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Jokowi After the First Term

Indonesia's KPK: Clipping Its Anti-Corruption Wings?

By Jefferson Ng

SYNOPSIS

The Indonesian Parliament (DPR) and the President have discussed and approved an amendment clipping the wings of Indonesia's independent anti-corruption agency. What are the policy implications and what accounts for the continued failure of corruption eradication?

COMMENTARY

THIS WEEK, on Tuesday 24 September 2019, Jakarta and other Indonesian cities were rocked by massive student protests. The students were unhappy about a new law seen as weakening Indonesia's anti-corruption agency, KPK, and its effectiveness in combating corruption. Troops were deployed to back the police, and tear gas was fired to disperse students surrounding the parliament building.

For many Indonesians, the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi, KPK*) has been hugely popular for its prosecution of high profile corruption cases and been likened to the small gecko (*cicak*) fighting against established interests. The KPK is virtually unique among Indonesian state agencies — it enjoys an excellent prosecution record, a robust performance-based human resources management system, and an organisational culture based on stringent ethical standards.

Amending the 2002 Law on KPK

This week's protests also reflected public unhappiness over the perceived roadblocks that are being put in the way of the KPK's critical role by entrenched interests.

The KPK is an independent anti-corruption agency created in the early post-Suharto period to coordinate and supervise the other anti-corruption institutions, conduct investigations and prosecutions against corruption, as well as perform preventive anti-corruption actions and monitor state governance.

However, the KPK's success in prosecuting major establishment figures for graft, such as former Golkar Party Chairman Setya Novanto, had likely earned it few friends in the legislature. Parliament, DPR, had repeatedly tried to curtail the KPK's powers as early as 2011, but had failed to revise the law until now.

Between 5 and 17 September 2019, the DPR speedily completed revisions to Law No. 30/2002 concerning the KPK and passed the bill into law. There are three key provisions of the revised 2002 KPK law:

Firstly, the KPK is a state agency in the executive branch (*lembaga negara rumpun eksekutif*), and its employees have been designated as state employees, although in carrying out its duties and authority it legally remains free from any influence.

Secondly, a five-person supervisory board selected by the President will oversee the implementation of the KPK's duties and authority including wiretapping, search, and seizure. The KPK has to obtain written permission from the Supervisory Board, which is obligated to respond within 24 hours.

Thirdly, the KPK has the authority to terminate investigations and prosecutions if they are not completed within two years.

Implications of the New Law & A Troubling Trend

As a Reform Era institution, the KPK was designed to be independent and accountable to the public precisely so as to safeguard the institution from the infiltration of other interests. The revised law reduces the KPK's institutional autonomy and introduces checks that will likely erode its effectiveness.

For instance, the designation of independent KPK investigators as state employees may create potential conflicts of interest during corruption cases in government agencies. The Supervisory Board may also lead to the KPK's mandate being held at the mercy of outsiders and alternative agendas.

More controversially, the legislative process was unusually expedited so that it could be completed before the end of the current DPR's term on 30 September 2019.

This therefore continues the phenomenon of major legislative initiatives being rapidly passed near the end of the DPR's term. In 2014, the DPR passed a law to abolish direct local elections after the election of President Joko Widodo ("Jokowi"), to prevent popular local candidates from coming to power.

The hurried passage of new laws at the end of the legislative term is troubling for democratic accountability. Under Article 96(1) of Law No. 12/2011 on Lawmaking, the public has the right to make submissions about laws and regulations under deliberation. Major legislative initiatives should not be hastily passed without public inputs and accompanying academic papers.

Root Cause: Corruption and Expensive Elections

The revision of the KPK law indicates that the favourable legal and political space created for the KPK during the Reform Era has been significantly rolled back. It highlights that corruption remains entrenched because the patronage-driven electoral system and heavy election expenses incentivise political actors to skim off state funds.

Ward Berenschot, co-author of the book entitled *Democracy for Sale: Elections, Clientelism and the State in Indonesia* had estimated that winning a governorship, for instance, costs Rp 166 billion (US\$11.7 million).

The temptation to recover electoral costs likely accounts for why between 2004 and 2016, 124 members of DPR and its provincial branches (DPRD), as well as 117 governors, were implicated in corruption cases.

Unfinished Institutional Reforms

The KPK was born out of the rallying call against Corruption, Collusion and Nepotism (*korupsi, kolusi dan nepotisme, KKN*) as a standard for good governance in the Reform Era. However, recent events indicate that the elimination of one or two big fish (*kakap besar*) will not address institutional incentives for corruption.

As a result, the KPK had sought to introduce corruption prevention measures that will improve transparency and compliance of government regulations, such as its 2016 e-LHKPN initiative (electronic asset declaration for state officials). In addition, it has called for the state to increase funding for political parties so as to untangle the nexus between party financing and corruption.

The bottom line is that corruption will continue to be an endemic problem with or without the KPK unless institutional reforms reduce incentives for corruption.

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