Enforcement of Corporate Criminal Liability and Corruption Prevention in Indonesia

Laode M. Syarif
KPK Commissioner

INTERNATIONAL BUSINESS INTEGRITY CONFERENCE (IBIC) 2017
PUBLIC AND PRIVATE COLLABORATION IN CORRUPTION PREVENTION
Jakarta, 11-12 December 2017
The Urgency of CCL Enforcement for Indonesia

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Individuals are from private sector

170 individuals are from private sector
The Urgency of CCL Enforcement for Indonesia

Prior to the enactment of the Supreme Court Regulation No.13/2016), ONLY 2 corporations have been prosecuted with Anti Corruption Act
1 Corporation

Has been proceeded by KPK after the PERMA No. 13/2016 came into force
The Urgency of **CCL Enforcement** for Indonesia (3)

Indonesia has actually more than 60 Laws containing corporate criminal liability on environmental, money laundering, corruption, mining, spatial planning, forestry, etc.
The Urgency of CCL Enforcement for Indonesia

“....to establish the liability of **LEGAL PERSONS** for participation in the offences established in accordance with this Convention. Subject to the legal principles of the State Party, the liability of legal persons may be CRIMINAL, civil or administrative....”

It is a mandated by UNCAC to the State Party
Regulation of the Supreme Court (PERMA) No. 13/2016

On Case Handling Procedures for Corporate Crimes

Becomes a BREAKTHROUGH to provide legal assurance for both law enforcement agency and corporations in CCL enactment
Fault Elements

Article 4, Perma No 13/2017

1. The Corporation is receiving profit or benefit from the crime; or the crime is perpetrated for the interest of the Corporation;
2. The Corporation allows the crime to occur; or
3. The Corporation failed to take necessary measures to prevent a wider impact and to ensure compliance with provisions of the prevailing laws
Crimes by Legal Person
Requirements for Crimes by Corporation

• Employee of corporation or other relationship (performs services for or on behalf of corporation. I.e. Agent, Lawyer, Broker and subsidiaries); and
• In scope of corporation business or to support corporation business.

(Source: Article 3 of Supreme Court Regulation No 13/2016 and Article 20 Anti Corruption Act)
Corruption Offences That Corporation Could be Liable

Illegally commits an act to illicit enrichment, thereby creating losses to the state revenues

Bribery

Gratification
Corporation could be liable for all Offences in Anti-Money Laundering Act
Lesson Learned of **CCL Effectiveness**

**Top Ten by Largest Sanction to Bribe Ratios, FCPA**

<table>
<thead>
<tr>
<th>Cases</th>
<th>Sanction</th>
<th>Bribe</th>
<th>Ratio</th>
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<td>In the Matter of Cadbury Ltd and Mondelez International, Inc.</td>
<td>$13,000,000</td>
<td>$90,666</td>
<td>14338%</td>
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<tr>
<td>US v. Saybolt North America, et al.</td>
<td>$4,902,400</td>
<td>$50,000</td>
<td>9805%</td>
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<td>Securities and Exchange Commission v. Noble Corp.</td>
<td>$5,576,998</td>
<td>$79,026</td>
<td>7057%</td>
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<tr>
<td>US v. Pride Forasol S.A.S</td>
<td>$32,626,200</td>
<td>$500,000</td>
<td>6525%</td>
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<tr>
<td>In Re Armor Holdings, Inc.</td>
<td>$10,290,000</td>
<td>$200,000</td>
<td>5145%</td>
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<td>US v. Pride International, Inc.</td>
<td>$32,625,000</td>
<td>$804,000</td>
<td>4058%</td>
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<tr>
<td>US v. SSI International Far East, Ltd.</td>
<td>$7,500,400</td>
<td>$208,623</td>
<td>3595%</td>
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<td>In Re Noble Corporation</td>
<td>$2,590,000</td>
<td>$74,000</td>
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<td>In the Matter of SAP SE</td>
<td>$3,888,896</td>
<td>$145,000</td>
<td>2682%</td>
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<td>US v. Hewlett-Packard Polska, SP. ZO.O</td>
<td>$15,450,224</td>
<td>$600,000</td>
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Lesson Learned of CCL Effectiveness (2)

**UK’s Serious Fraud Office (SFO) Annual Report 2016 – 2017:**

- **13 defendants were convicted** in seven cases, giving conviction rates by defendant of 86.7% and by case of 100%.

- SFO secured two Deferred Prosecution Agreement (DPA) in 2016-17 with a UK SME (that cannot currently be named due to continuing legal proceedings) and with Rolls-Royce.

- Overall, the financial recoveries we made in our cases, including proceeds of crime work and costs, amounted to **£544.7m**

- Almost all of the SFO’s cases have an **international dimension** that calls for **close cooperation** with overseas law enforcement agencies, prosecutors and regulators in order to secure the evidence required to investigate and prosecute those cases successfully.
Remaining Challenges in **CCL Enforcement**

- Amount of financial sanctions to amount of corruption?
- **Willingness and capacity of law enforcement agency to prosecute corporations?**
- Cross border/international case handling?
Corruption Prevention

- KPK launched **PROFIT** (*Professional with Integrity*) program to support the prevention side in business sector

- PROFIT engages **Chamber of Commerce** and Industry, business association, state-owned companies, private firms and regulators on public services sector

- PROFIT initiates **Certified Integrity Officer** (Ahli Pembangun Integritas) as a National Working Competency Standard acknowledged by the Ministry of Manpower and Transmigration and by National Profession Certification Agency (BNSP)
KPK is formulating **Adequate Procedure** to complement PERMA No. 13 / 2016 that requires corporation to have sufficient prevention measures to limit the criminal liability.
1. Identification of corruption risk
2. Code of Conducts
3. Internalization Anticorruption Values; Training; Socialization
4. Corporate Social Responsibility
5. Leadership
6. Mechanism Whistle-Blowing
7. Accountable, Transparent Reporting
8. Policy on Conflict of Interest
9. Compliance System
Remaining Challenges in Prevention

• To ensure that adequate procedure is not just paper checklist, but seriously implemented by corporation, meanwhile...

• Vary: SIZE, SCOPE, MATURITY IN COMPLIANCE, including GEOGRAPHICAL characteristics of the corporations in Indonesia
Terima Kasih