

INDONESIA CORRUPTION WATCH

PUBLIC ACCOUNTABILITY REVIEW

STRONG POTENTIAL FOR A CONFLICT OF INTERESTS IN COVID-19 PANDEMIC

WRITERS

EGI PRIMAYOGHA / LALOLA EASTER / SITI JULIANTARI / TIBIKO ZABAR / WANA
ALAMSYAH

BACKGROUND

Indonesia emerges as the country with the highest number of fatalities due to the Coronavirus Disease 2019 (COVID-19) in the Southeast Asia region. As of May 12, 2020, the country has capped a total of 14,749 COVID-19 cases with 1,007 people deaths. The mortality rate from the pandemic is around 6.8%. The average number of specimen tests conducted from March 2, 2020 to May 11, 2020 revealed that the government could only test around 1,557 specimens.

This situation is inseparable from the poor response and actions of the Indonesian government in addressing COVID-19 issues. The Indonesian government's response has been marked by statements belittling COVID-19 and by slow steps of handling, despite a warning from a team of experts from the Faculty of Public Health, Universitas Indonesia (FKM UI) that claimed that the virus had long entered Indonesia since the third week of January 2020.¹

Even more so, the disorganized handling of COVID-19 is made worse by the issue of a conflict of interests of public officials within the President's circle. For instance, on April 1, 2020, Presidential Special Staff (*Stafsus*) Andi Taufan Garuda Putra signed a letter addressed to all *camats* (district heads) throughout Indonesia. The letterhead of his letter was that of the Cabinet Secretariat, and it detailed a collaboration program between the government and PT Amartha Mikro Fintek, named Village Volunteers Fight COVID-19. Andi himself is the Chief Executive Officer (CEO) of PT Amartha Mikro Fintek.

The program is an initiative from the Ministry of Villages, Development of Disadvantaged Regions, and Transmigration as named in Letter No. 8 of 2020 on COVID-19-Responsive Villages and Village Labor and Cash-Intensive Assertion.

Another Special Staff, Adamas Belva Syah Devara, is also indicated to be problematic. Aside from serving as a special staff, he serves as CEO of Ruangguru. The Skill Academy platform created by his company Ruangguru was appointed directly by the government as a partner for the pre-employment program.

In response to the above issues, Indonesia Corruption Watch (ICW) compiles a note of criticism on COVID-19 handling and its great potential conflict of interest that may lead to corrupt practices in COVID-19 handling.

¹ *Detik*, "FKM UI ungkap corona masuk RI sejak Januari, Pemerintah: Kenapa baru bilang?" accessed on <https://news.detik.com/berita/d-4983197/fkm-ui-ungkap-corona-masuk-ri-sejak-januari-pemerintah-kenapa-baru-bilang> on April 20, 2020, 17:43 Western Indonesian Time.

PROBLEMS

OF THE TWO SAMPLES AFOREMENTIONED, THE TWO PROBLEMS AMONG MANY THAT THE GOVERNMENT MUST FACE IN ADDRESSING THE COVID-19 PANDEMIC ARE:

1. Ignorance of public ethics and conflicts of interests in COVID-19 handling;
2. Use of state budgets that are not based on law at all, in particular in the pre-employment program, which disregards the procedure for the procurement of goods and services in COVID-19 pandemic;

PART I

Ignorance of Public Ethics and Conflicts of Interests in COVID-19 Handling

Public ethics are principles that must be upheld by public officials. In carrying out their duties as servants of the people, public officials are required to comply with the principles of public ethics, where the conscience in making certain decisions or policies must be based on virtues and public interests.

The virtues include honesty, integrity, and avoidance of possible conflicts of interests in providing public services and public policy making. In the context of corruption eradication, the ethics of public officials are one of the imperative principles of corruption prevention. For in many cases of corruption, almost certainly there are public ethics issues ignored, including those of conflicts of interests.

A conflict of interest is a condition in which a state official who has an authority based on laws and regulations is suspected to have a personal interest in any decision made, which in turn can affect the objective quality and performance.² Conflicts of interest have been regulated in Law No. 30 of 2014 on Government Administration, Article 42 to Article 45.

What actions are deemed related to a conflict of interest according to the regulation?

Following is the elaboration of Article 43 ver. 1:

“A conflict of interests as referred to in Article 42 occurs when in determining and/or decision making and/or deciding an action, there are:

- a. personal and/or business interests;*
- b. relations with relatives and family members;*
- c. relations with representatives of any parties involved;*
- d. relations with any parties who work and receive salary from any parties involved;*
- e. relations with any parties who give recommendation to any parties involved; and/or*
- f. relations with any parties prohibited by law.”*

² Komisi Pemberantasan Korupsi, Panduan Penanganan Konflik Kepentingan bagi Penyelenggara Negara, Jakarta: National Library, 2009, p.2.

Based on these regulations, there is a need for a clear separation from regulation issuance or decision on an action by public officials who have potential conflicts of interests. Even more so, Article 45 paragraph 2 states that in the event of a policy being made in the presence of a conflict of interests, it shall be annulled. Having said all that, public officials shall be able to distinguish and separate private and public interests.

In addition, a conflicts of interests must be understood broadly, not only in terms of material gain, but also in terms of self, family, private enterprise, political party, and other interests. It is worth noting that one of the first preliminaries to corruption is the appearance of a conflict of interests. As such, the Crime of Corruption (Tipikor) Law specifically regulates conflicts of interest in procurement.

In the case of the Village Volunteers Fight COVID-19 program, a form of conflict of interest occurs: Andi Taufan exercised his authority as a public official by distributing a letter to all *camats* in Indonesia to give PT Amarnya special access. The move leans toward benefitting Andi Taufan and his group.

The move that Andi Taufan has taken also disregards a number of agencies, including the Ministry of Home Affairs. The task of establishing correspondence to all *camats* under regional heads is the responsibility of the Ministry of Home Affairs, as mandated in Article 3 of Presidential Regulation No. 11 of 2015 on the Ministry of Home Affairs, which includes regulations on the implementation of policies in politic and in public administration.

In a press release, Andi Taufan Garuda Putra finally apologized and withdrew the letter in question. He offered an excuse that his actions were a response to the horrible bureaucracy in the distribution of aids and/or grants in dealing with COVID-19. However, his excuse does not justify his actions. Public ethics must be upheld as long as he holds a public office.

In the second case, Adamas Belva Syah Devara is a Presidential Special Staff and Chief Executive Officer (CEO) of PT Ruang Raya Indonesia, or better known as Ruangguru. Since the government declared COVID-19 a national disaster as of April 13, 2020, there have been several programs executed to address the pandemic. One of the programs that has emerged to address social and economic impacts is the pre-employment card.

The pre-employment card program is an old idea first mentioned by President Joko Widodo during the 2019 general election race. It aims to reduce unemployment. When COVID-19 spread, the program was implemented as a social safety net scheme to help economically affected citizens. In practice, the government provides IDR 3,550,000 in cash aid that can be used to access training institutions on digital platforms.

One of the government-designated digital platforms to realize the pre-employment card program is Ruangguru. With the appointment of Ruangguru as one of the digital platforms and at the same time with Belva serving as a Presidential Special Staff, a conflict of interest occurs. Even more so, the digital platform selection is concluded without transparency and accountability.

Contextually, handling conflicts of interest needs to be based on the principles of awareness of public interests. It necessitates that state officials shall avoid inside information they obtain from their post, which are not publicly available. For the information obtained will likely benefit themselves.³

If Ruangguru is still appointed a government partner for the digital platform while Belva as its CEO has not resigned from his post, it means that the government directly perpetuates a culture of conflicts of interests within itself. For since the Special Staff were appointed to represent Indonesian youth, they were not required to resign from their post.

3 Komisi Pemberantasan Korupsi, *Panduan Penanganan Konflik Kepentingan bagi Penyelenggara Negara* (Jakarta: National Library, 2009), p.14.

PART II

Procedure for the Procurement of Goods and Services in COVID-19 Pandemic

According to the news channel *Tirto.id*, Deputy for the Coordination of Creative Economy, Entrepreneurship, and Competitiveness of Cooperatives and Small and Medium Enterprises in the Ministry of Economy, Mohammad Rudy Salahuddin, confirmed that the digital training platform cooperation was not decided via auctions. He asserted that a first-time direct appointment, due to time constraints and program trials, was valid based on Presidential Regulation No. 36 of 2020. Salahuddin denied that the appointment of the online training provider benefited specific individuals.⁴

Is this justified and permitted?

Presidential Regulation 16 of 2018 on Procurement of Government Goods/Services (Perpres 16/2018), Article 38, paragraph 4 states that:

“Direct Appointment is a method of selection to obtain a Provider of Goods/Construction Work/Consulting Services/Other Services in certain circumstances.”

Furthermore, in the same article paragraph 5, an emergency is specified as:

- a. organization of preparations of sudden activities as a follow-up to international commitments agreed by the President/Vice President;
- b. goods/services that are confidential for the interests of the state, including intelligence, witness protection, security of the President and Vice President, former President and former Vice President and their families as well as state guests at the head of state/head of government level, or other confidential goods/services in accordance with regulation statutory;
- c. construction work of buildings which constitutes a unified construction system and a unified responsibilities for the risk of failure, which in its entirety cannot be planned/calculated beforehand;
- d. other Goods/Construction Work/Services that can only be provided by one capable Business Actor;

⁴ *Tirto*, “Program Jaring Pengaman Sosial Jokowi Cuma Gimik di Tengah COVID-19,” <https://tirto.id/eLNr>, April 8, 2020, accessed on April 15, 2020.

- e. procurement and distribution of quality seeds including rice, corn, and soybean as well as fertilizers including Urea, NPK, and ZA for farmers in order to ensure the availability of seeds and fertilizers appropriately to support the implementation of increasing food security;
- f. work on public infrastructure, facilities, and utilities in the provision of housing for Low-Income Groups, executed by appointed developers;
- g. Goods/Construction Work/Other Services that are specific and can only be executed by their patent holder, or a party who has obtained permission from their patent holder, or a party who win the tender in obtaining permission from the government; or
- h. Other Goods/Construction Work/Other Service, which after a second tender have failed.

Based on the criteria of an emergency as stated in Article 38 paragraph 5, the direct appointment method used in selecting a digital platform for the pre-employment program is ill-suited. For the program does not meet the conditions stated in the Article.

In addition, the government argument that consistently insists that the pre-employment program needs not use the procedure for the procurement of goods and services is erroneous. Article 1 of Presidential Regulation 16/2018 states that:

“Procurement of Goods/Services is the procurement of goods/services procurement activities by a Ministry/Institution/Regional Apparatus funded by the State Budget/Regional Budget, whose process covers from the identification of needs to the submission of results.”

The budget allocated for the implementation of the pre-employment program amounts to IDR 20 trillion, extracted from state budgets. Conceptually, the government provides incentives for 5.6 million citizens, IDR 3.55 million each, to attend online-based training. The government mandates a slot of IDR 1 million that shall be used to access the training. Said training is organized by training institutions, who are required to collaborate with digital platforms. Therefore, training institutions and digital platform providers benefit the most if the member-citizens use the incentive funds from the government.

According to Article 1 of Presidential Regulation 16/2018, the budget used to implement the program is extracted from state budgets. In addition, Article 32 of Presidential Regulation 16/2018, states that digital platforms can be categorized as other services, which are detailed as:

“Non-consulting services or services that require equipment, special methodologies, and/or skills in a system of governance that is well known in the business world to finish an assignment.”

In short, the government should have used the instrument of goods and services procurement in selecting a digital platform, one of which is Belva’s Ruangguru. The mechanism for digital platform designation remains unclear, because it disregards the aspect of justice in the context of fair business competition.

CONCLUSION

FROM THE FINDINGS, ICW CONCLUDES THAT:

1. Actions undertaken by the government in addressing the COVID-19 pandemic allegedly disregard the element of conflicts of interests;
2. The emergence of several programs such as the pre-employment card as a government's effort to manage social and economic impacts is in fact not based on the principles of transparency and accountability;
3. The appointment of digital platform partners in the pre-employment program allegedly disregards the mechanism of procurement of goods and services in accordance with Presidential Regulation No. 16 of 2018. This results in an absence of fairness in the process of partners appointment;
4. The government fails to implement good management of conflicts of interests in the policy making process.

RECOMMENDATION

CONSIDERING A NUMBER OF PROBLEMS FACED BY THE GOVERNMENT IN HANDLING COVID-19, IN PARTICULAR THOSE RELATED TO A CONFLICT OF INTERESTS, ICW DEEMS IT URGENT FOR:

1. The President to promptly evaluate the performance and position of special staff, and take steps to dismiss staff who hold post/position in other institutions that have the potential to cause a conflict of interest;
2. The government to promptly design regulations to manage conflicts of interests in order to mitigate risks that may surface in the future and mitigate potential conflicts of interests in other public policies;
3. The government to temporarily suspend the pre-employment program and run an evaluation of the program's implementation, for it is suspected that the platform appointment is intransparent and has the potential to cause a conflict of interests and the potential to cause loss for the state.

WRITERS

EGI PRIMAYOGHA

LALOLA EASTER

SITI JULIANTARI

TIBIKO ZABAR

WANA ALAMSYAH