



Association of Certified Fraud Examiners

Indonesia Chapter #111

Asia Pacific Fraud Journal

E-ISSN: 2502-695X, ISSN: 2502-8731

Volume 4, Nomor 2 (July-December) 2019

<http://apfjournal.or.id/index.php/apf>

EVALUATION OF POLICIES ON THE FIT AND PROPER TEST FOR STRATEGIC OFFICIALS IN SUPPORTING EFFORTS TO PREVENT AND ERADICATE CORRUPTION

✉ Budi Saiful Haris

Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), Indonesia

ARTICLE INFORMATION

Article History:

Received May 30, 2018

Revised July 17, 2018

Accepted March 15, 2019

JEL Classifications:

D73; H43; O15

DOI:

10.21532/apfjournal.v4i2.106

ABSTRACT

Integrity of strategic officials is absolutely necessary to support the effective implementation of corruption prevention and eradication system in a government. To get officials with integrity, one of the efforts pursued is to apply the mechanism of fit and proper test. Based on a comparative study of various invitation laws, it was found a number of crucial issues relating to the policy of the fit and proper test of a number of strategic officials. These crucial issues include differences in the standard requirements of prospective officials, the presence or absence of a selection committee, the absence of detailed guidelines on information sources and measures to provide objective assessments of the value of integrity from a candidate, and provisions regarding dismissal of officials who are potentially counterproductive with corruption prevention and eradication efforts.

Keyword: Integrity, Strategic Officials, Corruption

1. INTRODUCTION

It is shocking to hear that corruption can still occur in an organization that has implemented an anti-corruption system and even in agencies born in the breath of reform, such as the Constitutional Court and Judicial Commission. In addition, some officials can still commit corruption in institutions that have experienced up and down due to corruption cases, although the institutions have also carried out a series of improvements to the system to prevent corruption, such as in the Ministry of Finance. And the most surprising thing is that corruption can still occur in an institution that is considered to have good performance and provide fantastic salaries to its officials. Greed, in this case, is a major factor in the occurrence of corruption and

even able to penetrate the stronghold of the anti-corruption system implemented in several agencies.

The fact above reaffirms the importance of human resources who have high integrity in supporting the implementation of a system of prevention and eradication of corruption in order to be effective. Integrity has no need rules. With high integrity, a person will always choose positive values for good, even though there are many deviations that he can do. A person with high integrity will always base his behavior on the values he believes in and does not let go of the values he believes in with his actions. In a number of literatures, the core values of integrity are always associated with the values of honesty, consistency, firmness and discipline.

✉ Corresponding author :

Address :-

Email : budisaifulharis@gmail.com

Besides aspects of value, other aspects needed in preparing human resources with high integrity are culture and leadership. The indications of corruption found in institutions that have reformed the anti-corruption system are because there are a number of parties who still feel that they are in a comfort zone and they do not want to change. They make use of corruption opportunities by extending illegal levies and extortion. Changing culture is not as easy as turning the palm. In the theory of organizational behavior, changing culture requires a change in perspective about value and consistency in implementing these values. An anti-corruption culture that has been effective in an institution has become a balancing force when the leader actually deviates.

However, a number of parties consider that anti-corruption culture can be created through ethical, idealistic and decisive leaders. In an organization, according to Moore, in Etty Indriati (2014: 97), imitating superiors is the most dominant process of transmission of corruption. The same method applies in the process of eradicating corruption. A state institution needs clean and honest leaders who have high integrity to change the widespread culture of individual and institutional corruption. This method is intended to describe the psychological process in institutional corruption. Without a decisive and ethical leader, it is very difficult to eradicate corruption because the process is transmitted from boss to subordinate, and subordinates tend to see and imitate their superiors.

In line with the above description, according to Boardman and Klum, in Etty Indriaty (2014: 98), ethical tones in institutions are determined by the leaders, *"An organization's leaders are the key to its operational effectiveness. They are its principal motivators. They provide focus, direction and inspiration. They set its ethical tone."*

The selection of strategic officials with integrity and having an anti-corruption vision is very important and the focus of the discussion in this journal. In addition

to the issue of corruption as stated above, the selection of strategic officials with integrity and having an anti-corruption vision is very important because in the patrimonial culture of Indonesian government, the feeling of reluctance possessed by a subordinate to his boss can shift the rational situation to irrational.

The fit and proper test to get strategic officials with integrity and having an anti-corruption vision needs to be done using comprehensive approach. The fit and proper test for officials, who are at risk of counterattack by criminals to officials within the Corruption Eradication Commission (KPK) and other Law Enforcement Agencies, is also needed to avoid criminalization efforts when these institutions handle large cases involving high level profiles.

The mechanism of fit and proper test for strategic officials requires standards that can meet the requirements in order to achieve the objectives as stated in the description above. In addition, the mechanism also requires a strong legal basis to be implemented consistently and effectively. Based on the description, this research will focus on reviewing the following issues:

1. How do regulations regulate fit and proper test for strategic officials?
2. What are the standards of fit and proper test based on regulations and legislation?

2. RESEARCH RESULT AND DISCUSSION

Selection Model of Fit and Proper Test for Strategic Officials

There are several models of strategic official selection, such as selection through general elections, selection by the President and the House of Representatives, selection by the House of Representatives, selection by the President, selection by the Judicial Commission and the House of Representatives, and selection by the President, the House of Representatives, and the Supreme Court. The existence of various models is inseparable from the

mechanism of checks and balances applied in Indonesia with the aim that there is no agency that has unlimited authority and there is a mechanism of control over each other.

On the other hand, the existence of these various models also indicates the need for the readiness of each authorized institution to carry out the fit and proper test optimally in order to get the leaders needed and in accordance with the challenges faced today. Leaders who have integrity and anti-corruption vision must be put forward as the priority in selecting and determining the leaders today, given that corruption is always present as a real challenge to the current course of government.

Based on various regulations and legislations relating to the selection or appointment and fit and proper test for strategic officials in relation to the goal of obtaining leaders with integrity and having an anti-corruption vision, there are several aspects that can be used to analyze:

Standards in the requirements of prospective officials relating to the criteria of leaders with integrity and having an anti-corruption vision;

1. The involvement of a selection committee and a team of experts;
2. The existence of detailed guidelines regarding information sources and measures to provide objective assessments of the value of integrity of a candidate;
3. Dismissal of officials

Standard Requirements for Prospective Officials

In connection with the need for the value of integrity for the prospective officials, a number of laws and regulations have a variety of emphasis on the inclusion of the requirements for the prospective officials.

1. Faith in God Almighty

The element of faith in God Almighty is always included in the requirements of prospective candidates. On the one hand, this value is inseparable from our country as a country that believes in God Almighty.

With faith, someone will not commit a disgraceful act, including corruption. However, in practice, the assessment of the element of faith needs to be translated so that it can be a measure that can be assessed objectively. In the guidelines issued by the Judicial Commission, for example, derivatives to test element of faith have not been found.

2. Having integrity and never committing a disgraceful act

There is a different emphasis from the requirements for selecting officials related to the element of having integrity and never committing a disgraceful act. The strongest emphasis found in the requirements of the candidates for the leaders of the Corruption Eradication Commission (KPK) is: 1) having an honest nature; 2) having high moral integrity, and 3) having a good reputation. On the requirements for several other candidates, there were no elements related to good reputation

On the requirements for prospective officials, there is an inclusion of conditions "never been sentenced to criminal". However, among the requirements, there are some that are added to the criminal sanctions which are punishable by a sentence of 5 (five) years or more.

In the requirements for prospective supreme judges, there is a more specific requirement, that is, never been sanctioned temporary dismissal due to violations of the code of ethics and / or judges' conduct guidelines for prospective judges from career judges.

3. Affiliation with political parties

On the requirements of the Chairperson of the Corruption Eradication Commission (KPK), the Constitutional Court Judge, and Head / Deputy Head of the Indonesian Financial Transaction Reports and Analysis Center/INTRAC), there are requirements relating to the affiliation of candidates with political parties. On the requirements for the Head / Deputy Head of the Indonesian Financial Transaction Reports and Analysis Center/INTRAC /PPATK), it is only stated that the candidates are

not leaders of political parties, while on the requirements for the candidates for the chairperson of Corruption Eradication Committee, it is stated that the candidate is not the management of one political party. The more specific and assertive sentence is on the requirements for the candidate of Constitutional Court Judge, that is, not being a member of a political party for a minimum period of 7 (seven) years before being proposed as a candidate for Constitutional Court Judge. Meanwhile, on the requirements of several other candidates, there is no requirement related to affiliation with political party.

4. Holding Multiple Positions

The requirement for not holding multiple positions is found on the requirements of prospective officials, but has a variety of emphases. The Constitutional Court Judge, for example, is only banned from holding multiple positions with the position of another State official. Meanwhile, for the Minister, Chairman of the Corruption Eradication Commission and Head / Deputy Head of the Indonesian Financial Transaction Reports and Analysis Center/INTRAC are prohibited from holding multiple positions and have other jobs, including the private sector. The Attorney General, in addition to being prohibited from having multiple positions with the position of another State official, he is also prohibited from having multiple positions and certain jobs. Requirements for not having multiple positions are very important in relation to efforts to avoid conflicts of interest so that the State officials can focus on their work and position.

5. Reporting Assets

Requirement for reporting assets is not found in the requirements of several candidates for official set in the Law, such as for candidates of Financial Service Authority (OJK) Board of Commissioners, Audit Board of the Republic of Indonesia (BPK) Members, Supreme Judges, Ministers, and Attorney General. However, in practice, this requirement is still required.

6. Carrying out Tax Obligation

The requirement stating to have been carrying out tax obligations for the past five years as evidenced by the Annual Annuity Letter of Individual Taxpayers' Income Tax found is only found in the requirements for the candidates for President and Vice President. Whereas, this requirement is very important in assessing one's integrity, especially for officials or parties that own the business.

7. Loyal to the Pancasila, the the Unitary State of the Republic of Indonesia (NKRI) and the 1945 Constitution

Requirement to be loyal to the Pancasila and NKRI is only found in the requirements for candidates for Judicial Commission Members, BPK Members, Ministers, and Attorney General.

8. In the appointment of the Indonesian National Police Chief and Army Commander mentioned in the Act that further provisions will be regulated by the President's Decree. However, until now there has been no such Decree.

Involvement of the Selection Committee or Expert Team

In a number of laws, there is an obligation to involve the Selection Committee / Panel / Expert Team in conducting fit and proper test for officials. In the selection of the KPK Chairperson, Members of the Judicial Commission and the Board of Commissioners of the Financial Services Authority, the Law requires the President to form a Selection Committee and conduct fit and proper tests before the names of candidates are submitted to the House of Representatives (DPR). In the election of the KPK Chairperson and members of the Judicial Commission, there must be an involvement of the element of society in the members of the Selection Committee.

Likewise, in the selection of Supreme Court justices by the Judicial Commission, before the names of candidates are submitted to the House of Representatives (DPR), the Judicial Commission carries out a number of selection stages where each type of selection is conducted by

the appointed team / panel with special qualifications and expertise.

In the selection of candidates for Constitutional Judges, the candidates from the Supreme Court, Parliament and the President shall pass fit and proper test conducted by the Expert Panel. The Expert Panel is formed with a composition of 7 (seven) people from the proposals of the Supreme Court, Parliament, and the President, Each of them submit 1 (one) person, and the other 4 (four) people are from the Judicial Commission based on community proposals consisting of former constitutional judge, community leader, academic in the field of law, and legal practitioner.

Meanwhile, in the election of the President and Vice-President, National Police Chief, TNI Commander, BPK Members, Ministers, Attorney General, Head and Deputy Head of PPATK, the Law does not require a Selection Committee. The existence of a Selection Committee, in general, can avoid the size of judgments that are subjective, not transparent and avoid conflicts of interest. The Selection Committee consisting of the Expert Team also strengthens how objective judgments are made to get officials who meet the needs, have integrity, and have an anti-corruption vision as expected.

Detailed Guidelines and Track Record Information Sources

Guidelines regarding aspects of assessment are needed to be able to provide an objective assessment of prospective officials. In addition to guidelines, the complete source of information regarding the candidate's track record must be fulfilled or optimized in order to provide a complete picture of the candidate. A clean track record is needed so that the implementation of government is not disrupted by the legal process of troubled officials and so that the administration of the government does not have a political interest in certain policies.

In connection with the existence of the fit and proper test guidelines obtained from a number of laws relating to the selection

of officials as reviewed in this journal, it is only the Law on the Judicial Commission that mandates the Judicial Commission to make guidelines in determining the eligibility of prospective judges. The Judicial Commission, in this case, issued Judicial Commission Regulation No. 6 of 2013 concerning Guidelines for Determining the Feasibility of Candidates for Supreme Court Justices containing detailed guidelines regarding the stages and assessment of fit and proper tests.

In the Judicial Commission regulations, the fit and proper test includes selection of quality, personality, health, and interviews. Each type of selection is conducted by a designated Team / panel with special qualifications and expertise. Personality selection carried out by the Judicial Commission is carried out in a series of self-assessment, profile assessment, investigation and clarification activities to measure and assess the personality suitability of prospective judges to be appointed as Supreme Judge. Assessment aspects used in personality selection are character, sensitivity, attitude, emotional stability, responsibility and sociability. Investigation is carried out to explore and deepen the data and information that have been generated from administrative selection and self-assessment, including wealth and behavior in service (such as not using office facilities for personal and family interests) and outside services (such as lifestyle, affiliation politic party and business). This guideline issued by the Judicial Commission can be a reference in the formulation of guidelines for selection conducted by the Government, Parliament, Supreme Court and others.

With regard to track record information sources, a number of laws explicitly require that the fit and proper test process involve community participation. The law mandates that information from the public be involved including in the selection of KPK leaders, members of the Judicial Commission, Constitutional Justices, Supreme Judges and the selection of BPK Members. In the

selection of other officials, there was no firm mandate from the Law relating to the obligation to include public participation. The source of public information is very important for the assessment of the track record of prospective officials, but further verification and investigation are needed to assess the correctness of the information.

Other sources of track record information that must be submitted based on the Law include wealth and tax reporting. For candidates who were formerly government officials, the wealth report should also be completed with notes from the Corruption Eradication Commission (KPK) regarding verification of assets from prospective officials by the institution. Tax information is very important in relation to the assessment of one's integrity, which can be used to see the fairness of the acquisition of assets reported in the Assets Report. Unfortunately, from a number of requirements in the selection of officials analyzed in this journal, not all include obligations in relation to wealth and tax reporting.

In addition to the sources of track record information, in the fit and proper tests there are other sources of track record information used and strongly support the track record assessment. In the selection of OJK Board of Commissioners members for the period of 2017-2022, the Selection Committee saw the track record of the candidates who had registered, including through:

1. Note on the results of the fit and proper test in the financial services industry sector originating from the Financial Service Authority of Indonesia (OJK) or Capital Market Supervisory Agency and Financial Institution (Bapepam-LK) and Bank Indonesia;
2. Note on violations of professional code of ethics;
3. Note on the investigation process by authorized institutions such as the Directorate General of Taxes, Corruption Eradication Commission (KPK), Indonesian Police and other investigative institutions;
4. Notes on public reports to the KPK regarding indications of verified acts of corruption, collusion and nepotism;
5. Results of analysis of the Indonesian Financial Transaction Reports and Analysis Center/INTRAC / PPATK);
6. Note on the list of bad loans;
7. Note on violations in the field of financial services;
8. Note on violations in accordance with information from Ministry's inspector general and relevant institutions (intended for prospective applicants with State Employee background);
9. Note on the relevance of participants to court decisions that have permanent legal force.

The track record relating to financial aspects, in this case delivered by PPATK, can provide an overview of the financial condition and customs of transactions (including lifestyle) which shows the positive and negative sides of the candidates and their families. The negative side can be in the form of unnatural transactions / assets and links to a crime. The previous cases, such as the involvement of the family in corruption cases and other cases, have an important role to enrich the candidate's track record information. The provision of information by law enforcement agencies must of course be based on a basis of high trust and integrity.

The legal protection for the use of PPATK information for the purpose of fit and proper test has not been found in the Laws and regulations. However, there is a Circular of the Minister of State Apparatus Empowerment and Bureaucratic Reform (SE MenPan-RB) Number 1 of 2012 concerning the increasing oversight in realizing the state apparatus who have integrity, accountability, and transparency. This Circular mandates Cabinet Ministers, Indonesian National Army (TNI) Commander, Indonesian Attorney General, Indonesian Police Chief, Non-Ministry Government Institutions, the Heads of Secretariat of State Institutions, and Other State Institutions, Leaders of the Board / Commission / Agency Secretariat,

Governors throughout Indonesia, and Regents / Mayors throughout Indonesia to:

- a. Proactively coordinate with the Financial Transaction Reporting and Analysis Center (PPATK) to:
 - 1) Obtain information about the fairness of financial transactions of prospective officials who are promoted to occupy the positions of echelon I and II.
 - 2) Obtain information on the possibility of Civil Servants (PNS) who deserve to be suspected or indicated to have had suspicious financial transactions / improper funds flow.
- b. Furthermore, the Head of the Agency assigns the Government Internal Supervisory Apparatus (APIP) to supervise civil servants who are suspected or indicated to have carried out suspicious financial transactions. APIP, which carries out supervision as referred to in number 2, is obliged to make a report submitted to the Head of the Agency with a copy to Minister of State Apparatus Empowerment and Bureaucratic Reform (MenPAN-RB). The head of the agency must follow up on the recommendations given by APIP based on the PPATK report.
- c. Increase supervision and guidance for all employees in each agency and impose strict disciplinary penalties that for those who violate the rules of discipline of civil servants as stipulated in Government Regulation (PP) No. 53 of 2010.

Aside from being information about track records, records of various negative information from candidates should also be interpreted as a fortress to prevent potential criminalization when the concerned person becomes an official. This means that when an institution gives a clearance to a candidate from various records that appear, this must be interpreted and agreed that the action is

deemed not necessary to be processed / followed up with the law enforcement process.

Other notes that can be put forward relating to detailed guidelines and track record information sources are related to the need for a stronger legal basis and consistent implementation.

Dismissal of Officials

There is a diversity of arrangements regarding dismissal of officials in a number of laws.. There are provisions regarding permanent dismissal and temporary dismissal.

For BPK Members, only a permanent dismissal is known. This sanction is imposed after the person concerned has been given the opportunity to defend himself before the Honorary Council of the BPK Ethics Code. Furthermore, the dismissal of the Chairperson, Deputy Chairperson and / or BPK Members is formalized by a Presidential Decree at the suggestion of the Audit Board of Indonesia (BPK) or The House of Representatives.

For the members of the Financial Service Authority (OJK) Board of Commissioners, there is also only permanent dismissal. This is imposed when they are unable to carry out their duties for more than 6 (six) consecutive months and violate the code of ethics.

For constitutional justices, the Minister, the Head or Deputy Head of the PPATK, the Chairperson of the Corruption Eradication Commission (KPK), in addition to the permanent dismissal there is also temporary dismissal. But for each position, there are differences in imposition. For the Head of the PPATK, for example, a temporary dismissal is imposed when the Head and Deputy Head of the PPATK become a defendant of a criminal offense relating to the misuse of his position. Temporary dismissals for constitutional judges and ministers are imposed when the person concerned is charged with committing a criminal offense that is threatened with imprisonment of 5 (five) years or more. Meanwhile, temporary

dismissal for the KPK Chairperson is imposed more loosely, that is, when the concerned person becomes a suspect of any crime.

Provision regarding dismissal of officials within their tenure has positive and negative sides. The positive side is that this provision is needed and becomes signs if the person concerned commits a violation or a crime when he is still in his term of office. This provision can also be used when there is a certain criminal act that is only discovered at the time the concerned officer is in office. However, this provision has the potential to be misused for efforts to criminalize officials when they are carrying out efforts to eradicate corruption and large-scale crime involving influential people.

3. CONCLUSION

Based on the description above relating to the selection or appointment and the fit and proper test for strategic officials with the aim of obtaining the leaders who have integrity and an anti-corruption vision, a number of laws and regulations have the following notes:

1. Relating to the standards in the requirements of prospective officials and the criteria of leaders with integrity and having an anti-corruption vision:
 - a. The assessment of the element of faith to God Almighty still needs a device to translate so that it can be a measure that can be assessed objectively;
 - b. There is a different emphasis from the requirements for selecting officials related to the element of never having committed a disgraceful act and having integrity;
 - c. Not all strategic positions include requirements relating to affiliation with political parties;
 - d. Provision regarding the prohibition of concurrent positions is found on the requirements of several prospective officials, but with a variety of emphases
 - e. Provision regarding the assets reporting is not found in the requirements of several prospective

officials;

- f. Provision regarding the implementation of tax obligations is only found in the requirements as candidates for President and Vice President;
 - g. There are laws and regulations that do not yet exist as implementing rules for the appointment of the National Police Chief and the Commander of the TNI.
2. Not all processes for selecting strategic officials involve a selection committee and expert team;
 3. It is only the Law on the Judicial Commission that mandates to make guidelines in determining the eligibility of prospective supreme judges. This causes the practice of selecting other strategic officials often to be carried out in various ways / there is no consistency in its implementation;
 4. The existence of detailed guidelines on information sources and measures to provide objective assessments of the value of integrity from a candidate;
 5. In connection with the provisions for dismissal of officials, particularly for the KPK Chairperson, there is a very vulnerable provision, that is, the temporary dismissal of the KPK Chairperson when the person concerned is made a suspect of any crime. This provision has the potential to be misused for criminalizing officials when they are carrying out efforts to eradicate corruption and large-scale crime involving influential people.

Based on the conclusion above, it is necessary to strengthen a number of statutory provisions so that the process of fit and proper test for strategic officials can be carried out optimally in order to get the leaders who have high integrity and anti-corruption vision. In addition, it is necessary to evaluate the provision of dismissal of strategic officials so that the provision does not contradict the efforts to eradicate corruption.

REFERENCES

- Etty Indriati, Pola dan Akar Korupsi Menghancurkan Lingkaran Setan Dosa Publik, Gramedia Pustaka, Jakarta: 2014
- Peraturan DPR RI No. 1 Tahun 2014 tentang Tata Tertib
- Peraturan Komisi Yudisial No. 6 Tahun 2013 tentang Pedoman Penentuan Kelayakan Calon Hakim Agung
- Surat Edaran Menteri Pendayagunaan Aparatur Negara dan Reformasi Birokrasi (SE MenPan-RB) Nomor 1 Tahun 2012 tentang Peningkatan Pengawasan dalam Rangka Mewujudkan Aparatur Negara yang Berintegritas, Akuntabel, dan Transparan
- Undang-undang No. 23 Tahun 2003 tentang Pemilihan Umum Presiden dan Wakil Presiden
- Undang-undang No. 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi
- Undang-undang No. 18 Tahun 2011 tentang Perubahan atas Undang-undang No. 22 Tahun 2004 tentang Komisi Yudisial
- Undang-undang No. 21 Tahun 2011 tentang Otoritas Jasa Keuangan, Anggota Dewan Komisiner Otoritas Jasa Keuangan
- Undang-undang No. 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia, Kapolri
- Undang-undang No. 34 tahun 2004 tentang Tentara Nasional Indonesia
- Undang-undang No. 15 Tahun 2006 tentang Badan Pemeriksa Keuangan
- Undang-undang No. 18 Tahun 2011 tentang Komisi Yudisial
- Undang-undang No. 4 tahun 2014 Tentang Penetapan peraturan pemerintah pengganti Undang-undang nomor 1 tahun 2013 tentang Perubahan kedua atas undang-undang nomor 24 Tahun 2003 tentang mahkamah konstitusi menjadi Undang-undang
- Undang-undang No. 39 Tahun 2008 tentang Kementerian Negara
- Undang-undang No. 16 tahun 2004 tentang Kejaksaan Negara Republik Indonesia
- Undang-undang No. 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang