

(6-7 September 2018)

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.

2. 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.

II. INFORMATION REQUESTED FROM STATES PARTIES IN RELATION TO ASSET & INTEREST DISCLOSURE

There are two objectives in the implementation of asset declaration system which are prevent public officials using their authority to obtain personal gain and detect illicit enrichment. The combination of two objectives can assist a country to prevent and enforce the corruption by identifying the extravagant lifestyle and potential conflict of interests. The main purpose in these two objectives is to build the atmosphere of accountability, integrity, and transparency in order to decrease corruption. Therefore, a clear definition and guidance in conflict of interest system can facilitate the public officials to avoid the conflict of interest and assist law enforcement to identify the conflicts when they have occurred

Asset Declaration (LHKPN)

According to the Law No. 28 of 1999 on State Administrators Clean and Free from Corruption, Collusion and Nepotism, Indonesia has been set a regulation that relates to Asset and Interest Disclosure by obligate all public officials to report, to be examined and to announce their wealth through Asset

Declaration. Hence, public officials or state administrators are defined as state officials who perform legislative, executive and judiciary functions. This would include state Officials at the State Highest-level Institution, State Officials at State High-level Institutions, Ministers, Governors, Judges, other State Officials defined in accordance with applicable laws and regulations, and other officials who hold strategic functions in state administration in accordance with the applicable legislation (including Deputy Governors, Regent/Deputy Regent, member of local/district/regent parliament). They are required to report their asset declaration to KPK (Law No. 30 of 2002 in article 13 (letter a)).

KPK Regulation no. 07/2005 as amended by KPK Regulation no. 07/2016, stipulated the rule on how to report, to announce and to examine the Wealth Report.

The new decree set the order:

- Form to report → from paper-based system into paperless or application system
- How to report → online assessment and submission
- Submission report → periodic (every year, between Jan 01 – March 31); special purposes (max. 3 month after occupied/when leaving current position)

Since 2017, KPK has launched and implementing a web-based Wealth Report management application known as e-LHKPN (www.elhkpn.kpk.go.id) which are consist of:

- E-Registration → For Asset Declaration Unit in each institution to register and manage independently the Wealth Report of their officials (to update the list of public officials that have obligation in submitting Wealth Report, to monitor the submission compliance, to proposed administrative sanction, etc.)
- E-Filling → To ease the Asset Declaration reporting process by public officials from paper-based system into paperless or web-based application system
- E-Announcement → Providing public access to give opportunity to the civil society in monitoring the compliance of submission and the assets fairness of the public officials

To facilitate the Public Officials in reporting their assets through E-Filling, the KPK provide video tutorial on the website to give guidance in filling the application. Moreover, the Public Officials can contact KPK's helpdesk via email for further queries. Recently, KPK is developing a web chat application in facilitating public officials to get in touch with KPK's customer service. Even though there are more than 300.000 of public officials required to submit their wealth report, in 2017 the submission compliance rate was 78%.

SUMMARY of PUBLIC OFFICIAL COMPLIANCE

As of: 30 December 2017

NO	INSTANSI	Number Of Public Officials	Number - Already Submitted	Number - Have Not Submitted Yet
1	EXECUTIVE	252.446	198.639	78,69%
2	LEGISLATIF	14.144	4.379	30,96%
	NATIONAL PARLIANMENT	556	536	96,40%
	DISTRICT/REGENT PARLIANMENT	13.588	3.843	28,28%
3	JUDICIALS	19.721	18.670	94,67%
4	STATE / LOCAL GOVERNMENT OWN COMPANY	29.250	24.127	82,49%
	TOTAL	315.561	245.815	77,90%

The information included in the wealth report should be systematic and cover wide and comprehensive information regarding the public official's assets. Therefore, the KPK considers the types of information that should be included in wealth report as follows:

- Submission date
- Personal Data (including all family member)
- Assets (consist of Fixed Assets, Current Assets, Cash and Cash Equivalent, Commercial Papers and Account Receivable, etc.)
- Liability
- Expenditure
- Income
- Other benefit received
- Statement Agreement for KPK to Announce WR/AD to Public
- Letter/Power of Attorney

KPK also review the completeness and data validation of the information provided by public officials in their wealth report. Furthermore, KPK conducts examination procedures which are a series of activities including the analysis of changes in assets and finding the source of fund in buying the assets. KPK performs examination based on two types of criteria:

- Reactive Examination → The examination performed based on the request from the internal of KPK or external government institution (Law Enforcer)
- Proactive → The examination based on the anomalies or red flag by capturing information provided in the wealth report such as :
 - a) The amount of net income is lower than the increase of assets in certain period,
 - b) The acquisition and sale of assets significantly obtain from grant/gift/inheritance,
 - c) The amount of debt higher than the amount of assets, or
 - d) Other analysis related to asset, income and profile

The examination objective is to identify the public officials who have a high standard of lifestyle and have a control of financial resources or asset beyond their official salary which can be categorized as unexplained wealth that could lead to illicit enrichment.

1. The purposes of conducting Wealth Report Examination are:
 - Assuring the compliance of public officials in submitting their Wealth Report
 - Identifying assets, income, gifts intentionally or unintentionally unreported in Wealth Report
 - Ensuring the appropriateness and the fairness of the assets owned by the Public Officials
 - Identifying the source of funds in obtaining the assets and financing the lifestyle of Public Officials and their families
 - Early detection of illicit enrichment as red flag of corruption

2. The benefit in conducting wealth report examination are:
 - Public officials feel monitored, in order to prevent them in commit corruption
 - Data support for other law enforcement agencies (General Attorney and Police)
 - Tools to assess transparency and accountability in the recruitment process
 - To encourage other government institutions to promote transparency through Wealth Reporting
 - Additional information for asset tracing and forfeiture

Asset Declaration of Civil Servants (LHKASN)

LHKASN is a report that declare the ownership of assets by civil servants in order to implement public transparency. All Civil Servants excluded from LHKPN. Ministry of AR&BR Letter No 1 of 2015 on Obligation of Civil Servants to Report Asset Declaration. The civil servants report their wealth to their respective Head of Organization through Internal Audit and its copy has to be sent to the Minister of AR & BR. The report time are: 3 (three) months after the policy is determined; 1 (one) month after appointment in office; and 1 (one) month after termination from office. LHKASN shall be used as a requirement for promotion and as one element of Bureaucratic Reform Assessment.

Technical Assistant Required

Capacity building on innovative approaches and the use of new technologies to prevent and combat corruption, including development of gratification and asset declaration reporting systems.