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## **Legal Certainty of Investigations by the Prosecutor's Office and Police against Government Internal Supervision Apparatus in Enforcing APBD Corruption Crimes**

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### **Abstract**

This research discusses the legal certainty of investigative actions carried out by the prosecutor's office and the police with the government's internal supervision apparatus in enforcing criminal acts of APBD corruption. The form of coordination carried out is related to the results of investigations carried out into alleged irregularities in government projects originating from the APBN/D. Limits on the Police's authority to follow up on the results of investigations into these allegations, deviations from government projects originating from the APBN/Regional Funds without recommendation from APIP as well as efforts that can be made by the police to follow up on the results of investigations into alleged deviations from government projects originating from the APBN/D if coordination with APIP does not go well. The Prosecutor's Office and the Police, which are State Institutions that are given the

authority to carry out Corruption Crime Investigations and Investigations, have serious challenges in eradicating Corruption Crimes. The method used in this article is normative legal research which is prescriptive analytical in nature through conceptual, statutory and case approaches in assessing community participation in efforts to prevent corruption. The results of this research show that corruption drives the decline in people's welfare, thereby forcing the wider community to suffer from irresponsible behavior carried out by corruptors. In this regard, the government is encouraged to make efforts to involve community participation in optimizing the prevention of criminal acts of corruption. These efforts include directions to increase public awareness, action steps, and procedural steps that the public can take in tackling criminal acts of corruption.

**Keywords:** Corruption Crime, Legal Certainty, Prosecutor's Office, Police

### **Introduction**

Abuse of the authority of government officials, which is a form of criminal act of corruption, must be suppressed in order to create regional government administration that is clean and free of corruption, collusion and nepotism.<sup>1</sup> The community, as a legal subject whose rights and obligations are recognized according to the 1945 Constitution of the Republic of Indonesia, has a role in eradicating and reducing the number of criminal acts of corruption in all aspects, including at the regional government level. As stated in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), the interests of the Indonesian people in realizing the ideals of Indonesian independence are implied, where the fourth paragraph states:

*“Then, in order to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's blood and to promote general welfare, educate the life of the nation, and participate in implementing world order based on independence, eternal peace and social justice, the Indonesian National Independence was drafted. in the Constitution of the State of Indonesia, which was formed in the structure of the Republic of Indonesia which is the sovereignty of the people based on the belief in the Almighty God, just and civilized humanity, Indonesian unity and*

<sup>1</sup> Yuliandra, Soponyono, Pujiyono, 2012, “Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Korupsi Yang Dilakukan Oleh Pejabat Daerah”, *Diponegoro Law Review*, 1 (4), h. 1.

*democracy, guided by the wisdom of deliberation /representation, as well as by realizing social justice for all Indonesian people.”*

The creation of a clean and authoritative government is very urgent. To make this happen, it is necessary to manage various areas of life such as politics, law, economics, social and culture in a more serious, transparent and directed manner and involving all components of the nation in order to rise together from adversity and humiliation in the eyes of the international world.<sup>2</sup> One of the government's efforts is to make Law Number 30 of 2014 concerning Government Administration and Law Number 23 of 2014 concerning Regional Government as the first step in advancing the duties and capacity of the Government Internal Oversight Apparatus (hereinafter referred to as APIP). APIP's role is expected guarantee that the implementation of regional government affairs is carried out in an orderly, efficient, effective manner in accordance with the plans and provisions of laws and regulations and encourage the realization of good, clean and dignified government, free from irregularities and abuse of power and KKN.<sup>3</sup>

Pay attention to this paragraph, there are four functions and objectives of the Indonesian state after independence, namely:

1. Protect the entire Indonesian nation and all of Indonesia's bloodshed,
2. Promote general welfare,
3. Educate the life of the nation and
4. Implement world order based on freedom, eternal peace and social justice.

In order to realize this goal, of course large funds are needed which are outlined in the State Revenue and Expenditure Budget (APBN). However, the mandate from the Preamble to the 1945 Constitution of the Republic of Indonesia will not be realized if public money is misused for personal interests or the interests of certain groups or groups. This act of misuse of state finances is usually referred to as a criminal act of corruption.

The criminal act of corruption is a systematic, structured crime and there is an element of intention in the legal actions carried out.<sup>4</sup> Corruption is a criminal act related to acts of bribery or manipulation as well as other acts that harm or could harm the state's finances or economy, harm the welfare and interests of the people.<sup>5</sup> Corruption crimes are often and even certain to be committed by government officials who have the power to carry out unlawful acts, especially in managing the state financial budget, including

regional finances. The opportunity to commit corruption still exists (widely open), especially nowadays, even though we are aware that it is not appropriate to do so (illegal).

Corruption of the state financial budget, including regional finances, basically causes losses to both state and regional finances, and this is a strong indication that these losses result from the behavior of state officials as legal subjects who have the power to commit criminal acts of corruption. And for this reason, special steps are needed to eliminate corruption, especially within government institutions. Corrupt behavior that occurs within government institutions is a result of strong suspicions of intentions and opportunities for officials in administering government. APIP is part of the Performance Accountability of Government Agencies which is also regulated in Law Number 23 of 2014 concerning Regional Government.

Based on the provisions in Article 379 Paragraph of the Regional Government Law, it is stated that every Regional Government is required to have an APIP which is tasked with carrying out internal supervision of the performance of regional government. Where APIP itself consists of several components, namely first, the Internal Monitoring Team (TPI), which is tasked with supervising the performance of regional government; secondly, Internal Auditor, whose task is to carry out audits of regional government financial management; third is the Internal Supervision Function, which is tasked with providing technical support for the implementation of internal supervision duties.<sup>6</sup>

Based on the provisions of Article 385 paragraph (1) of Law Number 23 of 2014 concerning Regional Government, the public can submit complaints regarding alleged irregularities committed by state civil servants in regional agencies to the Government Internal Supervisory Apparatus (APIP) and/or Law Enforcement Officials (APH), in this case the State Police of the Republic of Indonesia and the Prosecutor's Office of the Republic of Indonesia. APIP's role in monitoring abuse of authority is also clearly stated in Article 20 of Law Number 30 of 2014 concerning Government Administration. Handling bureaucratic officials at the regional level who abuse their authority with indications of criminal acts of corruption also requires a separate process, because the resolution can be resolved administratively or criminally.<sup>7</sup>

Likewise, APIP is in the context of realizing good governance, providing public services in accordance with established policies and plans, as well as achieving government goals that are economical, efficient, effective and free from corruption, collusion and nepotism (KKN). And in this case APIP is given the task of helping and encouraging this, but in the public government sector it certainly pays attention to aspects of criminal acts of

<sup>2</sup> Yunus Nur Rohim, “Menciptakan Good and Clean Government Berbasis Syariah Islamiyah dalam Tatakelola Pemerintahan Republik Indonesia,” *Jurnal Nur El-Islam* 3, no. 1 (2016): 143

<sup>3</sup> Yohanes Elieser, “Peran Aparat Pengawas Intern Pemerintah (APIP) dalam Penyelenggaraan Pemerintahan Daerah di Kabupaten Bulungan,” *Jurnal Paradigma* 7, no. 2 (2018): 66

<sup>4</sup> Chazawi, Adami, *Hukum Pembuktian Tindak Pidana Korupsi*. (Bandung: PT Alumni, 2008). h.5

<sup>5</sup> Baharuddin Lopa dan Moh. Yamin, *Undang-Undang Tindak Pidana Korupsi (Undang-Undang No. 3 Tahun 1971) Berikut Pembahasan Serta Penerapannya Dalam Praktek*, (Bandung: Alumni, 1987), h. 6

<sup>6</sup> Aflah, (dkk.), 2021, “Kedudukan Hukum Aparatur Pengawas Intern Pemerintah Dalam Pengawasan Barang/Jasa Pemerintah”, *Jurnal USM Law Review*, 4 (2), h. 641.

<sup>7</sup> Bayu Bimantoro, Budi Hermawan Bangun, Hamdani, Koordinasi Penanganan Atas Dugaan Penyimpangan Pengerjaan Proyek Pemerintah Yang Berasal Dari Dana Anggaran Pendapatan Belanja Negara/Daerah Oleh Kepolisian Dengan Aparat Pengawas Intern Pemerintah (Studi Di Kalimantan Barat), *Tanjungpura Journal Of Law*, Vol. 2 No. 1 (2023): 95 – 114

corruption, there is a criminal justice system that is used to adjudicate cases of alleged criminal acts of corruption.

As stated by Nanang Purnomo, supervision of the implementation of public services plays an important role in the development process.<sup>8</sup> Supervision is needed to realize good public services, and with inherent and continuous supervision of the government and service providers, they can immediately follow up on complaints and grievances from the public. The principle is in terms of service to the people where the people must be served quickly, accurately, transparently, accountable, friendly and also pay attention to vulnerable groups.

Supervision is also carried out by law enforcement agencies, in this case both the police and the prosecutor's office, especially if there are allegations of violations of the law (criminal acts/criminal justice) or abuse of authority, especially those related to the use of budgets, both APBN and APBD. And components in criminal justice (Police, Prosecutor's Office, Courts and Correctional Institutions) in terms of supervision and control of the use of power by subsystem components in criminal justice.<sup>9</sup> The problems that have arisen in the criminal justice system in Indonesia since the Criminal Procedure Code (KUHAP) was implemented in 1981, include: Due to a lack of coordination between fellow law enforcers who are part of the criminal justice system,<sup>10</sup> thus causing law enforcement itself to not work effectively and efficiently.<sup>11</sup>

Handling of criminal acts of corruption cannot be separated from the criminal justice subsystem, where its functions are systematically divided into an integrated criminal justice system which is implemented in 4 (four) subsystems, namely first, investigative authority is carried out by the police institution, secondly, prosecutorial authority is carried out by the prosecutor's office, third, the authority to judge and punish by the court and fourth, namely the authority to enforce decisions/penalties carried out by the institution/executor/executor. The four approach subsystems in the criminal justice system as mentioned above are a series of investigation subsystems, prosecution subsystems, judicial subsystems and subsystems for implementing decisions as referred to above, forming an inseparable criminal law enforcement system or often referred to as an integrated criminal justice system. So that the concept of an integrated criminal justice system must be reflected in the implementation of each justice sub system.<sup>12</sup>

<sup>8</sup> Nanang Purnomo, *Birokrasi itu Melayani, Bukan Dilayani, Sebuah Perubahan Paradigma Pelayanan Rakyat, Dalam Administrative Reform*, (Prenadamedia Group, Jakarta, 2015), h.116

<sup>9</sup> Kurniawan, B, *Problematika Pengisian Jabatan Pimpinan Komisi Pemberantasan Korupsi*. *Jurnal Kebijakan Hukum*, Vol.12. No. 2, 2018. h. 139

<sup>10</sup> Arifin, R. *Upaya Pengembalian Aset Korupsi yang Berada di Luar Negeri Dalam Penegakan Hukum Pemberantasan Korupsi di Indonesia*. *Indonesian Journal of Criminal Law Studies*, Vol.1. No.1, 2018, h. 101.

<sup>11</sup> Baldwin, John & Bottomley, A. Keith (Ed.). *Criminal Justice; Selected Readings*. (London; Martin Robertson. 1978), h. 48

<sup>12</sup> Atmasasmita, Romli. *Sistem Peradilan Pidana, Perspektif Eksistensialisme dan Abolisionalisme*. (Bandung: Binacipta, 1996), h. 18

Based on this, one of the law enforcement officers in the criminal justice system is an investigator whose legal position is as part of the subject in the criminal justice system. Law enforcement officials in this case as investigators, namely the police and prosecutors in cases of criminal acts of corruption which are a series of investigative actions above, are in the context of searching for and finding evidence to shed light on the criminal acts of corruption that have occurred, and finding sufficient evidence is aimed at found the suspect. In order to find the suspect, according to the opinion of the Constitutional Court in the judge's consideration in Decision Number 21/PUU-XII/2014, the investigator, in a series of investigative actions, carries out the process of collecting evidence to determine a person as a suspect because the action of collecting evidence is to find the suspect.

The position of the police as law enforcement officers in determining suspects in the criminal justice system who have special authority is given by law to special officials, namely investigators as legal subjects who are given this authority and cannot be possessed by other officials, so that special authority has inherent rights and obligations to them. The investigator's authority is to determine someone as a suspect in a criminal act of corruption through an inquiry and investigation process based on the provisions in Article 1 number 2 and Article 1 number 5 of the Criminal Procedure Code, in order to collect a minimum of two valid pieces of evidence as a basis for determining someone as a suspect. And more than that, on the other hand, judges as law enforcement officers are given the authority to decide cases of criminal acts of corruption against suspects through court decisions.

Based on the description above, the issue of determining the suspect itself is problematic, as is the case or cases that will be examined later, namely in Decision Number 01/Pid. Prap/ 2016/PN Bms. Where in this case the Petitioner, in this case the Civil Servant (Head of the Banyumas Regency Agriculture, Plantation and Forestry Service), requested that his status as a suspect be revoked, regarding the Banyumas Pre-trial Judge's decision, he decided to grant the Petitioner's Pre-trial petition thereby declaring the suspect's determination by the investigator to be invalid. investigators regarding allegations of corruption committed by the perpetrator can be refuted with a Pre-trial Decision, although factually it does not eliminate an allegation if the perpetrator indeed committed a Corruption Crime. This is different from the decision of the Yogyakarta District Court Number: 17/Pid.Sus-TPK/2016/PN. Yup. In his defense, the Defendant stated that the Prosecutor was not an APIP and no article was found stating that the Prosecutor was part of the APIP, so the Prosecutor could not continue the case. However, the panel of judges has a different opinion, the public prosecutor can continue examining the case even if he does not coordinate with APIP, and can even calculate state or regional financial losses.

Based on this description, there are several things that need special attention, namely regarding legal actions that must be initiated and carried out by APIP as an internal supervisory institution first, and what limitations are required to be carried out by investigators first in efforts to overcome criminal acts of corruption. Based on the background description above, a problem formulation can be prepared as follows: 1). Do prosecutors and police investigators have to coordinate first with the government's

internal supervision apparatus (APIP) in determining suspects in criminal acts of corruption in the Regional Revenue and Expenditure Budget (APBD)? government internal affairs (APIP) in investigating criminal acts of corruption in regional revenue and expenditure budgets (APBD) from the perspective of the criminal justice system? and 3). What should be the arrangements regarding coordination between government internal supervision apparatus (APIP) and prosecutors and police investigators in law enforcement for criminal acts of corruption in the regional income and expenditure budget (APBD)?

### Research Methods

Research methods are steps to obtain scientific truth regarding research carried out by researchers in order to provide real information and results. One of them is using legal research to examine and describe it so that it can find a problem based on the legal principles faced by the author.<sup>13</sup> The type of legal research in this research is normative juridical, the approach in this research is *statute*, conceptual and case approach. So the legal problem of researchers who examine whether legal actions taken by APIP regarding alleged criminal acts of corruption is justified considering the existence of the prosecutor's office as a law enforcement officer is given the authority to carry out investigations and investigations regarding criminal acts of corruption.

### Discussion

#### 1. Prosecutors and Police Investigators Need to Coordinate with the Government's Internal Supervision Apparatus in Determining Suspects In Criminal Acts of Corruption in the Regional Revenue and Expenditure Budget

Corruption is a serious problem in many countries in Asia. The serious development of corruption has threatened the stability and security of national and international society, weakened institutions and values of democracy and justice, and endangered sustainable development and the rule of law.<sup>14</sup> Based on research conducted by the Political and Economic Risk Consultancy (PERC), Indonesia has been ranked first in Asia since 2005. A similar predicate was also given by Transparency International, which always places Indonesia as the most corrupt country in the world.<sup>15</sup>

In Indonesia, criminal acts of corruption are experiencing developments both in terms of forms, types and modes of committing criminal acts of corruption. The development of corruption also occurs in terms of the amount of state losses incurred as a result of criminal acts of corruption in 2010, namely around 3.6 trillion.<sup>16</sup> According to De Pinto, an investigation is a preliminary examination by officials appointed by law as soon as they hear news that is merely

reasonable that a violation has occurred.<sup>17</sup> Meanwhile, what is meant by investigation according to the Criminal Procedure Code is a series of investigative actions in terms and according to the methods regulated in this Law to search for and collect evidence that will shed light on the criminal act that occurred and in order to find the suspect.<sup>18</sup>

The Ministry of Home Affairs, the National Police (through the National Police Criminal Investigation Agency) and the Attorney General's Office signed a Cooperation Agreement on APIP with APH regarding Handling Public Reports or Complaints in the Implementation of Regional Government. This agreement is intended as operational guidelines for the parties in coordinating the handling of public reports indicating criminal acts of corruption as well as strengthening the synergy of cooperation between APIP and APH.<sup>19</sup> The scope of this collaboration includes; exchanging information, report handling mechanisms and increasing human resource capacity. The important point is that APIP and APH follow up on public reports according to their authority. If indications of a criminal act of corruption are found, APIP will hand it over to APH for an investigation. Based on the provisions of Government Regulation Number 60 of 2008 concerning the Government Internal Control System, APIP has the authority and position as implementer of government internal supervision which covers the entire process of audit, review, evaluation, monitoring and other supervisory activities.<sup>20</sup>

One way of channeling and distributing the state budget is through the procurement of government goods/services. Procurement of government goods/services is a fundamental component of good governance. Government procurement of goods/services has the aim of, among other things, obtaining goods/services at prices that can be accounted for with appropriate quantity and quality and timely implementation. To regulate the implementation of procurement of goods/services financed from the APBN/APBD it is necessary to regulate from a formal and material perspective.<sup>21</sup> Bearing in mind that financing for the procurement of government goods/services is government spending that uses state finances which, among other things, come from the taxes of every Indonesian citizen. This arrangement is intended so that the process of

<sup>13</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Cetakan ke12, (Jakarta, Kencana,2020), h. 60

<sup>14</sup> Romli Atmasasmita, *Strategi dan Kebijakan Pemberantasan Korupsi Pasca-Konvensi PBB menentang Korupsi Tahun 2003*.

<sup>15</sup> Saldi Isra dan Eddy O.S. Hiarije, *Perspektif Hukum Pemberantasan Korupsi di Indonesia dalam Korupsi Mengorupsi Indonesia*, (Gramedia,Jakarta,2010), h. 554

<sup>16</sup> Marfuatul Latifah, *Legalitas Kewenangan Jaksa Dalam Penyidikan Tindak Pidana Korupsi*, *Jurnal Negara Hukum*: Vol. 3, No. 1,(2012),h.65

<sup>17</sup> Andi Hamzah, *Pengusutan Perkara Kriminal melalui Sarana Teknik dan Sarana Hukum*, (Ghalia Indonesia, Jakarta, 1984), h. 5.

<sup>18</sup> *Ketentuan Menimbang huruf b UU No.30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi*

<sup>19</sup> Pasal 2 Perjanjian Kerja Sama Kementrian Dalam Negeri, Kejaksaan Republik Indonesia, Kepolisian Negara Republik Indonesia tentang tentang Koordinasi Aparat Pengawas Internal Pemerintah (APIP) dengan Aparat Penegak Hukum (APH) Terkait Penanganan Laporan atau Pengaduan Masyarakat dalam Penyelenggaraan Pemerintahan Daerah.

<sup>20</sup> Pasaribu, Pramella Yunidar dan Briando, Bobby, "Internalisasi Nilai-Nilai Pancasila Dalam Penyusunan Kode Etik Aparatur Pengawas Internal Pemerintah (APIP)," *Jurnal Ilmiah Kebijakan Hukum*,vol.13, no. 2 (2019),h.247

<sup>21</sup> Muhammad Iqbal, "Pengaruh Pelaksanaan E Katalog dalam Pengadaan Barang/Jasa Pemerintah terhadap UMKM," *Jurnal USM Law Review*,vol.3, no 1 (2020),h.79

procuring goods and services has accountability and without reducing effectiveness in its implementation.<sup>22</sup>

The main foundation of Presidential Decree No. 16 of 2018 plays a strategic role in improving public services and developing the national and regional economy. Another consideration is that in order to realize government procurement of goods/services as mentioned previously, arrangements are needed that provide the maximum benefit value and contribute to increasing the use of domestic products, increasing the role of micro, small and medium enterprises as well as sustainable development. The principle of value for money aims to ensure that the use of any amount of money ensures the maximum benefit. It is impossible for the national economy to grow if it is not supported by the productivity of the business sector, one of which is products domestic. In order to open supply space for domestic products (goods/services), the domestic business sector is increased by opening opportunities for supply to the government, namely by having demand from the government in terms of procuring goods/services.<sup>23</sup>

The principle of value for money is the first goal of policy in Presidential Decree No. 16 of 2018. The second goal is related to the use of domestic products. The third objective relates to the economic pillar of MSMEs. The fourth objective relates to the role of national business actors. The fifth objective is the utilization of products, both goods and services study. The sixth goal is to encourage creative industries to take part in the national economy. Finally, the seventh goal is completion in the supply chain for procurement of goods and services, namely sustainable procurement. Through this goal, it is hoped that there will be continuity of supply lines so that the economy continues to move and develop.

This agreement was formed to prevent overlapping investigations between the prosecutor's office and the police. Even though a memorandum of understanding has been formed between the Police and the Prosecutor's Office, to date there is still no clear separation of which types of corruption crimes fall under the authority of each institution. So in practice it seems that there is still sectoral ego which in the process hinders action against criminal acts of corruption.

The Criminal Procedure Code (KUHAP) which was promulgated on December 31 1981, is a replacement for the HIR which states that the duties and obligations of prosecutors are determined differently from those currently in force. When the Criminal Procedure Code was implemented, there was specialization, differentiation and compartmentation as well as types of implementation and division of tasks between investigators, public prosecutors and judges in the implementation of law enforcement, which became the criminal justice system in force in Indonesia. After the enactment of the Criminal Procedure Code, there was a division into the stages of the Prosecutor's duties, namely the pre-prosecution stage and the prosecution stage.

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<sup>22</sup> Arifin, Zaenal, "Tindak Pidana Korupsi Pengadaan barang dan Jasa Pemerintah" *Jurnal Responsif*, Vol 5, no. 5 (2017),h. 55.

<sup>23</sup> Muhammad Nur Aflah, Muhammmad Junaidi, Zaenal Arifin, Kadi Sukarna, Kedudukan Hukum Aparatur Pengawasan InternPemerintah Dalam Pengawasan Pengadaan Barang/ Jasa Pemerintah, *Jurnal USM Law Review* Vol 4 No 2 (2021),h.631-650

However, the KUHAP itself contains these two stages in the Prosecution Chapter, namely in Chapter XV. Since the enactment of the National Criminal Procedure Law (KUHAP), basically the task of the prosecutor is only as a public prosecutor and executing court decisions only.

KUHAP Article 284 Paragraph (2) is the reference for the authority of the Prosecutor's Office to carry out investigations into criminal acts of corruption. In this article there are actually restrictions with the existence of "temporary" redactions. However, in reality, after many changes regarding the Corruption crime law starting from Law no. 3 of 1971, Law no. 31 of 1999, up to Law no. 20 of 2001 does not provide strict regulations regarding whether the prosecutor's office still has the authority to carry out investigations into criminal acts of corruption. Regarding the diction "temporary" there are several opinions in interpreting this authority. According to O.C. Kaligis, initially this authority was only maintained for 2 (two) years or until there was a change in special laws such as the Law on Corruption Crimes and the Law on Economic Crimes. This means that the Prosecutor's authority to carry out investigations into Corruption Crimes and the Economic Crimes Law has expired. This authority is granted only until the Law relating to Corruption Crimes and the Law on Economic Crimes is updated and the position of the prosecutor is restored as supervisor of investigations carried out by the police in accordance with the system regulated in the Criminal Procedure Code.<sup>24</sup>

The National Police and Prosecutor's Office as APH have the duties and authority to investigate/investigate in every criminal case. In accordance with the provisions of the Criminal Procedure Code (KUHAP), including criminal acts of corruption, they only have the authority to investigate cases of corruption that are detrimental state finances below Rp. 1,000,000,000,- (One Billion Rupiah). The rest is handled by another institution, namely the Corruption Eradication Commission (KPK) as regulated in Article 11 paragraph 2 of Law Number 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission (hereinafter referred to as Law No. 19 2019).

Coordination is a process of integrating goals and activities in separate units (departments or functional areas) in an organization to achieve goals efficiently and effectively. Coordination between the Police, APIP, BPKP and the Prosecutor's Office is carried out using a managerial principle called Early Stage. Based on this early stage principle, the coordination process must be carried out at the initial stage of the managerial process or in law enforcement terms, namely at the investigation stage. Coordination must start from the planning process so that it can produce good planning and implementation. If coordination is always carried out at the beginning then all management functions, namely planning, organizing, actuating and controlling can be achieved. Well done. Apart from that, with a good coordination process, organizational goals can be achieved more easily and quickly. In horizontal external coordination, namely coordination with other services or agencies that are deemed to exist its connection or connection with law enforcement issues carried out within its work area.

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<sup>24</sup> O.C. Kaligis, *Pengawasan terhadap Jaksa Selaku Penyidik Tindak Pidana Korupsi*, Lampiran L-05, (Alumni, Bandung: 2006), h. 225.

## 2. Coordination constraints between prosecutors, the police and government internal supervision apparatus in investigating criminal acts of corruption in regional revenue and expenditure budgets from the perspective of the criminal justice system

There are various causes of not achieving prosperity in this country, one of which is criminal acts of corruption.<sup>25</sup> As one of the criminal acts that is always in the spotlight in Indonesia, corruption is nothing new in this country. Corruption has damaged not only the State's finances and the State's economic potential, but has also destroyed the socio-cultural, moral, political and legal pillars of national security.<sup>26</sup>

Coordination between the Police and APIP is when public complaints arise about alleged corruption committed by ASN. The Police Criminal Investigation Unit will coordinate first with APIP, which in this case is the inspectorate, and then APIP will carry out an investigation into the ASN. If after investigation it turns out that the allegation is an administrative violation, it will be followed up internally at the institution. However, if the allegation is a criminal act, APIP will hand it over to the Police. Thus, APIP's role as a deterrent should be able to work well.

When suspected administrative violations have been detected, APIP can immediately alert the ASN concerned. This mechanism is expected to reduce the investigation budget that must be spent by APH, as well as speed up the investigation process. On the side another thing, strengthening APIP through an MoU or Cooperation Agreement between the Ministry of Home Affairs (APIP), the Prosecutor's Office and the Police can also provide security guarantees to ASN and regional heads, so that they do not fear being punished when making new policies or innovations.

One of the articles at issue in the MoU which is alleged to be a wide loophole for regional corruptors to escape is article 7 point b (MoU) which reads "There is a state/regional loss and it has been processed through a claim for compensation or a treasury claim no later than 60 days from the APIP or BPK inspection report has been received by officials or has been followed up and declared complete by APIP or BPK." This article regulates that if regional officials or officials as ASN have indeed caused financial losses to the state and under the pretext of an administrative error they then pay compensation for the amount of money claimed for the loss, then this will be declared complete or in other words free from criminal charges. According to legal experts, this actually contradicts Article 4 of the Corruption Law, which states "Recovery of losses to state finances or the state economy does not eliminate the punishment of perpetrators of criminal acts as intended in Article 2 and Article 3."<sup>27</sup>

Apart from that, the large number of parties involved in handling a complaint about a criminal act of corruption is

also worth considering. With the involvement of APIP, of course, APH cannot immediately act in investigating the complaint, which is feared will prolong the investigation process and overlap with the rules in handling the case, which could be the case. This is used as a "shield" for the perpetrators to argue that the corruption committed is merely an administrative violation.

Apart from that, APIP's role is not yet optimal, due to the absence of higher regulations (PP or Law), APIP's role is only "understood" through various Memorandums of Understanding. This will of course open up the potential for abuse of authority by APIP to "free" regional officials or ASN who really committing criminal acts of corruption. Currently, APIP's role in the corruption enforcement mechanism for ASN is as the first gateway to screen complaints of alleged corruption by regional officials from the community which will be in conflict with their position as subordinates of the Regional Head. As conveyed by the Assistant Investigator of the Criminal Investigation Unit of the Police/Tabses, who essentially stated that the potential for "flirting" between APIP HR and ASN or regional officials to stop investigations into complaints of alleged corruption would be very wide open. The most dominant factor becomes the cause is APIP's position which is below the Regional Head.

Another obstacle is that after the Constitutional Court decision Number 25/PUU-XIV/2016, The Supreme Court issued Supreme Court Circular Letter Number. 4 of 2016 which explains related state financial losses. One of the points is that it is stated that the agency which has the authority to state whether there is a loss in the State's finances is the Financial Audit Agency (BPK) which has constitutional authority.<sup>23</sup> This is because in judicial practice, it is not uncommon for BPK calculations to be different from BPKP calculations. So far, BPK audit results and BPKP results have been different. In fact, sometimes the defendant with testimony (expert testimony) makes it easier to propose an independent auditor so that SEMA was issued to achieve equality and speed up the processing of corruption cases. So it could be that with the existence of SEMA, coordination between the Police and BPKP to calculate state financial losses could be in vain due to concerns about rejection of the BPKP audit results.

The form of coordination between Government Internal Supervisory Apparatus (APIP) and Investigators in handling criminal acts of corruption in Pesisir Selatan can be categorized as horizontal coordination, namely coordination of unifying actions or activities, direction carried out on activities at the level similar level organization. Coordination of Government Internal Supervisory Apparatus (APIP) and Investigators in handling criminal acts of corruption in Pesisir Selatan is realized in communication, discussion, exposure (Degree Case) involving APIP

## 3. Coordination arrangements between prosecutors and police investigators with the government's internal supervision apparatus in enforcing the law on criminal acts of corruption in regional revenue and expenditure budgets

Criminal acts of corruption, collusion and nepotism are not only carried out by state administrators, between state administrators, but also by state administrators and other parties such as family, cronies and businessmen, thereby

<sup>25</sup> Rifki Syahriah, *Efektivitas Penanganan Kasus Korupsi Oleh Kepolisian (Studi Pada Unit Tipikor Polres Polman)*, Universitas Negeri Makassar, 2014, h. 2

<sup>26</sup> Ermansjah Djaja, *Memberantas Korupsi Bersama KPK (Komisi Pemberantasan Korupsi)*, (Sinar Grafika, Jakarta, 2010), h. 13

<sup>27</sup> Tisa Lestari, *MoU Aduan Korupsi Di Daerah: Penguatan Apip Vs Potensi Pembebasan Koruptor*, Jurnal Pusat Kajian Sistem dan Hukum Administrasi Negara, 2018, h. 3

destroying the very foundations of life society, nation and state, and endanger the existence of the state.<sup>28</sup> The effective role of the Government Internal Supervisory Apparatus (APIP) is expected to ensure that the administration of regional government affairs is carried out in an orderly, efficient and effective manner in accordance with plans and provisions of statutory regulations and can also encourage the realization of good, clean and dignified government, free from deviation and abuse of power as well as practices of corruption, collusion and nepotism so that the concepts of good governance and clean government are synergistic with the realization of the ideals of regional autonomy, namely to accelerate the realization of community welfare.

In practice, the process of investigating and investigating a corruption case requires the involvement of other stakeholders, especially in order to fulfill one of the elements of a criminal act of corruption, namely determining whether or not there is or what the value of state financial losses resulting from criminal acts of corruption committed by the suspect. Although whether or not there is a real loss to the state is still debated considering the offense of corruption when viewed from the criminal formulation as specified in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to the Law Number 31 of 1999 concerning Eradication of Corruption Crimes (UU Tipikor). This is a formal offense, but the elements of state loss must be determined in real terms first, whether determined by authorized institutions such as the BPK and BPKP or the calculations of other auditors such as APIP.<sup>29</sup>

Several principles applied in implementing inter-agency coordination as stated by Suganda include<sup>30</sup> goal agreement the existence of agreement and unity of understanding regarding the targets that must be achieved as a direction for joint activities is one of the principles of coordination. This cooperation agreement between the relevant agencies (Satreskrim Polres/tabes with APIP, Prosecutor's Office and BPKP) is manifested in various memorandums of understanding. This memorandum of understanding has been agreed upon by the heads of the respective agencies (Kapolri, Attorney General's Office, Inspectorate General of the Ministry of Home Affairs) and applies to all lower agencies including the Resort Police. The form of the memorandum of understanding, among others, is manifested in:

- a) Memorandum of Understanding between the Prosecutor's Office of the Republic of Indonesia, the National Police of the Republic of Indonesia, and the Financial and Development Supervisory Agency regarding Cooperation in Handling Cases of Deviations

<sup>28</sup> Nyoman Serikat Putra Jaya, *Tindak Pidana Korupsi, Kolusi Dan Nepotisme Di Indonesia*, (Semarang, Badan Penerbit UNDIP, 2005), h. 2

<sup>29</sup> Awi Ramadani, Otong Rosadi, *Koordinasi Antara Kepolisian Negara Republik Indonesia Dengan Aparat Pengawas Internal Pemerintah Dalam Penyelidikan Tindak Pidana Korupsi Dana Desa*, *Jurnal Swara Justisia*, Vol 6, No. 2, (2022).h.76

<sup>30</sup> Dann Sugandha, *Koordinasi Alat Pemersatu Gerak Administrasi*, Cetakan kedua, (Intermedia, Jakarta, 1991), h. 35

in State Financial Management which Indicate Corruption Crimes, Including Non-budgetary Funds.

- b) Memorandum of Understanding between the Corruption Eradication Commission of the Republic of Indonesia Prosecutor's Office of the Republic of Indonesia National Police of the Republic of Indonesia concerning Cooperation in Eradicating Corruption Crimes.

Handling Corruption Crimes for Law Enforcement Officials is like a heart that must beat continuously during fraudulent practices in the implementation of development and management of state finances, both in the context of prevention, let alone in enforcement. Investigations and investigations are the gateway to entering and uncovering corruption cases. Inquiries and investigations are also the first door to enter the next door within the framework of the criminal justice system. This means that in order to be able to continue the case handling journey to the next stage, namely the prosecution stage, the authorized institution is in the investigation and investigation process must be able to fulfill all the requirements for a corruption case to proceed. The Government Internal Supervisory Apparatus is a Government Agency which has the main task and function of carrying out supervision, and consists of the Financial and Development Supervisory Agency (BPKP) which is responsible to the President, the Inspectorate General (IG)/Main Inspectorate (Itama)/Inspectorate responsible to the Minister/Head of Non-Departmental Government Institutions (LPND)/Minister of State; Provincial Government Inspectorate which is responsible to the Governor, and; Inspectorate The Regency/City Government is responsible to the Regent/Mayor.

Seeing the contradiction between the potential for strengthening APIP and the potential for "liberating" corruptors in this MoU on corruption complaints, here are several policy recommendations related to this issue so that in the future APH, which coordinates with APIP, does not receive a bad stigma from the public regarding the alleged release of corruptors:

1. Regulations to guarantee APIP's independence and accountability need to be ratified immediately. Regulations related to strengthening the role of APIP, including changes to the APIP structure so that it is above the Regional Head. In the future, it is hoped that regulations can be made in the form of Government Regulations (PP) or Laws (UU). So far, regulations related to increasing the capacity and authority of APIP are only regulated in ministerial regulations (Permen), including Minister of Home Affairs Regulation (Permendagri) No. 71 of 2015 concerning Supervision Policy within the Ministry of Home Affairs and Regional Government Implementation in 2016, and Minister of Home Affairs Regulation no. 110 of 2017 concerning Policies for Supervision of Regional Government Implementation in 2018.
2. There needs to be involvement of the Corruption Eradication Committee (KPK) in drafting regulations and agreements related to preventing corruption. It would be best for both APIP and APH to continue to refer to the Corruption Law on eradicating acts of corruption when making agreements, as well as measures to impose penalties related to criminal acts of corruption in order to create a strong legal entity.

Collaboration between various Ministries/Institutions in an effort to encourage the creation of legal order is certainly an action that should be taken, but the things agreed upon in this collaboration must not conflict with the highest laws that are in force. Therefore, it is necessary to review the MoU on corruption complaints by considering the KPK's participation in making agreements related to criminal acts of corruption.

If linked to legal system theory, it can be analyzed that the obstacles in coordinating APIP with the Police are in terms of legal substance, APIP can be analogous to the "police" of government procurement of goods/services, including in matters This is the use of village funds. Even though it does not have as much authority as Law Enforcement Officials in the judicial domain, at least APIP's role is similar if not the same as law enforcement officials. APIP is in the government or executive domain, while law enforcement officers are in the judicial or law enforcement domain.

Presidential Decree 16 of 2018 contains regulations regarding supervision of procurement of goods/services in Article 76, namely obligations by ministers/institutional heads/regional heads through APIP which are carried out through audit, review, monitoring, evaluation and/or implementation of a whistle blowing system, from planning, preparation, selection of providers, execution of contracts, and handover of work.

As an integrated system from the center to the regions, it is felt that there is a need for the same "director" to operationalize the supervisory function over the procurement of goods/services. Law enforcement officers are not given the authority to follow up on public complaints regarding the procurement of goods/services but must forward the complaints to APIP for follow-up. Following up on reports or complaints from the public is the authority and obligation of law enforcement officials in serving the community. For this reason, in the future APIP needs to revitalize its mindset with a proactivity paradigm, as a catalyst for governance which not only finds "evidence of irregularities/fraud" but also requires partners who are able to formulate preemptive and preventive actions before there are indications of criminal acts of corruption.

### Conclusion

The form of coordination between the Police, APIP, BPKP and the Prosecutor's Office is horizontal external coordination. The managerial principle in coordination uses the Early-Stage pattern or carrying out the coordination process which is carried out at the initial stage of the managerial process or at the investigation stage. Principle implemented in the implementation of coordination between agencies is through target agreements, cooperation agreements, obedience and loyalty, mutual exchange of information, the existence of coordinators, and an attitude of mutual respect towards respective functional authority. In terms of effectiveness, this coordination provides clarity in the authority of each agency in handling cases, accuracy in acting, and speed in handling cases. The things that become obstacles in coordination between the Police and APIP are there is the potential for the release of corruptors under the pretext of "administrative error".

Coordination between the Police and APIP in dealing with criminal acts of corruption is not only based on a memorandum of understanding but also on statutory

provisions which have stronger legal force. The legal structure perspective explains that APIP's position is not stable enough in two ways. Second, there is a culture of intervention by higher officials in APIP work functions. APIP's structural position, which is under the head of a ministry/institution/region, has an impact on work culture and management systems impartiality (impartiality) of APIP's function in government bodies, both central and regional. In practice, APIP's independence is often questioned.

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