

The Regulatory Model for Eradication Corruption in Infrastructure Funding

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Date received: February 2019, Revised: February 2019, Accepted: March 2019

ABSTRACT

This study aims to identify the causes and formulate a regulatory model for the eradication of Corruption in regional infrastructure development funds in Indonesia. This research was conducted by examining cases and laws related to Corruption. Some of the causes of corruption in regional development funds are: 1) Historical Factors; 2) Economic Factors; 3) Cultural Factors and 4) Institutional Factors. Although all four factors have been identified, there are still many countries that have not succeeded in eradicating corruption. An extraordinary crime requires extraordinary effort. The Government of Indonesia needs to formulate legislative policies with those manifested in specific deviant provisions. In addition, there are four approaches that are needed, namely legal approach, moralistic-religious approach, socio-cultural approach, and educational approaches. Massive actions must also be taken in various regions to start an anti-corruption measure.

Keywords: *Infrastructure funding, Regulatory Model, Corruption Eradication*

DOI: <https://doi.org/10.31603/variajusticia.v15i1.2421>

1. INTRODUCTION

The progress of a nation is determined by the ability to carry out a development (Wimmer & Feinstein, 2010). Development is a planned change process that covers all aspects of the life of a community in the country. In addition, Human resources and financing also determine success in development (Buley, Demchenko, Makushkin, Vinichenko, & Melnichuk, 2016). If a human resource is involved in committing a crime that consumes development funding, then the development will not be adequately achieved. Thus, the low morale and honesty level in human personality causes Corruption (Melgar, Rossi, & Smith, 2010). Corruption in Indonesia today has become a common disease that threatens all aspects of social, national, and state life. Corruption has resulted in huge losses of state financial material (Siddiqui, 2019). Cases of Corruption in development budgets in Indonesia that draw attention are Corruption in road construction in Papua. The Corruption Eradication Commission (KPK) named David Manibui as the largest shareholder in PT Bintuni Energi Persada as a suspect (Taher, 2019). David is suspected of being a suspect in connection with a case of alleged Corruption of a roadwork improvement project from Kemiri-Depapre in Jayapura Regency. David allegedly committed acts against the law by abusing authority to enrich himself and others. The KPK suspects that collective actions have been carried out, resulting in abuse of authority, which eliminates half of the project budget.

Previously, the KPK had also named the Head of the Papua Province Public Works Office, Mikael Kambuaya as a suspect. The road improvement project from Kemiri-Depapre in Papua Province reached IDR. 89.5 billion. The project budget came from the 2015 Revised Regional Revenue and Expenditure Budget (APBD-P). During the investigation process, the KPK found indications of State losses of around IDR. 42 billion or almost equivalent to half the project value. The company that holds the tender

rather than the project is PT Bituni Energi Persada. The company's office is in Central Jakarta. Legally, David is alleged to have violated Article 2 paragraph 1 or Article 3 of Law No. 31 of 1999 as amended in Law Number 20 of 2001 concerning Eradication of Corruption in conjunction with Article 55 paragraph 1 to 1 of the Indonesian Criminal Code.

Corruption is directly related to the government bureaucracy model (Bach & Wegrich, 2018). Richard Robison said that Indonesia adheres to patrimonial bureaucracy so that corrupt practices carried out by bureaucratic officials in Indonesia are challenging to control (Hadiz & Robison, 2013). In the ethical aspect of organizing government activities, Adam Lindgreen argue that Corruption is very unethical and also violates the rights of others (Lindgreen, 2004). When viewed from the perspective of the theory of human development, the success of national development is assessed through at least by four main elements namely increasing productivity, equal opportunity, sustainable development, and human empowerment. For this reason, this research formulates a model for eradicating Corruption in infrastructure development funds in Indonesia.

2. RESEARCH METHODS

The approach used in this research is a qualitative approach. This type of research is legal research using legal materials as the main legal source. The legal materials used in this study include primary legal materials and secondary legal materials. Primary legal materials consist of 1) Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption; 2) Law of the Republic of Indonesia Number 20 of 2001 concerning Amendment to Law Number 31 of 1999; and 3) Law of the Republic of Indonesia Number 30 of 2002 concerning Corruption Eradication Commission. Secondary legal materials consist of legal journals and legal doctrines. Both legal materials are analyzed and concluded with qualitative descriptive.

3. RESULTS AND DISCUSSION

3.1. Triggering Factors in Corruption of Infrastructure Development Funds

Corruption occurs in various forms and varies from mild to severe. Many factors can trigger acts of Corruption, both from within and outside the perpetrator. According to some experts, a factor causing a person to commit Corruption is the temptation of assets that he is unable to withstand (Yogi Prabowo, 2014). Therefore, if we use the perspective of the causes of Corruption like this, one of the causes of Corruption itself is one's perspective on wealth. The wrong way of looking at wealth will lead to wrong actions in accessing wealth. External factors are a permissive environment for acts of Corruption, lack of supervision, and lack of compliance with legal ethics and governance by the supervisors themselves (Denisova-schmidt, 2018). In general, the management always covers corruption criminal acts carried out by a handful of elements in an organization (Man-wai, 2010). These factors make the corruptors feel safe and protected. As a result of this closed attitude, corruption violations continue to run in various forms.

Currently, Indonesia ranks third in ASEAN in the Corruption Perception Index (CPI). The rating shows that Indonesia is in the right direction in fighting Corruption. Indonesia can show significant improvements in combating Corruption. However, Indonesia's current position is still inferior to Singapore, a neighboring country which is now ranked top. Indonesia's corruption perception index in 2018 has decreased slightly, as shown in Figure 1:

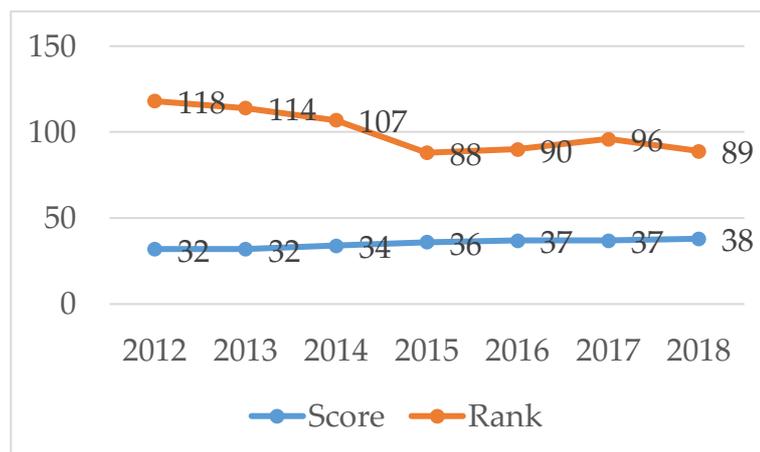


Figure 1. Indonesian Progress of CPI from 2012-2018

Source: (Transparency International, 2018)

Corruption crime is actually a legacy of the Old Order which continued in the New Order in Indonesia (Prabowo & Kathie Cooper, 2016). The most common cause is the tribute and ceremonial culture, which is a classic cause of the rise of Corruption in Indonesia. However, in the post-independence period especially in the New Order there were several aspects of contemporary causes of Corruption in Indonesia including;

1. Aspects of legislation

Positive law or legislation in Indonesia is still very far behind, and This lag is caused by the many colonial legacies of Dutch colonialism. Therefore, these laws do not have aspirational value in the community at this time. The Dutch occupation government made the legislation at that time, so it was not in line with the aspirations of the Indonesian people in general.

2. Aspects of Law Enforcement Officials

In the context of the integrated criminal justice system, law enforcement officials have three pillars consisting of investigators (police/prosecutors/KPK), public prosecutors, and examiners & law (judges). The three apparatuses are coercive tools based on legislation. Even though the Anti-Corruption Law has been settled, if the law enforcement tools implement it well, then the purpose of the legislation cannot be achieved. A law enforcer must have personality integrity, honest, and fair. However, it seems that law enforcement has not yet been fully owned. These constraints are caused by relatively low integrity, inadequate human resources, and welfare levels that do not meet minimum standards. These constraints are a common phenomenon that afflicts law enforcement. The involvement of law enforcers involved in Corruption has become symptomatic and leads to a massive condition.

3. Community Legal Awareness Aspects

Legal Awareness in the community is described as a very alarming phenomenon. Because of the legal Awareness of the community is considered low. This condition is considered as an obstacle to the realization of law enforcement and community justice, including the eradication of Corruption. A law that is promoted by law enforcers will be meaningless if it is not supported by community participation in legal Awareness. Therefore, standard legal arrangements in society must be improved.

In addition to the three aspects discussed above, the actual exemplary aspects must also be considered. In general, bureaucrats always live hedonist and consumptive. Therefore, the exemplary

aspect must start from the simple nature of the bureaucrats in their daily lives. Thus, in order to be an example for the community, thereby reducing Corruption in the country.

According to Beirne & Messerschmidt, 2005, Corruption is very closely related to authority. They divide Corruption into several types, namely Political Bribery, political kickbacks, election fraud, and corrupt campaign practices. This political bribery is related to power in the legislative field (legislators). This legislative body is controlled by the budget issued at the general election, or often associated with the activities of a particular company that acts as a budgetary. Political kickbacks are acts of Corruption that are related to the contractual system in a job. While election fraud is an act of Corruption in the form of fraud in the general election, corrupt campaign practice is a corruption that is related to the campaign using state facilities and also using state money.

One of the Government's efforts that have not been carried out is the application of the theory of reversal of the burden of proof as stipulated in Law Number 31 of 1999 concerning Eradication of Corruption, particularly article 37 (Anti-Corruption Law). According to the Anti-Corruption Law, what is meant by criminal acts of Corruption are all forms of actions that can harm state finances, hamper the economic growth of a country, and violate the social and economic rights of all people in a country. The third is, officials who are greedy with the abuse of power and authority through development project mark-ups. Fourth, the Law Enforcement system does not work well in a community. Fifth, the punishment for corruptors is still relatively mild so that it does not cause a deterrent effect for the perpetrators of Corruption. Sixth, oversight is still weak and ineffective, so it needs improvement in the supervision system. Seventh, The absence of role models in leaders in Indonesia. Finally, the culture of the community which is permissive towards Corruption.

According to Ochulor & Bassey, 2010, the most important cause of acts of Corruption among bureaucrats is one's faith, morals, ethics, and also honesty in human beings. This is reinforced by the opinion of Lee & Guven, 2013, that the main factor causing someone to commit acts of Corruption is the factor of encouragement from within each individual and stimulation factors from outside himself in the form of encouragement from the surrounding environment, opportunities, lack of control or supervision and conducive circumstances to commit a criminal act of Corruption.

Usually, Corruption is carried out by collaborating as an effort to manipulate or hide its corrupt behavior. According to Svensson, 2005, Corruption is an outcome as a reflection of the existence of laws in a country, economy, culture, and politics. So, it can be concluded that the cause of Corruption is the existence of several factors, ranging from historical factors, economic factors, cultural factors, and institutional factors as follows;

1. Historical Factors

Corruption is related to colonial rule in a country. The existence of colonialism in a country led to the formation of institutions in that country. According to Svensson (2005) institutions in a country are influenced by previous colonial history.

2. Economic factors

In general, Corruption is closely related to economic conditions, especially developing countries, countries with low incomes, and countries that have a closed economic system.

3. Institutional Factors

Countries with high press freedom tend to have relatively low corruption potential. Institutions are also likely to reduce Corruption and also reduce hidden actions or causes of inefficiency in an economy and trigger corruption in an institution.

Although these factors are known, the fact is that there are still many countries that have not succeeded in eradicating Corruption in their countries. Good moral cultivation is needed in the

community. According to Liu, Lu, & Ma, 2015, corruption causes misallocation of available resources. Gyimah-Brempong, 2002, adds that Corruption can cause income inequality in the community.

3.2. The Regulatory Model for Eradication Corruption in Infrastructure Funding

The ideal and constitutional foundation of legal development is the Pancasila and the 1945 Constitution. Both of these foundations form a strategic barrier in the management of legal development in a country. Legal development is defined as strategic steps that can be taken in order to form a national law based on Pancasila. According to the Decree of the People's Consultative Assembly (MPR) No.XX/MPRS/1966, Pancasila is the source of all legal sources (*staats fundamental form*). Law enforcement officials must work optimally in order to enforce the law indiscriminately or non-discriminatory and consequent. Legal development cannot be separated from the three legal substances, namely the law to be upheld, law enforcement officials who have the authority to enforce the law and the participation or role of the community to support the enforcement of a law regarding Corruption in a country.

In the perspective of a substantial law, there are already laws and regulations that regulate and seriously threaten the perpetrators of Corruption. For example, in the Law of the Republic of Indonesia Number 31 of 1999 as amended in the Law of the Republic of Indonesia Number 20 of 2001 with the version of the Law of the Republic of Indonesia Number 30 of 2002. Through the Law, the Government hopes for the settlement of various shocks and social reactions whose intensity is increasing. The law must also be able to become an instrument in criminal law. The regulation must include three substances consisting of criminal acts, criminal liability, and criminal matters in order to have power in combating acts of Corruption. Judging from the level of growth and development of criminal acts of Corruption in Indonesia and related to the inability of the law to fight it, the reform of the law on Corruption is an appropriate answer for the sustainability of a Corruption-free Indonesia.

The categorization of Corruption as an extraordinary crime is caused by several factors, among others. First, Corruption is entrenched in the lives of the Indonesian people. Second, Corruption raises social problems, such as poverty and social inequality in people's lives. Third, Corruption is not just a matter of law alone, but it also harms human rights. Fourth, Corruption is a result of discriminatory behavior in law enforcement and finally, Corruption is a collaboration between the public sector and the private sector. Since Corruption is an extraordinary crime, the eradication must also be done in an extraordinary way. One of the strategies is the legislative policy which is manifested in specific deviant provisions. The exceptional provisions that deviate from the rule of criminal law are extraordinary instruments needed to deal with Corruption as an extraordinary crime. In eradicating Corruption, anti-corruption bodies are needed as part of anti-corruption institutions in the form of independent government organizations, not part of government departments. However, these institutions remain in contact with state political bodies (Heilbrunn, 2004). Another strategy is that which can be taken by using four approaches namely the legal approach, the moralistic and faith approach, the socio-cultural approach and the educational approach (Santoso, Listiyono, & Meyrasyawati, 2015).

The legal approach has a strategic role in combating Corruption. The obstacle faced is the new legal approach and placing the interests of the nation and the socio-economic rights of the people above the individual interests of the perpetrators of Corruption. The moralistic and faith approach are limiting signs in straightening the course of law enforcement and strengthening the integrity of the administration of the state to always uphold justice based on the principle of God.

The socio-cultural approach is the development of culture in a society that condemns criminal acts of Corruption, by means of a public campaign throughout the country. This approach aims to create an anti-corruption culture and also participation in preventing Corruption among the community from childhood through to higher education.

The educative approach has a function to improve the reasoning or thought of the community, which impacts on a comprehensive understanding of the causes and background of Corruption so that steps can be taken in its prevention. These four approaches are the key to success in tackling and eradicating Corruption, which must be carried out synergistically in action called the National Action Plan (NAP) in eradicating corruption. The stages in uncovering a criminal act of Corruption are by way of investigation or seeking information or evidence regarding cases and investigations by handling corruption cases in accordance with the law or the Criminal Code.

Basically, the punishment for the perpetrators of criminal acts of Corruption is including dual punishment (subsidies). After the corruption perpetrators were tried, it was as if the corruptor had been impoverished by himself. The punishment can be proven by freezing the assets of the perpetrators of Corruption both by the court bailiffs and investigators during the investigation process.

4. CONCLUSION

Some of the causes of corruption in regional development funds are 1) Historical Factors; 2) Economic Factors; 3) Cultural Factors and 4) Institutional Factors. Although all four factors have been identified, there are still many countries that have not succeeded in eradicating corruption. An extraordinary crime requires extraordinary effort. The Government of Indonesia needs to formulate legislative policies with those manifested in specific deviant provisions. In addition, there are four approaches that are needed, namely legal, moralistic and religious, socio-cultural, and educational approaches. Combining the two strategies above can form a useful model of corruption eradication.

5. REFERENCES

- Bach, T., & Wegrich, K. (2018). *Politicians and Bureaucrats in Executive Government. The Oxford Handbook of Political Executives*.
- Beirne, P., & Messerschmidt, J. W. (2005). *Criminology*. Oxford University Press. Retrieved from <https://books.google.co.id/books?id=gjtOPgAACAAJ>
- Buley, N. V., Demchenko, T. S., Makushkin, S. A., Vinichenko, M. V., & Melnichuk, A. V. (2016). Human resource management in the context of the global economic crisis. *International Journal of Economics and Financial Issues*, 6(Special Issue), 160–165.
- Denisova-schmidt, E. (2018). *Corruption, the Lack of Academic Integrity and Other Ethical Issues in Higher Education: What Can Be Done Within the Bologna Process? European Higher Education Area: The Impact of Past and Future Policies*. Springer International Publishing. <https://doi.org/10.1007/978-3-319-77407-7>
- Gyimah-Brempong, K. (2002). Corruption, economic growth, and income inequality in Africa. *Economics of Governance*, 3(3), 183–209. <https://doi.org/10.1007/s101010200045>
- Hadiz, V. R., & Robison, R. (2013). The political economy of oligarchy and the reorganization of power in Indonesia. *Indonesia*, 96(Special Issue), 35–57. <https://doi.org/10.5728/indonesia.96.0033>
- Heilbrunn, J. R. (2004). *Anti-Corruption Commissions Panacea or Real Medicine to Fight Corruption?* Washington. Retrieved from <http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf>
- Lee, W. S., & Guven, C. (2013). Engaging in corruption: The influence of cultural values and contagion effects at the microlevel. *Journal of Economic Psychology*, 39(7685), 287–300. <https://doi.org/10.1016/j.joep.2013.09.006>
- Lindgreen, A. (2004). Corruption and unethical behavior: Report on a set of Danish guidelines. *Journal of Business Ethics*, 51(1), 31–39. <https://doi.org/10.1023/B:BUSI.0000032388.68389.60>
- Liu, Q., Lu, R., & Ma, X. (2015). Corruption, Financial Resources and Exports. *Review of International Economics*, 23(5), 1023–1043. <https://doi.org/10.1111/roie.12194>

- Man-wai, T. K. (2010). *Investigation of Corruption Cases* (96 No. 79). Retrieved from http://www.unafei.or.jp/english/pdf/RS_No79/No79_19VE_Man-wai2.pdf
- Melgar, N., Rossi, M., & Smith, T. W. (2010). The perception of corruption. *International Journal of Public Opinion Research*, 22(1), 120–131. <https://doi.org/10.1093/ijpor/edp058>
- Ochulor, C. L., & Bassey, E. P. (2010). Analysis of corruption from the ethical and moral perspectives. *European Journal of Scientific Research*, 44(3), 466–476.
- Prabowo, H. Y., & Kathie Cooper. (2016). Re-understanding corruption in the Indonesian public sector through three behavioral lenses. *Journal of Financial Crime*, 23(4), 1028–1062. <https://doi.org/http://dx.doi.org/10.1108/JFC-08-2015-0039>
- Santoso, Listiyono, & Meyrasyawati, D. (2015). Model Strategi Kebudayaan dalam Pemberantasan Korupsi di Indonesia. *Review Politik*, 5(2), 22–45.
- Siddiqui, K. (2019). Corruption and Economic Mismanagement in Developing Countries. *The World Financial Review*, (January-February), 50–58. Retrieved from <https://www.researchgate.net/publication/331199370%0ACorruption>
- Svensson, J. (2005). Eight Questions About Corruption. *Journal of Economic Perspectives*, 19(3), 19–42. <https://doi.org/10.33119/gn/101466>
- Taher, A. P. (2019, March 25). Usut Korupsi Jalan Kemiri-Depapre, KPK Panggil Sekda Papua. *Tirto.Id*. Retrieved from <https://tirto.id/usut-korupsi-jalan-kemiri-depapre-kpk-panggil-sekda-papua-dkcW>
- Transparency International. (2018). *Corruption Perception Index Score 2012-2018*. Retrieved from https://www.transparency.org/files/content/pages/2018_CPI_FullResults.zip
- Wimmer, A., & Feinstein, Y. (2010). The rise of the nation-state across the world, 1816 to 2001. *American Sociological Review*, 75(5), 764–790. <https://doi.org/10.1177/0003122410382639>
- Yogi Prabowo, H. (2014). To be corrupt or not to be corrupt: Understanding the behavioral side of corruption in Indonesia. *Journal of Money Laundering Control*, 17(3), 306–326. <https://doi.org/10.1108/JMLC-11-2013-0045>

Regulations

- Undang-Undang Republik Indonesia Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi* (Law of the Republic of Indonesia Number 31 of 1999 concerning Corruption Eradication)
- Undang-Undang Republik Indonesia Nomor 20 Tahun 2001 tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999* (Law of the Republic of Indonesia Number 20 of 2001 concerning Amendment to Law Number 31 of 1999)
- Undang-Undang Republik Indonesia Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Korupsi* (Law of the Republic of Indonesia Number 30 of 2002 concerning Corruption Eradication Commission)