

VIOLATION OF ETHICS BY PUBLIC OFFICIALS IN RELATION TO CORRUPTION CASES

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Abstract

The public ethics of state officials in the administration of clean government holds an important position and role as a guide for good behavior in carrying out their duties. The occurrence of political corruption is not solely attributed to the extent of authority possessed but is also rooted in the violation of the ethics of state officials. This study employs qualitative research methods and a literature approach to explore law violations stemming from breaches of state officials' ethics, focusing on the Hambalang Political Corruption case handled by the KPK. The investigation delves into how violations of state officials' ethics transpire, originating from both the executive and legislative branches. The breach of state officials' ethics in this case is linked to the struggle for interests in securing funds to support a candidate for the general chairmanship of a political party. Beyond implicating the executive and legislature, the corruption also involves the private sector. The manipulation of legal loopholes in preparing the APBN is exploited to inflate the value of the Hambalang project, resulting in substantial budgets, profits, and an escalation of corrupted funds. The case study reveals ethical violations by state officials, characterized by dishonest behavior, data manipulation, and a lack of transparency to secure approval for the Hambalang project. These ethical transgressions are coupled with legal violations, ultimately eroding public trust in endeavors to establish a corruption-free government, particularly concerning officials affiliated with political parties.

Keywords: *Clean Governance, Political Corruption, Public Ethics of State Officials*

1. INTRODUCTION

Upholding the law without considering ethics or morality is like attempting to navigate a ship on a waterless ocean. Legal norms and ethical or moral norms are comparable to the two sides of a coin, signifying that a regulatory text and the legal conduct of state officials encompass both dimensions. Law functions as a regulator and controller, interlinked with the execution of state functions and how state officials exercise their authority in accordance with prevailing legislation (Baharuddin, 2014). Meanwhile, ethics serves as a behavioral controller, safeguarding the honor and dignity of state officials who are entrusted, professional, ethical, and cultured.

In the context of the Pancasila state of law, state functions extend beyond the enforcement of laws to also include upholding societal morality, including substantive justice. This is attributed to the tenets of Pancasila, which encompass belief in God and humanism. This background underscores that a democratic rule of law and a democracy based on the law will thrive within the framework of Pancasila and the constitution when executed by trustworthy, professional, ethical, and cultured state officials. Conversely, instances of corruption, bribery, and abuse of authority serve as evidence that such officials lack trustworthiness and culture, in addition to violating the law.

This is substantiated by the prevalent phenomenon of ethical violations by state officials, nearly becoming a political spectacle on a daily basis, including by the highest-ranking officials within a state institution. Several cases of ethical violations have resulted in dismissals from office. Within the realm of judicial power, instances involve the

Constitutional Court (MK), namely the Chief Justice Akil Mochtar and Constitutional Judge Patrialis Akbar. In the Supreme Court (MA), this transgression was committed by Supreme Judge Ahmad Yamani. In the legislative domain, cases involve the Speaker of the People's Consultative Assembly Setya Novanto, the Speaker of the House of Representatives Ade Komarudin, and the Speaker of the Regional Representative Council Irman Gusman.

In addition to these cases, instances of ethical misconduct frequently arise within the legislative sphere, such as legislators playing games during plenary sessions, watching explicit content, engaging in physical altercations during council sessions, absenteeism, and the presence of special attendance. The issue of ethical violations by state officials leads to a decline in public trust in these institutions. For instance, within the judiciary, suspicion is cast upon rulings, with some perceiving them as products of political compromise. According to the Indo Barometer survey (2020), the People's Consultative Assembly and the Regional Representative Council hold the lowest positions (least trusted by the public) with scores of 54.3% for the Regional Representative Council and 44.8% for the People's Consultative Assembly. This indicates that approximately 50% of respondents or the public lack trust in the performance of these state institutions.

Recognizing that such violations damage the constitutional system and erode the foundations of the state's authority, there is a need for a redesign in ethical provisions and their enforcement by establishing an independent and impartial ethical judiciary. This research endeavors to systematically investigate the interplay between legal regulations and ethical norms, particularly within the context of ethical violations by state officials across different branches of government. The overarching objective is to contribute scholarly insights that inform potential reforms in ethical governance. By proposing recommendations, including the establishment of an independent and impartial ethical judiciary, the research seeks to advance academic discourse on the complexities of addressing ethical transgressions in public office, ultimately aiming to bolster the principles of accountability, transparency, and trustworthiness within state institutions.

2. RESEARCH METHODS

This research is a legal inquiry within the field of law, aimed at contributing to the academic discourse and enhancing legal practices within society, with a particular emphasis on the enforcement of constitutional ethics among state officials. Concurrently, it seeks to reconceptualize the institutional framework of ethical adjudication, aspiring towards an ideal configuration. Employing a normative legal research methodology, the study engages in the systematic exploration of secondary data through both a statutory approach, which focuses on regulations governing ethics and their enforcement, and a case approach, which delves into discussions surrounding instances of ethical violations committed by state officials. Methodologically, data collection involves a comprehensive examination of primary legal materials, secondary legal sources, and tertiary legal materials through library research (Amiruddin, 2016). The analytical framework employed is qualitative and descriptive, facilitating the construction of ideal ethical provisions and the establishment of an independent and impartial ethical adjudication system. Through careful data selection and subsequent comprehensive analysis, the research aims to address key questions and contribute to the scholarly understanding of ethical governance within the legal framework.

3. RESULTS AND DISCUSSION

3.1. State Official Ethics

Pancasila serves as the moral foundation and a source of law, morality, and ethics in Indonesia, encapsulating legal and ethical values that guide the nation's governance. The legal norm system should be based on Pancasila, necessitating the enhancement of legal authority to align with Indonesian national values. Pancasila acts as a margin of appreciation for the behavior of state administrators. It sets boundaries for the permissibility or prohibition of certain behaviors by state officials within the context of values and principles.

Meanwhile, the 1945 Constitution not only contains legal norms but also moral or ethical norms, serving as both a legal and moral or ethical guide. The terms "moral" and "ethics" are used interchangeably, both relating to human behavior, actions deemed good or bad, right or wrong, just or unjust, appropriate or inappropriate, ethical or unethical, and moral or immoral. Moral or morality is typically employed in evaluating an action (legal thoughts and actions).

Ethics and morality can stand alone in certain contexts, such as constitutional interpretation. The constitution encompasses legal, ethical, and moral norms, each standing independently as a perspective for understanding contextualization. The concept of the living constitution or the living law acknowledges the influence of values on the moral aspects of a judge's life, reflected in their decisions (Putrijanti, 2013). Another term is "moral justice." A judge's function goes beyond making honest and independent decisions; it rests on the judge's awareness, where accountability lies before the divine and humanity.

For example, in the judicial review of laws related to the expansion of adultery offenses (covering non-marital acts), an appropriate decision is one devoid of constitutional morality, as opposed to constitutional ethics. However, if a constitutional judge imparts political education to specific political parties (including contributing thoughts to a particular political party), constitutional ethics are more applicable in this context. Ethics are employed to assess existing value systems; thus, it serves as a benchmark for evaluating actions related to morality, such as corruption, adultery, gambling, and others.

Ethics differs from law or legal norms. Law is regulated in legislation with sanctions emphasizing institutional penalties, while ethics is governed by a code of ethics with sanctions related to specific positions (reprimands and removal from office). From a positivism perspective, law and morality are considered separate entities with no inherent connection (Dimitrijevic, 2016). However, their coexistence has implications within the legal system. Another viewpoint argues that law and morality are inseparable entities, integrative within a unified meaning. Understanding the constitution or the 1945 Constitution and legislation involves recognizing the interdependence of these entities, even though legal norms are often prioritized in practice. This is because interpreting the constitution does not always require reading its text but contextualizing it within a society rich in moral values and norms.

Constitutional articles are not entirely or always self-explanatory when approached solely from a legal standpoint (Assiddiqie, 2015). Therefore, to capture their meaning, a moral perspective is necessary, as well as political, economic, cultural, and other perspectives. Prohibitions against corruption, murder, fraud, and adultery in legislation constitute legal norms that simultaneously include elements of moral norms. Moral norms are constructed/codified in the form of legal norms. This condition impacts the adherence

to moral norms, which are enforced with strict sanctions in legislation. Similarly, moral norms compiled into a code of ethics should be formulated as justly and fairly as possible. Oversight of judge behavior is meaningless if the ethical norms do not embody principles of truth, justice, and equality. Jimly Asshiddiqie notes, "How can we expect to uphold the law if ethics in social, national, and state life is entirely non-functional? Religion flourishes everywhere, but morals, etiquette, and ethics are not prioritized in the process of forming the quality and integrity of national behavior." Ethics should teach individuals and emphasize how each person should follow and embrace moral teachings, ensuring that actions are always grounded in moral values.

Law born from ethical values comprehensively cannot be implemented without the enforcement of inherent ethical values that have been embedded in Indonesian society since ancient times (Butt & Lindsey, 2008). In various countries, public officials are regulated by ethical rules alongside legal regulations. Ethical provisions pertain to morals, addressing the values of good and bad, worthy and unworthy, or appropriate and inappropriate. Morality is an internal instrument related to personal attitudes and personal discipline because it reflects character (Mellema, 2010). Additionally, kindness, goodness, honesty, loyalty, sincerity, and honesty are forms of ideal morality. The type of constitutional ethics that should be regulated in laws and codes of ethics as a guide for the behavior of state officials includes trustworthiness, independence, impartiality, integrity, fair and objective behavior, honesty, wisdom, prioritizing public interest, responsibility and professionalism, an open personality and noble character, adherence to legal rules and other norms in society, and discipline (Lailam, 2020).

3.2. Analysis of Corruption Cases Based on Profession

The pervasiveness of corruption within governmental spheres, causing detriment to both society and the state, underscores the imperative for heightened vigilance, comprehensive preventive measures, and rigorous repressive actions (Asshiddiqie, 2022). An illustrative case currently under public scrutiny is the corruption involving Puput Tantriana, the Regent of Probolinggo. In contravention of the ethical standards expected of a public official, Tantriana stands accused of engaging in the corrupt practice of trading public office.

As of June 1, 2020, official data from the Corruption Eradication Commission (KPK) reveals a disconcerting trend, with a cumulative total of 1207 individuals implicated in corruption cases based on their respective professions or positions. Disaggregating this data unveils a noteworthy distribution, wherein private sector individuals occupy the foremost position, comprising 26% of the total cases (308 individuals). Subsequent to this, members of the DPR (People's Consultative Assembly) and DPRD (Regional People's Representative Council) account for 23% of cases (274 individuals), while eselon I/II/III officials contribute 19% (230 individuals). The remaining 13% is distributed among various other professions, with Mayors and Regents constituting 10% (122 individuals).

It is discernible from the data that the echelons of societal elites, particularly within the bureaucratic machinery and public offices, present a substantial propensity for involvement in corrupt activities. The case of Puput Tantriana, who ascended to her position through a public electoral process, accentuates the betrayal of trust bestowed upon public officials and the misuse of the authority vested in them. In the broader context of the proliferation of corruption cases, especially implicating local leaders and their familial connections, it behooves the government to take cognizance of these

disconcerting trends. Such occurrences should serve as a clarion call for a concerted effort to combat the reprehensible scourge of corruption, emphasizing the importance of instilling anti-corruption values from an early stage in the fabric of governance and leadership.

3.3. Case of Violation of State Officials' Ethics

In the understanding of state institutions, they can be comprehended by positioning them within the framework of the *trias politica* (legislative, executive, and judiciary) or can be expanded to include state auxiliary organs, agencies, or independent commissions. This means that the definition of state officials can be categorized based on positions in these institutions, but it can also be narrowly defined, including only members of the DPR (People's Consultative Assembly), the President, and Judges. In this research, the definition of state institutions and officials is limited to the scope of national executive power (DPR and DPD) and judicial power (Supreme Court and Constitutional Court). The President is not included in this scope because the 1945 Constitution provides a mechanism for impeachment if the President violates ethics and morality.

State officials are not considered a general profession, similar to the Constitutional Court's ruling that constitutional judges are not "judges" in the general sense, so they cannot be overseen by the Judicial Commission (Chakim, 2014). Similarly, state officials, such as legislators or DPR members, are not considered a general profession. Therefore, it is more accurate to refer to them as state officials whose code of ethics is positioned as such, and issues of ethics are not individual matters but public issues that their "behavior" must be transparently accountable for because the positions they hold are a trust of the people (the public interest). If criminal behavior or violations of the law are public concerns, violations of ethics and morality should also be public concerns, even though in the process of law enforcement and ethics, some exceptions may be made.

Over a period of 5 years, violations of ethics and the law have damaged the state order and shattered public trust. This is undoubtedly due to the actions of the highest officials in state institutions who have committed ethical and legal violations.

3.3.1. Case Example: Chronology of the Corruption Case of the Suspended Regent of Probolinggo, Puput Tantriana

It began with the setback of the second stage of the Village Head Election (*Pilkades*) agenda in Probolinggo Regency, which was supposed to be held on December 27, 2021. The Deputy Enforcement and Execution of the Corruption Eradication Commission (KPK), Karyoto, explained that in Probolinggo Regency, a total of 252 village heads from 24 districts had completed their term since September 9, 2021. As a result, the positions of village head were temporarily vacant.

To address this, officials from the Regional Civil Service Agency (ASN) of Probolinggo Regency, with the proposal from the district heads, were selected as village heads. However, in the process, there was a special requirement that the names proposed by the district heads must first obtain approval from Hasan Aminuddin, a Member of the Indonesian Parliament (DPR RI) and also the husband of Probolinggo Regent Puput Tantriana Sari. This approval took the form of Hasan Aminuddin's signature as the representation of Regent Puput Tantriana on the proposal note.

In addition, each candidate for village head was required to pay a fee of Rp20 million and a bribe in the form of renting village land at a rate of Rp5 million per hectare

(nasional.sindonews.com, 2021). With allegations of corrupt practices in the buying and selling of positions, the KPK conducted a sting operation (OTT) against Regent Puput Tantriana, Hasan Aminuddin, and several other parties involved. The KPK detained 19 people and declared 22 people as suspects, with 18 suspected as givers and 4 as receivers (nasional.sindonews.com, 2021).

The givers were suspected of violating Article 5 paragraph (1) letter a or letter b or Article 13 of Law No. 31 of 1999, while the receivers were suspected of violating Article 12 letter a or Article 12 letter b or Article 11 of Law No. 31 of 1999.

3.3.2. Behavior Violating Ethics by Suspended Regent of Probolinggo, Puput Tantriana, and the Urgency of Public Officials' Ethics

The Regent of Probolinggo, Puput Tantriana, served in her second term from 2018 to 2023, with her first term from 2013 to 2018. Previously, the position of Regent of Probolinggo was held by her husband, Hasan Aminudin, who served for two terms. In 2018, the pair of Puput Tantriana and Timbul Prihanjoko won the Probolinggo Regency Election with a winning vote of 57.6%. However, amidst Puput Tantriana's term as Regent, she became involved in a case of bribery, buying and selling positions, gratification, and money laundering (TPPU), which can be categorized as a violation of public officials' ethics. In this case, the Corruption Eradication Commission (KPK) revealed that Regent Puput Tantriana imposed a tariff on the position of village head in Probolinggo. Every civil servant who wanted to occupy that position was required to pay a bribe of Rp20 million and village land fees of Rp5 million per hectare. This reflects that Regent Puput Tantriana abused her power for personal enrichment and benefit. As reported by dpr.go.id (2021), the standard ethics for public officials include:

- a. Complying with religious teachings
- b. Upholding oath and promises
- c. Adhering to laws and regulations
- d. Behaving as a patron to subordinates and society
- e. Always being honest in actions and words
- f. Acting as a servant and enlightener of society
- g. Behaving as a social integrator

Based on the above standards of public officials' ethics, it is clear that Puput Tantriana deviated from her authority and violated the standards of public officials' ethics. Ethics for public officials should be the foundation for their actions, behavior, and service to the entire society with responsibility. Public officials or leaders will be examples or patrons, setting examples for many people, from subordinates to the general public, in behavior and actions (Yunus, 2018). In this corruption case, the suspended Regent Puput Tantriana is no longer considered a leader who can be a role model or a good example. Moreover, the fact that public funds were misused demands that public officials provide the best for the public. However, Puput Tantriana did not uphold the trust of the people as the Regent of Probolinggo. Furthermore, public officials should be able to build public trust, making their positions more effective.

Contrary to the actions of the suspended Regent Puput Tantriana in this case, she has been proven to violate laws and regulations and behave dishonestly by accepting bribes for the buying and selling of positions, gratification, and money laundering related to the job selection in Probolinggo Regency in 2021. This undermines public trust in a

public official's ability to carry out their duties and exercise their authority. Automatically, a violation of the oath of office also occurred for personal interests. In addition, sanctions for ethical violations so far have not been able to have a deterrent effect, so in reality, cases of public officials violating ethics continue to emerge. The corruption case currently being widely discussed is the case involving the suspended Regent Puput Tantriana. Therefore, it is evident that the government is not maximizing the manifestation of public ethics, so the urgency of public officials' ethics, which is classified as important, must be continuously optimized to minimize future violations of public ethics.

3.3.3. Factors Leading to the Corruption by the Suspended Regent of Probolinggo, Puput Tantriana

According to Indonesia Corruption Watch (ICW), corruption cases at the regional government level are rampant due to the suboptimal central supervision system. Another cause of corruption at the regional level is the delegation of authority to regions in personnel matters, making it prone to cases of buying and selling positions, as exemplified by the Regent of Probolinggo.

Moreover, Herman Nurcahyadi Suparman, Acting Executive Director of the Regional Autonomy Monitoring Committee (KPPOD), added that the lack of integrity among public officials is also a factor causing the rampant buying and selling of positions in the regional government. The setback of the Village Head Election agenda also creates opportunities for corruption, collusion, and nepotism for selected civil servants, authorized by the region to fill vacant village head positions. As regulated in Article 82 paragraph (1) and (3), if there is a delay in the village head election, civil servants are selected as temporary officials by the authorized regional head. Corruption will not occur if the perpetrators do not have the intention to commit such extraordinary crimes, even if there are loopholes or opportunities to do so (Maroni, 2012). In other words, corruption is inseparable from the weak integrity of public officials in maintaining prevailing ethics and norms.

In the case of the buying and selling of positions by the Regent of Probolinggo and related parties, integrity is one of the underlying issues for both parties involved in corrupt practices. Therefore, there needs to be improvement in regulations, supervision, and the enhancement of integrity among public officials and civil servants through various related programs. Integrity is the key to the success of state administration free from corruption, collusion, and nepotism practices.

3.3.4. Ethical Perspective on the Corruption Actions of the Suspended Regent of Probolinggo, Puput Tantriana

Leaders or officials within the government sphere also have a teaching function by serving as examples for the public. It is regrettable if those elected and trusted by the community do not fully fulfill their duties with utmost responsibility. As in the case of Puput Tantriana, by engaging in corrupt actions, she indirectly teaches unethical behavior to her subordinates or those around her. In this context, we examine the perspective of corruption actions from the ethical theories of deontology and teleology.

Deontological ethics views an action as good or bad based on the action itself without assessing the purpose or consequences of the action. In any context, corruption is considered wrong and always wrong because it is seen as detrimental, neglectful, and

sacrificing the public. Similarly, the corrupt actions by the suspended Regent of Probolinggo, Puput Tantriana, fall within the scope of deontological ethics. On the other hand, when viewed from the teleological ethics theory, the goodness or badness of an action is judged based on the purpose or consequences of the action. In this case, Puput Tantriana engaged in bribery for the buying and selling of positions, gratification, and money laundering with the goal of enriching herself, resulting in negative consequences for the country and the public.

3.4. Impact of Corruption on the Public Administration Environment

Corruption can breed greed, cynicism, and selfishness among individuals. Additionally, corruption has the potential to undermine the moral and intellectual standards of society. If this occurs in the public administration environment, the interests and needs of the public will be difficult to fulfill because state officials tend to prioritize their personal interests (Wiryanto, 2016). Furthermore, the prevalence of corruption cases in the public administration environment can also result in long-term negative externalities. Widespread corruption cases can create a perception of normalization within the community, considering corruption as a "culture" in public administration. One of the most crucial components in the state's functioning is public trust.

Corruption can erode public trust in the government as the state administrator. The public may perceive that the government is incapable of fulfilling its duties in accommodating public interests. Public trust is a key component of the success of public service delivery. The lack of public trust will also affect the community's interest in participating in any public policies set by the government.

If the public does not trust the government, the formulated programs will be challenging to implement (Syahuri, 2010). Moreover, corruption is an extraordinary crime with the capacity to dismantle a government regime. Corruption can trigger instability in the political and economic conditions of a country, potentially leading to disharmonious relations between the government and the public. Under certain circumstances, corruption has the ability to weaken the government's authority in a manner that lacks dignity.

4. CONCLUSION

With the increasing number of ethical violations committed by state officials, the need for an independent and impartial ethics court has become more urgent. However, some ethics institutions are still under the control of state institutions, which can lead to potential conflicts of interest. To establish a truly independent and impartial ethics court, certain conditions must be met, including the establishment of a law specifically regulating the ethics of state officials, the creation of a transparent and accountable code of ethics enforcement process, and the strengthening of procedural laws governing the ethics court. Ultimately, the decisions made by the ethics court must be final and binding.

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