiary challenges in proving abuse of authority in procurement corruption cases, revealing how perpetrators exploit regulatory ambiguities and procedural complexities to evade accountability. These scholarly analyses collectively indicate that subcontracting practices, which in principle are intended to expand project implementation capacity and encourage the participation of small enterprises, can instead be misused as avenues for fraud when adequate verification and oversight mechanisms are absent.

The urgency of this study arises from the critical need to scrutinize subcontracting as a specific, distinct, and systematically under-regulated vulnerability within public procurement systems. While subcontracting mechanisms are normatively intended to support national development objectives by expanding project implementation capacity and empowering micro, small, and medium enterprises (MSMEs) to participate meaningfully in government projects, empirical evidence from corruption prosecutions reveals that, in practice, these mechanisms are frequently exploited to facilitate corrupt practices through fictitious subcontractor listings, document fabrication, and fund diversion schemes. This disconnect between normative intent and operational reality calls for rigorous, focused juridical analysis of the legal risks and fraud mechanisms specifically enabled by subcontracting arrangements, particularly within the regulatory framework established by Indonesia's LKPP Regulation No. 12 of 2021.

LKPP Regulation No. 12 of 2021 stipulates that main providers bear full responsibility for subcontracted work. However, the regulation lacks robust provisions for factual verification and enforcement. As a result, legal accountability is not accompanied by effective preventive mechanisms, creating a legal vacuum that allows malpractice to persist. Zamroni (2019) critically examines accountability measures for Commitment-Making Officials, arguing that current frameworks emphasize formal procedural compliance while neglecting substantive performance monitoring and outcome verification. Pratama and Soyono (2023) analyze corporate criminal liability in direct appointment procurement methods, demonstrating how corporations exploit regulatory loopholes to avoid accountability even when fraudulent practices are evident. Miru, Nirahua, and

Wadjo (2023) investigate the allocation of criminal responsibility for official positions in procurement corruption, revealing systematic attribution failures in which individual officials bear consequences while institutional and corporate actors remain unaccountable. These legal analyses collectively establish that existing regulatory frameworks create what can be characterized as accountability gaps—situations where legal responsibility is formally assigned but practically unenforceable due to verification weaknesses, thereby creating permissive environments for corrupt actors.

This study seeks to fill an important gap in existing academic and regulatory discourse. While public procurement corruption has been extensively discussed in the literature, the role of subcontracting as a specific modality of fraud remains underexplored. The novelty of this research lies in its focused examination of subcontracting mechanisms as a distinct legal and operational vulnerability in PBJ. By concentrating on how subcontractors are used—legitimately or otherwise—this research provides a deeper understanding of how legal gaps are exploited and how administrative processes are manipulated for personal or corporate gain.

Through juridical analysis, this study assesses the effectiveness of existing regulations, particularly LKPP Regulation No. 12 of 2021, in mitigating fraud risks associated with subcontracting. It aims to identify loopholes that enable the misuse of subcontractors and to propose legal and policy reforms to strengthen accountability. Furthermore, the study offers a comprehensive perspective by linking doctrinal legal analysis with real-world procurement practices and judicial findings. In doing so, it contributes not only to academic literature but also to improving procurement governance in Indonesia.

This research also carries significant practical policy implications for multiple stakeholder groups. For regulatory authorities such as LKPP, it highlights the urgent need for stronger risk-based auditing procedures that move beyond document review to include substantive field verification of subcontractor work performance, physical presence, and technical capacity. For procurement officials, including Budget Users (PA) and Commitment-Making Officials (PPK), it emphasizes the necessity of mandatory factual verification protocols for all listed subcontractors prior to contract execution and payment processing. For oversight bodies, including the Supreme Audit Agency (BPK) and the Corruption Eradication Commission (KPK), it identifies specific audit focus areas and red flags that signal potential subcontractor fraud. For legislative bodies, it provides evidence-based recommendations for regulatory amendments to close existing loopholes while maintaining the legitimate policy objectives of MSME empowerment and capacity expansion.

These recommendations are essential to shift the current procurement system from a formal compliance orientation—where adherence to administrative procedures is prioritized regardless of substantive outcomes—toward a substantive accountability orientation—where actual work performance, genuine subcontractor participation, and value-for-money achievement become the primary evaluative criteria. Without such fundamental reforms, regulations will remain ineffective in practice, functioning merely as formalities that create the illusion of control while remaining structurally vulnerable to systematic manipulation by sophisticated fraudsters.

RESEARCH METHODS

This study employs a normative (doctrinal) legal research design to examine how subcontracting is regulated and applied in Indonesia's public procurement. Three approaches are applied: (i) the statute approach (LKPP Regulation No. 12/2021 and relevant Civil Code/competition provisions), (ii) the case approach (final or affirmed judgments in PT Amarta Karya and PT Waskita Karya), and (iii) the conceptual approach (contractual liability/wanprestasi, corporate liability, and fraud in contractual chains). Primary materials consist of statutes, regulations, and court decisions; secondary materials include peer-reviewed articles and monographs; tertiary materials include oversight reports (e.g., BPK, ICW). Cases were purposively selected for their relevance to subcontracting, finality, and documented state losses. The analysis combines legal hermeneutics, case law analysis (ratio decidendi/obiter), and doctrinal synthesis through deductive and analogical reasoning. Validity is reinforced by triangulating statutes, court decisions, and oversight data. Ethics: only public documents were used; no human subjects were involved. Limitations: findings rely on the

completeness of official records and do not measure field-level compliance.

This research exclusively utilizes publicly available official documents, including published statutes, court decisions accessible through public registries, and authorized oversight reports. No human subjects participated in this research; therefore, informed consent procedures and human subjects protections are not applicable. All case references and judicial decisions cited are properly attributed following academic citation standards. The findings and conclusions of this study rely fundamentally on the completeness, accuracy, and accessibility of official legal records, court documents, and governmental reports. To the extent that these sources contain gaps, inaccuracies, or omissions, the analytical conclusions may be similarly limited. Furthermore, this normative legal research does not empirically measure field-level compliance behavior, actual prevalence rates of different fraud types, or the effectiveness of specific interventions. Such empirical investigations would require different methodological approaches (e.g., surveys, interviews, statistical analysis) beyond the scope of normative doctrinal research. Future research could productively complement these doctrinal findings with empirical field studies measuring implementation effectiveness and compliance patterns.

RESULTS AND DISCUSSION

General Mechanism of Public Procurement

The implementation of government procurement of goods and services constitutes one of the crucial instruments of state administration, as it involves substantial public expenditure within the State and Regional Budgets (APBN/APBD). Accordingly, procurement is not merely a technical-administrative process but also carries extensive legal implications, encompassing criminal, civil, and administrative law aspects. Procurement itself has been systematically regulated under the Regulation of the National Public Procurement Agency (LKPP) No. 12 of 2021, which emphasizes the principles of transparency, accountability, and efficiency across every stage — from planning to the handover of project deliverables.

Nevertheless, various studies have shown that public procurement remains one of the most corruption-prone sectors. The potential for fraud in procurement can arise as early as the planning stage, through manipulation of the Owner's Estimate (HPS), and extend into contract implementation through engineered subcontracts. This finding aligns with conclusions that, despite the relative comprehensiveness of the legal framework, weak factual verification and inadequate internal oversight render public procurement persistently vulnerable to the misuse of state funds.

Thus, although LKPP Regulation No. 12 of 2021 has systematically structured the procurement process into six interconnected stages — planning, preparation, provider selection, determination of the winner, contract execution, and handover of deliverables — each stage still harbors legal vulnerabilities that warrant close attention, particularly in the context of subcontracting analysis. In essence, the implementation of government procurement of goods and services is a series of systematically regulated activities stipulated in legislation. Based on LKPP Regulation No. 12 of 2021, the procurement mechanism consists of several interrelated stages, beginning with the planning process and ending with the handover of project deliverables.

The procurement process, as outlined in LKPP Regulation No. 12 of 2021, can be simplified into six key stages, beginning with procurement planning and concluding with the handover of deliverables. In the planning stage, the Budget User (PA) determines and announces the General Procurement Plan (Rencana Umum Pengadaan or RUP), which is then implemented by the Commitment-Making Official (PPK). Following this, during the procurement preparation stage, the PPK prepares essential documents such as the Technical Specifications or Terms of Reference (Kerangka Acuan Kerja or KAK) and the Owner's Estimate (Harga Perkiraan Sendiri or HPS).

The provider selection stage involves the Procurement Working Group (Pokja Pemilihan) or the Procurement Officer conducting the selection process through various methods, including tender, selection, fast tender, e-purchasing, direct appointment, or direct procurement, with the exception that e-purchasing and direct procurement are carried out without the Pokja Pemilihan. At the award determination stage, the Pokja Pemilihan designates the selected provider to fulfill the needs of the Budget User, although for packages

meeting certain budget thresholds, this determination may also be made directly by the PA.

The contract implementation stage begins with the issuance and signing of a Letter of Appointment for the Goods or Services Provider by the PPK, who is also responsible for contract control and any necessary revisions. Finally, in the handover of deliverables stage, the provider submits the completed work, which is examined by the Official for the Handover of Work Results (Pejabat Penyerahan Hasil Pekerjaan or PPHP) and documented in the Minutes of Handover (Berita Acara Serah Terima or BAST). This is followed by a maintenance period, after which a final inspection is conducted and recorded in a second BAST.

Regulation on the Engagement of Subcontractors in Public Procurement (LKPP No. 12/2021)

The regulations on subcontracting in government procurement, as outlined in LKPP Regulation No. 12 of 2021, set specific requirements for construction work subcontracting. For projects with budget ceilings exceeding IDR 25 billion, the types of work that must be subcontracted are determined by the Commitment-Making Official (PPK) and specified in the procurement preparation documents. Subcontracting is divided into two categories: a portion of the main work must be subcontracted to specialist service providers, limited to a maximum of two work items corresponding to the SBU (Small Business Unit) sub-classification; and a portion of non-main construction work may be subcontracted to small-qualification service providers, also limited to two work items without requiring SBU classification. The evaluation of subcontracted work involves assessing the suitability of both main and non-main subcontracted portions. Importantly, the main provider is allowed to subcontract only specific portions of the work and retains full responsibility for all acts and omissions of the subcontractors.

The provider must not subcontract work exceeding the percentage of the contract price stated in the contract data or subcontract parts explicitly prohibited by the contract. The provider is accountable for controlling and coordinating all subcontracted work and is responsible for any actions by subcontractors, their agents, or personnel as if they were the provider's own. Additionally, the provider must obtain prior approval from the consultant for all proposed subcontractors, except for material suppliers or subcontractors already specified in the contract data. The approval process requires submission of detailed information about the subcontractor and the work to be subcontracted, with automatic approval granted if the consultant does not issue a rejection within 14 calendar days. The provider is also obligated to notify the consultant at least 28 working days before the start of each subcontractor's on-site work. These provisions collectively aim to regulate subcontracting rigorously to ensure accountability and proper oversight in public procurement projects.

Mechanism of Subcontracting in Public Procurement

Subcontracting is a mechanism through which the main provider engages a third party to carry out part of the procurement work on the basis of a written agreement. In procurements with a budget ceiling exceeding IDR 25 billion, the provider is obliged to subcontract a portion of its work in accordance with Article 75 paragraph (6) of LKPP Regulation No. 12 of 2021. This provision is intended to encourage the participation of Micro, Small, and Medium Enterprises (MSMEs) and to support the capacity development of local providers within the procurement value chain. Through this obligation, local MSMEs are granted broader opportunities to participate in government procurement projects.

The mechanism for involving subcontractors follows the stages of procurement as regulated under LKPP Regulation No. 12 of 2021. It is important to emphasize that subcontractors do not directly participate in the provider selection process; rather, they are listed within the bid documents of the main provider. Consequently, once the main provider is designated as the winner, the subcontractors included in the proposal are automatically bound to the execution of the contract. If illustrated in a diagram, the involvement of subcontractors in public procurement would be depicted as follows:

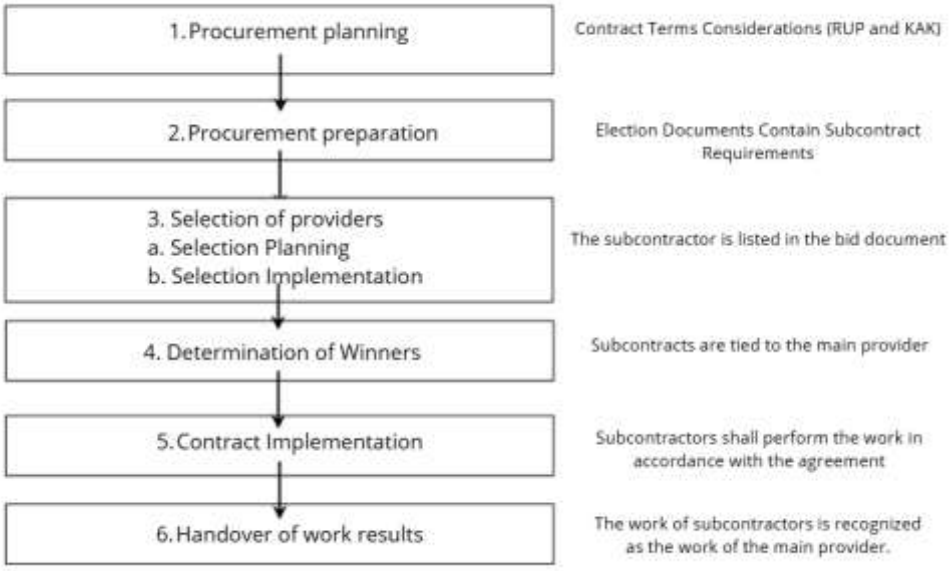

Figure 1. General Flow of Public Procurement Based on LKPP Regulation No. 12 of 2021

The involvement of subcontractors in public procurement follows a structured sequence of stages, as outlined in LKPP Regulation No. 12 of 2021. During the procurement planning stage, the procuring agency formulates the General Procurement Plan (Rencana Umum Pengadaan or RUP) and the Terms of Reference (Kerangka Acuan Kerja or KAK), where initial considerations regarding subcontracting may already be introduced, particularly for procurement packages valued above IDR 25 billion. At the procurement preparation stage, key procurement documents—including the Procurement Requirements (RKS), KAK, and Owner's Estimate (Harga Perkiraan Sendiri or HPS)—begin to explicitly identify portions of the work that are permitted or required to be subcontracted. This prepares the groundwork for the provider selection process, which is divided into two sub-stages: selection planning and selection implementation. In the planning sub-stage, the Procurement Working Group (Pokja Pemilihan) finalizes the selection documents by incorporating subcontracting requirements. During implementation, participating providers submit bid proposals that include the names and details of the subcontractors they intend to engage, thereby introducing subcontractors into the process at an administrative level.

In the award determination stage, once a main provider is declared the winner, any subcontractors listed in the submitted bid documents are implicitly bound to participate in the contract's execution. This is followed by the contract execution stage, wherein the subcontractor begins work on the assigned portions of the project under a subcontracting agreement. However, despite the involvement of subcontractors, the main provider retains full control, supervision, and responsibility for the deliverables, as reinforced in Article 77(3) of LKPP Regulation No. 12 of 2021. In the final stage—the handover of deliverables—the work produced by subcontractors is assessed as part of the overall performance of the main provider, without separate contractual recognition for the subcontractor's contributions.

Although the regulation normatively governs subcontractor involvement with clarity and structure, its implementation in practice remains problematic. The requirement to include subcontractors in bid documents, especially for high-value projects, creates a regulatory opening for the use of fictitious subcontractors or purely administrative entries with no operational substance. This issue is compounded by the limited capacity of the Pokja Pemilihan and the PPK to conduct rigorous factual verification, enabling the approval of subcontractors who lack technical competence or, in some cases, do not exist at all. Consequently, a mechanism originally intended to promote the participation of Micro, Small, and Medium Enterprises (MSMEs) in government procurement is often misused as a channel for fraudulent practices. This misuse not only undermines the objectives of inclusive procurement policy but also weakens the integrity and accountability of public procurement as a whole.

Fraud Potential in the Application of Subcontracting

The phenomenon of fraud through fictitious subcontractors is evident not only in the cases of PT Amarta Karya and PT Waskita Karya but has also been well-documented in academic literature. Rasina Padeni Nasution emphasizes that fictitious projects have become a systemic modus of procurement-related corruption, in which administrative documents are fabricated to appear valid even though the work is never performed. The case of PT Waskita Karya illustrates this pattern clearly, where company officials designated "paper subcontractors" merely as instruments to disburse project funds.

In principle, subcontracting in public procurement is intended to expand implementation capacity and provide flexibility for the main provider. However, this practice carries significant fraud risks due to the Budget User's (PA) limited control over subcontractor activities in terms of quality, costs, and timelines. Based on corruption cases tried by the Corruption Court, acts of corruption involving state budgets are commonly perpetrated by bureaucratic officials through procurement schemes. The most frequent methods include project mark-ups and manipulation of tender processes. Fictitious projects in the State Budget (APBN) are also frequently encountered. This condition reveals how procurement mechanisms can serve as systemic loopholes for perpetrators to conceal fraudulent conduct in government projects.

The potential for fraud in subcontracting mechanisms is not merely theoretical; it has been confirmed by judicial rulings demonstrating how subcontracting is exploited to misappropriate state funds. Major construction company cases reveal recurring patterns: (1) listing subcontractors as administrative entities without actual work; (2) fund disbursement based solely on administrative documents; and/or (3) the use of "paper companies" to facilitate project mark-ups. These facts highlight weaknesses in the oversight of subcontractor involvement under LKPP Regulation No. 12 of 2021.

A concrete example can be found in the conviction of former President Director of PT Amarta Karya (Persero), Catur Prabowo. According to the Bandung District Court Register No. 90/Pid.Sus-TPK/2023/PN Bdg (Decision of 5 February 2024), the defendant was charged in relation to fictitious projects that caused state losses estimated at approximately IDR 46 billion. The court established that several projects were recorded administratively but never executed and that unexplained financial flows were identified. This ruling confirms that fictitious subcontractors were used as a mechanism to facilitate the unlawful disbursement of state funds.

A similar pattern is evident in the case of PT Waskita Karya (Persero) Tbk. The Central Jakarta District Court Decision No. 59/Pid.Sus-TPK/2020/PN Jkt.Pst (26 April 2021) convicted several former executives for fictitious contracts and subcontractors that resulted in state losses estimated at IDR 202.3 billion. The ruling demonstrated that the subcontractors listed functioned only as administrative instruments for payment, not as actual implementers in the field. The verdict imposed prison terms of four to seven years and replacement money on five convicted executives. The findings of the Audit Report of the Audit Board of Indonesia (BPK) No. 09/LHP/XXI/07/2020 confirmed total state losses amounting to IDR 202,296,416,008. This decision was upheld on appeal (PT DKI No. 23/Pid.Sus-TPK/2021/PT DKI, 9 September 2021) and became final and binding with Supreme Court Decision No. 944 K/Pid.Sus/2022 (22 February 2022).

In procurement practice, subcontracting is intended to expand the capacity for project implementation and provide flexibility to the main provider. Yet, in practice, it contains a high risk of fraud, primarily due to hierarchical patterns of control—top-down supervision—that weaken oversight of third parties. Competition law and procurement studies note that such vulnerabilities often manifest in vertical collusion and tender manipulation, including direct appointments, manipulation of Owner's Estimates (HPS), and other schemes within government procurement.

Corruption cases repeatedly display common patterns: (i) subcontractors listed administratively without physical realization; (ii) fund disbursement based solely on documents; and (iii) use of "paper company" networks to unlawfully channel state funds. These patterns align with scholarly findings that identify "fictitious projects" as an entrenched and systemic modus of corruption.

Several recent legal cases in Indonesia exemplify the risks and fraudulent practices associated with

subcontractors in public procurement. In the Bandung High Court Decision No. 5/Pid.Sus-TPK/2024/PT BDG, it was revealed that CV Perjuangan, CV Guntur Gemilang, and CV Cahaya Gemilang were listed as subcontractors or "foremen" for various projects without performing any accountable work. Despite this, payments were processed, leading to the conviction of Catur Prabowo, who was sentenced to 11 years' imprisonment, fined IDR 650 million, and ordered to pay restitution amounting to over IDR 30 billion, with subsidiary imprisonment imposed for non-payment. Similarly, the Central Jakarta District Court Case No. 59/Pid.Sus-TPK/2020/PN Jkt.Pst uncovered a fraudulent scheme involving 41 fictitious subcontract agreements, "cash back" payments to the Civil Division, and fees for "flag lending." Five executives from PT Waskita Karya (Persero) Tbk. were sentenced to prison terms ranging from four to seven years, with the state suffering losses exceeding IDR 202 billion, as confirmed by Audit Report BPK No. 09/LHP/XXI/07/2020. These decisions, upheld by higher courts including the Supreme Court, illustrate how fictitious subcontracting has become a systemic modus operandi in procurement corruption. This exploitation of administrative loopholes within subcontracting arrangements facilitates the unlawful expenditure of state resources, highlighting the urgent need for more robust regulatory and oversight mechanisms in Indonesia's public procurement system.

Table 1. Comparative Analysis of Amarta Karya and Waskita Karya Cases

Aspect	Amarta Karya	Waskita Karya
Case Number & Judicial Level	Bandung High Court Decision No. 5/Pid.Sus-TPK/2024/PT BDG (appeal)	Central Jakarta District Court Decision No. 59/Pid.Sus-TPK/2020/PN.Jkt.Pst (26 April 2021) → Jakarta High Court Decision No. 23/Pid.Sus-TPK/2021/PT DKI (9 September 2021) → Supreme Court Decision No. 944 K/Pid.Sus/2022 (22 February 2022)
Main Defendant(s)	Catur Prabowo (President Director)	Desi Arryani; Fathor Rachman; Jarot Subana; Fakih Usman; Yuly Ariandi Siregar
Modus Operandi	Subcontractors/"foremen" listed administratively (CV Perjuangan, CV Guntur Gemilang, CV Cahaya Gemilang) without physical realization, yet payments were still disbursed	41 fictitious subcontract agreements; cash back payments to the Civil Division; "flag-lending" fees of 1.5–2.5%
Losses/Restitution	Restitution of IDR 30,140,137,677 (as ordered in the appellate decision)	State losses of approximately IDR 202,296,416,008 (as recorded in the BPK Audit Report)
Judgment & Sanctions	11 years' imprisonment, IDR 650 million fine, restitution of IDR 30.14 billion	Sentences ranging from 4–7 years' imprisonment; fines as determined in the District Court decision; upheld through Supreme Court Decision No. 944 K/Pid.Sus/2022

Analysis of Factors Contributing to Fraud through Subcontracting in Public Procurement

Regulatory Factors

Normatively, LKPP Regulation No. 12 of 2021, through Article D.4.2, stipulates that the main provider bears full responsibility for the work carried out by subcontractors. However, in practice, the regulation is frequently manipulated. Ahmad Rustan Syamsuddin highlights that corruption in public procurement often originates from the abuse of power at every stage—from planning to implementation—and that this element is the most decisive in proving corruption before the court. Anis also emphasizes that fictitious subcontractors constitute one of the prevailing fraud schemes in procurement. The existence of subcontractors that are

administratively valid but factually do not perform actual work serves as a means to channel funds illegally, causing state financial losses and undermining the integrity of the procurement system. Consistently, Sukarmi and Reka Dewantara explain that the most dominant forms of fraud in procurement involve manipulation of the Owner's Estimate (HPS) and vertical collusion—patterns that are closely aligned with fictitious subcontracting, as both exploit administrative loopholes to secure unlawful gains.

LKPP Regulation No. 12 of 2021 attempts to anticipate the risk of subcontract misuse by affirming that responsibility for subcontracted work rests entirely with the main provider. This is reflected in Article D.4.2 of the General Conditions of Contract, which states: "The Provider is responsible for the work of all sub-providers, for controlling and coordinating all sub-providers' work, actions, or errors, including those of their agents or personnel, as if they were the actions or errors of the Provider." Ideally, this clause should eliminate the possibility of the main provider disclaiming liability for subcontractor performance. Yet, in practice, this provision is often manipulated. The main provider merely lists subcontractors administratively without exercising genuine control or oversight in the field. As a result, the legal position that designates the main provider as fully liable ironically creates space for the use of fictitious subcontractors.

When compared with the regulation on bid-rigging, a similar pattern of fraud becomes evident. Bid-rigging, as regulated under Article 22 of Law No. 5 of 1999, constitutes a form of document manipulation and collusion occurring at the provider selection stage. Bid-rigging can take the form of horizontal collusion, where tender participants collude to predetermine the winner, or vertical collusion, where agreements are made between participants and procurement officials. Both practices ultimately eliminate fair competition in procurement. Subcontract fraud, although arising during the contract implementation stage, reflects a similar modus operandi: fictitious subcontractors, fabricated administration, and the shifting of liability from the main provider. According to Ari and Nazriyah, abuse of authority in procurement occurs when officials make decisions that benefit themselves or their groups, even if the decisions appear formally compliant with procedure. This constitutes one of the principal drivers of corruption. Thus, both bid-rigging and subcontract fraud can be understood as two facets of the same phenomenon—exploiting administrative loopholes within the procurement system to secure illicit benefits.

Structural Factors

Fraud patterns in subcontracting can also be traced through the flow of funds across contractual layers. Aure et al. illustrate that the longer the contractual chain, the greater the potential for fictitious companies to emerge, functioning solely to issue invoices without performing actual work. At a certain point, the flow of funds stops at the level of a "paper subcontractor" and is withdrawn in cash, rendering its use difficult to trace.

The following diagram illustrates the cashflow pattern described by Aure et al.:

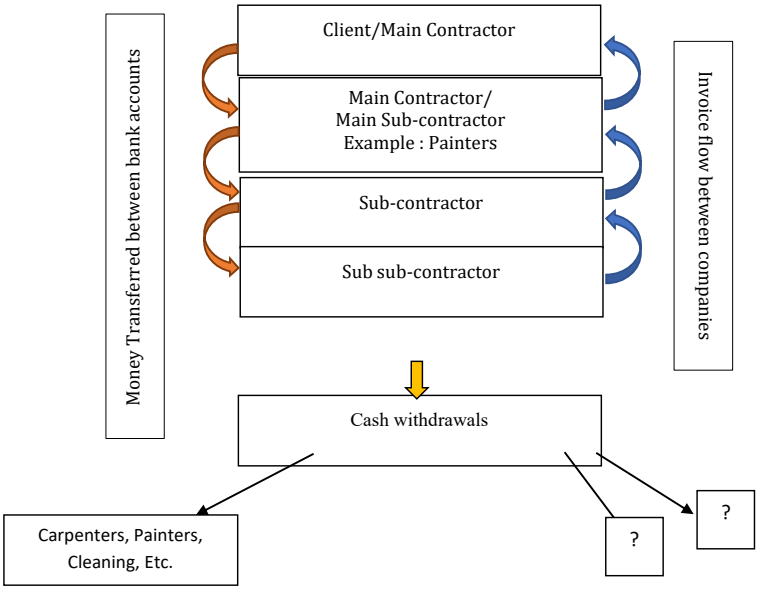

Figure 2. Aure, B., Lædre, O., & Lohne, J. (2020). Experiences from allowing maximum two contract tiers in the vertical supply chain. Proceedings of the 28th Annual Conference of the International Group for Lean Construction (IGLC), 601–612.

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According to Aure, Lædre, and Lohne, the longer the subcontracting chain within a vertical supply chain, the more difficult it becomes to verify compliance with wage obligations, taxation, and the actual performance of work. The extended chain creates opportunities for fictitious invoices, where invoices serve merely as administrative justifications while funds stop at a certain point and are withdrawn in cash, rendering them untraceable.

This pattern is clearly reflected in the case of PT Waskita Karya (Persero) Tbk., as revealed in Central Jakarta District Court Decision No. 59/Pid.Sus-TPK/2020/PN.Jkt.Pst (26 April 2021), which was upheld through to cassation. In that case, investigators uncovered 41 fictitious subcontract agreements, cash back practices to internal divisions, and "flag-lending" fees of 1.5–2.5%, all of which were consistent with fraudulent cashflow patterns.

Similarly, the PT Amarta Karya case demonstrated the use of 41 fictitious subcontractors that were formally recorded but never carried out any actual work. Project funds were instead diverted through the accounts of these fictitious subcontractors, resulting in significant state financial losses. Lohne and Drevland also observe that subcontractors are frequently used as intermediaries in criminal practices, either to disguise financial flows or to allow the main contractor to evade direct liability.

Supporting this analysis, data from Indonesia Corruption Watch (ICW) indicate that 27.4% of corruption cases in Indonesia originate from the infrastructure sector, with the most prevalent schemes being fictitious projects and bribery in road construction tenders.

As a form of visualization, the fraudulent cashflow pattern in the Waskita Karya case can be illustrated in Figure 3 below. This figure demonstrates how multi-layered contracts ultimately end with fictitious subcontractors and purely administrative invoices without physical realization, which are then diverted into internal cash back mechanisms. Accordingly, the contrast between the arrows in Aure's idealized model and those in the Waskita diagram underscores the difference between a legitimate cashflow and a fraudulent one.

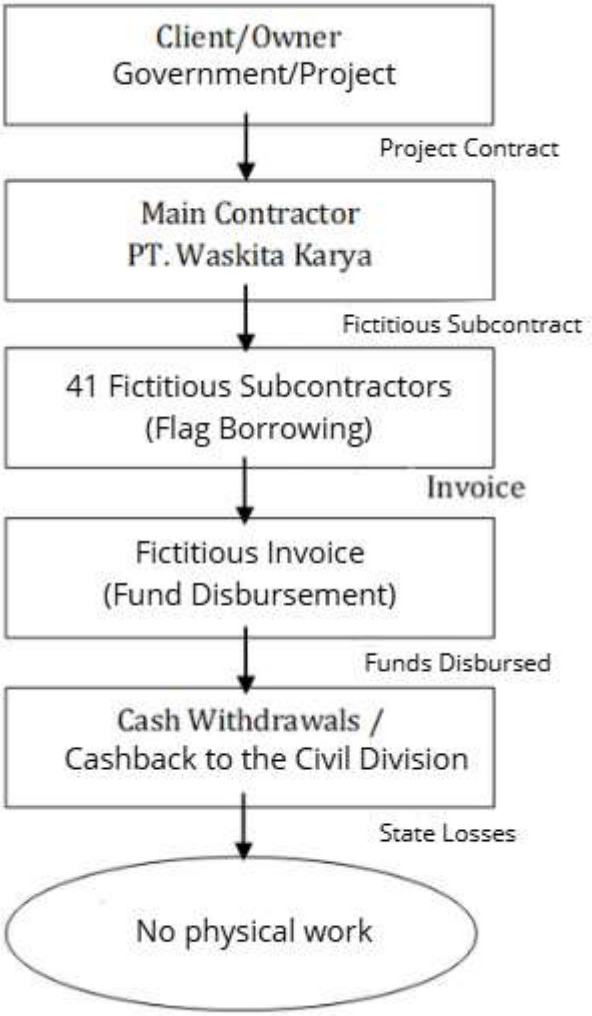

Figure 3. The author's elaboration is based on the Central Jakarta District Court Decision No. 59/Pid.Sus-TPK/2020/PN.Jkt.Pst (26 April 2021) in conjunction with Supreme Court Decision No. 944 K/Pid.Sus/2022 (22 February 2022).

Although LKPP Regulation No. 12 of 2021 explicitly provides that the provider bears full responsibility for the work of subcontractors—including any errors or negligence committed by them—this norm has not been accompanied by an adequate verification mechanism. The regulation merely establishes the contractual liability of the main provider but does not supply legal instruments ensuring the traceability of financial flows or the actual performance of subcontractors in the field. This regulatory gap renders factual oversight of subcontractors weak. Such a condition is consistent with the findings of Aure et al., who argue that the longer the subcontracting chain, the greater the risk of misuse through fictitious invoices and untraceable cash withdrawals. In many instances, collusive corruption is executed through the issuance of fictitious invoices by the colluding parties. This normative loophole was ultimately exploited in the PT Waskita Karya case, in which 41 subcontract agreements functioned solely as administrative tools to disburse funds without any physical realization of work. Fictitious projects remain the most commonly used modus operandi of corruption in the procurement sector. Such schemes are carried out by creating projects that are never executed, while the entire budget is disbursed as though the projects were implemented normally. Thus, fraud factors arise not only from technical weaknesses but also from regulatory limitations that have failed to anticipate fraudulent practices involving fictitious subcontractors.

Practical and Institutional Factors

Sujoko explains that under the "don't care" scheme, the Budget User (PA) maintains a contractual relationship exclusively with the main contractor, without exercising direct control over subcontractors. Consequently, subcontractors remain outside the scope of formal supervision, leaving wide open opportunities for fraud. This pattern is evident in the PT Amarta Karya (Persero) case, where several fictitious subcontractors—such as CV Perjuangan, CV Cahaya Gemilang, and CV Guntur Gemilang—were listed only administratively and never carried out any work. The Bandung High Court Decision No. 5/Pid.Sus-TPK/2024/PT BDG emphasized that payments were still processed because the PA conducted no factual verification of subcontractors, interacting only with the main contractor.

The fraud pattern revealed in the PT Waskita Karya case underscores the weakness of subcontracting control mechanisms at the structural level. The problem, however, does not lie solely in the length of subcontracting chains but also in the institutional design of procurement itself. This is illustrated by Sujoko's "don't care" theory, derived from his interview with Prof. Dr. FX Joko Priyono, S.H., Hum., Lecturer at the Faculty of Law, Unsip, and instructor of International Business Contract Law. In his journal, Sujoko demonstrates that, in practice, the legal relationship in government contracts situates the PA in direct dealings only with the main contractor, without any direct verification of subcontractors.

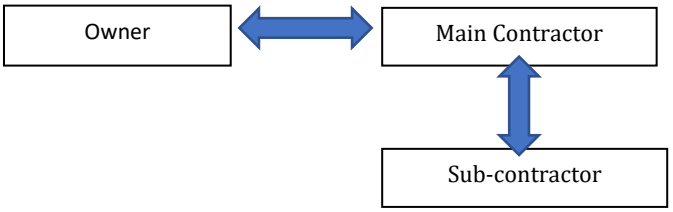

Figure 4. Legal Relationship of Subcontracts in the Don't Care Scheme.

Sujoko, A., Pengelola Barang, F., Fakultas, J., & Undip, H. (2019). Permasalahan Subkontrak Pada Pekerjaan Konstruksi di Pemerintah. In Administrative Law & Governance Journal (Vol. 2, Issue 3). In the don't care scheme, the Budget User (PA) maintains only a contractual relationship with the main contractor, without direct control over subcontractors. Consequently, subcontractors fall outside the scope of formal legal oversight, making fraud easier to perpetrate. This is clearly reflected in the PT Amarta Karya (Persero) case. Based on Bandung High Court Decision No. 5/Pid.Sus-TPK/2024/PT BDG, several fictitious subcontractors—such as CV Perjuangan, CV Cahaya Gemilang, and CV Guntur Gemilang—were included in administrative documents despite never executing any work. Payments, however, were still processed since, legally, the PA conducted no factual verification of subcontractors, interacting only with the main contractor. Transparency in procurement processes is a key factor in preventing corruption, collusion, and nepotism. Yet, the main obstacles remain limited public access to information and weak oversight. This case illustrates how institutional gaps within the don't care scheme create opportunities for providers to exploit fictitious subcontractors to unlawfully channel state funds.

Fraud in procurement frequently occurs due to weaknesses in internal control systems. Pressures from project targets, opportunities created by weak supervision, and rationalization stemming from a permissive culture constitute the main drivers of fraud. The weakness of subcontract implementation is also linked to institutional design in public procurement. Tambunan and Simanungkalit explain that procurement operates under the principle of official responsibility (borne by the PA, PPK, and KPA), as well as the personal responsibility of officials, which entails criminal, civil, and administrative consequences. When the PA deals solely with the main contractor without verifying subcontractors, the space for fraud becomes wide open. Even when indications of corruption, collusion, and nepotism (KKN) are apparent, proving them remains difficult because the administrative system—and the parties assigning or receiving the work—are often highly organized and systematic from the project planning stage. This condition aligns with Sujoko's don't care

theory, namely, that the PA maintains a legal relationship only with the main contractor without direct oversight of subcontractors. This fact is confirmed in the Amarta Karya case, where fictitious subcontractors still received payments because the PA failed to conduct factual verification.

Civil Law Aspects

Beyond internal, external, and structural factors that open avenues for subcontract fraud, it is also important to analyze the issue from a civil law perspective. Fraud involving fictitious subcontractors can essentially be classified as wanprestasi (breach of contract), since the main provider fails to perform its contractual obligations in reality. Under Article 1320 of the Indonesian Civil Code (KUHPerdata), a valid agreement requires a specific object and a lawful cause. If the subcontractor listed is fictitious, these conditions are not fulfilled, rendering the contract legally defective. Furthermore, Article 1243 KUHPerdata provides the basis for the aggrieved party to claim damages for breach of contract, while Articles 1266 and 1267 KUHPerdata open the possibility for contract termination through a judicial decision.

Thus, fraud through subcontracting should be understood not only as a criminal act of corruption causing state losses but also as a civil breach leading to potential contract annulment and liability for damages. Although LKPP Regulation No. 12 of 2021 positions the main provider as fully liable, the regulation lacks legal instruments to ensure the traceability of subcontractor financial flows. Corporations involved in procurement may also incur criminal liability under the principle of vicarious liability, where crimes committed by corporate executives in the course of corporate functions are attributable to the corporation itself. Endah Cahyani underscores that despite the existence of a legal framework, procurement-related corruption persists due to weak factual verification and insufficient internal oversight from the planning stage through contract implementation. Therefore, preventive measures must focus on risk-based audits and field monitoring to close the loophole of fictitious subcontractor use.

CONCLUSION

The subcontracting mechanism in government procurement aims to enhance the capacity of main contractors and encourage small business participation. However, in practice, it often becomes a loophole for fraud. A common pattern involves the use of fictitious subcontractors that exist only on paper and do not perform any actual work, allowing state funds to be disbursed without real project execution. This is further exacerbated by cashback schemes and flag-lending practices. Although LKPP Regulation No. 12 of 2021 places full responsibility for subcontractor performance on the main provider, the lack of factual verification and weak oversight undermines its effectiveness. Fraud emerges when legal accountability is not supported by strong monitoring mechanisms. Subcontracting fraud not only causes state financial losses due to corruption but also violates the principles of contract law. The use of fictitious subcontractors breaches the legal validity of the contract, potentially leading to its annulment and claims for damages. This study highlights the urgent need for stricter oversight of subcontracting practices through risk-based audits, enhanced transparency, and firm enforcement of main contractor accountability. Without stronger control mechanisms, existing regulations risk becoming mere formalities prone to abuse.

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