

OPENING REMARKS & KEYNOTE SPEECH

*Mr Adnan Pandu Praja**

The honorable:

Mr Kozo Honsei, Deputy Chief of Mission at the Embassy of Japan,

Mr Taro Morinaga, Deputy Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders,

Ms Laksmi, Acting Head of the Legal and International Relations Bureau at the Attorney General's Office,

Our visiting expert Mr Tony Kwok, former Deputy Commissioner of ICAC Hong Kong,

Mr Da'i Bachtiar from the Indonesia Crime Prevention Foundation,

Distinguished participants of the seminar from fellow countries in Southeast Asia,

And esteemed colleagues from the National Police, the INTRAC, Financial Services Authority, Ministry of Finance, Ministry of Foreign Affairs and Ministry of Law and Human Rights.

Assalamu'alaikum wa rahmatullahi wa barakatuh, and good morning to all.

On behalf of the Corruption Eradication Commission, I would like to welcome you to the Ninth Regional Seminar on Good Governance for Southeast Asian Countries. In the past years, our Commission has benefited from the wealth of knowledge shared during the previous seminar sessions. Thus, I am very happy that this year we, in cooperation with UNAFEI and the Attorney General's Office, have the privilege of hosting it here in Indonesia. My heartfelt thanks to the staff at UNAFEI, AGO, and also KPK for all the work done in preparing and organizing the seminar.

Ladies and Gentlemen,

Here, we come from different backgrounds, from various countries with differing legal systems, from the same country but different institutions, carrying out different functions. However, I believe that we share something in common, a desire to learn from one another and to stay up-to-date on how we can accomplish our mandates in order to tackle the problem that is corruption. We all know the harms of corruption, and that it needs to be stamped down. To do that, it is important that we identify the current situation and challenges in the field, in order to formulate the best and feasible strategies to overcome them.

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I. SOPHISTICATED METHODS

With regard to corruption, some aspects of it remain constant, namely the presence of authority and the abuse of it for personal gain. However, it is not the case with the methods used. At the popular level, people may think of corruption as the straightforward giving and taking of bribes linked to an official's act in favor of the briber, or the manipulation of records in order to embezzle money from the state budget. Yet, practitioners know that increasingly complex and sophisticated measures have been used in order to obscure corrupt deeds and hide the proceeds of crime.

An example that we notice is the trend of the corruptive state budgeting cycle. In Indonesia's decentralized system, there are two kinds of state budget, the central government budget or APBN, and the regional government budget or APBD. The trend is for corruption to start during the planning stage, when marked up goods and services procurement, with prices above the official general cost standards without sufficient explanation, are embedded in the APBD. If the marked up projects get approved by the local Parliament, often there are already "backers" from within local legislators. By the time the project is implemented, the actual funds used for the goods and services is just a fraction of what's proposed. The next year, when audited by the Supreme Audit Board, the project becomes a finding, which is grounds for interpellation by the local Parliament. Yet instead, it passes the local Parliament easily, which suggests that here too, is a point of risk of collusion or extortion between executive and legislative. The corruptive budgeting cycle can be prevented if the regional inspectorates and the people are involved in transparent and participatory budgeting from the beginning to ensure that the state budget appropriately meets the people's needs.

Another example of methods involves layering of transactions associated with money laundering, with the use of gatekeepers and also shell companies that are sometimes located overseas. With regard to anticipating gatekeepers, this year a Government Regulation¹ has been issued, making it obligatory for professions often associated with gatekeeper activity such as accountants, advocates, notary public and financial service providers to report suspicious transactions to the INTRAC.

In general, to anticipate such methods, law enforcement agencies need to stay current and share information as well as lessons learned from cases on the ground.

II. ASSET TRACING

Another area of challenge encountered during investigation and prosecution is regarding asset tracing, especially when it involves the jurisdiction of another country. The procedure, including the use of MLA, can take up a long time, especially as it involves the need to understand a different set of rules. Through experience, good communications built upon a well-maintained cooperative relationship helps during the formal and informal coordination to facilitate the process between the requesting and requested countries.

¹ *Peraturan Pemerintah* (Government Regulation) number 43 year 2015.

With regard to asset recovery especially, earlier this month in the 6th Conference of the States Parties to the UNCAC in Saint Petersburg, state parties have agreed to begin the second review cycle covering Prevention and Asset Recovery in the next year. I look forward to the implementation review mechanism to foster compliance with articles 51 to 59 among ratifying countries so as to assist efforts in recovering the proceeds of corruption.

III. RESOURCE BALANCING

Going back to the national context, our institutional challenge. Our country Indonesia's territory spans almost 2 million square kilometers of land, with a population of roughly 250 million. Our civil servants number at around 4.3 million. Meanwhile the KPK currently has around 1200 employees, of which less than 200 are investigators or prosecutors. Striking a balance between the needs for quantity of law enforcement personnel and ensuring they have the appropriate qualifications and capability is a challenge for management.

Likewise, in terms of facilities such as the availability of examination rooms, resources needed for site visits in remote areas. One proposal that we are exploring, which is allowable by the KPK Law but still needs to be agreed upon by the Parliament, is to set up provincial branches. Another proposed measure is to improve the effectiveness of KPK's coordination and supervision role through an electronic mechanism, what I'd call *e-korsup*. The framework for this mechanism would include real-time notice of the starting and progress of a case investigation. It can also allow us to gather data on the distribution and typology of corruption throughout the country as a basis for planning and policy-making.

IV. INTERPRETATION OF LAW

Another challenge we face is in the area of interpretation of laws. In Indonesia's legal system based on civil law, judges decide on cases based on code provisions on a case-by-case basis, independent of precedence. In practice, this may cause confusion when the law is vaguely worded, or in the presence of contradictory regulation, or not well-adapted to recent advances, such as the increasing sophistication of criminal methods mentioned earlier. Different judges may rule differently on the same thing, such as the validity of investigations conducted by KPK independent investigators, who are not seconded from the Police Force or the Attorney General's Office.

During the period from 2000 to 2015, the government has issued 12, 471 regulations², most of which are ministerial level regulations, around 8400 of those, followed by presidential level regulations, as well as 916 bills.

Regarding bills, a concerning trend is the increase of judicial review at the Constitutional Court. From 2003 to 2015, the Constitutional Court has ruled in favor of 182 judicial review requests³, including one that allows the pre-trial mechanism to challenge the validity of designation of suspects. This ruling has become an extra step for suspects to seek

² *Strategi Nasional Reformasi Regulasi: Mewujudkan Regulasi yang Sederhana dan Tertib*. Kementerian PPN/Bappenas, 2015.

³ See <<http://www.mahkamahkonstitusi.go.id/index.php?page=web.RekapPUU>>.

revocation through the decision of a single judge while investigation is ongoing, which in turn changed the way law enforcement officers work.

Another indicator is from the 2013 Worldwide Governance Indicators, which scored the regulatory quality in Indonesia at 46 per cent.

A concerted effort involving lawmakers—in this case the legislative and executive branch of the government—is needed in order to improve the quality of regulations. On that front, I appreciate that the Ministry of Development Planning has launched the National Strategy for Regulation Reform covering the period of 2015 to 2025, and hope that it is a sign of political will to achieve not only deregulation that leads to ease of business but also good governance.

On the practitioner's side, we also try to tackle this challenge by coordination efforts, including joint trainings to harmonize the views between investigators, prosecutors and judges, for example the recent Judge's Dialogue series on Anti Money Laundering and Criminal Asset Confiscation.

V. KPK's ACTIVITY IN INTERNATIONAL COOPERATION

During a two-day conference of the world's anti-corruption institutions held by KPK in 2012, the participants jointly drafted the Jakarta Principles—16 rules to reinforce anti-corruption institutions in the world. In the same year, the Southeast Asia Parties Against Corruption (SEAPAC) workshop strengthened the strategic commitment among Southeast Asian countries to restrict the movement of corruptors.

In 2013 through the Asia Pacific Economic (APEC) forum that has wider reach, KPK as host of the Anti Corruption and Transparency Working Group (ACTWG) was initiated the APEC Anti-Corruption Network (ACT-Net), a cooperation forum between anti-corruption agencies in APEC countries. KPK felt that the establishment of such networks is important given Indonesia's experience. A number of corruptors have escaped abroad to avoid criminal sentences, and assets from corruption have also been stacked in other countries, complicating the issue. With ACT-Net, the issues related to jurisdiction, citizenship and dual criminality could be settled more easily.

KPK also initiated the formation of the Economic Crime Agency Network (ECAN). The network consists of law enforcement agencies in various countries, such as the FBI from the United States, Singapore's CPIB, Malaysia's MACC, the United Kingdom's SFO, OLAF in the European Union, and the SFO New Zealand. The cooperation helps provide data and information required in corruption investigation.

Ladies and Gentlemen,

The revitalization of the anti-corruption movement in Indonesia in the post-1998 era has come to an important juncture, where it's time to evaluate what works, what needs to be strengthened, and what needs to be adjusted, while avoiding the pitfalls of overlooking long-term efforts. We also learn from the history of steadfastness of the anti-corruption authorities in our fellow countries, like in the 38 years of ICAC Hong Kong, 48 years since the Malaysia ACA—now MACC, 63 years of CPIB Singapore, all with their ups and downs.

Lastly, I wish you a successful and beneficial seminar, and good times in Indonesia especially to those who are here the first time. May we all bring from here not only knowledge, but also better rapport upon which effective communication and cooperation shall be built.

Thank you, *wassalamu'alaikum wa rahmatullahi wa barakatuhu.*