

Optimization the Role of APIP (Government Internal Supervisory Apparatus) in the Region as a Preventive Action in the Criminal Act of Corruption in Indonesia

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Abstract--This study aims to determine the position and role of APIP in region on preventing corruption according to statutory regulations and to find out the ideal concept for APIP in the region. This research is a legal research conducted with normative research using the statutory approach and conceptual approach. It is known that various laws and regulations governing APIP's position in region consistently, which is under the regional head. Regarding the role of APIP in region on preventing corruption, it starts through the existence of a new function in Government Regulation Number 72 of 2019 concerning Amendments to Government Regulation Number 18 of 2016 concerning Regional Apparatuses. Furthermore, the most important thing that becomes the solution is the repositioning of APIP in region. APIP in region cannot be continually placed under the regional head. This will greatly affect their performance. As long as APIP in the region is still under the shadow of the regional head, APIP in the region will not be able to become a supervisor in the region. APIP's position in the region should be under the Ministry of Internal Affairs, hence APIP in region will be more courageous to take action. Departing from this, APIP in regions will no longer responsible to the regional head. The first thing to do in realizing this is to create a second amendments to Government Regulation Number 18 of 2016 concerning Regional Apparatuses. Departing from this reposition, technical matters regarding position and rank adjustments will be able to follow. In addition, clear requirements must be established regarding qualifications to be APIP inspectors in the regions. Then, a fit and proper test should be made and involving the community and independent institutions. It is certainly intended that the inspector has full of responsibility to the community.

Key words--APIP in region, supervision, prevention, corruption.

I. INTRODUCTION

As we highlight the number of regional heads affected by Red-Handed Operation (OTT) lately, according to Indonesia Corruption Watch (ICW) it shows that the Government Internal Supervisory Apparatus (APIP) in the region has not played an effective role [1] in eradicating corruption, especially in terms of prevention [2]. Evidently, throughout 2018, the Commission of Corruption Erradication (KPK) has arrested 121 suspects in corruption cases in the regions. [3] By the total, there are 21 regional heads who are entangled in corruption cases. [4] In fact, there are corruption cases that actually involved by APIP members in the regions.

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In 2017, there was a case that occurred in Pamekasan Regency, where there was an APIP involvement alleged in bribery carried out by Dasok Village Head, Agus Mulyadi together with the Regent of Pamekasan. [5]

Article 1 number 46 of Law Number 23 Year 2014 concerning Regional Government states that APIP is the generale inspectorate of ministries, the oversight unit of non-ministerial government agencies, provincial inspectorates, and district/city inspectorates. In this research, APIP in region is the subject which referring to the provincial inspectorate and district/city inspectorate. Besides being accommodated in Law Number 23 of 2014 concerning Regional Government, the existence of APIP in region is also regulated in various other laws and regulations, which are Law Number 1 of 2004 concerning State Treasury, Government Regulation Number 60 of 2008 concerning Internal Government Control Systems, Government Regulation Number 12 of 2017 concerning Development and Supervision of the Implementation of Regional Government, Government Regulation Number 18 of 2016 concerning Regional Apparatus, and Government Regulation Number 72 of 2019 concerning Amendment to Government Regulation Number 18 of 2016 concerning Regional Apparatus.

Discussing the supervision within the Government by APIP, it is necessary to study two types of supervision, namely preventive supervision and repressive supervision. The role of the regional inspectorate which was originally only repressive, has developed to be preventive. Meanwhile, preventive supervision is intended as supervision conducted on an activity before the activity is carried out, thus prevent deviations. [6] In principle, this oversight is carried out by the government to avoid any deviation in the implementation of government actions. On the other hand, this supervision is also intended to ensure that the implementation of government actions is in accordance with its objectives. [7] With preventive supervision, it is expected that there will be early detection of suspicious matters. Furthermore, repressive supervision is supervision conducted on an activity after the activity has finished. [8]

Regarding supervision within the Government, there have been various studies carried out, both regarding the role, functions, to the effectiveness of APIP. However, the study did not focus on supervision conducted by APIP in region. One of the existing studies entitled "Supervision Synergy to Create a Good Governance and Clean Governance" written by Wakhyudi, Widyaiswara Madya Pusdiklatwas BPKP. The study relies from the Government's desire to hold the government clean. The substance discussed is about the development of APIP which leads to the supervision synergy. Thus APIP management functions will be efficient and effective according to the needs of the stakeholders. The study was conducted before the issuance of Law Number 23 of 2014 concerning Regional Government, Government Regulation Number 18 of 2016 concerning Regional Apparatus, Government Regulation Number 72 of 2019 concerning Amendments to Government Regulation Number 18 of 2016 concerning Regional Apparatus, and other regulations regarding the duties and functions of APIP. Thus, this research will refer to various relevant laws and regulations and focus on the existence and function of APIP in the region, particularly in the action to prevent corruption.

Besides the previous studies, there are also studies on APIP in regions. Meanwhile, the subject discussed is on the effectiveness in certain areas chosen as the location for research data collection. One of them is a study titled "Evaluation on the Effectiveness of Strengthening the Role of Government Internal Supervising Apparatus in the New Paradigm (Case Study of One Inspectorate in Aceh)" written by Marlaini as Lhokseumawe City Inspectorate Staff and Aliamin and Mirna Indriani as Lecturers in the Faculty of Economics and Business in Syiah Kuala University. The research discusses the audit methods, approaches, and focus in line

with the paradigm shift in the role of internal auditors of APIP in regions. In addition, the study also identified aspects that were obstacles in implementing the strengthening of APIP. The results of the study indicate that the audit methods, approaches, and focus that should be carried out in a new paradigm, have not changed in their entirety. The implementation of strengthening the role of APIP also has several obstacles including, the competence of human resources is minimal, the amount of the budget is relatively small, the weak independence of APIP's institutions, low objectivity of the auditors, and minimum commitment from stakeholders.

Meanwhile, this research will not refer to APIP in certain regions, but rather look comprehensively through the laws and regulations on how the role and position of APIP in regions at present. Hence, both structural obstacles and the solution will be found. From this, there will be an analysis of how the position and role of APIP should be in the regions, especially in the context of preventing corruption.

Based on the scope, previous literature reviews, and scientific novelty above, the formulation of the problems in this study are: 1) The position and role of APIP in regions in preventing corruption according to statutory regulations ?; and 2) The ideal concept for APIP in regions. Meanwhile, the objectives in this study are: 1) To acknowledge the position and role of APIP in regions in preventing corruption according to statutory regulations; and 2) To acknowledge the ideal concepts for APIP in regions.

II. METHOD

This research is a legal research/study, in which is research by focusing on the main characteristics of examining the application of a legal product accompanied by arguments/legal considerations made by law enforcers, as well as the interpretation behind the enforcement. This research was conducted with normative research. Normative research is research that places the law as a building norm system, which consists of principles, norms, rules of legislation, court rulings, agreements and doctrines. [9] This normative research achieved by studying and analyzing laws and regulations or other legal materials with the substance of the Government's internal control arrangements. Meanwhile, this study uses a statutory approach and a conceptual approach.

The statute approach is carried out by examining all laws and regulations relating to the legal matter discussed. [10] From the legis ratio, ontological basis, and philosophical basis of regulations relating to the role of APIP in regions as one of the preventive efforts in the occurrence of criminal acts of corruption. Meanwhile, the conceptual approach is an approach that moves from the views and doctrines that develop in the science of law. [11] This approach is carried out with an understanding of the concepts put forward by experts in various literatures [12], especially about APIP in districts/ regions.

III. RESULTS AND DISCUSSIONS

The Position and Role of APIP in Regions Regarding the Prevention of Criminal Act of Corruption According to Regulations

Sri Soemantri argued that the most important elements of the law were [13]:

- a. The government in carrying out its duties and obligations based on law or legislation;
- b. Guarantees of human rights (citizens);
- c. The distribution of power; and

d. Supervision of judicial bodies (rechterlijke controle).

The perspective expressed is the perspective of constitutional law. Therefore to put special attention to the division of institutions and their respective functions. One consequence that arises is the oversight function attached to the judiciary. Based on this opinion, the supervision of the judiciary is an important thing in order to realizing a constitutional state of law. In this case, supervision is a control for each state institution. In its development, supervision in the modern state is not only carried out by the judiciary. Especially if the supervision in question is internal supervision. Meanwhile, internal supervision is supervision carried out by a person or entity within the environment of the relevant organizational unit. [14] Supervision in this form is conducted both by direct supervision or built in control. [15] APIP in regions is one form of internal supervision that is inherent supervision with built in control.

Furthermore, referring to the concept of administrative law, supervision is interpreted as a process of activities that compares the result with what is initially planned, or ordered. [16] In the context of building public management that is characterized by good governance, supervision is an important aspect to maintain the function of government as it should. [17] In this case, APIP in regions is expected to be able to supervise the government therefore all functions in the regional government is an effective and proper ones. [18]

Various laws and regulations regarding APIP in regions have consistently governed the position of APIP in regions, which is under the regional head/leader. As a consequence, APIP in regions must be responsible to regional heads. [19] Article 1 numbers 6 and 7 Government Regulation Number 60 of 2008 concerning the Government Internal Control System states that the provincial inspectorate is the government internal control apparatus responsible directly to the governor and the district/city inspectorate is the government internal control apparatus responsible directly to the regent/mayor.

In line with the statement Article 23 paragraph (1) of Government Regulation Number 12 of 2017 concerning Development and Supervision of the Regional Government Implementation also instructs the existence of an obligation for APIP to report the results of supervision to the leader of their respective agencies. Referring to this, in the context of APIP in regions it is mandatory to submit it to the respective regional heads. [20]

Meanwhile, Article 216 paragraph (2) of Law Number 23 Year 2014 concerning Regional Government states that the task of the regional inspectorate is to assist the regional head in fostering and overseeing the implementation of government affairs which are the authority of the region and the task of co-administration by the regional apparatus. Furthermore, in Article 216 paragraph (3) of Law Number 23 Year 2014 concerning Regional Government, it also explicitly states that the regional inspectorate is responsible to the regional head through the regional secretary. A distinctive difference that distinguishes what is regulated by Law Number 23 of 2014 concerning Regional Government with the two government regulations mentioned earlier, namely the existence of the regional secretary as an intermediary.

APIP's position in regions is responsible to the regional head through the regional secretary causes APIP in regions to be unable to work independently. [21] The effectiveness of APIP's role in the regions depends on the political will of the regional head. [22] As a result, APIP in regions does not have enough space

to be able to become a strong internal supervisor. [23] Aside from being related to independence, APIP in regions also lacks adequate support in terms of personnel and budget. [24]

Reflecting from the many cases of corruption in regions that have been revealed, many parties consider that the weakness of the monitoring system is a central factor. [25] In fact, APIP in regions plays a central role in preventing corruption. [26]

Its role as a supervisor, consultant, and quality assurance (QA) in the operational activities of government in the region, APIP should be able to sniff out any potential irregularities or corruption thus they can prevent it early on. [27] More simply, APIP should act as an early warning system. [28]

Looking at the level of theory, Gurgur argues that patron-client relations in the bureaucracy are often used in seeing the effectiveness of internal supervision. [29] According to J.C. Scott, Patron-client in the bureaucracy is a theory which states that in a patron-client relationship, a superior/head acts as a patron with all the influence and resources that can provide protection and/or take benefits to someone who is considered inferior/subordinate as a client, as long as the client responds by providing support and assistance to the patron.

In the context of bureaucracy in the region, patron-client relations can be seen from the role of the regional head who is central to the employees in the area. This is manifested in various laws and regulations. Referring to Law Number 5 of 2014 concerning the State Civil Apparatus, the regional head holds the role of head to the regional employee. As the supervisor of regional employees, the regional head has the authority to appoint and dismiss an employee. As a result, regional employees place themselves as clients of the regional head who becomes a patron.

In the context of patron-client relations between regional heads and APIP in regions, it can be understood that APIP in regions is not an independent institution as it must comply with regional heads. In this perspective, even though APIP in regions has adequate capacity, budget, and facilities and infrastructure, if a patron-client relationship occurs, it will be difficult to expect APIP's performance in the regions to eradicate corruption.

Seeing the condition of APIP in regions that has not been optimal [30], there are various institutions that have pushed APIP in regions to be addressed immediately. The Ministry of Internal Affairs through Minister of Internal Affairs Decree Number 188.3105-7723 of 2017, formed a Revision Team for Government Regulation Number 18 of 2016 concerning Regional Apparatus. In addition, the Ministry of Internal Affairs along with the Corruption Eradication Commission (KPK), the Ministry of Administrative Reform and Bureaucratic Reform, and the Ministry of State Secretariat are also keen to the reform.

On November 15, 2018, the four institutions agreed on the revision of Government Regulation Number 18 of 2016 concerning Regional Apparatus. [31] For the efforts that have been made by various agencies, in 2019 Government Regulation Number 72 of 2019 concerning Amendment to Government Regulation Number 18 of 2016 concerning Regional Apparatus was issued. Various parties hope that the change in government regulations can strengthen APIP in regions. But in fact, APIP's position in the region remains under the regional head and it must comply to the regional head. This is stated in Article 11 paragraph (3) and Article 33 paragraph (3) Government Regulation Number 72 of 2019 concerning Amendment to

Government Regulation Number 18 of 2016 concerning Regional Apparatus which states that provincial inspectors in carrying out their duties are responsible to the governor through a secretary regions and district/ city regional inspectors in carrying out their duties are responsible to regents/mayors through regional secretaries.

However, there are additional functions that are expected to strengthen APIP in regions. The new function is in the framework of preventing corruption that was not previously contained in Government Regulation Number 18 of 2016 concerning Regional Apparatus. The function is contained in Article 11 paragraph (5) letter e and Article 33 paragraph (5) letter e Government Regulation Number 72 Year 2019 concerning Amendment to Government Regulation Number 18 Year 2016 concerning Regional Apparatus, namely the function of coordinating the prevention of corruption by the region's inspectorate. This is an additional function that is quite significant when compared with the previous one. In Government Regulation No. 12 of 2017 concerning Development and Supervision of the Implementation of Regional Government, APIP in regions only focuses on administrative violations. In fact, Article 49 paragraph (5) Government Regulation Number 60 Year 2008 concerning the Government Internal Control System only provides a limitative oversight function of APIP in regions. The function is applied to supervise all activities in the context of carrying out the duties and functions of regional work units that are funded by the Regional Revenue and Expenditure Budget.

Regarding supervision of the prevention of corruption, more technically, Article 3 paragraph (1) Regulation of the Minister of Internal Affairs Number 61 of 2019 concerning Planning for Supervision of Regional Government Administration in 2020 encourage the enforcement of integrity a form of planning for supervision. In the appendix to the Ministerial Regulation, the integrity enforcement activities mentioned include: (1) monitoring and evaluation of corruption prevention actions; and (2) verification of corruption prevention reporting.

In addition to the new functions, based on Article 11 paragraph (5) letter e and Article 33 paragraph (5) letter e Government Regulation Number 72 Year 2019 concerning Amendment to Government Regulation Number 18 Year 2016 concerning Regional Apparatus, provincial and district/city regional inspectorates may carry out supervisory functions for specific purposes of the assignment without waiting for assignments order from the governor and/or minister for the provincial inspectorate and from the regent/mayor and/or governor if there is potential for abuse of authority and/or state/regional financial loss.

Ideal Concepts for APIP in the Region

Minding the condition of APIP in regions that have not been properly maximized [32], there have been various institutions that encourage APIP in regions to be addressed immediately, including the Ministry of Internal Affairs, the Corruption Eradication Commission (KPK), the Ministry of Administrative Reform and Bureaucratic Reform, and the Ministry of State Secretariat. These agencies already have solutions to improve APIP in regions.

The Ministry of Internal Affairs as the ministry in charge of regional government offers several solutions to make the inspectorate more independent [33]: First, there is a vertical quasi. Vertical quasi means that the appointment of a district / city inspector is carried out by the regional head with the approval of the

governor. Meanwhile, the provincial inspector is appointed by the governor with the approval of the Minister of the Internal Affairs. The hope is that APIP in regions is not the result of cloning from the regional head. Secondly, the echelonization of the inspectorate which is equal to the regional secretariat office. Third, create adjustments to functional positions both for the Supervision of the Implementation of Government Affairs in the Region (P2UPD) and the Functional Auditor Position (JFA) to deal with the lack of functional auditors in the regions due to the moratorium policy on recruitment by the Government. Fourth, provide a proper budget for proper supervision in accordance with the Regulation of the Minister of Internal Affairs.

Not only the Ministry of Internal Affairs, the KPK also has recommendations for APIP in regions, especially in the context of preventing corruption. According to the Corruption Eradication Commission (KPK), the method is through revision of Government Regulation Number 18 of 2016 concerning Regional Apparatus with details [34]:

1. Provincial APIP must report to the minister if there are indications of abuse of authority and/ or state/regional financial loss when conducting the supervisory function;
2. Regency/City APIP must report to the governor if they find indications of abuse of authority and/or state/regional financial loss when conducting the supervisory function;
3. The Minister of Internal Affairs and the governor supervises the regional inspectorate by involving the Financial and Development Supervisory Agency;
4. The mechanism for dismissal or transfer of regional inspectors must be through written consultation with the Minister of the Interior. For district/city level regional inspectors, written consultations are submitted through the governor;
5. The Minister of Internal Affairs supervises the process of filling the position of regional inspector; and
6. Improving the class of inspector positions by the Ministry of Administrative Reform and Bureaucratic Reform through the Minister of Administrative Reform and Bureaucracy Reform.

Although the recommendation was submitted prior to the revision of Government Regulation Number 18 of 2016 concerning Regional Apparatus, the recommendation is still relevant. Bearing in mind that even after the Government Regulation Number 18 of 2016 concerning Regional Apparatus was revised, the APIP in regions was still under the regional head and had to answer to the regional head. It can be said that the position of regional head is still superior when compared to APIP in regions. As a result, the performance of APIP in regions still inadequate.

Referring to the various recommendations submitted by the Ministry of Internal Affairs and the KPK, three main aspects can be drawn into the spotlight, namely institutional, budget, and human resources. [35] Strengthening in institutional aspects is important to maintain the independence of APIP in regions. In this case, the appointment of district/city inspectors is carried out by the regional head in consultation with the approval of the governor. Meanwhile, the provincial inspector was appointed by the governor in consultation and with the approval of the Minister of the Internal affairs. It is intended that the regional head does not remove the inspector who clashes the regional head arbitrarily. In addition, there must be clear requirements for becoming an inspector. Furthermore, in terms of budget, APIP's budget in the regions is still dependent on the Regional Revenue and Expenditure Budget. In principle, there must be an adequate level of supervision costs at a rational and proportional level.

Various concepts presented by the Ministry of Internal Affairs and the Corruption Eradication Commission (KPK) lead to the renewal of APIP in regions. The most important thing that becomes the solution is the repositioning of APIP in regions. APIP in regions cannot be continually placed under the regional head. This will greatly affect their performance.

As long as APIP in regions is still under the shadow of the regional head, APIP in will not be able to become a monitoring body in the region. APIP's position in the region should be under the Ministry of Internal Affairs, therefore APIP in regions will be more courageous to take action. In addition, APIP in regions will no longer responsible to regional heads. The first thing to do in realizing this is to create a second change to Government Regulation Number 18 of 2016 concerning Regional Apparatus. From this reposition, technical matters regarding position and rank adjustments will be able to follow.

In addition, clear requirements must be established regarding qualifications to be APIP inspectors in the regions. Next, a fit and proper test was made, involving the community and independent institutions. It is certainly intended that inspector must have a full sense of responsibility to the community.

IV. CONCLUSION

Based on the results and discussion, it can be concluded that various laws and regulations regarding APIP in regions have consistently governed the position of APIP in regions, which is under the regional head. Regarding the role of regional APIP to prevent corruption, it has begun to emerge through the existence of a new function in the framework of preventing criminal acts of corruption contained in Government Regulation Number 72 of 2019 concerning Amendments to Government Regulation Number 18 of 2016 concerning Regional Instruments.

Furthermore, the most important thing that becomes the solution is the repositioning of APIP in regions. APIP in regions cannot be continually placed under the regional head. This will greatly affect the performance As long as APIP in regions is still under the shadow of the regional head, APIP in will not be able to become a monitoring body in the region. APIP's position in the region should be under the Ministry of Internal Affairs, therefore APIP in regions will be more courageous to take action. In addition, APIP in regions will no longer answer to regional heads.

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