

A Prevention Program of Corruption in Infrastructure Development by the Attorney General's Office of Republic of Indonesia

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Abstract

The continuous existence of corruption despite eradication efforts has made all elements of the society to support the implementation of law enforcement, including the aspect of prevention. Infrastructure development plays a pivotal role in a state's advancement, but the sector is prone to corruption. Accordingly, this paper discusses the prevention of corruption in the field of infrastructure development by the prosecutor's office in Indonesia. This research employed juridical method in a broader sense by applying empirical approach. The key informants of this research were selected from the prosecutors' offices. The research applied qualitative descriptive and content analyses using legal interpretation, legal principles and legal theories. The conclusion is that the Government and Development Guard and Security Team is quite beneficial to the efforts aimed at preventing and eradicating corruption. This is a Research and Development study and is part of the 2021 SKIM for Professor Facilitation Research.

Keywords: Prevention, Corruption, Development.

Introduction

Corruption is a crime that has a negative impact on a country because the consequences will be passed on to posterity. The birth of reform in Indonesia in 1989 provided a very conducive atmosphere for the birth of many changes in the life of the nation, including reforms in the field of law. The legal politics of eradicating corruption is developing much more rapidly than in the pre-reform era. President Joko Widodo in running his government has made a commitment to reject the weakening of the state by corruption. Eradication and prevention of corruption must go hand in hand. The President gives every state institution the task of preventing corruption in accordance with its field.

In the criminal justice system in Indonesia, there are five pillars of law enforcement, which synergize in carrying out law enforcement activities in the field of criminal law; they are the Indonesian National Police, the Attorney General's Office of the Republic of Indonesia, the courts, correctional institutions and advocates who carry out their duties independently. These institutions carry out their functions in the various stages of law enforcement as stipulated in the Criminal Procedure Code.

The pre-adjudication process is a task carried out by the police and the prosecutor's office, while the adjudication process is carried out by the courts (from the district court level, which is the lowest court level, to the Supreme Court, which is the highest court). The post-adjudication stage, when a person has been convicted, is conducted by the correctional institution for guidance. Meanwhile, advocates work with suspects from when they are arrested until the completion of the law enforcement process (Nugroho, 2019: 20).

The Attorney General's Office (AGO) is a government institution that exercises state power in terms of prosecution and the obligation to provide legal outreach to the public. In this sense, the AGO necessarily plays an active role not only in enforcing law but also in preventive duties, particularly with regards to corruption. For this reason, the Attorney General, as the leader of the Attorney General's Office, formed a team known as the Government and Development Guard and Security Team. This study is conducted to determine the performance of the mentioned team in preventing corruption in the infrastructure development sector.

Research Methodology

This research employed juridical method in a broader sense by applying empirical approach. The key informants of this research were selected from the prosecutors' offices. The research applied qualitative descriptive and content analyses using legal interpretation, legal principles and legal theories.

Discussion

Corruption is a perilous crime due to its extensive impact; it damages all aspects of life. Law enforcement against corruptors does not always provide a deterrent effect on people with the potential to commit corrupt acts. This happens since opportunities to evade justice are still relatively open, especially as a result of weak supervision in particular sectors as well as overlapping regulations, which causes confusion, thereby making the implementation of such regulations difficult. Consequently, preventing the emergence of corruption is critical.

Corrupt practices might be committed by anyone who lacks integrity. The term corruption refers to fraudulent behaviour or conduct by someone occupying a position of authority, especially civil servants and public officials. In essence, corruption is not only committed by civil servants and public officials but also by the private sector and politicians. Corruption is not only intended to enrich oneself but also to provide benefits or opportunities for parties who are close to the perpetrator in terms of assets and power or authority.

Corruption can be investigated using several theories, one of which is the cost-benefit theory. This theory asserts that corruption keeps occurring and expanding if the risks or costs associated with it are smaller than the benefits it gives. Therefore, imposing criminal charges is crucial in providing a deterrent effect on perpetrators as well as providing early warning for people who have the potential to commit corruption. Various efforts have been made by the Indonesian government to reduce corruption in all sectors of development. However, limited achievements have been made in this regard, so the government's efforts are not considered effective.

Law enforcement activities against corruption will not produce the best results unless it is accompanied by preventive measures. This is evident in the disclosure of corruption convicts who belong to the younger generation. Nowadays, involvement in acts of corruption is no longer dominated by middle-aged (more than 45 years old) people but by the younger ones. Also, there is increasing active participation of the younger generation in the political and business sectors, and they have occupied strategic positions. The development of preventive measures for acts of corruption is highly required to cut off the rampant corrupt practices more quickly. In the fraud triangle theory, it is stated that a person's tendency to commit corruption is caused by three factors: pressure, opportunity, and rationalization. Therefore, prevention can be done by eliminating these three factors. First, by improving existing systems; systems prone to leakage must be re-evaluated, and tighter and more targeted supervision should be carried out. Besides, instilling an anti-corruption culture accompanied by real examples from the leadership will have a significant effect on the subordinates. Along with the cultivation of integrity, an anti-corruption culture will be formed. Cultivating a culture of integrity must be done continuously because instilling good qualities is more difficult than getting used to bad ones, which look exciting.

The severe impact a country might experience due to high level of corruption is the destruction of the processes of democratization and development. The state becomes stagnant, and the people go through severe poverty. Both governance and legal authority will decline since public services only give priority to rulers and capital owners. In addition, development projects will be affected, and the quality of public facilities will fall below standard. As a result, the necessary public facilities that meet the required standards will be out of reach.

During President Joko Widodo's leadership, infrastructure development became the priority. Indonesia possesses a wide area of land and water, including thousands of islands stretching from Sabang to Marauke. In terms of infrastructure, Indonesia does not only focus on the islands close to the capital city but also pays attention to those in farther areas, from Sabang in the west to Marauke in the east. As stated by the President, there are several reasons for adopting building of infrastructure as a priority:

1. Infrastructure development is the foundation for increasing Indonesia's competitiveness with other countries. Moreover, the development of this sector requires a large amount of workforce and will open up numerous employment opportunities.
2. Evenly distributed infrastructure development will create new economic growth centers to complement the existing central economy.
3. Infrastructure development helps in improving the logistics network for faster and proportional distribution to previously isolated areas. As an archipelago of approximately 17 thousand islands, Indonesia possesses its own challenges in terms of connectivity.
4. Building infrastructure is a form of public service provided by the government to its people to meet social justice for all Indonesian people.

Infrastructure development has a great significance. Thus, all obstacles must be overcome to accelerate development goals. As in other developing countries, corruption is the major challenge that impedes development. The business field, including construction services, is an important part of the development of this sector. The former commissioner of the Corruption Eradication Commission stated that the principles of Good Corporate Governance (GCG) should serve as a guide for every business actor in a company in carrying out their duties. In this regard, there are five important actions that must be carried out by the business world in its processes to prevent corruption. First, the leadership should show commitment to the implementation of anti-corruption and anti-bribery policies. Second, there should be planning that considers laws and regulations related to corruption and corporate conviction by identifying risks and mitigating corruption in corporations. Third, regulation of sensitive matters should be implemented, including training and intensive communication for employees. Fourth, the corruption prevention system should be evaluated. Fifth, there should be continuous improvement to the system. The establishment of integrity in the

business world is not limited to the existence of a corruption prevention system in a corporation but also relies on the actualization of a positive attitude by individual business actors.

The Indonesia government has a national strategy for the prevention and eradication of corruption; it serves as direction and reference for all stakeholders who have a long and medium term vision. Therefore, the AGO materialized it by forming the Government and Development Guard and Security Team (TP4) based on Attorney General Decree No. KEP-152 / A / JA / 10/2015, dated October 1, 2015. Also, Instruction of the Attorney General No. INS- 001 / A / JA / 10/2015 dated October 5, 2015 led to similar establishments at the regional level throughout Indonesia. The following are the aims and objectives of the team (Suhendi, et al., 2017):

1. To increase preventive efforts targeted at acts of corruption, which requires thorough plan and implementation for effective results.
2. To contribute to the success of government and national development at both the central and regional levels through monitoring and security activities in planning, implementing and utilizing development results, including the prevention of state losses.

Further, their tasks and functions include:

1. Guarding, supervising and supporting governance as well as development through preventive and persuasive measures at the central level by:
 - i. Providing legal education in governmental offices, State-owned Enterprises (BUMN), Village-owned Enterprises (BUMD) and other related parties;
 - ii. Establishing discussions with government offices, BUMN and BUMD;
2. Providing legal assistance at each stage of the development program.
3. Establishing good communication at the central level with the Government Internal Supervisory Apparatus to prevent any distortion that could potentially hinder, thwart and cause losses to state finances.
4. Repressively enforcing the law at the central level when it finds any illegal acts that are likely harm state finances.

The Attorney General's Office of the Republic of Indonesia exercises state power in terms of prosecution as well as other powers based on law. Prosecutors are officials who are authorized by law to act as public prosecutors and implement court decisions that have permanent legal force and other decisions based on law. Based on this definition, the profession of a prosecutor is often associated with criminal cases. This is so since the prosecution function they bear falls within the realm of criminal law. However, the prosecutor's office also has a moral obligation to participate in carrying out the task of increasing legal awareness of the community, as regulated in Article 30, Paragraph 3, Letter a of

Law Number 16 of 2004 concerning Prosecution. Prevention is realized by the formation of TP4. In practice, if the prosecutor finds a clear indication of irregularities supported by strong evidence and legal facts, he or she will surely carry out prosecution duties. Yet, the activities will be carried out in line with prevention efforts. For this task, the TP4 is controlled by the Junior Attorney General for Intelligence and assisted by the Deputy Attorney General for State Administration and members of special criminal units. At the district level, it is controlled by the head of the intelligence section and the head of the civil and state administration section.

One of the goals of the TP4 team is to take non-penal measures, namely the prevention of corrupt acts. By doing so, it enables national development to continue as expected as well as prevent potential fraud by individuals involved in a national project. Persuasive preventive measures include communication that aims to change or influence a person's beliefs, attitudes and behaviour so that they act as expected. Persuasive communication between the TP4 team and other parties, such as Ministries/Agencies/Regional Governments, State-Owned Enterprises and Regional-Owned Enterprises, could lead to a more professional attitude in carrying out project activities. A good communication would greatly facilitate positive attitude and measures. Meanwhile, legal assistance is provided to oversee every stage of project implementation. In general, a construction project is a long-term activity that involves many stages. It starts from preliminary design to design development, detailed design, administrative preparations and selection of the prospective executor. The next stage is the process of construction at a location until the readiness of the building for use as well as the maintenance stage. Each stage is conducted with the legal assistance of the TP4 team in relation to development projects. The importance of following the course of a development project from the beginning to the end is that it makes it easier for the TP4 team to evaluate a project activity in case of any suspicious acts during the development process. The legal assistance of the TP4 team allows each Ministry/Agency of BUMN and BUMD to minimize doubts in implementing the national strategy development program. The legal assistance is materialized as follows:

- a. Legal discussion in terms of regulation enforcement, statutory regulations, and mechanisms and procedures with budget management officials regarding problems of budget allocation;
- b. Legal opinion during the stages of planning, bidding, supervision, and implementation of work and procurement of goods/services on the initiative of TP4 or at the request of necessary agencies and parties.

The legal assistance is to prevent budget misappropriation or SOP discrepancies in each stage of implementation. Evaluation of the results of project work will be carried out by the TP4 periodically, while monitoring and evaluation will be performed by the TP4 together with any Ministry, Agency, Regional Government, BUMN or BUMD in the Central and Regional environments who

requests the TP4 team to conduct monitoring and evaluation for the implementation of development work. The monitoring and evaluation are conducted periodically in accordance with the stages of work implementation and development programs. The results are compiled in a working paper form and submitted by the chairperson of TP4 to the applicant at the end of each work and reported to the leadership. In this monitoring process, it is possible for the TP4 team to reconsider a previous work records in case of data mismatch or change in the quality of goods that is not in accordance with the agreed SOP. Thus, if the TP4 team is assisted from the beginning, the project implementation could run optimally till the end.

Infrastructure development has a major impact on economic growth at both macro and micro levels; it also promotes the development of a country or region. According to a study conducted in the United States, the rate of return on infrastructure investment to economic growth is 60% (Dikun, 2003). Also, a study by the World Bank indicates that the elasticity of Gross Domestic Product on infrastructure in a country is from 0.07 to 0.44. It means that an increase of only 1% in the availability of infrastructure will cause a GDP growth of 7% to 44%, indicating a significant variation in numbers. However, this does not totally apply in Indonesia, especially since the country was hit by economic crisis in mid-1997, which eventually widened into an impinging multidimensional crisis (Haris, 2009: 1).

Since the development of the infrastructure sector plays a strategic role, its implementation must be both well managed and conducted. Corruption is one of the "diseases" that can damage any kinds of development. Leaks in this field occur in majority of countries around the globe. This is one of the many challenges that organizations and countries face, and the best solution is to find the "leak points".

The Regional Autonomy Monitoring Committee argued that corruption has caused spending on the infrastructure sector to increase. Once a mode of inflating the APBD budget on the value of government projects is identified, the funds are indicated as a source of corruption. This is categorized as grand corruption or political corruption, in reference to corruption committed at the level of policy making (determining the amount of the budget) by local political elites. It is this "manipulative" budgeting process that has led to the increase of infrastructure budget instead of the increase of infrastructure demand.

Along with the rapid development of infrastructure in Indonesia, Indonesia Corruption Watch (ICW) said that the number of corruption cases in infrastructure projects increased from 2015 to 2018. In 2015, there were 106 cases of corruption in this sector. The number increased to 133 in the following year and 158 in 2017. In 2018, there were 167 cases with an estimated loss of IDR 1.1 trillion (katadata.co.id).

Some of the leaks that occur in the implementation of infrastructure development involve funding originating from foreign debt and the processes of goods and services procurement for infrastructure projects. Another source of leak

is infrastructure funding sourced from the Regional Transfer Fund, particularly the Physical Special Allocation Fund. In 2019, IDR 69.3 trillion was budgeted for this Fund in the APBN. Corruption took place in the process of disbursement. Submissions for disbursement by regions are made through submission of proposals addressed to Bappenas and the Ministry of Finance.

The results show that, generally, the sector is prone to irregularities, causing losses to state finances within the BUMN area, including services procurement, operational fund distribution, facilities and infrastructure repair, goods and services mark up, and manipulation of the bid winner, indicating bribery or stipulated by the management or supervisor in the procurement of goods and services for BUMN. Some other irregularities are fictitious payments, falsification of letters/documents as a means of deviating from the budget use of BUMN, manipulation of goods/funds use, and land acquisition cost manipulation. Besides, work realization that does not comply with the contract causes losses to BUMN due to embezzlement, employee salary manipulation, illegal charges, and misuse of official travel expenses and abuse of authority.

Corruption that occurs in government bureaucracy is the result of political bargaining in the regional legislative and executive bodies. Also, increase in the budget happens as a result of the expectations of local bureaucrats to take advantage of the infrastructure projects. This is reflected by an increased government budget in the following years with a high level of bribery by project managers. In this context, the Regional Autonomy Monitoring Committee noted that the active role of civil society organizations in monitoring infrastructure project planning might be an important factor in preventing collusion in over-budgeting. Unfortunately, in practice, community participation in terms of formulation and determination of the budget remains minimal and is limited to formality.

The escalating budget in infrastructure development riddled with corrupt practices resulted in reduced quality of infrastructure in the regions. The government's efforts to use e-procurement implementation are expected to reduce irregularities in the budget use. However, the opportunities for corruption will persist unless the weak monitoring system for infrastructure projects is fixed. Corruption in this context commonly takes place in the implementation stage. The bureaucratic apparatus supervising the work tries to perform the so called rent-seeking during the project implementation. In this case, opportunities for corruption in road and highway projects are more likely to happen even though the region has implemented the e-procurement system by means of a convention between the prospective project bid winner and the bureaucrat. The reduction of certain specifications is the price paid as a guaranty to win the project. Once the e-procurement has been implemented, corruption would take place through the collusion of the bidder and local government officials with respect to the bidding price. The cost of collusion is then calculated as production costs.

The respondents of the prosecutor's office revealed that the team's program allows a wider and more transparent communication between the AGO

and the public. The public was also more comfortable, and they welcomed suggestions regarding any potential crimes that could arise in implementing a project. Therefore, the prosecutor's office has a concrete role in conducting preventive measures in synergy with the law enforcement efforts.

Furthermore, respondents who had received mentoring gave positive feedback and felt greatly assisted by the team's guardianship and supervision. Dubiousness of agreement or regulation interpretation in the field can be eliminated to prevent any potential problems.

High expectation regarding the existence of the Government and Development Guard and Security Team does not mean the elimination of obstacles in the field, some of which are as follows (Nugroho, 2019: 50):

1. There is still hesitance in asking for mentoring since the prosecutor's office is not part of the Regional Work Unit team included in the Budget Implementation List. This can actually be resolved if the applicant can become actively involved since the prosecutor's office is actually open in providing such information.
2. Conflict between the required duties of guarding and mentoring and the duty of the prosecutor as an investigator of corruption may occur. The doubts from the prosecutor occurred at the beginning of the formation of the team. Since a prosecutor acts as public prosecutor in law enforcement, the prosecutor who performs his duties as an assistant in this team must adapt and have a mindset as a companion and must be able to lead the implementation of development to avoid mistakes. Besides, it aims to prevent the project implementer from any irregularities.
3. Regarding the performance of their activities, the team members need improved knowledge about the main duties and functions of the Government and Development Guard and Security Team. They should be well-informed and trained to perform their task of mentoring to prevent corruption in the field.
4. The limited personnel of the prosecutor's office resulted in the discontinuation of monitoring of some projects. Basically, monitoring is not the primary task of the prosecutor's office. Instead, they function as the only agency assigned by the state in terms of prosecution. Meanwhile, the task of mentoring and monitoring is a form of contribution of the prosecutor's office in an attempt to prevent corrupt acts.
5. There are cost limitations and personnel split-focus due to the multitasking duties. This obstacle occurs since the given budget is only allocated to the primary task of public prosecution. Consequently, the work carried out by the Government and Development Guard and Security Team is less.

Conclusion

During the office term (2016-2019), the Government and Development Guard and Security Teams at all levels provided significant benefits, particularly in encouraging development in the infrastructure sector by meeting the target of fund allocation. In addition, there is a sense of security and comfort for the party being supervised since they are always given directions to avoid fund misuse that could potentially cause state losses.

Recommendation

The Government and Development Guard and Security Team manifested themselves as an icon of the prosecutor's office and as an institution capable of preventing corruption in the infrastructure development sector. Accordingly, the concept is worth maintaining regardless of any potential change in name due to government policy.***

References

- Dikun, Suyono. 2003, Indonesia's Infrastructure: Before, During and Post Crisis. Jakarta: Kementerian Negara PPN/BAPPENAS.
- Haris, Abdul 2009. The effect of land use on the success of infrastructure and economic development. Jakarta: Bappenas.
- Nugroho, Hibnu. 2019. TP4D Reevaluation in the prevention of corruption in the regions. Research of Professorship SKIM 2019.
- Suhendi, Hendi. Dkk. 2017. Strengthening the Effectiveness of the Duties and Authorities of TP4 as Efforts to Prevent Corruption Crimes. Jakarta: Miswar.
- <https://databoks.katadata.co.id/datapublish/2019/10/21/korupsi-infrastruktur-2015-2018-semakin-meningkat>. Accessed on 18 June 2020