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Functions of the Prosecutor of the Republic of Indonesia in the Eradication of the Crime of Collusion to Create a Clean State Apparatus

Budi H. Panjaitan¹, J. Ronald Mawuntu², Caecilia J. J. Waha³, Jemmy Sondakh⁴

Sam Ratulangi University^{1,2,3,4}

Bahu, Malalayang, Manado City, North Sulawesi Correspondence email: budihpdki@gmail.com

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ABSTRACT

This research analyzes the Prosecutor's Office the conducts eradication of collusion and creates a state apparatus to corruption. To examine the rosecutor's office function, a normative research method was used with a sample of the and policies issued by the prosecutor's office of the Republic of Indonesia. The findings show that the function of the Prosecutor's Office in eradicating corruption and enforcing the law must be continually carried out through various efforts so that the government projects are right on cost, on time, and of good quality by supervising planning, and securing the implementation. utilization and development results.

Keywords: Clean State Apparatus, Collusion, Crime Eradication, Functions of the Prosecutor's Office, Normative Legal Research

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INTRODUCTION

In the life of the nation and state, the state's role is not only to maintain security and order (law and order) but also to play an active role in various fields of life to realize the welfare of its citizens. Article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia (UUD 1945) expressly states that "Indonesia is the State of Law", implying that the Indonesian state is based on the law (*rechsstaat*), not based on mere power (*machtsstaat*) (Mertokusumo, 2014). In fact, Law Number 28 of 1999, namely the Law on State Organizers that are Clean and Free from Corruption, Collusion, and Nepotism has not been maximally implemented, while the beginning of corruption was collusion. The corruption, collusion, and nepotism law must be optimally empowered to create legal certainty.

The strategy for improving the performance of the Public Prosecution Service is basically within the scope of the national policy framework. The human resources, especially law enforcement officers, are the targets of bureaucratic reform. The task of the Indonesian Attorney General is to support the implementation of development, especially at the national level and government priority programs, and the prosecutor as a Team for Escort, Security, Central Government, and Development (TP4P) in the context of preventing corruption.

Based on empirical data, there are cases of criminal acts in the procurement of goods using the State Revenue and Expenditure Budget (APBN) carried out by the state civil apparatus. The Attorney General's Office of the Republic of Indonesia can perform a preventive function. With this function, collusion and corruption can be prevented, including:

- a. Project auction case at the Yogyakarta City Public Works, Housing and Settlement Area (PUPKP) Office for the 2019fiscal year
- b. The case of the East Nusa Tenggara (NTT) Fair Project for the 2019 fiscal year
- c. Government non-compliance with regulations related to the procurement of standard goods and services.

LITERATURE REVIEW

There are three known concepts of the rule of law, including *rechtstaat*, the rule of law, and socialist legality. According to one view, *rechtstaat* states that the characteristics of a rule of law state include: 1) the protection of human rights, 2) the separation or division of powers, 3) the government based on laws and regulations (*Wetmatigheid Van Bestuur*) and administrative justice in dispute (Adji, 1996). Soekanto and Mamudji (2010) stated that law enforcement is an activity to harmonize the relationship of values described in the rules/views of values that are solid and manifest and act as a series of value elaboration at the final stage to create sensitive information (as social engineering), maintain (as social control) peaceful social life (Rahardjo, 1996). Concrete law enforcement applies positive law in practice as it should be obeyed.

Indroharto (1993) stated that authority is obtained by attribution, delegation, and mandate. Authorities are obtained by "attribution", the granting of new government authority by a provision in the legislation, so, here is born a new government authority. In the delegation, there is a delegation of an existing authority by the state administration agency that has obtained an attributive government authority

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to another state administration agency. Therefore, a delegation is always preceded by the attribution of authority. In the mandate, there is no granting of new authority or delegation of authority from one state administration agency to another (Indroharto, 1993).

General principles of good governance (*Algemene beginselen van behoorlijk bestuur*) are unwritten legal principles that must be observed by state administrative bodies or officials in carrying out legal actions, which will be assessed later by an administrative judge (Rahmad, 2018). Initially, the general principles of good governance were put forward by Crince Le Roy, which in Indonesia was later adopted and developed by Kuntjoro Purbopranoto (Purbopranoto, 1985).

RESEARCH METHOD

We applied normative legal research techniques (Soekanto, 2010). This study used legal theories and regulations that apply in Indonesia to support the discussion of the problems above. This normative juridical research can also be called doctrinal research. It consists of research in the form of an inventory of positive law, the discovery of the principles and philosophy (dogma or doctrine) of positive law, and the discovery of law in concreto appropriate to be applied to resolve a particular legal case (Wiradipradja, 2016). This research was conducted to find out more about the laws and regulations and their application, as well as the opinions or concepts of experts who have conducted research on law consisting of behavioral regulations or rules and norms in society (Van Apeldoorn, 2005).

The data sources were secondary data, which consists of primary legal materials. They are legal materials that are binding and consist of basic norms or basic principles, namely Pancasila, the 1945 Constitution, statutory regulations, uncodified legal materials, jurisprudence, and treaties (Soekanto & Mamudji, 2010). In this study, we focused on the 1945 Constitution and the principles under the authority of the Attorney General's Office in supervising projects financed by the State Budget. The secondary legal materials are:

- a) The 1945 Constitution of the Republic of Indonesia
- b) Law Number 28 of 1999 concerning State Administrators that are Clean and Free from Corruption, Collusion, and Nepotism
- c) Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia
- d) Decree of the Attorney General of the Republic of Indonesia Number 345 of 2019 concerning the revocation of the Decision of the Attorney General of the Republic of Indonesia Number 152/A/JA/10/2015 concerning the establishment of the Government Guard and Security Team and the Development of the Attorney General's Office of the Republic of Indonesia
- e) The analysis is carried out according to the normative legal research method with descriptive juridical analysis techniques. The legal material found is then coded to separate which ones are urgent according to the research topic. After that, a juridical descriptive analysis was carried out by looking at the meaning, the basic understanding, the classification of norms, and their binding strength.

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RESULTS

The results showed that the prosecutor's office had tried to prevent collusion by forming Regional Development Assistance and Security Escort Team (TP4D.) However, since TP4D was disbanded, the function has become increasingly unclear. The function of the prosecutor's office is to prevent various potentials of collusion and corruption by minimizing the potential for various modes of crime in the project (Andraman in Haja, Sondakh, & Lengkong, 2020). The security function must be continued by the prosecutor's office, even though the TP4D has been disbanded. The formation of the Team Formation of the Government and Development Guard and Security Team (TP4) was carried out based on the Decree of the Attorney General of the Republic of Indonesia Number: KEP-152/1/JA/10/2015 concerning the Establishment of the Government and Development Guard and Security Team of the Republic of Indonesia Attorney General's Office and instructions of the Attorney General of the Republic of Indonesia Number: INS-001/A/JA/10/2015 Indonesia. concerning Establishment and Implementation of the Tasks of the Government Guard and Security Team and the Central and Regional Development of the Prosecutor's Office of the Republic of Indonesia. The TP4 was also carried out in the context of implementing Presidential Instruction (Inpres) Number 7 of 2015 concerning Actions for Prevention and Eradication of Corruption, and Presidential Instruction (Inpres) Number 1 of 2016 concerning Acceleration of Implementation of National Strategic Projects.

Presidential Instruction Number 7 of 2015 concerning Actions for Prevention and Eradication of Corruption is intended to increase efforts to prevent the occurrence of criminal acts of collusion in government agencies that need to be supported and implemented in a planned and earnest manner. The Presidential Instruction Number 1 of 2016 is addressed to the Ministers of the Working Cabinet, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police, the Cabinet Secretary, the Presidential Chief of Staff, Heads of Non-Ministerial Government Institutions, Governors, and Regents/Mayor. The President instructs the officials mentioned above to take the necessary steps according to their respective duties, functions, and authorities to accelerate the implementation of national strategic projects and or provide support in accelerating the implementation of national strategic projects.

The name of the TP4 at the Attorney General's Office is known as the Team Formation of the Central Government and Development Guard and Security Team (TP4P) and the High Prosecutor's Office (Kejati) and the State Attorney's Office (Kejari) is known as the Team Formation of the Guards and Development Team. Government Security and Regional Development (TP4D). The TP4 has duties and functions, including guarding, securing, and supporting the success of the administration and development through preventive and persuasive efforts both at the central and regional levels according to the jurisdiction of the assignment.

However, at the end of 2019, the TP4 was disbanded through the Decree of the Attorney General of the Republic of Indonesia Number 345 of 2019 concerning the Revocation of the Attorney General's Decree Number 152/A/JA/10/2015 concerning the formation of the Government and Development Guard and Security Team. The Attorney General's Office of the Republic of Indonesia as amended by the Decree of the Attorney General of the Republic of Indonesia

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Number KEP-059/A/JA/2018 concerning Amendments to the Decision of the Attorney General Number KEP-152/A/JA/10/2015 concerning the Establishment of the Government and Development Guard and Security Team, the implementation of which is regulated in the Attorney General's Instruction Number 7 of 2019. The reason for the dissolution of the TP4 is the team's lack of effectiveness in carrying out its duties and functions. Instead of encouraging project supervision free from collusion and corruption, TP4 has become a tool of collusion by way of a seal of a secure project.

The Coordinating Minister for Political, Legal and Security Affairs, Mahfud MD, stated that when a regional head wants to make a development program, he asks for some kind of approval so it seems as if it is clean. However, it was not clean. Local governments also want to protect themselves from untruths, and it seems as if they have consulted with TP4 (CNN Indonesia, 2019). Mahfud MD's statement was not merely an opinion; it was a fact. As there was a regional head from Sulawesi, who visited the office of the Prosecutor's Commission of the Republic of Indonesia and reported that he was blackmailed by the head of his regional attorney's office to pressure him to win a tender in a project (Hidayat, 2019). The discussion since the dissolution of the TP4D for eradicating collusion by the attorney general is unclear.

Although the team was disbanded in 2019, its duties and functions in preventing collusion and corruption must be continued by the Attorney General's Office as law enforcers. In the Attorney General's Instruction Number 7 of 2019, the Attorney General has instructed all heads of the High Prosecutor's Office and the District Attorney's Office to increase strict supervision to detect any form of authority abuse by individual prosecutors early on. The instructions imply that the Attorney General still adheres to the principle of the supervisory function in the context of preventing corruption stemming from collusion. The tasks of the Directorate of Strategic Development Security as stated in Article 223 of the Regulation of the Attorney General of the Republic of Indonesia Number PER-006/A/JA/07/2017 concerning the Organization and Work Procedure of the Attorney General's Office of the Republic of Indonesia includes carrying out the preparation of policy formulation, intelligence activities, and intelligence operations related to the security sector for strategic development. The scope of the strategic development security sector covers the road infrastructure, railways, ports, airports, smelters, telecommunications processing, water, embankments, dams, agriculture, marine, electricity, alternative energy, oil and gas, science and technology, housing, tourism, priority industrial areas or special economic zones, cross-border posts, supporting facilities, and other sectors to support the success of the administration and development of strategic projects both nationally and regionally.

DISCUSSION

As a functional official, the prosecutor must not only carry out all the provisions in the law but also comply with the code of ethics in the Prosecutor's Office. This code of ethics will create professional and responsible prosecutors. To improve the performance of the Public Prosecution Service, the President may form a commission whose structure and authority are regulated by the President. In 2011, through Presidential Regulation No. 18 of 2011, the President established the Prosecutor's Commission.

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Modus Operandi of Collusion in the Procurement of Government-Owned Goods and Services

The study show that the modus operandi of criminal acts of collusion between entrepreneurs and service providers for the procurement of goods and services has occurred starting from the planning stage to the delivery of goods or the completion of the activity. In practice, the procurement of government goods and services has a modus operandi of deviation at each stage.

Deviations in the Identification and Analysis of Goods/Services Needs

The budget user (PA) compiles a plan document to procure goods/services financed by the state budget at the planning stage. The goods/services needed by the relevant agencies will be identified and analyzed. By individuals, unnecessary needs are then made up, increasing state financial expenditures. The procurement is intentionally held with a certain motive, even though the goods/services can still be or are suitable for use. The budget user compiles and determines the budget plan for the procurement consisting of the cost of the goods/services, support costs, and administrative costs required for the procurement process. These costs are very high in number, so the symptoms of the inflated budget can be seen in the unrealistic unit price. The cost of procurement and other costs are marked up to gain profit. Even though the price is not that high, it is still detrimental to the state, especially since the amount of goods needed is substantial. Such tactics are detrimental to the state, especially if the mark-up value is immense compared to the average price on the market. Government officials carry out many corruption cases with this mode at the central and regional levels. This violates the procurement ethics of goods and services.

Modus Operandi at the Stages of Formation of the Auction Committee

The committee makes non-transparent regulations and provides convoluted explanations to make bidders cannot have certainty about what requirements are used as guidelines to win the tender. This non-transparent committee usually has a specific purpose, to ask for an explanation to negotiate what conditions must be met to win the auction. Because the participants' desire to win the tender is very large, they are forced to fulfill the requirements proposed by the committee at a not small price.

Modus Operandi at the Stages of Submission and Offering Opening

In the Regulation of the Head of LKPP Number 6 of 2012, in conjunction with the Regulation of the Head of LKPP Number 14 of 2012, it is stated that the bidding document consists of taking advantage of the procurement of goods/services, a person entering fictitious document that seems to come from the auction participant so that the bidder is declared invalid or the auction ends up canceled because no one meets the requirements. This is done to reduce the number of participants and win the participants who have been invited to work together. This action is very detrimental to other participants as they cannot do anything other than accept that their company cannot participate in the next auction process.

Modus Operandi at the Contract Signing Stage

This guarantee is intended to ensure the continuity of the work contract for the procurement of goods/services if the partner wins the tender or auction. If, the partner is absent after getting the procurement wort, guarantees from the bank or the insurance company can be used to cover the losses in the procurement of selection and auction conducted by the government. Later, the guarantee will be

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used as funds to hold a selection or re-auction.

As there is no guarantee from the bidder, it is easier for participants who colluded with the committee members to get work and benefit from the procurement of goods/services. Even though the partner is not absent from the work given, the goal is still the profit earned. The contracts made are arranged in such a way and complete as if there were no irregularities. However, when examined more deeply, the contract benefits several parties. In addition, there is no guarantee of performance to make it easier for partners to get the job. Contracts have many shortcomings, as well as supporting documents.

Closed Contract Signing

The party authorized to sign the contract on behalf of the provider is the director whose name is mentioned in the deed of incorporation/articles of association, registered in accordance with the laws and regulations or the individual provider. Other parties who are not directors or whose names are not mentioned in the deed of incorporation/statutes of association may sign a contract for the procurement of goods/services, as long as that party is a management/employee of the company who has the status of a permanent employee and legal authority or delegation of authority from the board of directors or other parties, which is valid based on the deed of establishment of the articles of association.

Contract signing is conducted openly and transparently to avoid collusion and nepotism. The open contract signing gives the impression that the tender process is carried out fairly and according to procedures. If the signing is carried out in a closed manner, it can raise suspicions, and indeed there are things that the committee or goods and service procurement officials deliberately cover up for the execution of the closed signing.

Modus Operandi at the Stage of Delivery of Goods/Services

The provider submits in writing to the Commitment Officers (PPK) for the submission of the work. The results will be assessed by a committee or the recipient of the work results officer. If there are deficiencies and/or defects in the work, the provider is obliged to repair them. For example, the volume of work is not the same as the documents contained in the minutes.

If this happens, the next process and payments cannot be carried out. This unequal volume and/or quality is a form of intent on the provider's part, and if the process is continued further, it means that collusion has occurred between the provider and the committee. The goods user has the right to refuse because the goods' volume and/or quality do not match. The provider must replace them according to what is stated in the procurement document, and the costs are fully borne by the provider.

Delay in Delivery of Goods/Services

The delay in the delivery of goods/services is highly detrimental to the users of the goods because the need for these goods cannot be postponed. The delay in the delivery of these goods/services is subject to a fine and the user will ask for compensation from the provider.

Fictitious Payments

This fictitious payment was made by a person, the actual price of which was low

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but marked up. The payment was made as if the price of the item was low, and the committee members took advantage of the inflated price. In addition, there was never a real procurement of goods/services; it was carried out to obtain evidence as if the procurement had taken place.

Incomplete/Incompatible Reporting

The procurement of goods/services must be reported in detail and care as a form of accountability for the procurement committee. However, this is not done by the procurement committee, and even the procurement committee makes a report not by the rules, or the report made is incomplete. This will make it difficult for those in charge of supervising the procurement of goods/services.

Non-compliance with the Central Government and Regional Governments

In the Summary of Examination Results (IHPS) Semester II of 2020, the Supreme Audit Agency (BPK) indicated that the accountability and reporting of COVID-19 Handling and National Economic Recovery (PC-PEN), including the procurement of goods and services, were not fully under the provisions of laws and regulations.

The mechanism for determining partner commercial banks (BUM) by the Minister of Finance has not been fully implemented consistently by the provisions. The duration of time for determining the status of a commercial bank's application to become a BUM exceeds five working days. The assessment of the bank's performance, risk profile, and business plan is not carried out. In addition to inconsistency in the use of composite rating time periods, the process of value allocation of the fund placement in BUM does not consider the needs and plans for the use of funds following their designation.

The fund placement program does not have a target size of achievement and performance indicators to measure outcomes or outputs. The government has the potential to bear the excess interest expense of Rp13.71 trillion for the duration of the fund placement program that is not in line with the financing maturity through the issuance of non-public goods state securities (SBN NPG). In addition, BI has the potential to bear excess interest charges of at least Rp. 2.08 trillion for the issuance of SBN NPG, which is not based on data on the bank's business plan.

A total of 91 local governments have not complied with the provisions for the procurement of goods/services, including the amount of Rp.22.62 billion unsupported by evidence of price fairness and Rp.10.80 billionhas not been implemented following the contract/order letter/handover report (BAST).

However, the procurement of goods/services has not been supported by a letter of appointment for a provider of goods/services (SPPBJ)/starting work order (SPMK)/work agreement (SPK)/order letter (SP)/contracts. The procurement is not equipped with qualification documents for providers' appointment, and BAST is not supported by the contract. The procurement has not been supported by evidence of the fairness of the price of Rp.22.62 billion. There is a difference between the contract price and the confirmation or source documents. Also, there is an excess in the calculation of the cost component or price-forming in the been carried out following contract. The procurement has not SPK/contract/SP/BAST amounting to Rp10.80 billion, including implementation of the work not in accordance with the specifications required in

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the SPK/contract/SP. There is a lack of work volume, and there are fines for late completion of the work that is not charged.

The problems with goods/services procurement payment occurred in 61 local governments. The payment for the procurement has not been carried out in accordance with the work performance of Rp. 4.16 billion, among others, overpayments due to miscalculation of the budget and expenditure plans.

The need to procure goods and services in 43 local governments has not been planned optimally. The planning has not identified the needs based on a quick study or analysis in the field or is not in accordance with the required specifications. Also, there is the procurement of goods that are not directly related to handling activities.

The Ideal Model for Supervision of the Prosecutor's Office

Organizational functions and management are a series of activities carried out in management based on each and following a particular stage in its implementation: planning, organizing, directing, controlling and monitoring, and coordinating (Sule & Saefullah, 2006).

In connection with this, we suggest a model of supervision carried out by the Attorney General's Office of the Republic of Indonesia to prevent collusion in the procurement of goods carried out by the State Civil Apparatus, namely: The establishment of a Collusion Crime Prevention Center that uses the APBN by the State Civil Apparatus under the Attorney General of the Republic of Indonesia. The authority of the Center for the Prevention of Criminal Acts of Collusion is to prevent collusion crimes committed by the State Civil Apparatus on projects that use the APBN. This institution is supervised by a supervisory board consisting of 9 members of the Junior Attorney General for Intel (ex officio), the Deputy Attorney General for Special Crimes (ex officio), the Junior Attorney General for State Administration/TUN (ex officio), a member of the representative of the Prosecutor's Commission (ex officio), one representative member of the Government Goods/Services Procurement Policy Institute/LKPP (ex officio) and four independent members from the community. The supervisory board is chaired by an independent member. The decisions of the board are taken on a collegial collective basis.

CONCLUSION

The function of the Prosecutor's Office of the Republic of Indonesia in eradicating the Criminal Acts of Collusion, according to the Indonesian legal system, is to conduct investigations and prosecutions of criminal acts to optimize law enforcement independently, which is not bound by other powers by applying the authority neutrally and impartially. Furthermore, the Prosecutor's Office of the Republic of Indonesia must transparently carry out activities with openness from every official. The Ideal Concept of the Function of the Prosecutor's Office to create a clean state apparatus is the concept of supervision with a clean legal culture and human resources with integrity. With the establishment of the Center for the Prevention of Criminal Acts of Collusion, this institution is directly under the Attorney General of the Republic of Indonesia and supervised by a supervisory board consisting of nine members consisting of the Deputy Attorney General for Intel, Deputy Attorney General for Special Crimes, Deputy Attorney General for

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State Administration (TUN), one member of the Prosecutor's Commission representative, one member of the representative of the Government Goods/Services Procurement Policy Institute/LKPP, and four Independent members from the community who have high integrity.

For the Prosecutor's Office of the Republic of Indonesia, it is necessary to have consistency between the counseling material on the crime of collusion and the attitude of the Prosecutor's Office. As a law enforcement officer, the Prosecutor's Office must show a firm anti-collusion attitude so that no parties involved in the APBN project dare to commit collusion and realize optimal supervision. The parties involved in the APBN project should increase the legal awareness of the community not to commit criminal acts of collusion by making statements and integrity pacts. The public must always supervise (social control) the activities carried out by the state apparatus and immediately report indications of collusion and corruption to the authorities.

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DECLARATION OF CONFLICTING INTERESTS

We declare no potential conflicts of interest concerning the study, authorship, and/or publication of this article.

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