



Circular Letters as Instruments for Creating New Norms in Indonesian Public Procurement: A Review of LKPP Circular Letters Nos. 5 and 8 of 2024

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Article Info	Abstract
Article history: Received: June 11, 2026 Revised: August 30, 2026 Accepted: September 25, 2026 Keywords: Administrative law; Circular letters; LKPP; Public procurement; Regulatory hierarchy.	Circular Letters Nos. 5 and 8 of 2024 issued by Indonesia's National Public Procurement Agency (LKPP) were issued to provide guidance on corruption prevention in government procurement. Because circular letters are not listed in the hierarchy of legislation under Article 7 of Law No. 12 of 2011, questions arise when their operative provisions appear to create obligations, decision criteria, sanction grounds, or allocations of authority beyond existing procurement regulations. This study examines the legal character of selected provisions in the two circular letters. Using normative legal research with statutory, conceptual, and analytical approaches, the study applies a clause-level doctrinal analysis by comparing the selected operative provisions with the procurement regulations applicable at the time of issuance and classifying them as restatements, interpretations, operational directions, or potentially norm-creating provisions. The analysis identifies potentially norm-creating effects concerning review of the General Procurement Plan without clear confirmation of the final authority of the Budget User or duly authorized Proxy Budget User, the linkage between a single brand and a single capable business actor, the shortest supply chain criterion, price preference in negotiated e-purchasing, mandatory disclosure of evaluation worksheets without adequate safeguards for protected information, and the possible treatment of failure to repay audit-identified overpayments as an independent ground for blacklisting. By contrast, subcontractor-payment controls and mini competition have prior regulatory foundations. The findings show that the principal legal issue is not LKPP's regulatory competence in general, but the compatibility between the substance and legal effects of particular provisions and the circular-letter form used to express them. The study contributes a clause-level framework for distinguishing explanatory guidance grounded in existing law from provisions requiring a prescribed regulatory form and sufficient legal basis.

To cite this article: Mustafa, K., & Ramli, S. (2026). Circular letters as instruments for creating new norms in Indonesian public procurement: A review of LKPP Circular Letters Nos. 5 and 8 of 2024. *Smart Society: Community Service and Empowerment Journal*, 6(3), 295–307. <https://doi.org/10.58524/smartsoc.v6i3.1423>

INTRODUCTION

Public procurement connects public expenditure, service delivery, and market participation. Its control framework should therefore reduce opportunities for collusion and corruption through clear and consistently applied procedures. This requirement accords with the recommendation of the Organization for Economic Co-operation and Development (OECD) for a coherent and stable procurement framework that avoids conflicting regulatory requirements (OECD, 2015, Section IV(i)), and with rule-of-law principles requiring foreseeable rules and legally defined limits on

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administrative discretion (Venice Commission, 2016, paras. 58, 60, & 65). Indonesian empirical research shows that stronger procurement governance is associated with corruption prevention across planning, selection, and contract implementation, while also showing that formal rules must be supported by accountability and consistent enforcement (Suardi et al., 2024). The practical importance of prevention does not, however, remove the requirement that government bodies act through legally appropriate instruments.

Against that background, the National Public Procurement Agency (*Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah, LKPP*) issued Circular Letter No. 5 of 2024 on 29 October 2024 and Circular Letter No. 8 of 2024 on 10 December 2024. Both letters were addressed to central and regional government leaders and expressly state that their purpose is to provide explanations on corruption prevention for procurement actors within ministries, agencies, and regional government units (LKPP, 2024b, Section 2; LKPP, 2024c, Section 2). Their respective scopes are specified in Section 3: Circular Letter No. 5 covers procurement planning and preparation, whereas Circular Letter No. 8 covers provider selection and contract implementation (LKPP, 2024b, Section 3; LKPP, 2024c, Section 3).

Indonesian legislation does not include circular letters in the hierarchy listed in Article 7 of Law No. 12 of 2011, but that omission does not itself determine their binding effect (Yuniagara et al., 2017). Article 8 recognizes the existence and binding force of other regulations issued by specified institutions or officials insofar as they are mandated by higher legislation or established on the basis of authority; it does not expressly classify circular letters as legislation (Government of Indonesia, 2011, Articles 7–8). In her study, Hanum (2020) explains that circular letters are administrative instruments rather than statutory regulations. An instrument's designation is not necessarily conclusive (Anggono & Mardika, 2021). In the specific context of administrative decisions, the elucidation to Article 1(3) of Law No. 5 of 1986 states that the requirement of a written determination primarily refers to its content rather than its formal shape (Government of Indonesia, 1986). In line with this, Wahyuni (2020) discusses the expanded interpretation of administrative decisions (Keputusan Tata Usaha Negara or KTUN) under Law No. 30 of 2014 on Government Administration, including decisions that may produce legal effects. With regard to circular letters, Hapsari et al. (2026) emphasize the importance of considering their substantive content and legal effects rather than merely their formal designation. Although that provision concerns administrative decisions rather than circular letters, it provides a limited analogy supporting attention to substantive legal effects rather than nomenclature alone. Accordingly, this study examines the substance and legal effects of the circular letters while separately assessing their legal basis and compliance with applicable requirements concerning authority and form.

This study distinguishes defects in legal form from defects of competence, while recognizing possible overlap. For purposes of this study, a formal defect (*cacat bentuk*) arises when a competent institution uses a circular for provisions that legally require enactment through a regulation (Government of Indonesia, 2011, Articles 1(2) and 5(c)). *Ultra vires*, as used in this study, refers to action taken without or beyond conferred authority; relevant indicators include obligations or sanction grounds exceeding that authority and the reassignment of powers legally reserved to other officials (Government of Indonesia, 2014, Articles 8–9 and 17–18; Efendi & Sudarsono, 2024). The Finance Ministry circular examined by Gunawan et al. (2023) and the Home Affairs Ministry's personnel-transfer circular examined by Harahap (2024) raise a comparable issue: whether administrative guidance substitutes for binding regulation. LKPP's distinct procurement mandate requires assessing its circulars against procurement-specific delegated powers and their effects on procurement officials and suppliers (Government of Indonesia, 2018, Articles 87 and 91). In the context of administrative law, Elfiani et al. (2023) explain that circular letters constitute policy rules (*beleidsregels*) rather than statutory regulations, and therefore must not exceed the limits of the issuing authority or conflict with applicable laws and regulations. Similarly, Inggiz et al. (2019) and Hanum (2020) discuss the legal status of circular letters within the Indonesian legal system.

Consistency with superior norms remains an additional requirement (Hadi, 2024).

The literature reviewed here addresses three relevant strands. Studies on circular letters examine their legal status, legitimacy, and relationship with the hierarchy of legislation (Ahmad et al., 2023; Gunawan et al., 2023; Hanum, 2020; Harahap, 2024; Yusdheaputra, 2023). Procurement studies examine governance, corruption reduction, and collusion (Suardi et al., 2024; Anggriawan,

2025), while Muhshi and Yunita (2024) examine judicial review of policy rules. Taken together, these studies do not classify individual provisions of LKPP Circular Letters Nos. 5 and 8 of 2024 as restatements, interpretations, operational directions, or potentially norm-creating provisions. This study therefore extends the reviewed literature through a clause-level comparison of these circulars with the procurement regulations applicable at issuance, while considering subsequent regulatory reforms separately as contextual developments.

This article contributes an integrated clause-level framework linking legal basis, legal effects, normative classification, and validity assessment, applied to LKPP Circular Letters Nos. 5 and 8 of 2024. For purposes of this study, restatement reproduces existing rules; interpretation clarifies their meaning within legally permissible bounds; and operational direction organizes implementation without altering substantive requirements. Potentially norm-creating provisions are those that independently introduce or modify obligations, procurement criteria, sanction grounds, or allocations of authority not already prescribed by existing rules. Such provisions are assessed separately for competence, required legal form, and consistency with procurement law applicable at issuance. Presidential Regulation No. 46 of 2025 is considered separately as a subsequent regulatory development.

METHOD

This study uses normative legal research with statutory, conceptual, and analytical approaches (Putra et al., 2026; Virjusept et al., 2026). The principal legal materials were selected for their relevance to the circulars and the law applicable at issuance (Yulis, 2025; Syafliansah et al., 2025; Widiarty, 2024). Law No. 12 of 2011 and its applicable amendments provide criteria for regulatory form and hierarchy, Law No. 30 of 2014 supplies standards of authority, procedure, and good administration. Presidential Regulation No. 16 of 2018, as amended by No. 12 of 2021, establishes procurement powers and procedures, LKPP Regulations Nos. 4, 9, and 12 of 2021 provide benchmarks for blacklisting, e-purchasing, and procurement through providers, respectively (LKPP, 2021a, 2021b, 2021c). Circular Letters Nos. 5 and 8 of 2024 constitute the objects of analysis. Academic literature was selected for direct relevance to circulars, administrative authority, procurement, or judicial review, transparent reasoning, and traceable sources. Doctrinal arguments informed definitions and clause interpretation and were assessed against primary legal materials, empirical studies supplied governance context, not evidence of how the circulars were implemented (Majeed et al., 2023). Consistent with *tempus regit actum*, each circular's legality is assessed against the law in force on its issuance date in 2024 (Peirone, 2024). Subsequent legislation is examined separately to contextualize the findings and inform regulatory recommendations, without determining legality at issuance. Presidential Regulation No. 46 of 2025 provides a comparator for the disputed price-preference directions through its provisions on price preference in e-purchasing through mini-competition (Government of Indonesia, 2025, amendment to Article 67). Law No. 1 of 2026 is considered only as a subsequent development affecting Article 15 of Law No. 12 of 2011 and is not used to determine the legality of the 2024 circular letters at the time of their issuance (Government of Indonesia, 2026, Article V).

An operative direction denotes a clause requiring, prohibiting, or permitting conduct, or prescribing a decision criterion, for procurement actors identifiable from its wording or context. The analysis covers selected directions affecting procedures, provider obligations, sanctions, or institutional authority across planning, preparation, selection, and contract implementation, excluding background and purpose statements. Each direction is compared with legislation and LKPP regulations applicable at issuance and classified by its dominant function: restatement preserves an existing rule's actors, conditions, and consequences, interpretation resolves ambiguity within its text, purpose, and scope, operational direction specifies workflow or documentation without introducing external duties or changing substantive requirements, procedural safeguards, or decision-making authority, potential norm creation independently adds or alters obligations, decision criteria, sanction grounds, or allocations of authority beyond existing prescriptions. Classification therefore turns on substantive effects, not wording alone. Potential norm creation is a preliminary classification, not a finding of invalidity (Safitri et al., 2026). It triggers separate scrutiny of enabling authority, required legal form, and consistency with superior rules. Any invalidity or annulment of

implementing decisions requires a separate assessment of the issuing official's authority and the decision's procedure and substance under the applicable review framework ([Government of Indonesia, 2014](#), Articles 52 and 56).

Following classification, potentially norm-creating clauses are tested against identifiable legal requirements concerning authority, prescribed regulatory form, substantive compatibility, procedural safeguards, and the General Principles of Good Administration (AUPB). Authority and legal form are assessed primarily under Articles 87(1)– (2) and 91(1) of Presidential Regulation No. 16 of 2018, as amended by No. 12 of 2021. Article 87(1) authorizes LKPP to develop procurement systems and policies by reference to procurement objectives, policies, principles, and ethics, while Article 87(2) requires the resulting systems and policies to be established in a Regulation of the Head of LKPP. Article 91(1) separately delegates further regulation of specified procurement matters through the same regulatory form ([Government of Indonesia, 2018, 2021](#)). For sanctions and governmental decisions, the analysis checks the legal grounds, competent decisionmaker, and applicable verification, clarification, and reasoning requirements. Four principles under Article 10(1)(a), (c), (d), and (f) of Law No. 30 of 2014 and its elucidation are selected for their relevance to the clauses: legal certainty addresses unclear authority and requirements, carefulness addresses evidentiary verification, impartiality addresses discriminatory selection criteria, and openness addresses disclosure with confidentiality safeguards ([Government of Indonesia, 2014](#)). Each finding identifies the controlling rule and explains compliance or conflict. A clause is considered consistent only if all applicable requirements are satisfied, a demonstrated breach supports a finding of inconsistency, while unresolved ambiguity is reported as an interpretive risk.

RESULTS AND DISCUSSION

Legal position of circular letters and LKPP's competence

Article 7 of Law No. 12 of 2011 lists the legislative hierarchy, while Article 8 recognizes other regulations mandated by higher legislation or based on lawful authority, without expressly classifying circular letters as legislation ([Government of Indonesia, 2011, 2022](#)). Although circular letters are not listed in Article 7, their omission does not, by itself, establish an absence of binding force. Any claimed binding effect requires a separate assessment of the issuer's lawful authority, the provision's content, and its addressees. Scholarship generally characterizes circulars as policy rules or internal directions ([Ahmad et al., 2023](#); [Hanum, 2020](#); [Yusdheaputra, 2023](#)). For LKPP, the question is whether each provision implements existing rules or adds requirements needing a separate regulatory basis and the prescribed legal form.

Under Presidential Regulation No. 16 of 2018, as amended by No. 12 of 2021, Article 87(1) authorizes LKPP to develop procurement systems and policies, while Article 87(2) requires the resulting systems and policies to be established in a Regulation of the Head of LKPP. Article 91(1) separately delegates further regulation of specified procurement matters to LKPP ([Government of Indonesia, 2018, 2021](#)). This delegation is bounded by the authorized subject matter, procurement objectives, policies, principles, and ethics, and the substantive limits of superior legislation. A circular therefore has a defect of legal form where the applicable enabling provision requires a regulation. Substantive overreach must be assessed separately: exceeding the conferred authority raises an ultra vires issue, which cannot be remedied merely by changing the instrument's form ([Efendi & Sudarsono, 2024](#)).

Table 1 applies the four-category framework to the principal subjects of the two circulars. The classification is functional rather than purely linguistic because each provision is assessed according to its legal effect, normative function, and relationship with the applicable superior regulation rather than the terminology used in the circular itself. Accordingly, the classification focuses on whether a provision merely restates existing law, interprets an existing norm, organizes administrative procedures, or introduces a new legal obligation, criterion, sanction, or allocation of authority. A provision described as a "reminder" may nevertheless be classified as potentially norm-creating if, in substance, it imposes a compulsory condition that lacks a prior legal basis. Consistent with Indonesian administrative-law scholarship, the legal character of a circular is determined primarily by its substantive legal effect rather than by its title or drafting terminology ([Ahmad et al., 2023](#); [Elfiani et al., 2023](#); [Hanum, 2020](#); [Yusdheaputra, 2023](#)).

Table 1. Functional Classification of the Circular-Letter Provisions

Category	Test	Examples in the Circulars	Legal Assessment
Restatement	Repeats an identifiable rule in a superior instrument.	Document completeness, conflict prevention, and compliance reminders.	Proper in a circular if it does not change the underlying rule.
Interpretation	Selects a plausible meaning within an existing rule.	Indicators for prudent review and risk identification.	Acceptable only within the text, purpose, and limits of the superior rule.
Operational direction	Organizes internal workflow or records.	Internal review notes and retention of evaluation records.	Proper if it does not impose a new external duty or alter decision authority.
Potential norm creation	Adds a duty, criterion, sanction ground, or transfer of authority.	Shortest supply chain, negotiated e-purchasing preference, mandatory disclosure of evaluation worksheets, and possible treatment of non-repayment as an independent blacklisting ground.	Requires separate scrutiny of legal basis, prescribed regulatory form, and consistency with superior rules.

Review of the General Procurement Plan

Circular Letter No. 5 instructs the Commitment-Making Official, Procurement Officer, and Selection Working Group to review the General Procurement Plan and states that procurement need not proceed when an identified item is no longer needed. Such a review may function as an administrative control, but the existing procurement framework distinguishes the respective authority of the Budget User, Proxy Budget User, Commitment-Making Official, Procurement Officer, and Selection Working Group. Under the 2024 framework, the Budget User had responsibility for establishing and publishing the General Procurement Plan, while the Commitment-Making Official prepared procurement planning for the assigned package ([Government of Indonesia, 2018, 2021](#)). This distinction between the responsibilities of the PA and PPK is also relevant to the RUP process, as discussed by [Singgih and Pater \(2022\)](#) in their examination of the respective roles of these officials in the RUP Information System. A reviewing officer may identify that a package is unnecessary, duplicated, or unsupported, but the circular should not be read as independently transferring authority to decide that the package will not proceed from the Budget User or a duly authorized Proxy Budget User to the reviewing officer.

Section 5, item 3, of Circular Letter No. 5 of 2024 directs PPK, PP, and Pokja Pemilihan to review the RUP and states that procurement inconsistent with needs need not proceed ([LKPP, 2024b](#)). Although it acknowledges PA/KPA's role in establishing the RUP, it does not specify who decides not to proceed. Reading this wording as independently authorizing reviewers to cancel a package would imply a potentially norm-creating reallocation of authority. A legally coherent reading therefore treats review findings as recommendations for decision by PA or a duly authorized KPA. The circular should clarify the referral procedure, competent decisionmaker, and supporting documentation, consistent with lawful authority, legal certainty, and carefulness ([Government of Indonesia, 2014](#), Articles 8(1) and 10(1)(a), (d)).

Refusal where planning documents are incomplete

Circular Letter No. 5 also directs procurement personnel not to continue when essential planning or preparation documents are incomplete. This is largely defensible as preventive guidance. Procurement should not proceed to the relevant selection stage unless the documents required for the applicable procurement type, method, and stage are sufficiently complete. This preventive role of document review is consistent with [Riyanto \(2022\)](#) study, which identified recurring problems in procurement preparation reviews, particularly concerning the RUP, technical documents, estimated prices, and draft contracts. The direction becomes problematic only if examples in the circular are treated as absolute legal conditions for every procurement type. The underlying regulations distinguish packages, methods, values, and forms of contract. An operational checklist must follow those distinctions and cannot replace them with a uniform condition.

Single brand, single capable business actor, and the “shortest supply chain.”

Circular Letter No. 5 links a specification identifying one brand to direct appointment and directs officials to the business actor with the shortest supply chain. The 2024 Presidential Regulation allowed a brand to be specified in limited circumstances, including components of goods/services, spare parts, parts of an existing system, and goods/services in the electronic catalogue or Online Store. It separately permitted direct appointment where the required goods, construction works, or other services could be provided by only one capable business actor ([Government of Indonesia, 2018, 2021](#)). These are distinct legal tests. A single brand describes the object of procurement, it does not establish that only one distributor, reseller, or service provider is capable of supplying it.

The circular’s “shortest supply chain” criterion may be relevant as market information, but it is indeterminate unless the procuring entity defines how chain length, authorization, delivery risk, warranty responsibility, and price are verified. Used as a mandatory selection rule, it adds a criterion and may narrow competition without a regulatory basis. This concern is consistent with [Fajar et al. \(2020\)](#) analysis of direct appointment in the procurement of goods and services by state-owned enterprises, which highlights the relevance of fair competition principles in assessing direct appointment practices. A more legally coherent construction is to treat supply-chain information as market evidence. Direct appointment remains permissible only when the statutory ground is independently established and documented.

Price preference in negotiated e-purchasing

Section 5(a)(4) of Circular Letter No. 8 of 2024 permits the PPK, in negotiated e-purchasing for procurement packages valued at least Rp1 billion, to take the Final Evaluation Price (Harga Evaluasi Akhir, HEA) with price preference into account ([LKPP, 2024c](#)). [Kristianto \(2022\)](#) study of price negotiation in government e-purchasing highlights the importance of negotiation practices in achieving efficient and effective procurement, providing relevant context for examining the price-related mechanism addressed in the circular. Under the procurement framework applicable in 2024, Article 67(2) linked the application of price preference to procurement with an Owner’s Estimate (Harga Perkiraan Sendiri, HPS) above Rp1 billion, while Article 26(7) exempted e-purchasing from the preparation of an HPS. Article 67(3) already prescribed the HEA mechanism and its calculation on the basis of the bid price after arithmetic correction ([Government of Indonesia, 2018, 2021](#)). The substantive issue is therefore not the HEA formula itself, but the extension of price preference to negotiated e-purchasing and the use of package value, rather than HPS, as the applicable threshold. This potentially norm-creating extension may affect provider selection and therefore requires a sufficient regulatory basis under the framework applicable at the time.

Presidential Regulation No. 46 of 2025 is informative but not retroactive. The amendment expressly places price preference in Tender and in e-purchasing through mini competition, not in negotiated e-purchasing ([Government of Indonesia, 2025](#)). This subsequent regulatory design reinforces the distinction between negotiated e-purchasing and mini-competition for price-preference purposes, but it does not determine the legality of the 2024 circular at the time of its issuance. The legality of the 2024 direction must instead be assessed against the regulatory framework then in force, particularly the relationship between the HPS-based threshold in Article 67 and the exemption of e-purchasing from HPS preparation.

Disclosure of evaluation worksheets in the Electronic Procurement System

Circular Letter No. 8 directs Selection Working Groups to upload evaluation worksheets to the Electronic Procurement System so that they can be accessed by bidders and the PPK at the time of winner determination and announcement ([LKPP, 2024c](#)). Digital documentation can strengthen auditability, and procurement governance research supports traceable records and transparent controls ([Suardi et al., 2024](#)). The legal issue is not whether an evaluation should be documented; that duty already follows from an accountable selection process. Rather, the issue is whether a circular letter may impose a new mandatory disclosure obligation, and whether the scope of the information to be disclosed is sufficiently defined and accompanied by safeguards for information that should not be disclosed.

An evaluation worksheet may contain technical details, personal data, business information, or material relevant to an ongoing review. The Public Information Disclosure Law recognizes openness while also providing categories of excluded information ([Government of Indonesia, 2008](#)). This issue was specifically examined by [Syafar et al. \(2022\)](#), who found that the legal status of disclosure of provider-evaluation data in government procurement was not clearly established and highlighted the relevance of the applicable legal framework in determining which information may be disclosed. Although Circular Letter No. 8 identifies the persons who may access the worksheet and the timing of access, it does not further specify the scope of the worksheet to be disclosed or whether information requiring protection should be withheld or redacted. An internal instruction to preserve the worksheet is operational. By contrast, a mandatory disclosure requirement that gives bidders access to evaluation worksheets has an external procedural effect and should operate with sufficiently clear safeguards concerning the scope and protection of information contained in those worksheets.

Blacklisting based on an Audit Board recommendation

A significant issue in Circular Letter No. 8 is the direction to impose a blacklist sanction on a provider that has not returned an overpayment identified in an Audit Board recommendation. Article 20 of Law No. 15 of 2004 requires the responsible officials to follow up Audit Board recommendations ([Government of Indonesia, 2004](#)). That obligation concerns the audited entity and follow-up process. It does not by itself establish an additional substantive ground for blacklisting or replace the procurement sanction framework.

Section 6(b) of Circular Letter No. 8 of 2024 links blacklisting to failure to repay audit-identified overpayments, based on a BPK recommendation ([LKPP, 2024c](#)). Under Presidential Regulation No. 16 of 2018, as amended by Presidential Regulation No. 12 of 2021, audited quantity/volume errors attract compensation under Articles 78(3)(d) and 78(5)(e), whereas contract nonperformance attracts blacklisting under Articles 78(3)(a) and 78(5)(d) ([Government of Indonesia, 2018, 2021](#)). LKPP Regulation No. 4 of 2021 prescribes examination, notification, objections, and APIP review, while expressly providing for blacklisting decisions following BPK/APIP recommendations to impose that sanction ([LKPP, 2021a](#), Annex II, Sections 4.3.1–4.3.6). The importance of ensuring that blacklisting sanctions are imposed in accordance with the applicable legal framework and principles of fairness is also discussed by [Swanjaya and Apriyani \(2022\)](#) in their study of blacklisting in government procurement. A recommendation to recover funds must therefore be distinguished from a recommendation to blacklist. At the same time, Annex II, Section 3.1 separately specifies the conduct subject to blacklisting. Read systematically, the mechanism for implementing a BPK/APIP recommendation does not itself add a new substantive blacklisting ground. The potential overreach arises if non-repayment alone is treated as sufficient without establishing an existing blacklisting ground.

This conclusion does not prevent recovery, contractual remedies, civil claims, or other legally authorized action. It means only that each consequence requires its own legal basis and procedure. The audited entity must follow up the Audit Board recommendation, while any blacklisting decision must remain connected to a substantive blacklisting ground recognized by the procurement framework and follow the procedure applicable to the relevant recommendation route. Combining recovery of an overpayment and blacklisting without clearly distinguishing their respective legal bases creates a risk of treating non-repayment as an automatic blacklisting ground.

Directions that are not entirely new

Under the four-category framework, subcontractor-payment verification is classified as an operational direction, while the reaffirmation of mini-competition is classified as a restatement. First, Section 6(i) of Circular Letter No. 8 requires the PPK to verify payment by the main contractor to subcontractors ([LKPP, 2024c](#)). This implements Article 53(3) of Presidential Regulation No. 16 of 2018, which already requires payment requests to include evidence of subcontractor payment corresponding to work performed ([Government of Indonesia, 2018](#)). Second, Section 5(a)(3) refers to existing guidance for mini competition, a method already authorized under Article 18(b) of LKPP Regulation No. 9 of 2021 ([LKPP, 2021b, 2024a, 2024c](#)). On this reading, neither provision resolves an ambiguity or independently creates substantive obligations, selection criteria, or authority. These

classifications remain valid only insofar as the circular preserves the scope and conditions of the existing rules; any extension beyond those rules requires separate assessment as potential norm creation. Presidential Regulation No. 46 of 2025 subsequently incorporated mini competition into the Presidential regulatory framework; consistent with *tempus regit actum*, this later development is treated only as contextual and does not determine the legality of the 2024 circular.

Table 2. Potentially Norm-Creating Provisions and Required Corrections

Provision	2024 Legal Baseline	Problem	Required Correction
Circular Letter No. 5: review of the General Procurement Plan	Budget User establishes and publishes the plan; procurement officials perform assigned planning and preparation duties.	Unclear final decision maker after reviewers find a package unnecessary.	State that reviewers recommend correction and that the Budget User or duly authorized Proxy Budget User makes the final decision.
Circular Letter No. 5: single brand and shortest supply chain	Brand specification is allowed in limited cases; direct appointment requires a statutory ground, including only one capable business actor.	A single brand is not proof of a single provider, and supply-chain length was not a statutory criterion.	Use supply-chain data as market evidence and retain the statutory test for direct appointment.
Circular Letter No. 8: price preference in negotiated e-purchasing	The 2024 preference mechanism was tied to the Owner's Estimate, while e-purchasing did not require one.	Extends price preference to negotiated e-purchasing and uses package value rather than HPS as the applicable threshold.	Ensure that any price-preference mechanism has a sufficient regulatory basis and follows the scope and method prescribed by the applicable procurement framework.
Circular Letter No. 8: upload of evaluation worksheets	Selection must be documented, but publication scope and confidentiality require a legal design.	The scope of information to be disclosed and safeguards for protected information are not sufficiently specified.	Specify the scope of disclosure and safeguards for information requiring protection or redaction.
Circular Letter No. 8: blacklisting after an Audit Board recommendation	Officials must follow up audit recommendations; provider sanctions require a ground and procedure in procurement law.	Risk of treating failure to repay an audit-identified overpayment as an independent substantive blacklisting ground.	Distinguish recovery recommendations from blacklisting recommendations and ensure that any blacklist sanction remains connected to a recognized substantive ground and the applicable procedure.

Directions on contract modification likewise require a case-specific approach. A modification may be lawful when it follows the contract and the procurement regulation, remains within authorized limits, and responds to a documented need. A modification becomes problematic when it exceeds the changes permitted by the applicable procurement framework or materially alters the scope or essential terms of the original procurement without an adequate legal basis. The circular may remind officials to examine these risks, but it cannot establish an automatic rule that every change is either lawful or unlawful.

Administrative-law consequences

The findings require differentiated legal responses. The RUP-review provision should clarify that final decisions remain with the competent PA or duly authorized KPA. Price-preference conditions and blacklisting grounds must conform to the procurement framework applicable in 2024; a BPK recommendation does not independently expand the substantive grounds for blacklisting. Where LKPP possesses the necessary authority and the defect concerns only legal form, the provision should be enacted through the prescribed regulatory procedure ([Government of Indonesia, 2018](#), Article 87(2)). Content exceeding that authority or contradicting the Presidential framework requires substantive correction. [Efendi and Sudarsono \(2024\)](#) support examining whether governmental action remains within legally conferred powers. Implementing decisions require separate assessment. Under Articles 70–71 of Law No. 30 of 2014, decisions or actions made without or beyond authority are invalid, whereas procedural or substantive errors may render them

subject to annulment ([Government of Indonesia, 2014](#), Articles 52, 56, 70–71). Classification as potential norm creation therefore identifies a legal concern without itself establishing the invalidity of every resulting decision.

The general principles of good administration provide an additional analytical control throughout the assessment. Legal certainty was applied to determine whether each provision had a clear statutory basis and predictable legal consequences. Carefulness was used to assess whether refusal, disclosure, or sanctions required prior verification and documented justification. Impartiality guided the evaluation of provisions that could indirectly favour particular suppliers or procurement methods, including the shortest supply chain criterion. Openness supported transparent documentation while recognizing statutory limitations protecting confidential procurement information. These principles collectively favour written reasons, a documented escalation path, procedural safeguards, and an opportunity for affected providers to respond ([Government of Indonesia, 2014](#)).

Contractual and criminal consequences

A procurement circular does not automatically become a contractual term. It can affect contractual performance when the same obligation already arises from the procurement regulation or standard contract, or when the obligation is validly incorporated into the signed contract. It cannot unilaterally add a provider liability after contract formation. This distinction is consistent with [Tanjung et al. \(2026\)](#) analysis, which differentiates contractual liability arising from non-performance from administrative and criminal liability in government procurement. This distinction is particularly relevant to subcontractor payment, recovery of overpayments, and contract modifications.

To delineate the circulars' legal character and effects, this study clarifies that their corruption-prevention purpose does not make noncompliance, by itself, a corruption offence. Article 15(1) of Law No. 12 of 2011, as amended by Law No. 1 of 2026, restricts criminal provisions to specified legislative instruments, which do not include circular letters ([Government of Indonesia, 2011, 2026](#)). Accordingly, a circular may inform the assessment of administrative conduct within its lawful scope but cannot independently create an offence or substitute for proof of the statutory elements of corruption. The limits of circular letters as administrative instruments have also been examined by [Sjarif and Kastanya \(2021\)](#), who caution against using them to regulate matters beyond their proper administrative function. This distinction separates the identification of potentially norm-creating administrative provisions from any determination of criminal liability.

Administrative judicial review

The direct judicial review of a policy rule remains doctrinally contested because a circular may not fit neatly within the categories of legislation or an individual administrative decision. [Muhshi and Yunita \(2024\)](#) identify this uncertainty and the need for a clearer review model. In procurement, a more concrete dispute may arise from a decision or governmental action applying the circular, such as rejection, disclosure, or blacklisting. The Government Administration Law and Supreme Court Regulation No. 2 of 2019 provide a framework for disputes concerning governmental action, while procurement-specific jurisdiction must still be examined in each case ([Government of Indonesia, 2014; Supreme Court of Indonesia, 2019](#)). Research on procurement disputes similarly emphasizes the role of the Administrative Court where an abuse of authority is alleged ([Dzulfikar, 2022](#)).

Correction of the circular letters

The analysis identifies provisions in LKPP Circular Letters Nos. 5 and 8 of 2024 that are grounded in existing rules and others that risk obscuring or departing from those rules. Based on these findings, the recommended corrections concern the wording, scope, and legal form of the two circulars, with superior legislation serving as the governing benchmark. Consistent with their stated explanatory purpose, the circulars should clarify existing requirements and facilitate their implementation without altering or obscuring them. RUP review should preserve the final authority of the competent Budget User or duly authorized Proxy Budget User. The single-brand provision should distinguish product specifications from the criterion of a single capable business actor. Price preference should follow the applicable Presidential Regulation's method and scope. Evaluation

worksheet disclosure should specify the scope of information to be disclosed and safeguards for information requiring protection or redaction, while blacklisting should follow established grounds and procedures (LKPP, 2021a). Material requiring a regulatory instrument should be removed from the circulars and, where within LKPP's authority, separately enacted through the prescribed procedure (Government of Indonesia, 2018, Article 87(2)). Provisions exceeding that authority or contradicting superior legislation should be corrected or withdrawn.

LIMITATION

This is a normative study of the texts and legal effects of the two circulars. It does not measure how ministries, regional governments, procurement units, auditors, providers, or courts have implemented each provision. Consequently, the classification identifies legal risks and issues of instrument design; it does not establish the frequency of inconsistent practice or quantify its effects on competition and corruption prevention.

The analysis also reflects a changing regulatory environment. The primary assessment uses the law in force in 2024, while the 2025 procurement amendment and the 2026 penal adjustment are treated only as later developments. Future implementing regulations, judicial decisions, or official revisions of the circulars may change the current position. Empirical interviews and case studies would be useful to examine whether the identified provisions have produced different administrative practices.

CONCLUSION

Circular Letters Nos. 5 and 8 of 2024 expressly aim to provide explanatory guidance on corruption prevention in public procurement. Analysis of selected provisions against the legal framework applicable at issuance in 2024 distinguishes guidance grounded in existing rules from provisions raising concerns about drafting clarity, legal form, authority, and substantive or procedural consistency. Identifying potential norm creation does not itself establish the invalidity of either circular as a whole or any implementing decision.

The identified concerns involve final authority following General Procurement Plan review, the equation of a single brand with a single capable business actor, the shortest supply chain criterion, price-preference eligibility in negotiated e-purchasing, the scope of evaluation worksheet disclosure and safeguards for protected information, and the possible treatment of failure to repay audited overpayments as an independent blacklisting ground. The latter concern does not negate the existing procedure for blacklisting recommendations from BPK/APIP. Subcontractor-payment verification and the reaffirmation of mini-competition have prior legal bases, provided their existing scope and conditions are preserved.

Based on these findings, this study recommends bringing the two circulars into conformity with their governing legal framework while retaining guidance supported by existing rules. Corrections should clarify decision-making authority, selection conditions, disclosure safeguards, and sanction grounds and procedures. Where a defect concerns only legal form, separate enactment through an LKPP regulation requires adequate authority, substantive conformity with superior rules, and compliance with prescribed procedures. Provisions exceeding those limits require substantive correction or withdrawal. The contribution lies in applying the four-category framework to distinguish the legal functions of selected provisions in these two circulars; its broader applicability requires further examination.

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