

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY INDONESIA

ARTICLE 7, PARAGRAPH 4 UNCAC

CONFLICT OF INTEREST

INDONESIA (NINTH MEETING)

I. INFORMATION REQUESTED FROM STATES PARTIES IN RELATION TO PREVENTING & MANAGING CONFLICTS OF INTEREST

Conflict of Interest (COI) are regulated in the following regulations:

1. Law No 30 of 2014 on Government Administration, article 42-45 has stipulated that Government Officials with Potential Conflict of Interest are prohibited from stipulating and/or performing Decisions and / or Actions. The law has also stipulated that Citizens are entitled to report or provide information on alleged Conflicts of Interest of Government Officials in determining and /or performing Decisions and / or Actions.
2. Law No. 31 of 1999 as amended by Law No. 20 of 2001 on Eradication of Corruption, in article 3, 11 and 12 has stipulated the criminal sanctions/penalties for Public Officials/civil servants for the COI violation.
3. Law No. 17 of 2014 on the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representatives Council and the Regional House of Representatives stipulated the following:
 - a) Parliament members are prohibited from having double position and performing work as structural officials in private educational institutions, public accountants, consultants, lawyers or lawyers, notaries and other work related to the authority and duties of the Parliament members (article 236-237)
 - b) Conflict of interest are further regulated as part of code of ethic regulation in the Regulation of House of Representatives (DPR) No. 1 of 2015 on the Code of Ethics of the House of Representatives of the Republic of Indonesia. In the fifth section on transparency and conflicts of interest, mentioned that every member of the People's Legislative Assembly must declare what interests it holds, forbidden to use his position to seek the convenience and personal benefit of his family, and groups, and prohibited from using his/her power to influence judicial proceedings intended for personal and/or other interest (article 6).
4. Government Regulation of the Republic of Indonesia Number 6 of 1974 on Limitations on Activities of Civil Servants in Private Business that prohibits the holding by the public officials of certain positions in legal entities that are incompatible with their primary functions, such as an individual sitting on the board of a company.
5. Presidential Instruction No. 17/2011 on Corruption Prevention and Eradication Act of 2012 has instructed to undertake an action plan for the drafting of rules on Conflict of Interest for officials in the bureaucratic environment. The purpose is to reduce the practice of abuse of power by officials in the process of policy formulation/decision making. This Instruction has become the responsibility of Ministry of Administrative Reform and Bureaucratic Reform (AR&BR) to draft a Regulation related to conflict of interest.

6. Ministerial Regulation of Minister of Administrative Reform and Bureaucratic Reform (AR&BR) No. 37 of 2012 stipulates the General Guidelines for Handling Conflict of Interest. The General Guidelines are then followed up by government agencies by adoption into guidelines applicable within their respective agencies. Monitoring and evaluation of the implementation of this regulation shall be conducted by the Ministry of AR&BR in coordination with the relevant institutions. The General Guidelines contain the following:
 - a) Definitions of conflict of interest, public officials, government agencies and public institutions.
 - b) Category of officials with potential conflict of interest in the executive, judiciary and
 - c) other officials appointed by the President or Minister.
 - d) Forms of conflict of interest that often occur and faced by public officials.
 - e) Types of conflict of interest that often occur in the executive and judiciary.
 - f) The sources of the conflict of interest.
 - g) The basic principles in handling conflict of interest.
 - h) Stages in handling conflict of interest.
 - i) Factors supporting a successful handling of conflict of interest.
 - j) Measures against potential conflict of interest.
 - k) Procedures to address conflict of interest.

KPK's Guidelines in Handling Conflict of Interest for Public Officials

KPK has published the Guidelines in Handling Conflict of Interest for Public Officials that can be accessed by the public through the KPK website (<http://kpk.go.id/gratifikasi/?p=258>). The guidelines contained the basic principles of COI, stages in handling COI, the factors that support the success in handling COI and the examples of COI cases. The guidelines have been promoted by KPK to ministries/agencies in all domestic levels. As part of COI management, KPK is currently involved in the drafting of Government Regulation on Gratification.

Sanctions for Conflict of Interest (COI) Violation

1. Criminal Sanctions according to the Law No. 31 of 1999 as amended by Law No. 20 of 2001 on Eradication of Corruption, in article 3:

"Any person who, for the purpose of profiting himself or others or a corporation, misuses the authority, opportunity or means available to him because of a position or position which could be detrimental to the state's finances or the economy of the state, is liable to a life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp50,000,000.00 (fifty million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah)".

Criminal Sanctions has also been stipulated under article 11 and 12 of the Law for other forms of COI.
2. Administration Sanctions according to Law No 30 of 2014 on Government Administration, in article 80:

- a) Mild administrative sanctions, by way of oral reprimands or written reprimands or postponement of promotion. These sanctions applied to public officials who are not informed his/her superior in dealing with conflict of interest.
- b) Severe sanctions by way of permanent termination. This sanction applied to public officials who have formulate policy and or making decisions and or actions that have the potential to have a conflict of interest.

These administration sanctions are further stipulated in the Government Regulation No 48 of 2016 on the Procedure of imposition of Administrative Sanctions for Public Officials.

Description of Specific duties and responsibilities of the specialized staff or bodies to strengthen transparency and prevent conflict of interest

1. Government Internal Control System (SPIP) by Government Internal Auditors (APIP)

The supervision on the implementation of the conflict of interest is also carried out through government internal control system. Government Regulation No. 60 of 2008 on Government Internal Control System (SPIP) stipulates that to strengthen and support effective implementation of Internal Control System, internal oversight and guided-supervision for the implementation of SPIP shall be conducted. Internal oversight is one part of the internal control activities that functions to conduct an independent assessment of the implementation of duties and functions of Government Agencies. The scope of the internal oversight includes the organization, scope of work, competence of human resources, code of ethics (includes conflict of interest), audit standards, reporting, and peer review.

The Finance and Development Supervisory Agency (BPKP) shall be the Government internal auditor (APIP) in the SPIP, and will conduct internal supervision over the accountability of state finances. Meanwhile, the general responsibility for internal control (including the supervisory of conflict of interest) shall be at the Inspectorate General, Provincial Inspectorate and District/City Inspectorate that functionally perform internal supervision by supervising all activities in the exercise of duties and functions of state ministries/agencies/work units at the provincial level/work units at the district/city level that are funded by the state/provincial/district/city budget.

2. Council of Ethics in Government Agency

The violation of conflict of interest has also been included as the breach of code of conduct. Hence, in several government agencies, there are council of ethics who are also supervise the conflict of interest, among others:

- Ethics Committee of the House of Representatives (MKD) that oversees the ethic of parliament members
- Ethics Committee and Advisory Council of KPK Employee
- Ethics Commission of the Police (KKEP)

Challenges:

- 1. Indonesia has several layers of regulations governing conflict of interests for public officials and civil servants, but the level of implementation of those regulations, especially in the supervisory

areas (conflict of interest, gratification, public complaints, whistleblower system, the capacity of internal government auditor/APIP, the capacity of the Government Internal Control System/SPIP) are still not optimal.

- The follow-up actions and commitment to the Ministerial Regulation of the Minister of Administrative Reform and Bureaucratic Reform (AR & BR) no. 37 of 2012 on the General Guidelines for Handling Conflict of Interest, to become a regulation in the respective ministry/agency and its full implementation has become a challenge, especially at the provincial, city and district levels.

These followings are the evaluation result of the Ministry of AR&BR:

No	Follow up Actions	Central Government	Provincial Government	City/District Government
1	Percentage of Ministries / Agencies that already have conflict of interest policies	97% out of 90 ministries/agencies	32,4% out of 34 provinces	33,3% out of 514 city/districts
2	Percentage of Ministries / Agencies that has implemented a conflict of interest policy	81% out of 90 ministries/agencies	17,6% out of 34 provinces	12,1% out of 514 city/districts
3	Percentage of Ministries / Agencies that has evaluated the handling of conflict of interest	31% out of 90 ministries/agencies	1,5% out of 34 provinces	1,5% out of 514 city/districts

Technical Assistance required:

- Capacity and institution-building in conflicts of interest management.