

THE AUTHORITY OF PUBLIC PROSECUTION SERVICE OF THE REPUBLIC OF INDONESIA FOR HANDLING CORRUPTION CASES

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I. INTRODUCTION

The Public Prosecution Service of the Republic of Indonesia is the government institution that exercises the prosecutorial power of the state and other powers conferred by law. In terms of handling corruption cases, Article 30(d) of Law Number 16 of 2004 concerning on the Public Prosecution Service states that this institution has the duties and powers of investigating certain types of crime as stipulated by law, including corruption.

According to the Performance Accountability Report 2013, the Public Prosecution Service has handled inquiries for 1,709 cases, investigations for 1,653 cases, preliminary prosecutions for 2,023 cases and prosecutions for 2,023 cases. Further, this institution, through the Special Crimes Division, has saved over IDR 403 billion in state funds/assets as well as US \$500,000 in 2013.

II. PROCEDURES FOR HANDLING CORRUPTION CASES

The procedures for public prosecutors' handling of corruption cases are based on Law No. 5 Year 1981 concerning the Indonesian Criminal Procedure Code, which consists of three stages: investigation, prosecution and execution.

A. The Investigation Stage

An investigator who receives a report or complaint about the occurrence of an event which may reasonably be presumed to be a corrupt act shall be obligated to promptly open an investigation. According to the Indonesian Criminal Procedure Code, there are several steps in the investigation stage. They are:

a. Arrest:

The investigator has authority to conduct arrests based on needs of the inquiry or investigation. (Art. 16 of Indonesian Criminal Procedure Code). Orders for arrests must be issued upon strong suspicion of corrupt conduct based on sufficient preliminary evidence. A suspect arrested for a corruption crime can be held for no more than one day (24 hours).

b. Detention:

Following the arrest, a detention order or detention continuation may be issued against the suspect or accused if they are strongly suspected to have committed a corrupt act. The suspicion must be based upon sufficient evidence, and there is concern that the suspect might flee, destroy or conceal evidence or commit further criminal acts [*Id.* at Art. 21(1)]. In addition to the foregoing, Indonesian criminal due process only permits detention if a suspect or the accused has committed a crime which is punishable by

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criminal imprisonment of five years or more. In this context, it includes corrupt acts. A warrant of detention issued by an investigator shall only be valid for 20 days at most. If an investigation has not been completed yet, it may be extended by a competent public prosecutor for 40 days at most. After the expiration of 60 days, based on the law, the investigator must release that suspect from detention.

c. Search:

The investigator has authority to enter a place or residence and other closed premises to carry out acts of inspection, seizure or arrest (*Id.* at Art. 32).

d. Seizure:

The investigator has authority to take possession and to retain under his control, any moveable or immovable goods, whether tangible or intangible, to be used for evidentiary purposes in investigation, prosecution and adjudication (*Id.* at Art. 1 (16)].

e. Examination of documents:

The investigator has the right to open, examine and seize other documents with a special warrant issued for such purpose by the head of the district court (*Id.* at Articles 41, 47, 48, 49, 131 and 132).

At the time the investigator has begun an investigation of an event that constitutes corruption, they shall inform the public prosecutor of this fact. If the investigator terminates an investigation because of the absence of sufficient evidence or it has become clear that said event did not constitute an offence or the investigation has been terminated by virtue of law, the investigator shall inform the public prosecutor, the suspect or their family of this circumstance.

When the investigator has finished conducting an investigation, the investigator shall promptly submit the case file concerned to the public prosecutor. If the public prosecutor believes that the result of said investigation is incomplete, the public prosecutor shall promptly return the case file to the investigator with instructions for its completion. The investigator is obligated to promptly conduct a supplemental investigation in accordance with the instructions of the public prosecutor.

An investigation shall be considered complete if the public prosecutor has so notified the investigator, and the investigator shall surrender the responsibility for the suspect and the physical evidence to the public prosecutor.

B. Prosecution Stage

The Public Prosecution Service has the authority to prosecute anyone who is accused of committing corruption within the public prosecutor's jurisdiction by bringing the case before a competent court for adjudication, accompanied by an indictment letter. When the prosecutor has the opinion that a prosecution may be conducted from the results of investigation, the prosecutor shall prepare as soon as possible a bill of indictment.

A public prosecutor may affect the accomplice of cases and cover them in one indictment letter, if at the same time or almost simultaneously he receives several case files on:

- a. several corrupt acts committed by a person and the interest of the examination does not pose an obstacle to accomplice;

- b. several accomplices who are related to one another; or
- c. several corrupt acts which are not interrelated but which do have some connection to one another, such that the accomplice is necessary for purposes of examination.

In contrast, if a public prosecutor receives a case file containing several corrupt acts committed by several suspects, they may prosecute each of the defendants separately. Therefore, a public prosecutor has the authority to decide freely whether the cases will be separated or not.

In preparing an indictment letter, which shall be dated and signed by the public prosecutor in charge, it shall contain (*Id.* at Art. 143):

- a. the full name, place of birth, age or date of birth, gender, nationality, address, religion and occupation of the suspect; and
- b. an accurate, clear and complete explanation of the offence of which accusation is made, stating the time and place where the offence was committed.

The public prosecutor shall bring an action before a district court or corruption court with a request that the case be adjudicated immediately, accompanied by an indictment letter. An indictment letter may be amended by the prosecutor whether with the aim to improve or to discontinue the prosecution. Amendment of the indictment letter is permitted once, seven days before the trial begins at the latest, and the copies of the amendments to the indictment letter shall be sent to the suspect or legal counsel and the investigator. (*Id.* at Art. 144).

During the trial proceedings, a judge shall not impose a penalty upon a person except when there are at least two pieces of evidentiary proof enabling them to come to the conviction that an offence has truly occurred and that the accused is guilty of committing it. (*Id.* at Art. 183). There are five types of evidence under the Indonesian Criminal Procedure Code, i.e., the testimony of witnesses, the testimony of experts, documents, indication (circumstantial evidence), and the testimony of the accused. [*Id.* at Art. 184(1)].

The testimony of a witness is what the witness has stated at trial, which is similar to the testimony of the expert and the accused, i.e., what the expert and the accused have stated at trial. (*Id.* at Arts. 185 and 186). Documents to be considered as evidence should be made under an oath of office or supported by oath. (*Id.* at Art. 187).

An indication is an act, event or circumstance which because of its consistency, whether between one and the other or with the offence itself, signifies that the offence has occurred and indicates who the perpetrator is. The indication as evidence shall only be obtained from the testimony of the witnesses, documents and testimony of the accused. The evidentiary strength of the indication is prudently evaluated by the judges at trial after the judges have accurately and carefully examined on the basis of their consciences. (*Id.* at Art. 188).

Testimony of the accused is what the accused states at trial and may only be used with respect to him or herself. Testimony of the accused alone is not sufficient to prove that he or she is guilty, but it must be accompanied by another evidence. (*Id.* at Art. 189).

Every public prosecutor always tries to have the indication in proving the guilt of the accused, even if two of the five types of evidence have been proved; however, in practice every public prosecutor always tries to obtain three or more types of evidence in proving the guilt of the accused.

C. Execution Stage

The execution of a judgment that has become final and binding shall be carried out by the public prosecutor. (*Id.* at Art. 270). If a judgment also stipulates that the physical evidence shall be confiscated for the state, in addition to imprisonment and fine, the public prosecutor shall entrust the goods to the state auction office in order to be sold by auction within three months, the proceeds of which shall be deposited in the state treasury for and on behalf of the public prosecutor. [*Id.* at Art. 273(3)].

For the purpose of execution, a copy of the judgment shall be sent to the public prosecutor by the clerk. The public prosecutor then shall send a copy of the minutes of the execution of the punishment signed by himself, by the head of the corrections agency and by the convicted person, to the court which decided the case in the first instance, and the clerk shall record it in the register of supervision and observation.

D. Salient Features of Modus Operandi of Corruption

This paper selects the sample of corruption modus operandi in state-owned companies or local-government-owned companies; and corruption modus operandi in procurement of goods and services for further discussion.

1. Corruption in State-owned Companies and Local-Government-Owned Companies

The following is the modus operandi of corruption conduct which may be committed by boards of directors in state-owned companies and local-government-owned companies:

- Misuse of corporate funds. This might occur if the directors “borrow” the funds of company which are used for speculation or investment activity for a private interest. After taking the profit, the directors return the funds.
- Directors or employees act as a supplier for the company. This occurs when directors have controlling interests or influence over a company selected as a supplier of stock or materials for a state-owned company or local-government-owned company.
- The director also has a position with a competitor at the same time that he or she works as a director of a state-owned company or local-government-owned company. Therefore, by having access to confidential or insider information, the director is able to obtain concessions or other advantages in favour of the competitor.
- The benefits and/or bonuses accepted by the director from the suppliers or other business partners who had run projects for the company or as a business associate to get a project from the company.
- Misuse of confidential information for the personal interest of the director.
- Receiving additional income in the form of allowances for the directors, apart from their salaries, without necessary approval of the shareholders.

- Receiving additional income for the board of directors may also appear in the form of extravagance or overusing the office facilities: for instance, selection of a luxurious car by a director, having loans from the company at below-market interest rates, or purchasing luxurious furniture for the office and directors' rooms.

2. Corruption in Procurement of Goods/Services

In practice, the modus operandi of corruption that may occur in the procurement of goods or services for a government institution include:

- a. Irregularities in government budgeting and planning
The corrupt act may occur by marking up the value of the proposed project.
- b. Irregularities in the bidding process
Such corrupt acts may commonly occur as follows:
 - The selection of goods or services provider without following the required public bidding process; instead, contracts are awarded illegally as no-bid contracts.
 - Inappropriate bidding process involving collusion.
- c. Irregularities of work implementation
This occurs through fraudulent deviation from the specifications stated in contract. The forms of deviation include the decreasing volume, amount or quality of work.