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Asian Development Bank
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Anti-Corruption Initiative for Asia and the Pacific



Conflict of Interest in Indonesia

From A Legalistic Approach to Effective Institutional Changes

Presented at the Regional Seminar: "Conflict of Interest –
A Fundamental Anti-Corruption Concept

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Aligning the perception of conflict of interest

- **From legal perspective:** it ranges from a minor breach of law or code of ethic or conduct without clear enforcement measures to a serious act of corruption with severe penal sanction, depending on rules adopted in positive law
- **From governance perspective:** as a prevention method to establish good governance best practices
- **From social and cultural changes in a country in transition:** education, socialization and advocacy process and initiatives to create awareness of the role and function of public services

Minimizing the Gaps

- Parameters used in OECD Recommendation
- Parameters used in international covenant adopted by national law: Law Number 6 of 2006 on Ratification of the United Nations Convention Against Corruption 2003
- Scattered incomprehensive provisions of Indonesian laws and regulations, code of ethics and conducts, official oath, and other forms with different application, mechanism of implementation and enforcement

Mapping of Indonesian Laws and Regulations on Conflict of Interests

- ☐ Indonesian UUD 1945 Constitution
- ☐ Anti KKN Law
- ☐ Anti Corruption Law
- ☐ KPK Law
- ☐ Civil Services law
- ☐ Legislature Law
- ☐ Judiciary Law
- ☐ Supreme Court Law
- ☐ Constitutional Court Law
- ☐ Prosecution Law
- ☐ Police Law
- ☐ Central Bank Law
- ☐ State Audit Board Law
- ☐ Judicial Commission Law
- ☐ Capital Market Law
- ☐ Company Law
- ☐ Implementing regulations
- ☐ Code of ethics and conducts of state institutions, organizations and commissions

The Most Frequent Conflict of Interest Situations in Indonesia

- ❑ Public Officials designs, sets up and/or issues a public policy or make a decision favorable to a business he or she directly or indirectly owns or controls, or to a business he or she directly or indirectly is promised to own or control;
- ❑ Public Officials designs, sets up and/or issues a public policy or make a decision favorable to a business of his affiliations, either political, religious, family, ethnic, place of living, association, professional, or others, regardless whether or not there is a conflict of economic or financial interest in such act;
- ❑ Public Officials does not necessarily do some intended unethical or bad things, however he or she simply holds a position that could potentially trigger a conflict between his public and fiduciary duties with his or her personal interest, directly or indirectly, and the systems may or may not provide management policies or mechanism for managing such potential conflict, or how to avoid a conflict to happen;
- ❑ Public Officials receives money, goods, performances or services without obliging him or her to design, set up or issue a favorable policy or decision; this creates a psychological relationship that requires the Public Official to return favor in the future;
- ❑ Public Officials holds important position in a corporation which business depends on the policy of the Public Officials or the institution of such Public Officials;
- ❑ Public Officials does hold multi positions, which may create a conflict or potential conflict between one to another.




Application of COI: Institutional Defensive Approach Versus Best Practices

- ❑ A classic sample of institutional defensive approach is shown by the Code of Ethic applied by the Supreme Court which covers philosophical points of view on the present condition of judiciary
- ❑ A classic sample of best practices is shown by the Code of Ethic applied for the commissioners of KPK (Corruption Eradication Commission) which does not only rule the do's and don'ts of the commissioners in their position as public officials, but also as individuals in their daily life

The Delicate Present Issues of Conflict of Interest

- ❑ Awareness in the public services as well as in general public that COI is a serious problem and may lead to corruption practices is relatively low
- ❑ The practices in procurement of government contracts dictate that COI is not well understood
- ❑ Applying stringent laws and regulations on COI will affect thousands of government-related contracts awarded by breaching COI principles, and from short term business and political points of view it may be perceived as unproductive measures
- ❑ Prioritized efforts are still focused on the prevention and eradication of corruption as extraordinary crimes, and this believed to have caused the development of principles against COI situations is a less-prioritized
- ❑ Alignment on the angle of COI principles that need to be built by various government agencies, state institutions and organizations has not been effectively made
- ❑ There is no demonstration of leaders' commitment to establish best practices in preventing COI situations

Policy Recommendations

-  A complete study on the mapping of COI principles adopted by the positive laws and in code of ethic or conducts adopted by public institutions and organization shall be done in a comprehensive manner, pointing out specifically which part that could be adopted as a set of rules and regulations that could be enforced with clear disciplinary actions and penal sanctions, which part that could be adopted merely as ethical issues that could be enforced with administrative or other lighter sanctions.
-  When introducing new laws and regulations on COI, a realistic approach must be used when efforts are made to use parameters set out in the Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service or the UNCAC Law.
-  The leaders shall set up a set of rules for cabinet members, high-ranked officials, heads of military and police forces, head of regional governments, parliament members, heads of State commissions, institutions and organizations, judges, prosecutors and other public officials, while holding positions in the public offices, that: (a) they shall declare publicly through KPK their affiliation with businesses they control, directly or indirectly, (b) they could not carry out any business, directly or indirectly, within their authority, (c) any participation of public officials in a business, directly or indirectly, that may be carried out by them shall, if it relates to government projects, be scrutinized by a team of independent professionals and people with tested integrity.

Policy Recommendations

- The government shall initiate an action to offer any member of society, including non-profit organizations to watch implementation of public procurement, and offer protection as a whistle-blower under the KPK Law to those people;
- The government shall start socializing the COI principles to educate Public Officials in a massive way so Public Officials could distinguish which act or non-act is considered COI, corruption or simply an ethical issue.