INTERNATIONAL JOURNAL OF SOCIAL POLICY AND LAW (IJOSPL)
Vol. 02: No 01 FEB 2021 E-ISSN : 2774-2245

THE WEAKNESS OF THE CONTROL SYSTEM FOR FIGHTING CORRUPTION IN THE JUDICIAL PROCESS: THE CASE OF INDONESIA

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Abstract- Several supervisory bodies have been established under government policy in Indonesia to prevent and eradicate corruption within the judicial process. However, these appear to be ineffective, as evidenced by the fact that corruption by judges, prosecutors, and court officials remain high [11, 12, 19, 20]. The purpose of this research is explaining the weaknesses of the control model in fighting corruption within the judicial process and its factors. Normative research has been conducted on the legal policies affecting the control system of the judicial process in Indonesia to redress the issue. The results show that from the quantitative perspective, adequate supervisory bodies have been established to deal with corruption. For instance, there is an internal supervisory body for each institution in the judicial process, together with external supervisory bodies such as the Judicial Commission, Corruption Eradication Commission, and Examination Commission. Nevertheless, from the qualitative perspective, many weaknesses remain. Firstly, government policy focuses on the model for internal supervisory bodies rather than external. Secondly, although external supervisory bodies are established, they have no broader authority, except the Corruption Eradication Commission. Thirdly, external control through community participation has limited jurisdiction. Finally, the punishment enforcement system is ineffective

Keywords – corruption, eradicate, judicial process, supervisory

I. INTRODUCTION

In many countries, corruption has spread to all institutions, including the judiciary, and Indonesia is no exception [27]. In 2018 there were 2,970 reports of corruption submitted by the public to the Judicial Commission against Indonesian justice institutions [20]. The Corruption Eradication Commission (KPK) followed up 2,469 complaints from the public regarding alleged corruption [19].

The Corruption Perception Index (CPI) score for Indonesia shows a stagnant trend of below 50 from 32 in 2012, 37 in 2017,38 in 2018, and 40 in 2019 [25-27] measured on a scale of 0 (highly corrupt) to 100 (very clean). These figures demonstrate the continued failure by the supervisory bodies to effectively control corruption, including corruption in the judicial process. The crime most commonly committed in the legal process is the bribery of judges and extortion by court administration officers. KPK arrested at least 27 judges for accepting bribes during the period from 2012–2018 [14, 15, 18]. The level of corruption in Indonesia will undoubtedly be higher. Other modes of crime in the judiciary include influencing the arrangement of judges who will handle cases, the selection mechanism of witnesses, evidence, fabrication of trials, questioning the decisions of judges, and the arrangements of the hearing schedule [18].

Ferdik et al. [6] found that the public perceives law enforcement officials as legitimate

authority figures when they interact with the people in fair, unbiased, and trustworthy ways. On the other hand, corruption is seen as wicked and untrustworthy and reduces the level of public trust in the police, including the judiciary. One way to prevent and eradicate corruption in the judicial process is to create a control system as an essential function of management to monitor and improve activities [3]. The Indonesian Government has created a judicial control system by establishing legal policies and supervisory institutions to eradicate corruption, as described below. Nonetheless, the facts show that the instances of corruption by judges, prosecutors, and court officials remain high [11, 12, 19, 20].

The countries ranked highest in the Corruption Perceptions Index (CPI) for 2017 were Sweden and New Zealand [25]. While from 2012–2017, Indonesia was ranked 37 in the CPI, far lower that its ranking of 80 in 2017 [25]. The control system established by the government is considered ineffective in eradicating corruption. This ineffectiveness was also found by Transparency International[28] and United Nations Office on Drugs and Crime[29] in the Asia Pasific regions. According to Filho et. al [7] and Harahap[9], corruption behavior can be prevented and eliminated by internal control, external control, and social control. Indonesia tends to take a formal approach to implementing its judicial control system to eradicate corruption in the judicial process.

This study aims to explore the weakness of a structured strategy from the perspective of Filho et al.[7] and harahap[9] to prevent and eradicate corruption in Indonesia. The results can be utilized for legal reform to create a more effective control system.

By exploring the weaknesses of the supervisory system, the result may be used to eradicate corruption in the judicial process more effectively in significantly increasing the ranking of Indonesian CPI to achieve a better level of corruption eradication in the country. Even, since corruption impedes the achievement of its objective, namely upholding law and justice, as well as human rights [16].

II. LITERATURE REVIEW

Based on Article 1 of Law Number 8 of 1981, and Article 5 (1) of Law Number 18 of 2003, four institutions play a primary role in establishing the criminal justice system: court judges, public prosecutors, the police, and lawyer. According to Article 14 of Law Number 2 of 2002, the police have the power to investigate to obtain evidence of a crime and determine the identity of the suspect. Article 1 of Law Number 16 of 2004 gives the public prosecutor the ability to prosecute the defendant in court proceedings and execute the court judgment. The defense lawyer has the role of putting forward the defendant's case. The highest authority is the judge who has the power to pass judgment on the defendant and issue the necessary punishment. These roles are related and designed to establish the objective of the criminal justice system which is to protect people from anti-social behavior [5].

The corruptive behavior of judges, public prosecutors, the police, and lawyers in the criminal justice system impedes the achievement of effective legal reform. This supports the assumption of Hayes[10] that anyone can have a motive for stealing from an organization and will do under any scenario or circumstance. Filho[7] expresses that control systems for preventing and eradicating corrupt behavior in the judicial process, include internal control, external control, and social control. Internal control involves the elements of the system itself, designed in such a way to prevent things from going wrong. Ciuhureanu [3] reminds us that good organization in an internal supervision system contributes to its accountability and increases public trust. According to the study by Rachlin [17] on the science of self-control, the accountability of internal control depends on the personalities of the judge, prosecutor, police, and advocate and their groups, and whether they want to take responsibility, or not. The self-control of judges, prosecutors, police, and advocates influences their altruistic behavior and whether they are just and honest, or corrupt. Hayes[10] promotes effective internal control by explaining to the perpetrator the consequences of their wrongdoing, rather than issuing punishment. However, there search by Aritonang[2] concluded that punishment, including temporary dismissal of the person suspected of corruption is

an effective way to combat corruptive behavior.

III. METHOD

The aim of The aim of this research is explaining the weaknesses of the control model in fighting corruption within the judicial process and its factors. The research is designed by the doctrinal or normative legal research [1] by analyzing the legal policies and their implementation in the judicial process control system for Indonesia, and its ineffectiveness in significantly increasing the ranking of Indonesian CPI to achieve a better level of corruption eradication in the country. The judicial controlling system under analysis in this research includes judges, prosecutors, police, and advocates. Adopting the perspective of Filho at al.[7] and Harahap[9], the forms of judicial control used in this study consist of internal, external, and social.

Robbins[21] describes the effectiveness of an organization as the degree to which the achievement of its goals is influenced by individuals, groups, and organizational structures. This research adopts the perspective of Robbins[21] to analyze whether the weakness of the controlling system is influenced by judges, prosecutors, police, and advocates as individuals, corps, or their structure.

According to Steers[22] three factors influence effectiveness: (1) the goal itself, including the policy, period, and concrete target; (2) integration, represented by the ability of an organization to conduct outreach, develop cooperation, and communicate with other organizations; and (3) adaptation, referring to the ability to adapt to circumstances by improving capabilities, facilities, and infrastructure. A reliable monitoring system involves two essential elements; transparency [24] and erosion of the subordinate's shy or fearful culture toward his or her officers [4].The three factors and two elements previously mentioned are used in this study to explain the weakness of the judicial control system regarding judges, prosecutors, the police, and lawyers. In this study, ideological-qualitative analysis [1] and systematic analysis [8] are used to examine the theory, principles, and research findings of the above-mentioned control system. Such analysis involves five elements: (1) the existence of legal policies in the control system to eradicate corruption by judges, prosecutors, police, and advocates in the judicial process; (2) the nature of the control system; (3) integration; (4) the independence of the supervised-subordinates; and (5) the punishment system and its implementation. Deductive reasoning is applied in this study to identify the weaknesses of the formal approach to the judicial process control system in Indonesia.

IV.RESULTS AND DISCUSSION

A. *The Existence of Legal Policies to Eradicate Corruption in the Judicial Process*

The eradication of corrupt behavior by law enforcement officials is a critical aspect of judicial supervision. The scope of fraudulent behavior in the legal process can be seen from the provisions of Articles 5 to 12, Law Number 31 of 1999 on Eradication of Corruption, as amended by Law Number 20 of 2001. Such behavior includes bribery, gratification, cheating, fabrication of documents, falsification of records, damage, elimination or embezzlement of evidence, extortion and coercion, abuse of authority, and conspiracy. No definition of corruption is formulated in the law. Sulistoni et al.[23] define corruption as:

The actions of anyone who violates the law, in the form of abuse of authority/power, opportunity, means or position available to him, embezzlement of money or securities, falsification, bribery, making promises, or cheating, to enrich themselves, others or corporations, which results in detriment of the country's finances or the country's economy.

Legal policies for the prevention and eradication of corruption in judicial process through the monitoring system, include:

1. Law Number 31 of 1999 as amended by Law Number 20 of 2001 of the Eradication of

Corruption
2. Law Number 48 of 2009 of the Judiciary Power
3. Law Number 14 of 1985 as amended by Law Number 5 of 2004 and Law Number 3 of 2009 of the Supreme Court
4. Law Number 24 of 2003 of The Constitutional Court
5. Law Number 2 of 1986, as amended by Law Number 8 of 2004 and Law Number 49 of 2009 of the General Court Bodies
6. Law Number 5 of 1986 as changed by Law Number 9 of 2004 and Law Number 51 of 2009 of the Administrative Court Bodies
7. Law Number 31 of 1997 of the Military Court Bodies
8. Law Number 7 of 1989 as amended by Law Number 3 of 2006 and Law Number 50 of 2009 of the Religious Court Bodies
9. Law Number 8 of 1981 of the Criminal Procedures
10. Law Number 16 of 2004 of the Public Prosecutors of Republic Indonesia
11. Law Number 2 of 2002 of the Police of Republic of Indonesia
12. Law Number 28 of 1999 of the Good Governance of the Government to be Free from Corruption, Collusion, and Nepotism
13. Law Number 30 of 2002 as amended by Law Number 19 of 2019 of the Corruption Eradication Commission
14. Law Number 37 of 2008 of the Ombudsman
15. Law Number 46 of 2009 of the Corruption Court
16. Law Number 22 of 2004 as amended by Law Number 18 of 2011 of the Judicial Commission
17. Law Number 18 of 2003 on Legal Aid
18. Presidential Regulation Number 54 of 2018 of the National Strategy to Eradicate Corruption

The laws are aimed at preventing and eradicating corruption and applies to all law enforcement officials in the judicial process, managed through monitoring systems. Monitoring begins at the recruitment stage to find suitably qualified judges, public prosecutors, police, and lawyers, imposing stringent sanctions on those suspected of being corrupt.

B. The Nature of the Monitoring System

There are three models in the control system to prevent and eradicate corruption: internal control, external control, and social control [7]. Through systematic interpretation of supervisory models which are regulated by various laws in Indonesia, it is focusing on internal supervision by officers, as can be seen in some of the following provisions.

1. Some regulations contain strict requirements, such as the selection, and appointment of candidates by officers, with administrative sanctions on those who violate the law;
2. There are obligations, responsibilities, prohibitions, codes of ethics or disciplines for staff and officers, accompanied by penal and administrative sanctions;
3. Officers supervise the implementation of duties, obligations, prohibitions, and responsibilities in the form of permits and task reporting;
4. Sanctions are in the form of warnings, temporary dismissal, and disrespectful dismissal by officers;
5. No regulations exist on proactive activity to routinely check the performance of subordinates.

The accountability of the internal control system is questionable since all supervision is conducted internally by the officers and external control is limited. Therefore, even though the level of internal control is ample, it means nothing if the judges, prosecutors, police, advocates, and their officers express no altruism in enforcing the regulations. This supports the findings of many previous studies, including those of Lubis [13], Ramadhan et al.[18], and MaPPI [14, 15], that internal control is ineffective because it tends to be *l'esprit de corps*. The Freedom Coalition for Obtaining Information) describe their experiences concerning the difficulties in getting information from public officers transparently [4]. They agree that transparency is an essential element for a reliable internal monitoring system. Transparency supports accountability, and all of this depends

on the personalities of the law enforcement officers.

Not all public officers covering corruption cases in their institution agree with *l'esprit de corps.* In her press release, Sri Mulyani, the Minister of Finance of the Republic of Indonesia, strictly declared that transparency could take the form of welcome to outsiders who want to uncover cases of corruption within an organization [4]. The best way to show accountability is by letting outsiders control it.

The Indonesian judiciary is established under the principle of independence which is meant to prevent any intervention of the judicial process by powers other than the bench. Establishing independence does not mean that external institutions or the public cannot control the court as long it does not affect the course of the judicial process [24]. Judges are averse to external control, arguing that they are independent of intervention. However, monitoring is different from intervention.

Indonesia has also developed an external monitoring system for the judicial process by establishing certain formal-external monitoring agencies other than those in the judicial system. Six formal external institutions who supervise the law enforcement officers are the Corruption Eradication Commission (KPK), the Judicial Commission (KY), the Corruption Court, the Ombudsman, the Examination Commission, and the Supervisory Commission. Although there are six formal-external control institutions, they have limited authority and scope of control.

The provisions of Article 8, 20, and 23 of Law Number 18 of 2011 state that the Judicial Commission (KY) has the authority (1) to organize the recruitment of qualified Supreme Court Judges with pleasant personalities; (2) to supervise the behavior of judges; and (3) recommend sanctions against judges who violate the Law or Code of Ethics. Nonetheless, the authority to select judges is limited only to the selection of Supreme Court Judges, not all judges. The provision for supervising the behavior of judges does not give full access and the power to investigate. The jurisdiction of sanctions is limited only to providing penalty recommendations to the officers for imposing on the judges. Article 42 of Law Number 48 of 2009 gives the Judicial Commission the right to examine the work of a judge through his judgment as the basis of recommending whether he or she be promoted or removed. This authority is limited only to the final decision and cannot prevent potential corruption before the judgment becomes final.

The Ombudsman is an independent agency which supervises the activities of public services practiced by the Indonesian Government and corporations. Article 8 of Law Number 37 of 2008 entitles the Ombudsman to accept potential malpractices reported by citizens, investigate public service maladministration, resolve and make sanction recommendations, as well as publishing malpractices in the name of public interest.

Based on Law Number 28 of 1999, the President established the Commission of Examination, which includes the government and society in its composition. The Commission of Examination is entitled to examine and investigate property owned by potentially corrupt public officers and report those officers to the law enforcement officers for prosecution and adjudication.

As stipulated by Law Number 18 of 2003, a Supervisory Commission is established by a group of advocates to supervise each other's ordinary activities. A Supervisory Commission composed of senior advocates, academicians, and society has the authority to bring advocates to justice for breaching the Code of Ethics and breaking the law.

Based on Law Number 30 of 2002, the Corruption Eradication Commission (KPK) has the authority to coordinate the investigation and prosecution of corruption cases, raising up to one billion Rupiah in damages for the state. It also has the power to supervise other agencies with the responsibility and authority to eradicate corruption in public services and can take over the investigation and prosecution of corruption cases from the police and prosecutors based on the specific reasons provided. Article 12 of Law Number 30 of 2002 also gives the KPK full power to investigate and prosecute corruption cases, including tapping, direct recording, access to communications, and working with Interpol to collect evidence and catch offenders.

Law Number 46 of 2009 provides for the extra-ordinary Corruption Court to be established

separately from the ordinary justice structure to ensure its independence in deciding corruption, including that enacted by law enforcement officers. In contrast to the general court, judges are selected in an ad hoc manner. The investigators and prosecutors of KPK are also established independently from the ordinary court investigators and prosecutors.

Another essential issue for discussion is the independence of external monitoring bodies. The Indonesian Minister of Finance, Sri Mulyani, has warned about it since neither she and the external control body were able to detect corruption in the case of Gayus Tambunan. Therefore, it is meaningless to establish an external control institution without giving it full independence and power [27]. The independence issue, together with other matters relating to the external monitoring system is explained in the following section.

C. The Level of Authority, Integration, and the Independence of the External Monitoring System

The highest external supervisory body for corruption is the Corruption Court. Corruption cases, including potential offenses by judges, are not heard by the general court but by the Corruption Court, to support independence and prevent judges come into *l'esprit de corps*. The second highest, and only, external supervisory authority with the ability to investigate and prosecute corruption cases is KPK. Others, such as the Judicial Commission, the Ombudsman, and the Examination Commission, only have the authority to investigate and provide recommendations for the resolution or continued handling of the case to law enforcement officials, without having the power to prosecute or impose sanctions. If the Corruption Court itself commits corruption, then the highest bastion of external supervision in the context of eradicating corruption will no longer exist. The KPK does not have the authority to supervise cases involving the corruption of court judges; it can only conduct investigations and prosecutions if a court judge commits a crime. Hearings with ordinary judges as defendants of fraud by ordinary courts are vulnerable to the occurrence of *l'esprit de corps*. The external supervision of Corruption Court judges is controlled by the Judicial Commission, with authority only to provide sanction recommendations through the Supreme Court. Another external control, according to Law No.46 of 2009, is access to information owned by the public. Use of the public to access information as an external monitor is not effective in preventing corruption by a judge.

The KPK is the only investigator and prosecutor of corruption with broader authority than the police and prosecutors since it has the power to coordinate and conduct corruption investigations and prosecutions by the police and prosecutors. If the KPK itself commits corruption during the investigation and prosecution of fraud, there is no external body to supervise it. The law only gives the public the right to access information concerning the result of corruption, as part of their social control. This kind of power is not adequate to prevent and eradicate crimes committed by the KPK. If the KPK commits fraud, conventionally, the police and prosecutors have limited authority to investigate and prosecute such corruption.

The six institutions operate from different locations. Only the Ombudsman has representatives up to the district level. While others with higher authority, such as the Corruption Court, only exist in Jakarta and the Special IA Class District Court. The KPK can only have representatives up to the provincial level. Additional regional representatives may result in more extensive control and greater effectiveness.

Each supervisory institution is responsible for different subjects. Advocates are only managed by a Board of Trustees whose membership consists of senior advocates, academics, and the public. Its authority merely involves reporting to the Advocate Code of Ethics Council, while the ultimate decision is in the hands of the Council on the Code of Ethics, as the internal supervisor. The KPK has the right to supervise and prosecute the police and prosecutors for corruption. The Ombudsman and the Examination Commission has indirect external control on the police and prosecutors by recommending sanctions.

Nevertheless, the final decision on the sanction is in the hands of the officer as the internal supervisor. Judges are supervised by KY and prosecuted for corruption by the KPK. KY can

recommend sanctions for judges who commit a crime, but the final decision is in the hands of the Supreme Court as the internal supervisor. The police, prosecutors, and judges are all tried by the Corruption Court if they commit corruption.

The six external control bodies work separately. Only the KPK and the Corruption Court have a collaborative pathway. The Advocate Supervisory Commission works alone in controlling advocates since other institutions (KPK, KY, Ombudsman, and Examining Commission) were created for the sole purpose of controlling the state administrators.

The Indonesian Government has established a social control system to prevent and eradicate corruption in the judicial process, and the community has some rights. Nevertheless, there are still many limitations to doing so, as can be seen from the following list.

1. Law Number 31 of 1999, as amended by Law Number 20 of 2001, gives the community the right to seek, obtain, and provide information on suspected corruption to the KPK. Nevertheless, they cannot gain access to the KPK to determine the prosecution.
2. Law Number 48 of 2009 only entitles the community to attend the judicial process and access information on the judgment and court costs. The public cannot interrupt the legal process even if corruption is suspected. Neither can they access the judge's deliberation in determining the verdict, or the files used by the judge, clerk, and bailiff, all of whom are often vulnerable to corrupt behavior. The public can only access information on the definitive judgment.
3. Law Number 2 of 2002 provides the community with the right to report police performance to the Police Commission, without having access to the Commission itself in determining the prosecution of suspects.
4. Law Number 16 of 2004 of the Public Prosecutors and Law Number 18 of 2003 of the Legal Aid' system has no specific social control over public prosecutors and advocates.

Based on these legal policies, no social control system has yet been established with full power to control law enforcement officials in the judicial process. The role of social control merely concerns the level of access to information and reporting any suspected corrupt behavior without a further form of advanced function such as decision making and sanctions for law enforcement and against supervisors who do not carry out their duties optimally.

D. The Punishment System and its Implementation

The theory of rewards and punishment concerns the management of human resources. Organizations with lazy and deviant human resources usually use punishment to force employees to work effectively. Punishment is then used as a model to avoid human resources being lazy and deceptive in order to achieve the organization's goal. There is also a punishment system for law enforcement officers in the Indonesian judicial process. Various obligations, orders, and prohibitions for judges, prosecutors, clerks, bailiffs, police, and advocates accompanied by punishments for violators are designed to prevent corruption. Penalties take the form of warnings, criminal penalties, and dismissal without references, all of which are carried out internally by officers. The implementation of such penalties depends on the sincerity of the officers and their desire to crack down on subordinates for committing deviant acts, including corruption. This model of punishment has, therefore, become less effective. There is no external oversight for controlling the aberrant behavior of law enforcement officials nor any monitoring on the implementation of sanctions. Such absence of a social control model makes the control system weak.

V. CONCLUSION

The control system for eradicating corruption within the judicial process in Indonesia by formal institutions remains weak, based on the following facts. First, focus on the internal control system. Second, no regulations are in place to allow the recording, tapping, and publication of judicial processes in a more comprehensive manner to support transparency. Third, no management system exists between law enforcers to control each other's duties and behavior to improve integration and

effectiveness. Fourth, there are still many restrictions on the powers of formal-external institutions, and only a partial law enforcement apparatus exists which is not comprehensive or continuous. Fifth, the social control system has a limited role in controlling law enforcement officers in the judicial process. Many countries in the region have strategies for fighting corruption. These include improved access to information on laws, the establishment of stronger anti-corruption agencies, and strengthening the prosecution of corrupt individuals. That said, there is no single solution to a deep-rooted and complex issue like corruption, so a diverse national strategy is the key [27]. It is necessary to discuss further optimization of social control as the last bastion of power in the democratic system to eradicate corruption.

ACKNOWLEDGMENT

This research has received funding from the Research and Public Services Institution of Universitas Atma Jaya Yogyakarta in the 2019/2020 Annual Budget.

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