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Facilitating payments: an ethical problem in the Indonesian bureaucracy

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I. Introduction

A survey conducted by Transparency International Indonesia (TII) in 2012 revealed that about 71 percent of Indonesia's citizens pay bribes to obtain public services such as taxation, civil registration, business licensing, and land services (Martinus 2013). Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* or KPK) confirms this finding and reveals that the problem of bribery of public officials has been a chronic problem in Indonesia's bureaucracy, not only at the central government but also at the local governments (KPK 2014, p. 35). The unofficial payments given to public officials with an intention to expedite the administrative process of public services are also commonly known as facilitating payments (Argandona 2005, p. 251; Bailes 2006, p. 295; OECD 2003, p. 16). According to Argandona (2005), facilitating payments are often caused by the uncertainty of public services, hence by giving some money to the public officials as the service provider, citizens expect the faster and easier process (p. 254).

Even though facilitating payments do not directly cause losses to the state finance as other types of corruption do, there are damaging impacts resulted by them, such as additional costs to the citizens and destroying the ethical foundations of organisation (ibid, p. 252). From the ethical perspective, public officials who receive bribes could be said to commit unethical behaviour since they have neglected the ethical demands on the public sector stressed by Van der Wal et al. (2008), such as the values of incorruptibility, impartiality and lawfulness (p. 476). Against the above background, this paper attempts to: (1) analyse facilitating payments from the ethical perspectives, (2) identify the main factors behind the emergence of facilitating payments in Indonesian bureaucracy, and (3) propose recommendations to address the problem of facilitating payments. This paper argues that (1) cultivating the culture of integrity within public organisations, (2) mainstreaming online services, and (3) strengthening the role of the Ombudsman of the Republic of Indonesia are appropriate strategies in addressing the problem of facilitating payments.

II. Literature review

1. Facilitating payments from the ethical perspective

Administrative ethics is one of the key features of democratic life by which the government has to ensure an equal treatment towards everyone. According to Thompson (1985), administrative ethics entail the implementation of moral principles which determine the rights and duties that public officials should respect when they act to affect the wellbeing of society (p. 555). In addition, to satisfy administrative ethics, public officials must be able to make a moral judgement towards their action (ibid). Hence, the administrative ethics is mainly aimed to specify whether public officials' actions are able to serve everyone's interests. By receiving bribes for their duties in serving the citizens, public officials not only have failed to meet the requirement of administrative ethics in making a moral judgement towards their action, but also have violated the moral principles. It is because they have moral responsibilities to specific duties attached to the position that they hold in the public administration (Thompson 1980, p. 905). Discriminating public services to obtain personal benefits in the form of bribes indicates the occurrence of unethical behaviour caused by a failure to fulfil the moral responsibilities.

Furthermore, by abusing their position to obtain personal benefits, public officials who receive bribes have violated the value of incorruptibility as one of public sector values. Van der Wal et al. (2008) define incorruptibility as the ability of government officials to perform their duty without being affected by their private interests (p. 470). The failure to fulfil the value of incorruptibility thus leads the public officials to commit corrupt acts. Hence, according to Larmour (2007), examining corruption from the perspective of ethics would lead the focus to the individuals' behaviour rather than the system in which individuals hold a position, even though international arguments would suggest to analyse both individuals and systems (p. 8).

2. Main factors of the presence of facilitating payments in Indonesian bureaucracy

The problem of facilitating payments is rooted in the poor quality of public services. According to the IPAA (2011), a quality public service delivery is marked by its ability to meet the citizens' needs and expectations (pp. 13-14). For instance, business licensing is the most complained about service in both central and local governments by which investors are discouraged from the intention to invest. Rather than providing simple and

fast investment procedures as expected by investors, the business licensing process in Indonesia is uncertain, which is caused by the complexity of procedures, the uncertainty in the period of the process, and unstandardized costs (KPPOD 2014, p. 1). Hence, Indonesia was ranked 91 of 190 countries in ease of doing business as reported by the World Bank (2016, p. 7), in which the uncertainty of bureaucratic process of business licensing significantly contribute to this rank.

Furthermore, the deviance between citizen's expectation of quality of public services and actual services delivered by public sector organisations lead to the citizens' willingness to pay bribes to obtain quality services. The TII's finding reveals that almost all of those who pay bribes to public officials admitted that the bribes were intended to expedite the process of service delivery (Martinus 2013). This fact implies a deviation between citizens' expectation of timely services and the reality of untimely public services. From this fact, it also is possible to conclude that public officials in Indonesian bureaucracy have not fully implemented the principle of customer orientation as one essential feature of New Public Management (NPM). According to Korunka et al. (2007), NPM requires the public administration to focus on citizens as the customers, therefore individual customer expectations and needs must be responsively fulfilled (p. 307-308).

Moreover, the problem of facilitating payments in Indonesian bureaucracy could also be attributed to the lack of integrity of its public officials. It is because the facilitating payments are commonly made to affect the non-discretionary duties of public officials and are not intended to affect the decisions or the outcome of the public officials' action (KPK 2014, p. 4). Ideally, public officials must perform their regular duties to provide quality services to the citizens without expecting or receiving anything in return. Hence, by accepting bribes for an outcome that is a routine and non-discretionary duty in his position, a public official exhibits a lack of integrity. According to Weinreb (2003), the value of integrity requires public officials not to behave corruptly in obvious way, such as accepting bribes or accepting something in return for officials' action (p.421).

However, behaviour of public officials cannot be separated from the organisations' responsibility, as Christensen and Lagreid (2011) argue that the actions of individual civil servants determine ethics in public sector organisations (p. 460). Unethical behaviour of public officials could be attributed to the failure of the organisations in building an effective ethics infrastructure. The OECD (2000) defines ethics infrastructure as the tools

and processes built within an organisation which are intended to prevent unethical behaviour as well as providing incentives to encourage good conduct of public officials (p. 23). Thus, the efforts to improve public officials' behaviour should also be performed through an organisational approach by developing adequate ethics infrastructure within public organisations.

III. Analysis: Addressing the problem of facilitating payments

Cultivating the culture of integrity within public organisations

Indonesia has a strong legal foundation to take enforcement actions against the incidence of facilitating payments on its bureaucracy. Article 11 of Law Number 31 Year 1999 concerning Eradication of the Criminal Act of Corruption clearly states that every civil servant is prohibited from receiving any kind of gift or bribe in regards to their duties. The threat of punishment in the form of prison sentences and fines has also been clearly exposed. A civil servant who receives a gift or bribe related to his duties is threatened with a maximum of five years prison sentence or a maximum of IDR 250,000,000 (equivalent to AU\$ 25,000) in fines (ibid). However, enforcement of this regulation is difficult due to the massive practice of facilitating payments in the Indonesian bureaucracy. In addition, KPK as the anti-corruption agency has also faced limited resources to deal with cases of facilitating payments which have spread across government agencies (Febrari 2015, p. 136). Moreover, Mulgan and Wanna (2011) argue that the legal enforcement approach in anti-corruption strategies merely relies on the disincentives character of formal regulatory to encourage compliance, hence it has potential to be disregarded, and could potentially not cover all of the behaviour associated with ethically appropriate action (pp. 416-417).

Therefore, it is important to develop the culture of integrity as a complementary strategy to the legal approach. In general, the culture of integrity would provide greater emphasis on the prevention of unethical or corrupt behaviour. According to the OECD (2000), the prevention approach would be less expensive than enforcement approach, and it also implies a long-term investment in enhancing the public service culture (p. 19). First, as the initial step, the President of Indonesia is recommended to issue a regulation which requires every public organisation to develop a culture of integrity through the process of codifying the organisation's values and conduct. Broader than establishing a regulation as the basis in inculcating public service ethics, this regulation would also indicate the

political commitment from the highest leader of Indonesian bureaucracy. The OECD (2000) underlines the importance of political commitment as the foundation to encourage ethical behaviour in the public administration (p. 24).

Moreover, every public official within an organisation has to be involved in developing both a code of ethics and a code of conduct based on distinctive values and internal practices. General values and principles which underpin the organisation's duties and are employed by members of an organisation to make independent judgments in performing their duties would then be stated in the code of ethics (Dobel 2005, p. 165). The core of public sector values such as incorruptibility, impartiality, integrity and lawfulness should be stated in this ethical code as a solid foundation of organizational culture. On the other hand, the code of conduct should specify the expectations about which actions and behaviour of public officials are required, prohibited and acceptable (Mulgan & Wanna 2011, p. 423). The code of conduct should also be used to specify the standard of services expected when public officials deliver services to citizens, and prohibit them from receiving any facilitating payments. Standard of services stated in the code of conduct has to be directed to encourage public officials who are in the front line of service delivery to better focus on customers.

Finally, to ensure that members of an organisation have sufficient understanding and therefore are able to comply with the code of ethics and code of conduct in performing regular duties, induction and training would be essential to reinforce these ethical matters. According to Nolan (1998), induction of ethical and conduct codes would ensure that every member of organisation has instilled the values and professional practices, while continuous training is important to remind the members of the organisation about the existence of these rules within organisation (p. 452). In addition, Mulgan and Wanna (2011) also suggest the establishment of 'governance structures' which consist of senior executives or board of directors to administratively enforce the ethical rules within organisation (p. 426). Even though building the culture of integrity within public sector organisations is a time-consuming process, the objective of changing cultural attitudes of bureaucracy towards the higher integrity would possible to be achieved and accordingly, any corrupt behaviour including receiving facilitating payments could potentially be ceased.

Online services to minimise direct interactions between public officials and citizens

In preventing the incidence of facilitating payments, the government could optimise the advantage from the current development of information, communication and technology (ICT) to shift public service delivery from a traditional approach, which involves direct contact between public officials and citizens, to online services. Minimising the direct interaction between officials and citizens in service delivery would reduce the opportunity of public officials to receive facilitating payments. According to the OECD (2016), the opportunity for corruption, collusion and bribery is greater when there is a condition which enables closer contacts between public officials and citizens (p. 7). Introducing online services would not only reduce the opportunity of facilitating payments to occur, but also represent a significant improvement in the way public organisations deliver the services. Larmour (2007) argues that when corruption exists within a bad system, significant changes in regulations and procedures are required to diminish opportunity for corruption as well as to encourage the alteration of public officials' behaviour within the system (p. 6).

In addition, providing online services also brings a greater emphasis on customer focus by which public organisations deliver efficient services. ICT-based services enable public organisations to deliver services to the citizens in a standardized procedure and quality, hence timely and efficient processes could be assured (Cordella 2007, p. 268). Moreover, providing equal and impartial services to every citizen without discrimination demonstrates the value of impartiality in performing organisation's duties. In addition, mainstreaming ICT-based services among public sector organisations would also actualise public sector reform based on NPM agenda. According to Heeks (1999), the main objective of public sector reform is to improve the performance of public sector organisations (p. 9). Performance improvement could be achieved by enhancing the efficiency of processes performed by public sector organisations in achieving the results (ibid, p. 13). ICT could be seen as a means to improve efficiency by which manual procedures and human efforts are replaced by automation processes, therefore the higher efficiency is gained through a significant decrease in staff costs and more time efficient processes (Heeks & Davies 1999, p. 23). Even though this recommendation entails significant costs needed for initial investment in the ICT system and infrastructure, the potential benefits outweigh the costs. Heeks and Davies (1999) note some countries such as Australia, Canada, Japan, the Netherlands and the EU countries have succeeded in reinventing government by adequately investing in ICT (p. 24).

Strengthening the role of the Ombudsman of the Republic of Indonesia

The Ombudsman of the Republic of Indonesia (hereafter the Ombudsman) has very limited powers in overseeing administrative action. Law Number 37 Year 2008 concerning Ombudsman mandated the Ombudsman to perform its main duties in managing the cases of maladministration in the public sector, starting from receiving reports from groups or individuals who experienced injustice caused by maladministration, conducting substantial investigation, and making recommendations. In other words, constitutional disciplinary authority of the Ombudsman is limited to recommendatory. Because of its limited duties, accordingly, the Ombudsman has been subject to criticism of its lack of initiatives to perform own motion investigations of presumed maladministration in the public sector (Hukum Online 2010). In addition, Sherlock (2002) describes the Ombudsman as a paper tiger due to its lack of power to enforce its recommendations by compelling public agencies to act on its advice (p. 369). Hence, by these features, the Ombudsman could be classified as a classical ombudsman as defined by Mulgan (2014, p. 151).

Therefore, it is recommended to strengthen the role of the Ombudsman by granting it at least two additional powers. First, the Ombudsman must be granted a special power to initiate an investigation on the sectors where maladministration or illegal behaviour are most reported. Rather than waiting for case by case of complaints, the Ombudsman could perform its own motion investigation to deeply examine the most prone sectors. For instance, the ORI (2017a) reported that among the 9,030 complaints received by the Ombudsman in 2016, 18.3 percent or 1,652 complaints were reporting maladministration by the Indonesian Police (pp. 2-6). The presumed maladministration occurred in the Indonesian Police are including protracted delays, the deviation of procedures, and requesting facilitating payments to the citizens (ibid, p. 9). In response to this fact, the Ombudsman should ideally initiate a deep investigation into administrative actions performed by the Indonesian Police, hence a comprehensive recommendation to improve procedures and performance of the Indonesian Police could be advised. Without the power to initiate an investigation, the Ombudsman could not conduct this type of investigation, and therefore it could not fully perform its role as external adviser to the government as suggested by Mulgan (2014, p. 153). It is because the Ombudsman's recommendation would be limited to case by case recommendation, which could not comprehensively portray the real administrative problems within public agencies.

Secondly, to ensure that the Ombudsman's recommendations are followed up and are implemented, it is proposed to equip the Ombudsman with power to enforce its recommendations. The Ombudsman reported that the compliance level towards its recommendations in recent years was only about 40 percent (Widianto 2014). In regards to this issue, Mulgan (2014) argues that public officials might not always agree with the ombudsman's recommendations, and hence they do not want to implement them (pp. 154-155). The low compliance level towards the Ombudsman's recommendations would undermine the objective of the Ombudsman in promoting better procedures and performance of public sector organisations.

By possessing two additional powers as discussed above, the Ombudsman could become the key player in solving the problem of facilitating payments in Indonesian bureaucracy. Since overseeing public services is its main jurisdiction, the Ombudsman could initiate an investigation to public organisations that allegedly receive facilitating payments in delivering public services. The power to enforce recommendations would ensure that public organisations concerned would take appropriate strategies as recommended by the Ombudsman to prevent the incidence of facilitating payments. Lastly, the main advantage of the Ombudsman is that it has regional offices across provinces in Indonesia (ORI 2017b), therefore it has adequate resources to perform wide range monitoring of public administration.

IV. Conclusion

The existence of facilitating payments in Indonesian bureaucracy is mainly caused by the poor quality of public services, hence citizens are willing to pay bribes to obtain quality services as expected by them. The presence of facilitating payments would also imply the failure of public administration to focus on citizens as customers. Public officials who receive facilitating payments are violating administrative ethics and commit acts of corruption. On the other hand, a public organisation should also be responsible for unethical behaviour of public officials, as it is mainly caused by the lack of effective ethics infrastructure within the organisation. Therefore, the focus on solving the problem of facilitating payments should be directed to build an effective ethics infrastructure within public organisations to inculcate the cultures of integrity among public officials. First, every public organisation should develop code of ethics and code of conduct as the basis for organisational culture and behaviour. These codes must be equipped by

governance structures to ensure that both are effectively enforced within the organisation. Secondly, mainstreaming the use of online services would not only minimise the possibility of the incidence of facilitating payments but also lead to an increase in public organisations' performance by enhancing the efficient processes of service delivery. Lastly, strengthening the Ombudsman with the powers to initiate investigation and to enforce its recommendation would contribute to address the problem of facilitating payments. Once possessing these powers, the Ombudsman could initiate investigations to the most prone sectors or organisations as well as recommend an improvement in the procedures of service delivery to prevent the incidence of facilitating payments.

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