

EVOLVING EFFORTS ON CORRUPTION ENFORCEMENT

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I. INTRODUCTION

Corruption deteriorates countries in many aspects of life. Like a chronic disease, corruption undermines countries and brings them to downfall. Artidjo Alkostar, one of the respected judges of the Republic of Indonesia's Supreme Court, stated that corruption, as a crime against humanity, causes negative impacts to the country and deprives human rights, especially the rights of people to live on welfare.¹ Therefore, efforts to combat corruption should be encouraged seriously as an important agenda item, specifically in law enforcement as the legal response.

Since established in 2003, the *Komisi Pemberantasan Korupsi* (KPK), or Corruption Eradication Commission, has investigated more than 393 cases of which 270 of them have reached final and binding decisions.² However, the numbers should not be seen merely as a success story done by the KPK. It should also be considered as reality that enforcement and prevention actions have to be intensified in order to suppress the existence of corrupt conduct.

Responding to the need to develop legal responses, the KPK continues enforcement efforts in order to create a deterrent effect against the corrupt actors. It attempts to apply various legal actions to recent cases as one of its strategies. One of the actions applied to prosecution is imposition of additional punishment. Bambang Widjojanto, one of the Commissioners, stated that the KPK has applied political disenfranchisement in addition to severe punishment.³ Two corruption offenders have recently received such punishment.

Despite the implementation of severe and additional punishments, the number of investigated cases—which reached 40 grand corruption cases in 2014⁴—shows that the penalties prescribed by legislation are insufficient to deter perpetrators from engaging in corruption. Therefore, since acquiring the authority to investigate money laundering under the Money Laundering Law, “impoverish[ing] corrupt actors” has been set as an aggressive KPK strategy in order to restore the country's losses.⁵ Thirteen money laundering cases, in which corruption as a predicate crime is noted, have been handled by the KPK since 2012.⁶ However, perpetrators will learn from the mistakes of previous offenders and develop a new modus operandi to avoid punishment. Law enforcement must evolve to the point where it can

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¹ Kompas.com, “Artidjo: Korupsi, Kanker yang Gerogoti Negara”, 19 September 2014. Available at <<http://nasional.kompas.com/read/2014/09/19/06431611/Artidjo.Korupsi.Kanker.yang.Gerogoti.Negara>>.

² KPK, “Rekapitulasi Penindakan Pidana Korupsi”, 31 August 2014. Available at <<http://acch.kpk.go.id/statistik;jsessionid=899BBAEE7651578CEE13DA99128E2D96>>.

³ KPK, “Koruptor Harus Dibuat Kapok”, 10 October 2014. Available at <<http://www.kpk.go.id/id/berita/berita-kpk-kegiatan/2240-koruptor-harus-dibuat-kapok>>.

⁴ KPK, “Rekapitulasi Penindakan Pidana Korupsi” (see footnote 2).

⁵ KPK, *Annual Report 2013* (Jakarta, 2014). Available at <http://www.kpk.go.id/images/pdf/laptah/annual_report_2013.pdf> (accessed 16 October 2014).

⁶ KPK, “Penanganan TPK Berdasarkan Jenis Perkara”, 31 August 2014. Available at <<http://acch.kpk.go.id/statistik-penanganan-tindak-pidana-korupsi-berdasarkan-jenis-perkara>>.

prevent corruption crimes. This paper is intended to discuss some of the KPK's experiences regarding its efforts to eradicate corruption through enforcement and prevention actions which continuously evolve by improving the collection of evidence and networking.

II. EVIDENCE AND NETWORKS FOR COMBATING CORRUPTION

A. Case Disclosure by the KPK

After nearly eleven years of effectively investigating and prosecuting corruption cases, the KPK has handled various types of cases. Based on data provided by its official website as shown in the table below, there are seven types of cases impacted by corruption—the most frequent being bribery, with 177 cases. Two types of cases that emerged over the last two years were money laundering and hindering KPK process.

The KPK is authorized to investigate money laundering cases under the Money Laundering Law. The implementation of the authority is in line with the KPK's recent strategy to impoverish corrupt actors, along with the goal of deterrence and to restore the country's losses due to corruption. Since authorized by law, the KPK investigates any indication of money laundering in a corruption case, and the prosecution of both crimes will be merged.

Hindering KPK process has been applied in cases in which some of witnesses have obstructed the KPK's legal actions by giving false testimony under oath at trial or by attempting to bribe the Commissioners in order to stop an investigation process. The KPK considers that such conduct should be given serious attention because such conduct will undermine the honour of justice and the KPK.

Table
Corruption handling data (by KPK) based on type of cases, 2004-2014 (per 31st August 2014)

Type	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Procurement	2	12	8	14	18	16	16	10	8	9	13	126
Licensing	0	0	5	1	3	1	0	0	0	3	4	17
Bribery	0	7	2	4	13	12	19	25	34	50	11	177
Illegal Charges	0	0	7	2	3	0	0	0	0	1	4	17
Misuse of State Budget	0	0	5	3	10	8	5	4	3	0	2	40
Money Laundering	0	0	0	0	0	0	0	0	2	7	4	13
Hindering KPK's Process	0	0	0	0	0	0	0	0	2	0	2	4
Total	2	19	27	24	47	37	40	39	49	70	40	394

Source: KPK Official Statistics; see <<http://acch.kpk.go.id/statistik-penanganan-tindak-pidana-korupsi-berdasarkan-jenis-perkara>>.

B. The KPK's Enforcement Authority

Article 11 Law No. 30 Year 2002 authorizes the KPK to conduct pre-investigation, investigation, and prosecution cases that:

1. Involve law enforcement and state officials, and other individuals connected to corrupt acts perpetrated by law enforcement or state officials;
2. Have generated significant public concern; and/or
3. Have lost the state at least IDR 1,000,000,000 (more than US\$ 110,000).

In performing pre-investigation, investigation, and prosecution, the KPK is given the power and authority as follows:

- Intercept communications (phone, text messaging, email, fax, etc.);
- Request banks and other financial institutions for suspect's or defendant's financial records;
- Order banks or other financial institutions to block accounts suspected to harbour the gains of corrupt activities of a suspect, defendant, or other related parties;
- To request data on the wealth and tax details of a suspect or defendant from the relevant institutions;
- Temporarily halt financial and trade transactions, and other transactions, or to temporarily annul permits, licenses, and concessions owned by suspects or defendants, assuming that preliminary evidence has any connection to the case being investigated;
- Investigate high profile public/law enforcement officers without warrant from other authorities;
- Other authority as defined in Criminal Procedure and the Penal Code.

Some of the powers are different from the other law enforcement institutions (Indonesia National Police and the Attorney General's Office). The significant powers that are factors of success in the KPK's handling of corruption cases are communication interception, warrantless investigation on high profile public/law enforcement officers, and warrantless seizure of evidence. These great powers are a manifestation of the goal of the KPK's establishment, that is:

to enhance law enforcement methods by forming a special agency that will be allowed a wide authority that is independent as well as free from the influence of notorious powers in the effort to combat graft.⁷

Law No. 8 Year 2010 which is known as the Money Laundering Law gives additional authority to the KPK as one of the authorized institutions to investigate money laundering. Due to the limitation on the scope of investigation, the KPK can only conduct investigation on money laundering for which corruption is the predicate crime. Aside from the authority to investigate, there is no difference between the KPK and other authorized agencies (Indonesia National Police, Attorney General's Office, National Narcotics Board, and Directorate of Tax and Directorate of Custom of Ministry of Finance) regarding the power to conduct investigations.

⁷ Indonesia, KPK Law, Law No. 30 Year 2002, Further Explanation.

C. Enforcement Challenges

The broad authority given by law does not guarantee that there will not be any challenges encountered during the process of enforcement. Several challenges have been identified by the KPK throughout its investigation and prosecution.

1. Issues Regarding the KPK's Authority to Investigate and Prosecute

In recent cases handled by the KPK, issues arose regarding its authority. The issues were raised particularly by the defendants. A notable challenge is about the KPK's authority to seize assets in money laundering investigations related to the time of asset acquisition. One defendant argued that the authority to seize started in 2010, the year that the latest Money Laundering Law entered into force. The argument's rationale was that the KPK was firstly authorized to investigate money laundering under the latest law, while in the former law (Law No. 25 Year 2003) the KPK was not mentioned as an authorized institution. However, the challenge was dismissed because the judges ruled that the KPK had the authority.

Another challenge was against the KPK's authority to prosecute money laundering cases. A defendant argued that the KPK had no authority to prosecute because there was no article in the law about prosecution by the KPK. Hence, the prosecution should be handled by the Attorney General's Office, although investigation was conducted by the KPK. However, that challenge was also dismissed.

Regardless the fact that court decisions have taken the KPK's side, these challenges show that criminals will always try to avoid punishment by any means. If they realize that they have no ability to prove their innocence, the enforcement authority of the institution becomes the target of their challenges.

2. Lack of Witnesses' Integrity

Ideally, a witness gives honest and true testimony at trial because the witness is under oath. However, in some recent cases, witnesses break their oaths despite their awareness of the consequences of their actions. Prosecutors found that there were some witnesses who revoked their statements given during investigation and gave entirely new testimonies which mostly were in favour of the defendants. Moreover, their reason for revoking the statements was that they were under pressure from the investigators; hence, their answers were given under compulsion.

To counter the witnesses' testimonies, prosecutors have, several times, brought the investigators to be examined verbally in court. To support their examination, investigators prepared themselves with recorded video of the investigation to prove that during the process there was no pressure at all and that the witnesses gave the statements independently.

3. Exploitation of the Weaknesses of the Administrative System

The purpose of the Money Laundering Law is to seize criminals' property in order to restore state losses or to return the property to the rightful parties. Further, it reduces the crime rates. However, perpetrators maintain their properties by concealing or disguising them. Many methods are conducted, namely by concealing or disguising the ownership and the acquisition of assets. These methods could be done by falsifying identity; purchasing assets on behalf of family, relatives, and others; using gatekeepers, avoiding transactions through the financial services (cash and carry), etc.

Some of the methods are done by exploiting the weaknesses of the administrative system. The citizen identification system in Indonesia prior to the electronic ID-Card in 2013 was not well-organized. It caused administrative problems. Someone could have identity data that did not correspond to the actual one. In other situations, someone could have more than one identity. These loopholes were exploited by money launderers.

D. Strong Evidence and Network for Better Investigation and Prosecution

Other than those mentioned above, there are still many challenges faced by the KPK. However, by taking corruption in the procurement of a driving simulator for the Indonesian National Police as an example, the challenges require attention. This case was an exhausting one because it took two years to investigate the case and reach the final, binding decision.

DS, a high-ranking police officer, was the suspect of an investigation and was found to have three different identities. Under his first identity, DS was reported to have been born in 1960. Using this identity he married his first wife, S, and had five children. Under his second identity, DS used a similar name, but with a different initial, JS. JS was reported to have been born in 1967; using that identity he married his second wife, M, and had two children. Under the third one, he used his second initial, JS. He was reported to have been born in 1970, and married his third wife, DA, and had one son. This evidence shows that DS exploited the weaknesses of the administrative system in order to have three different families, which he used to conceal his assets.

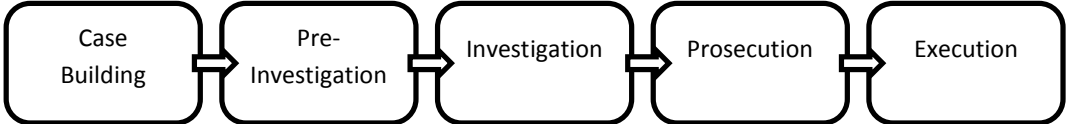
In the prosecution stage, NNS, one of the witnesses who was DS’s former subordinate in a previous position, revoked her statement in front of an investigator when examined in court. She stated that she was under pressure. Although it could be countered by presenting the investigators at trial, it showed that NNS’s loyalty to her former superior was well-utilized by DS.

At trial, DS also challenged the KPK’s authority regarding the KPK's action of seizing his assets which he obtained since 2004. He argued that the KPK had authority to seize only those acquired after 2010. Hence, the seized assets prior 2010 should be returned back to him. Although the challenge was dismissed, it showed that criminals could exploit the law’s loopholes if certain issues have not been clearly regulated.

Learning from experience, it can be seen that corrupt actors evolve their efforts, not only by finding new modus operandi for their crimes, but also by challenging the regulation regarding the enforcer’s authority to investigate or prosecute. Competing with criminals requires more than just conducting routine investigation and prosecution based on procedural law. Law enforcers should also increase their competencies by being more tactical and progressive in exercising their authority. There are two factors that significantly contribute to proving the case: strong evidence and good networks.

1. Strong Evidence from Effective Utilization of Authority

The KPK has built a mechanism of handling corruption cases that aims to ensure cases brought to court can be proved. This mechanism is a consequence of the KPK’s inability to stop investigations mid-way once they have been started. The mechanism is shown in the following chart.



Reports of corruption are analyzed in the Case Building stage. Documents, public information, media, voluntary interviews, or any related data are verified in order to determine whether the report meets the required conditions. Three standard questions commonly used when analyzing such reports are: (1) “is it a crime or not?”, (2) “is it a subject of the KPK’s authority to investigate?”, (3) “is it a solid case?”. If it meets all the required conditions, then it is presented in front of the Commissioners, Director of Public Complaints, and Directorate of Pre-Investigation.

In the Pre-Investigation stage, obtaining evidence begins to be the focus of activities. The investigators have the duty to obtain at least sufficient preliminary evidence: two items of evidence (including electronic evidence). They use their authority, namely by conducting communication interception, imposing travel bans, conducting surveillance, interviewing person(s) voluntarily, and organizing cooperation with other agencies (FIU, experts, and the Supreme Audit Board). Intelligence operations typically must be conducted in this stage. If the two items of evidence are considered sufficient, then the case is brought in front of the Commissioners—the Director of Pre-Investigation, Director of Investigation together with the investigators, Director of Monitoring, and Director of Prosecution together with the Prosecutors—in order to assess whether the case should be opened as an official investigation. Factors considered include who would be the suspect(s) and what other evidence is required. The presence of prosecutors is important. They can provide feedback about evidence they will need later at trial.

In the investigation stage, investigators have the authority to examine witnesses and suspect(s), to search and seize, to arrest, and to detain. Electronic evidence obtained in the previous stage is selected, validated, and registered in the case. Investigators enhance cooperation with experts and the Supreme Audit Board and obtain their information based on expertise to be included in the case file. Coordination with the FIU is also intensified to identify suspects’ suspicious financial transactions which would be followed up with by blocking accounts. Coordination also takes place with the National Land Agency and other institutions, including the private sector in order to pursue the suspect’s assets which are proceeds from crime. Moreover, the suspect is obliged to provide information on his or her assets, along with those of his or her family members and businesses. The investigation activities involving prosecutors begin early in the process. The purpose is to ensure that all evidence obtained is strong and can be considered in court.

Through the work done in these earlier stages, it is intended that prosecutors will be able to prove conclusively the crimes committed. Adnan Pandu Praja, a Commissioner, stated that the KPK’s achievement of a 100 percent conviction rate in corruption cases is a result of the effective utilization of authority to prove the cases in court.⁸

2. Good Support Network

Some of the activities in the pre-investigation and investigation stages rely on contributions of other institutions, either government or private, and parties such as society. The FIU, the Supreme Audit Board, the National Land Agency, Immigration, banks, and property agents are some of those commonly involved, especially for the purpose of gathering evidence, tracing assets acquired from crimes, and expert testimony.

⁸ The Philippine STAR, “Ramon Magsaysay Awards: Indonesia’s KPK fights corruption without fear”, 29 August 2013. Available at <<http://www.philstar.com/news-feature/2013/08/29/1146351/ramon-magsaysay-awards-indonesias-kpk-fights-corruption-without-fear>>.

In regard to pre-investigation, investigation, and prosecution, the KPK is authorized to construct strong networks, and treat existing institutions as colleagues, ensuring that the fight against corruption is efficient and effective.⁹ Hence, the KPK has developed cooperation with many parties in order to structure good networks which could contribute to the KPK's enforcement programme. The KPK has learned which networks increase efficiency and effectiveness of pre-investigation and investigation activities. One of the significant experiences was the disclosure of the existence of DS's two other wives as in the discussed case. At that time, society contributed to revealing the suspect's secret lives. The information was valuable in regard to tracing the suspect's assets.

These experiences show that indeed the KPK has the power to take important enforcement action, but networking contributes to accelerating the results. In other words, networking is a valuable support for the efficiency and effectiveness of enforcement authority.

III. CONCLUSION

In regard to conducting investigation and prosecution of corruption cases, every law enforcement institution is granted authorities that have similarities and differences. This contributes to the final result. Strong powers and authorities create better opportunities to prove the case in court. However, ineffective and inefficient use of authority may lead to failure. Moreover, corrupt actors are evolving their modus operandi and are exploiting legal loopholes to avoid punishment. Therefore, strong evidence is required in order to reduce the number of criminals who avoid conviction. Strong evidence can be obtained by developing better methods based upon powers and authorities that enforcers have. In addition, building good networks would support investigation and prosecution in terms of efficiency and effectiveness. Hence, the expected result of a better conviction rate in enforcing corruption can be achieved.

⁹ Indonesia, KPK Law.