

CASE STUDY OF

CONCURRENT POSITIONS OF LAW ENFORCEMENT OFFICIALS AS SOE COMMISSIONERS



FEBRUARY 2023



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PREFACE

At the beginning of his administration, President Jokowi, as was quoted by various media, strictly prohibited his ministers from holding concurrent positions. However, later he retracted his statement, allowing officials to hold concurrent positions as long as they were “able to manage the time well for each task they were responsible for”.

Jokowi's tolerant attitude resulted in a large number of public officials holding concurrent positions. According to the Ombudsman's 2019 records, there were 397 state/government officials who were found to hold concurrent positions as commissioners in SOEs (*BUMN, Badan Usaha Milik Negara*) and 167 in SOE subsidiaries, of whom 64 percent were ministry officials, 28 percent were officials from non-ministerial institutions, and 8 percent were officials from universities. Another interesting finding from the Ombudsman's record is that of the commissioners from non-ministerial officials, some were law enforcement officials, both from the Prosecutor's Office and the Indonesian National Police, and some of them were even holding active ranks.

Of course, it is an oversimplification if the phenomenon of concurrent positions can be adequately solved by streamlining time management. More than that, there are the dimensions of wastage of state funds, regulatory conflicts, and most concerningly, conflict of interest, which is an entry point for corruption.

The Organization for Economic Co-operation and Development (OECD) identifies the practice of concurrent positions as a form of conflict of interest. As such, OECD encourages positive laws in each country to regulate situations where public officials are not simultaneously appointed to hold positions in government institutions that will create potential conflicts of interest.

Likewise, in the Guidelines for Conflict of Interest Management issued by the Corruption Eradication Commission (KPK), it is explained that the forms of conflict of interest that often occur amongst State Administrators include holding concurrent positions in several institutions/agencies/companies that have direct or indirect relationships, of the same type or otherwise, thus causing the utilization of a position for the benefit of another position.¹

¹ Corruption Eradication Commission. *Conflict of Interest: Guidelines for Handling Conflicts of Interest by State Organizers*. Jakarta: Corruption Eradication Commission, 2009, page 3.

Referring to Article 17a of Law 25 of 2009 concerning Public Services, it has been clearly stated that public service implementers are prohibited from concurrently serving as commissioners or management of business organizations for executors who come from government agencies, state-owned enterprises, and regionally-owned enterprises. Whereas in the general provisions as contained in this Law, it is stated that executors are officials, employees, officers, and everyone who works within the implementing organization who is tasked with carrying out actions or a series of public service actions.

Concurrence of positions in public positions have implications of state funds wastage and have the potential to create conflicts of interest. The Law on Government Administration has defined conflict of interest as a condition in which government officials have personal interests to benefit themselves and/or others in the use of authority, so that these could affect the neutrality and quality of decisions and/or actions made and/or carried out.

Based on the problems above, this case study report on conflicts of interest will focus on concurrent positions among the law enforcement, especially police officers, who serve as commissioners in various SOEs. The analysis is carried out on the laws regulating each law enforcement agency, which actually have laid out the prohibition of concurrent positions, however have multiple interpretations, thus becoming loopholes to justify concurrent positions. These loopholes also later have implications for the rise of more technical derivative regulations that increasingly legalize concurrent positions.

Problematic rules will of course also have the potential to cause bigger problems. It is not impossible that the appointment of law enforcers is not only done in SOEs, but also in public institutions, so that any violations of the law, potential losses to state finances can be "secured" so that they do not continue to legal proceedings.

We hope that this report can become a starting point for producing a new analysis that is more comprehensive as well as an initial step to raising awareness with the civil society and other stakeholders to work towards a strict prohibition against concurrent positions among state/government officials, particularly the law enforcement.

Thank You,
ICW Coordinator

TABLE OF CONTENTS

Preface	i
Table of Contents	iii
List of Tables and Figures	v
Chapter I. Introduction	1
A. Problem Background	1
B. Problem Formulation	4
C. Case Study Objectives	4
D. Case Study Limitations	5
E. Research Methods	5
F. Data Source	6
Chapter II. Concurrent Positions, Conflicts of Interest, and Ethics of Public Officials	7
A. Conflict of Interest and Its Relation to Concurrent Positions	7
1. Map of Regulations on Conflict of Interest for Civil Servants or State Administrators in General	12
2. Map of Regulations on Concurrent Positions for Civil Servants or State Administrators in General	13
3. Map of Regulations on Conflict of Interest in Law Enforcement Agencies	13
a. Indonesian National Police	13
b. Prosecutor's Office	14
c. Judicial Power Institution	15
4. Map of Regulations on Concurrent Positions of Law Enforcement Agencies	15
a. Indonesian National Police	15
b. Prosecutor's Office	16
c. Judicial Power Institution	17
5. Map of Regulations on Conflict of Interest in SOE/ROE	18
6. Map of Regulations on Concurrent Positions in SOE/ROE	19
B. Comparison of Regulations on Concurrent Positions in Various Countries	20
a. Denmark	21
b. France	23

c. Northern Ireland	24
d. Canada	26
e. Australia	28
C. Public (Official) Ethics	29
1. Public Ethics	29
a. Descriptive Ethics	31
b. Normative Ethics	31
2. Republicanism and Political Ethics	33
Chapter III. Mapping of Figures and Gap Analysis of Regulations on Concurrent Positions	35
A. Mapping of Public Officials with Concurrent Positions in the Legal Sector-SOEs/ROEs	38
1. Competence and Authority	39
2. Reasons for Placement and Time of Appointment in SOEs	42
B. Analysis of Regulatory Gaps on Conflict of Interest and Concurrent Positions between Law Enforcement Agency Internal Regulations and SOE/ROE Internal Regulations	45
1. Law Enforcement Agency Internal Regulations	45
2. SOE Internal Regulations	47
Chapter IV. Concurrent Positions and Potential for Influence Trading	49
A. Conflict of Interest	49
B. Concurrent Positions	51
• Concurrent Positions in Non-Public Offices	52
C. Analysis of Findings	56
Analysis I:	58
• Mine Exploitation Areas Vulnerable to Conflicts Over Land Grabbing and Resistance from Residents Around the Mining Area	58
• Nickel Mining on Gag Island, Southwest Papua	58
• Memorandum of Understanding with the Police on the Security of National Vital Objects	60
Analysis II	63
• Alleged Expansion of Interests and Acquisition of Material Profits	63
D. The Need for the Implementation of a Cooling Off Period and Firm Limits on the Practice of Concurrent Positions	66
E. Going Beyond the Law on Concurrent Positions	67
Chapter V. Closing	71
A. Conclusions	71
B. Recommendations	72
Bibliography	76

LIST OF TABLES AND FIGURES

List of Tables

Table 1.	Regulations on Conflict of Interest for Civil Servants or State Administrators in General	12
Table 2.	Regulations on Concurrent Positions for Civil Servants or State Administrators in General	13
Table 3.	Regulations on Conflicts of Interest for the Indonesian National Police	13
Table 4.	Regulations on Conflicts of Interest for the Prosecutor's Office	14
Table 5.	Regulations on Conflicts of Interest for Judicial Power Institutions	15
Table 6.	Regulations on Concurrent Positions in the Indonesian National Police	15
Table 7.	Regulations on Concurrent Positions of the Prosecutor's Office	16
Table 8.	Regulations on Concurrent Positions of Judicial Power Institutions	17
Table 9.	Regulations on Conflict of Interests in SOE/ROE	18
Table 10.	Regulations on Concurrent Positions in SOE/ROE	19
Table 11.	Data of SOE Commissioners Known to Hold Concurrent Positions in 2019	39
Table 12.	List of Active Police Members Appointed as Commissioners	45
Table 13.	List of Senior and Retired TNI Officers Who Serve as SOE Commissioners	69

List of Figures

Figure 1.	Image Capture of a Report of Bamsoet's Activities at IMI on the Official Website of the Indonesian People's Consultative Assembly	55
Figure 2.	PT Gag Nikel's IUP Area on Gag Island, Southwest Papua	59



INTRODUCTION

A. Problem Background

The practice of concurrent positions continues to be a problem in Indonesia. In general, the concept of concurrent positions is understood as a condition in which one person holds positions, or wields more than one branch of power at the same time. In Indonesia, this phenomenon, which is also known as *rangkap jabatan*, is often found in practice, but it is not clearly called out as a violation, including cases in which one of the concurrent positions is as an official of a State-Owned Enterprise/Regional Owned Enterprise (SOE/ROE). Ironically, state officials are increasingly involved in this practice. The findings of the Ombudsman of the Republic of Indonesia revealed that hundreds of public officials, from various ministries, as well as officers from the TNI, Indonesian National Police and the State Intelligence Agency (BIN) also serve as commissioners in state-owned companies.

Within the limits of reasonable reasoning, the practice of holding concurrent positions in the SOE family does not only violate the ethical principles of governance, but also violates legal aspects. Unfortunately, the fatal problem of concurrent positions is that it is considered as normal and ordinary, and not an act that violates ethics and law. In fact, when legal regulations are traced one by one, the majority of them explicitly state that concurrent positions are prohibited and run counter to the principles of Good Governance (GG) and Good Corporate Governance (GCG).

The practice of holding concurrent positions is one of the triggers and entry points for corruption. This is because concurrent positions are considered not only to have a negative impact on the delivery of public services, but also to have a major possibility of creating conflicts of interest and abuse of power. The evidence is the large number of unscrupulous officials in the Republic of Indonesia, who have been ensnared in corruption cases, the trigger of which were concurrent positions in several state and private companies. For example, the case involving the former Democratic Party politician, M. Nazaruddin, who incidentally was previously a member of the DPR's Budgetary Body as well as a top official in a company.

The phenomenon of the rise of public officials holding concurrent positions will open up the potential for conflicts of interest that perpetuate corrupt practices. It should be underlined that the prohibition of concurrent positions has actually been regulated in Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism. Even though the phrase “concurrent positions” is not explicitly mentioned, this provision can be interpreted that every state administrator is obliged to implement the general principles of state administration, one of which is the principle of public interest.

This means that personal interests in the administration of the state must be avoided, especially in the context of having two or more positions. The practice of concurrent positions will greatly affect the moral ethics and bureaucratic culture in the administration of the state. This problem will be even more complex if the practice of holding concurrent positions is actually carried out by persons with a background in law enforcement.

As an example is concurrent positions within the police institution. Even though there are regulations prohibiting it, the practice of active police officers holding concurrent positions, especially in SOE/ROEs, still occurs frequently. It is expressly stated in Article 28 paragraph (3) of Law No. 2 of 2002 concerning the Police of the Republic of Indonesia,² that it is not allowed if active members of the police hold other positions that have no correlation with the police's functions, namely, maintenance of security and public order, law enforcement, protection, and service to the community.

Based on the findings of the Ombudsman of the Republic of Indonesia, in 2019 there were at least 397 public officials presumed of holding concurrent positions as SOE/ROE officials. Furthermore, the data show that 65% of persons from non-ministerial institutions holding the position of SOE commissioners came from five agencies, including the TNI (27 persons), the National Police (13 persons), the Prosecutor's Office (12 persons), the Regional Government (11 persons), and BIN (10 persons).³

In addition to creating opportunities for conflicts of interest, the practice of concurrent positions also indicates that an official receives double income from the state budget or revenue, and is contrary to the ethics of public officials. One of the arguments that also arises in the phenomenon of the dual positions of public officials as SOE/ROE officials is that public officials who hold the position of commissioners act as government representatives in overseeing the performance of the Board of Directors.⁴

² Article 28 paragraph (3) Law No. 2 of 2002. *“Members of the Indonesian National Police can occupy positions outside the police after resigning or retiring from the police service”.*

³ Ombudsman of the Republic of Indonesia, 2020. *“2019: 397 SOE Commissioners Indicated with Concurrent Positions” (Press Release)*. June 28, 2020. <https://ombudsman.go.id/news/r/2019-397-komisaris-bumn-terindikasi-rangkap-jabatan>.

⁴ Akhdi Martin Pratama, 2020. *“Ministry of SOEs: It's Natural to Have a Government Representative In the Position of a Commissioner of SOEs”*. Kompas.com. August 5, 2020, <https://money.kompas.com/read/2020/08/05/153549926/kementerian-bumn-wajar-ada-perwakilan-pemerintah-di-posisi-komisaris-bumn?page=all>.



However, it cannot be denied that the appointment to the position of SOE/ROE commissioner is likely nuanced with distribution of benefits for supporters of regional heads or heads of government and their affiliates. This is what raises serious problems in terms of managing conflicts of interest, which lead to the perpetuation of the practice of concurrent positions.

To unravel this problem, Indonesia Corruption Watch (ICW) intends to formulate a study in the form of a case study, on the phenomenon of concurrent positions of public officials, especially those carried out by law enforcement officials. This case study will later become the basis for formulating appropriate policy recommendations to be submitted to policy makers in the form of a case study.

This research is divided into 5 (five) parts. After the *first part* or background, the *second part* of this study examines further the problems in the practice of concurrent positions from a legal, formal and ethical perspective of public officials in the practice of concurrent positions that occur in Indonesia. Apart from that, in this second part, the author team also provides an overview of good practices in a number of countries on how developed countries can manage conflicts of interest.

Furthermore, in *part three*, the authors analyze a number of findings regarding the mapping of figures of public officials who hold concurrent positions, particularly in the legal sector. This section also provides an elaborative analysis of gaps in conflict of interest regulations and concurrent positions within law enforcement institutions and law enforcement officials. While in the *fourth part*, the author team provides further analysis results regarding the potential for corruption in the practice of concurrent positions, as well as attitudes, regarding the phenomenon of distribution of appointments.

The conclusion and recommendation section are the *final part or the fifth part* of this study. This section provides conclusions and recommendations to a number of parties in the event that there are legal gaps allowing various practices of concurrent positions occurring, including how to fix them.

B. Problem Formulation

This case study aims to answer 2 (two) key questions:

1. Why are officials and law enforcement officials still engaged in holding concurrent positions?
2. What is the map of regulations and their enforcement against concurrent positions in Indonesia, especially in the law enforcement sector?

C. Case Study Objectives

This case study aims to:

1. Provide an elaborative description of the issue of concurrent positions of public officials in SOEs, especially from a legal and public ethical perspective;
2. Produce an in-depth mapping of regulations and actors in the law enforcement sector related to the practice of concurrent positions; and
3. Generate recommendations for improving governance or relevant regulations to address the problem of concurrent positions of public officials, especially in the scope of law enforcement officials.

D. Case Study Limitations

The case study in this research report is an analysis of salient events or patterns in the findings of regulatory mapping and/or phenomena of public officials having more than one position or concurrent positions. This case study focuses on law enforcement officials, as well as exploring the phenomenon of the appointment of active officials to fill the position of SOE commissioners.

The subjects in this case study were selected based on three criteria. *First*, the level of position or rank of the subject that is the focus of this case study. *Second*, the authority of the subject's original institution in administering the state. *Third*, the significance of the SOE in which the subject holds the concurrent position.

On the basis of these three criteria, the determination of the subject was narrowed down to a person who is a high-ranking officer in the Indonesian National Police. It is known that the subject also holds a position as a SOE commissioner, and at the same time is also a high-ranking official of the State Intelligence Agency (BIN). Furthermore, the subject, who will be referred to by his initials, is known to have held the position of commissioner in a SOE engaged in the mining sector for two periods.

E. Research Methods

The research method used by the authors in writing this study is the qualitative research method. In simple terms, in qualitative research data analysis is carried out by narrating the data that has been obtained properly, so that it becomes a feasible research result.⁵ Meanwhile, there are two approaches used in writing this study, namely the statutory regulation approach and the comparative approach.

The statutory regulation approach is taken to examine all laws and regulations or other regulations concerning legal problems or issues being faced, which in the context of this study are regulations regarding the prevention of conflicts of interest, specifically regarding the practice of concurrent positions in Indonesia.

Whereas, in the conceptual approach, various views and doctrines that have developed in the field of law,⁶ particularly those related to the science of legislation, constitutional law, and state administrative law, will be used to sharpen and deepen this analysis.

Meanwhile, a comparative legal approach is used to provide an overview of legal practices in the countries used as the object of comparison. According to Shidarta, there

⁵ M. Rijal Fadli, 2021. "Understanding the Design of Qualitative Research Methods". Humanics, General Subject Scientific Studies, Vol. 2, No.1 (2021) page 35.

⁶ Marzuki, 2006. *Legal Research*. Kencana, Jakarta, page 93.

are two types of comparative legal approaches, namely macro-comparison and micro-comparison.⁷ This study uses macro-comparison, the purpose of which is to assist the authors in raising the issue or the overview of the concept of managing conflicts of interest and concurrent positions in Indonesia, which would be compared with their implementation in five countries, namely, Denmark, France, Northern Ireland, Canada and Australia.

F. Data Source

There are 2 (two) data sources used by the authors of this study, including:

1. Primary Sources

The primary data used in writing this study consist of literature, study results, reports, laws and other regulations that are relevant to the topic of this case study.

2. Secondary Sources

The secondary data used in this study consist of:

- a. Interviews with relevant parties, including:
 1. Monitoring of State Violence, dated October 11, 2022;
 2. Ahmad Ashov Birry, researcher from Trend Asia, via Zoom meeting on October 27, 2022;
 3. Dr. Jacqui Backer, academic at Murdoch University, Australia, through a Zoom meeting on November 8, 2022;
 4. Alamsyah Saragih, former member of the Ombudsman of the Republic of Indonesia, through a Zoom meeting on November 14, 2022; And
 5. Mr. X, an academic from a university in Jakarta on November 22, 2022.
- b. Focus Group Discussions

This activity was held in Jakarta on July 27, 2022 and was attended by several participants from civil society organizations, academics, practitioners and state institutions. ■

⁷ Shidarta, 2016, *"Comparative Law as a Legal Research Method"*. Binus University Business of Law (blog). June 10, 2016. <https://business-law.binus.ac.id/2016/06/10/perbandingan-hukum-sebagai-suatu-metode-penelitian-hukum/>, accessed January 25, 2023.

CONCURRENT POSITIONS, CONFLICTS OF INTEREST, AND ETHICS OF PUBLIC OFFICIALS

A. Conflicts of Interest and Its Relation to Concurrent Positions

The practice of concurrent positions in the context of state governance in Indonesia remains a polemical matter. This is because, in current Indonesian practice, much of the existing regulation do not provide much guidance regarding the prohibition of public officials from holding more than one public positions. Moreover, this practice also concerns the ethics and culture of the government bureaucracy.⁸

Fundamentally, the practice of public officials holding concurrent positions opens up opportunities for conflicts of interest to occur. One of the most prominent examples is the practice of holding concurrent positions in the State Civil Apparatus (ASN) and as a SOE Commissioner. The potential for a conflict of interest is extremely high, as the person will have dual loyalties and commitments to two public institutions simultaneously.

This condition is exacerbated by the fact that the two positions have inversely proportional characteristics and dynamics. On the one hand, ASN is actually a public position that is oriented towards public interest, and on the other hand, a SOE as a business entity has an orientation to seek profit. This fundamental difference in orientation then becomes the main factor behind the emergence of a potential conflict of interest. Moreover, under certain conditions, the two entities have the possibility to engage with each other.

⁸ May Lim Charity, 2016. *"The Irony of Multiple Position Practices in the Indonesian State Administration System"*. Journal of Indonesian Legislation 13, No. 1, March 2016.

Conflict of interest is a term used to describe a situation when a public official acts contrary to their main duties or responsibilities in order to gain personal gain or take advantage of relationships for personal gain, which are generally in the form of money. Usually, in certain relationships, individuals entrust someone to act in their best interests. When a person has the responsibility to represent another person, whether as an administrator, executor, public prosecutor, defender or government official, the conflict between professional responsibility and personal interest will surface when that person tries to work professionally while seeking personal gain.⁹

Conflicts of interest do not only occur between personal interests and professional responsibilities, but between professional responsibilities, for example a legal consultant serving two clients or an official leading more than one organization. They will not be able to act fairly when the actual or potential interests of the two people or organizations are in conflict.¹⁰

Conflicts of interest are not always influenced by economic motives. The Cambridge Dictionary defines a 'conflict of interest' as any particular situation in which a person is unable to make a fair decision. For example, a person cannot decide which candidate will be accepted by a company because one of the candidates is a friend.¹¹

Conflicts of interest can occur in public institutions, professional organizations and private companies. Conflicts of interest in leaders of public institutions involve conflicts between public duties and private interests, in the sense that these leaders have personal interests that can influence public interests, activities and policies inappropriately. Here a conflict of interest is not necessarily corruption or fraud, but it can fuel the abuse of public institutions for private gain and may contain potential misconduct. For example, a conflict of interest with a judge can occur if the judge has a financial relationship with one of the litigants.

Conflicts of interest in the professional community occur when there is a conflict between professional responsibility to protect the interests of clients, constituents, shareholders, students or patients and their own interests. In normal situations, this conflict may operate under the radar, reflecting a compromise of various interests. For example, an auditor may make concessions in certain matters to a client, but will not compromise in a major corruption case. A doctor may accept a gift from a pharmaceutical company and prescribes that company's drug when it is completely on par with drugs from other companies. An academic who becomes an expert at a trial tries to frame their argument to satisfy the party asking for it, but avoids saying anything they actually disagree with.

⁹ Farlex. "Conflict of Interest", The Free Dictionary. <https://legal-dictionary.thefreedictionary.com/conflict+of+interest>, accessed on February 6, 2023.

¹⁰ *Ibid.*

¹¹ Cambridge Dictionary. "Conflict of Interest". <https://dictionary.cambridge.org/dictionary/english/a-conflict-of-interest>, accessed February 6, 2023.

Conflict of interest is not a phenomenon that is unique to Indonesia, but to all countries. We can observe this in the attention of lawyers in the United States, United Kingdom, Canada, Australia, New Zealand and the European Union in regulating the issue of conflicts of interest in the field of legal services. One example is the American Bar Association, which regulates the issue of conflicts of interest in the ABA Model Rules of Professional Conduct, particularly Rule 1.7, which essentially states that conflicts of interest include: directly representing clients with different interests and having interests or responsibilities that will limit attorneys from the best interests of his clients.¹² One can also take a look at the United Nations Convention Against Corruption (UNCAC), the International Code of Conduct for Public Officials and the conflict of interest rules at the University of Oxford.

Indonesia has regulated the issue of conflicts of interest since the reform era, starting with Law Number 28 of 1999, Law Number 31 of 1999, Law Number 7 of 2006 to Law Number 8 of 1974 in conjunction with Law Number 43 of 1999, Law Number 30 of 2002, Law Number 5 of 2014 to Law Number 30 of 2014. In addition, conflicts of interest among the civil servant (PNS) group are regulated in Ministerial Regulations, such as the Regulation of the Minister of Administrative Reform Number 37 of 2012, Regulation of the Minister of Research, Technology and Higher Education Number 58 of 2016, and Regulation of the Minister of Health Number 50 of 2016. Even conflicts of interest pertaining to civil servants are also regulated in the Regulation of the Secretary General of the People's Representative Council (DPR) of the Republic of Indonesia Number 8 of 2015.

It is important to note that the definition of conflict of interest has been explained in Article 1 paragraph (14) of Law Number 30 of 2014 (UU 30/2014) concerning Government Administration. The *a quo* article states that a conflict of interest is a condition in which a government official has a personal interest to benefit themselves and/or others in the use of authority so that it can affect the neutrality and quality of the decisions and/or actions they make and/or take.

Officially, the Government Administration Law does not allow government officials to hold concurrent positions. The *first* concern is that from the perspective of administrative law, this can interfere with concessions in carrying out government functions, because, when an official has a concurrent position, they no longer have the instrument to issue administrative decisions/actions. *Second*, from the perspective of financial law, concurrent positions will certainly result in double payments from both the government and SOE, which are both included in the category of state finance. Of course, this has the potential of harming state finances.

Conflict of interest is not only a problem for the Indonesian government, but a global one. This can be seen from international legal instruments that pay attention to the

¹² Janine Griffiths-Baker, 2002. *Serving Two Masters: Conflict of Interest in the Modern Law Firm*. Portland: Hart Pub, page 77-78.

phenomenon of conflicts of interest, such as the UNCAC and the International Code of Conduct for Public Officials. The OECD even has guidelines on managing and preventing conflicts of interest. There seem to be different ways of looking at conflicts of interest. UNCAC and the Code of Conduct for Public Officials see conflict of interest as a pathway leading to the criminal act of corruption, while the OECD sees conflict of interest as not always ending in corruption.

Fundamentally, these provisions aim to ensure that there is a clear separation between the two interests, namely between the public and the private. This paradigm is in line with the description regarding the concept of conflict of interest in the recommendations of the Council of Europe in the provisions of Article 13 paragraph (1) of the Code of Conduct of Public Officials (2000), which reads as follows:

'Conflict of interest arises from a situation in which the public official has private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties'

Based on this understanding, it can be concluded that conflict can originate from two interests that simultaneously oppose with each other, or lie in the fact that two positions held sequentially can be considered to interfere with one another, one of which is the practice of holding concurrent positions in public officials.

This was later emphasized as explained in the guidebook regarding conflicts of interest published by the KPK. The book, which was released in 2009, explains that one form of conflict of interest is concurrent positions in several institutions/agencies/companies that have direct or indirect, similar or dissimilar relationships, resulting in the misuse of one position for other interests.¹³

Not only that, international organizations also have the same concern about the dangers of conflicts of interest and the practice of concurrent positions. One of these organizations is the Organization for Economic Co-Operation and Development (OECD). Moreover, this institution explains in detail and differentiates conflicts of interest into three types:

1. Real or actual conflict of interest;
2. Conflicts of interest that seem real or actual (apparent/likely to occur but cannot be ascertained); and
3. Potential conflict of interest (not currently occurring, but likely to occur in the future).

In the context of the practice of concurrent positions, the OECD also identifies the practice of concurrent positions as a form of conflict of interest. It is explained in the

¹³ Corruption Eradication Commission, 2009. *Guidelines for Handling Conflicts of Interest for State Officials*. Jakarta: Corruption Eradication Commission, page. 3-4.

OECD conflict of interest handling guidebook, that positive laws in each country should regulate circumstances in which public officials are not appointed simultaneously in government institutions, which will result in potential conflicts of interest. Some of the positions that are prohibited to public officials include:¹⁴

- a. Community groups or Non-Government Organizations (NGOs);
- b. A professional organization or political party;
- c. Institutions or other government bodies; and
- d. State-owned companies or other commercial organizations.

However, it is important to underline that even though the country already has a regulatory framework regarding conflict of interest management, the OECD emphasizes that the existing regulations are possible to or can be implemented properly.¹⁵ One indicator that is generally used to assess whether a regulation can be properly implemented is that there are no legal gaps or even overlapping regulations.

In the current context in Indonesia, unfortunately there are overlapping regulations, especially regarding the prohibition of public officials holding concurrent positions. One of the things that the authors found was the internal regulations within the scope of law enforcement agencies. As is known, the problem of concurrent positions becomes even more complex if law enforcement officials (APH), be it the Police, Prosecutor's Office, or Judges, simultaneously hold positions as administrators in state-owned companies (SOEs or ROEs).

Based on 2019 Ombudsman records, there were 13 commissioners of SOEs/ROEs from the police institution. It was stated in the Ombudsman's findings that some of them were still active and some were inactive or retired. If the Ombudsman data are examined further, several positions of active police officers who were placed as commissioners of SOEs lack relevance from a competency point of view.

In addition, the appointment of these active officers who incidentally are law enforcers can create a potential conflict of interest in an effort to maintain the impartiality and objectivity of the law enforcement process. The practice of holding concurrent positions, especially among law enforcers, is still found, one of which is caused by the indecisiveness of regulations that clarify relevance, resulting in an expansion of the area of assignment to hold civil positions, including the position of SOE commissioner.

¹⁴ OECD, 2005. *Managing Conflict of Interest in the Public Sector: A Toolkit*. Paris: OECD, page 30-31.

¹⁵ Within the framework of conflict of interest regulations, there are three things that need to be ensured according to the OECD, including:

- 1. Managing Conflict of Interests;
- 2. Developing the policy framework; and
- 3. Implementing the policy framework.

In order to provide an overview regarding regulatory mapping regarding the prohibition of conflicts of interest and concurrent positions, both in general, as well as within law enforcement agencies and SOEs, the authors will further elaborate on a number of existing regulations in the next section.

1. Map of Regulations on Conflict of Interest for Civil Servants or State Administrators in General

Table 1.
Regulations on Conflict of Interest for Civil Servants or State Administrators in General

No.	REGULATION	CHAPTER	ARTICLE
1.	Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism	Article 5 point 6	Every state administrator is obliged to: 6. Carry out duties with full sense of responsibility and not commit disgraceful, selfish acts for personal, family, crony, or group interests, and do not expect compensation in any form that is contrary to the provisions of the applicable laws and regulations.
2.	Law Number 30 of 2014 concerning Government Administration	Article 24 letter e	Government officials who use discretion must meet the following requirements: e. Does not give rise to a Conflict of Interest.
		Article 42 paragraph (1)	Government officials who have the potential to have a conflict of interest are prohibited from making decisions and/or making decisions and/or actions.
		Article 43 paragraph (1)	The conflict of interest as referred to in Article 42 occurs if the background in making and/or making decisions and/or actions is: a. There is a personal and/or business interest; b. Relationships with relatives and family; c. Relationship with the representatives of the parties involved; d. Relationship with the party who works and gets a salary from the party involved; e. Relationship with the party providing recommendations to the parties involved; and/or f. Relationship with other parties that are prohibited by the provisions of laws and regulations.
3.	Law Number 5 of 2014 concerning State Civil Apparatus	Article 5 paragraph (2) letter h	The code of ethics and code of conduct as referred to in paragraph (1) contain behavioral arrangements so that ASN Employees: h. Ensure that there is no conflict of interest in carrying out their duties.

2. Map of Regulations on Concurrent Positions for Civil Servants or State Administrators in General

Table 2.
Regulations on Concurrent Positions for Civil Servants or State Administrators in General

No.	REGULATION	CHAPTER	ARTICLE SOUND
1.	Law Number 25 of 2009 concerning Public Services	Article 17 letter a	Executors ¹⁶ are prohibited from: a. Concurrently serving as a commissioner or administrator of a business organization for executors originating from government agencies, state-owned enterprises, and regionally-owned enterprises.

3. Map of Regulations on Conflict of Interest in Law Enforcement Agencies

a. Indonesian National Police

There are a number of internal regulations governing conflict of interest for the police institution, including:

Table 3.
Regulations on Conflicts of Interest for the Indonesian National Police

No.	REGULATION	CHAPTER	ARTICLE SOUND
1.	Government Regulation Number 2 of 2003 (PP 2/2003) concerning Disciplinary Regulations for Police Members	Article 3 letter b	In the context of state and social life, members of the Indonesian National Police are required to: b. Prioritizes the interests of the state above personal or group interests and avoid anything that could harm the interests of the state.
		Article 5 letter e	In order to maintain state and social life, members of the Indonesian National Police are prohibited from: e. Acting as an intermediary for employers or groups to obtain work or orders from the office/ agency of the Indonesian National Police for personal gain.
		Article 6 letter n	In carrying out their duties, members of the Indonesian National Police are prohibited from: n. Influencing the investigation process for personal gain thereby changing the direction of the material truth of the case.

¹⁶ The executors that is referred in this law, is further explained in the General Provisions section, Article 1 paragraph (5) that is, "Public service executors, who would later be addressed as Executor, is administrator, employee, officer, and every individual that works for the executive organizations, whose task is to deliver public service".

No.	REGULATION	CHAPTER	ARTICLE SOUND
2.	Regulation of the Chief of Police of the Republic of Indonesia Number 9 of 2017 (PerKapolri 9/2017) concerning Business for Police Members	Article 2 paragraph (2)	In carrying out the business referred to in paragraph (1), POLRI members are prohibited from: <ul style="list-style-type: none"> a. Cooperating with other people or working alone inside or outside the work environment with the aim of obtaining personal, group or party benefits that directly or indirectly harm the interests of the state; b. Acting as an intermediary for employers or groups to obtain work or orders from the Police office/institution for personal gain; And c. Having shares/capital in companies whose business activities are within the scope of their powers.
3.	Circular Letter of the Chief of Police of the Republic of Indonesia Number SE/8/XI/2015 concerning Conflicts of Interest	In this Circular Letter, the subjects that are regulated are only limited to employees at the Directorate of Corruption Crimes at the Bareskrim POLRI. Furthermore, the provisions contained in it contain sources of common causes of conflicts of interest, basic principles for implementing conflicts of interest, and prevention of conflicts of interest.	

b. Prosecutor's Office

Table 4.
Regulations on Conflicts of Interest for the Prosecutor's Office

No.	REGULATION	CHAPTER	ARTICLE SOUND
1.	Regulation of the Attorney General of the Republic of Indonesia Number 2 of 2020 concerning Handling Conflicts of Interest in the Prosecutor's Office of the Republic of Indonesia	In contrast to the internal rules at the police institution, the internal rules of the Prosecutor's Office further regulate the procedures for dealing with conflicts of interest by Prosecutor's Office employees. However, it is further explained that an employee who is involved or has the potential to be involved in a conflict of interest is only allowed if the employee concerned reports to their direct supervisor by providing reasons and evidence. This means that this provision can only be applied if there is self-awareness from the employee that they have, or have the potential to have, a conflict of interest, and does not allow reports from other employees or even the public.	
2.	Attorney General Regulation No. Per-014/A/JA/11/2012 concerning the Prosecutor's Code of Conduct	Article 5 letter h	Prosecutor's Obligations to the Prosecutor's Profession: <ul style="list-style-type: none"> h. Provide legal assistance, legal considerations, legal services, law enforcement or other legal actions in a professional, fair, effective, efficient, consistent, transparent manner and avoid conflicts of interest with other field assignments.

c. Judicial Power Institution

Table 5.
Regulations on Conflicts of Interest for Judicial Power Institutions

No.	REGULATION	INFORMATION
1.	Joint Decree of the Chief Justice of the Supreme Court and the Chairperson of the Judicial Committee No. 047/KMA/SKB/IV/2009 concerning Code of Ethics and Code of Conduct for Judges	The provisions in this Joint Decree at least contain control over potential conflicts of interest. The presence of these guidelines is a form of preventing judges from being unable to carry out their duties to create an independent, neutral, competent, transparent, accountable and authoritative court capable of upholding legal authority, legal protection, legal certainty and justice.

4. Map of Regulations on Concurrent Positions of Law Enforcement Agencies

a. Indonesian National Police

Table 6.
Regulations on Concurrent Positions in the Indonesian National Police

No.	REGULATION	CHAPTER	ARTICLE SOUND
1.	Law Number 2 of 2002 concerning the Indonesian National Police	Article 28 paragraph (2)	Members of the Indonesian National Police can occupy positions outside the police after resigning or retiring from the Police service. Article Explanation: What is meant by "occupation outside the police" is a position that has nothing to do with the police or is not based on an assignment from the Chief of Police.
2.	Regulation of the Chief of the National Police of the Republic of Indonesia Number 4 of 2017 concerning Assignment of Members of the Indonesian National Police Outside the Organizational Structure of the Indonesian National Police	Article 5	The assignment of members of the National Police in the country as referred to in Article 4 letter a is carried out on: a. The People's Consultative Assembly (MPR), the People's Representative Council (DPR), and the Regional Representative Council (DPD); b. Ministries/institutions/agencies/commissions; c. International organizations or representative offices of foreign countries domiciled in Indonesia; d. State Owned Enterprises (SOE) or Regionally Owned Enterprises (ROE); and e. Certain agencies with the approval of the Chief of Police
		Article 7 paragraph (1) and (2)	(1) Positions in the assignment of Members of the National Police in the country include: a. Structural position; and b. Functional position. (2) Structural positions as referred to in paragraph (1) letter a include positions in: a. Ministries/agencies/agencies/commissions; b. International organizations or representative offices c. Foreign countries domiciled in Indonesia; d. SOE or ROE; and e. Certain agencies with the approval of the Chief of Police.

b. Prosecutor's Office

Table 7.
Regulations on Concurrent Positions of the Prosecutor's Office

No.	REGULATION	CHAPTER	ARTICLE SOUND
1.	Attorney General Regulation Number Per-014/JA/11/2012 concerning the Prosecutor's Code of Conduct	Article 9 letter b	In carrying out the professional duties of a Prosecutor, it is prohibited to: (b) Concurrently being an entrepreneur, management/employee of a SOE/ROE, and administrator/member of a political party.
2.	Law Number 16 of 2004 jo. Law Number 11 of 2021 concerning the Attorney General of the Republic of Indonesia	Article 11	Unless otherwise stipulated by this Law, Prosecutors are prohibited from holding concurrent positions as entrepreneurs or administrators of SOE/ROE/private corporations.
		Article 11A paragraph (1)	Prosecutors can be assigned to occupy or fill positions: a. Outside the Prosecutor's office; b. On representatives of the Republic of Indonesia abroad; c. In international organizations; d. In international professional organizations e. On other assignments
		Article 21	The Attorney General is prohibited from concurrently being: i. Other state officials or state administrators according to laws and regulations; ii. Advocate; iii. Guardian, curator/custodian, and/or official who is involved in the case being examined by him/her; iv. Entrepreneurs, management, or employees of SOE/ROE/private corporations; v. Notary, substitute notary, or land deed official; vi. Arbiters, bodies or dispute resolution committee established based on statutory regulations; vii. Officials of institutions in the form of commissions established by law; or officials in other positions determined by law viii. Officials in other positions determined by law.

c. Judicial Power Institution

Table 8.
Regulations on Concurrent Positions of Judicial Power Institutions

No.	REGULATION	CHAPTER	ARTICLE SOUND
1.	Law Number 48 of 2009 concerning Judicial Powers	Article 31 paragraph (2)	<p>Judges as referred to in paragraph (1) cannot hold concurrent positions, unless this law determines otherwise.</p> <p>Article Explanation: What is meant by concurrent positions include:</p> <ol style="list-style-type: none"> Guardians, representatives, and officials related to a case examined by them; Entrepreneur; and Advocate. <p>In the case of a judge who is concurrently an entrepreneur, the definition, among others, is a judge who is also a director of a company, becomes a shareholder of the company or conducts other trading businesses.</p>
2.	Government Regulation Number 36 of 2011 concerning Positions That Cannot Be Concurrently Served by Supreme Court Justices and Judges	Article 2	<p>Supreme Court Justices and Judges are prohibited from concurrent positions as:</p> <ol style="list-style-type: none"> Other state officials; Structural positions or functional positions in Central Government and Regional Government agencies; Arbitrator in a civil dispute; Member of the Committee for State Receivables and Auctions; Position at a bank financial institution.
3.	Joint Regulation of the Chairman of the Supreme Court and the Chairperson of the Judicial Committee Number: 02/PB/MA/IX/2012, 02/PB/PKY/09/2012 concerning Guidelines for Enforcing the Code of Ethics and Code of Conduct for Judges	Article 18	Judges who hold concurrent positions as prohibited by laws and regulations will be categorized as serious violations.
		Article 19	<p>Sanctions for serious violations include:</p> <ol style="list-style-type: none"> Dismissal from position; Non-hammer judge for between 6 (six) months and 2 (two) years; Demotion to a lower rank for a maximum of 3 (three) years; Permanent discharge with retirement rights; And Dishonorable discharge.

5. Map of Regulations on Conflict of Interest in SOE/ROE

Table 9.
Regulations on Conflict of Interests in SOE/ROE

No.	REGULATION	CHAPTER	ARTILCE SOUND
1.	Law Number 19 of 2003 concerning State Owned Enterprises	Article 33 letter b	Members of the Board of Commissioners are prohibited from holding concurrent positions as: b. Other positions that may give rise to a conflict of interest.
2.	Law Number 40 of 2007 concerning Limited Liability Companies	Article 99 paragraph (1) letter b	Members of the board of directors are not authorized to represent the company if: b. The member of the Board of Directors concerned has a conflict of interest with the company.
		Article 99 paragraph (2) letter a	In the event that there is a situation as referred to in paragraph (1), those who have the right to represent the company are: a. Other members of the Board of Directors who do not have a conflict of interest with the company.
3.	Regulation of the Minister of State-Owned Enterprises Number Per-01/MBU/01/2015 concerning Guidelines for Handling Conflicts of Interest within State-Owned Enterprises	The provisions of these guidelines regulate several matters such as forms of conflict of interest, types of conflict of interest, sources of conflict of interest, fundamental principles and actions against potential conflicts of interest. Furthermore, the handling of conflict of interest conditions in decision making is carried out through an appraisal mechanism by the direct supervisor and/or the inspectorate from the position of the employee concerned.	

6. Map of Regulations on Concurrent Positions in SOE/ROE

Table 10.
Regulations on Concurrent Positions in SOE/ROE

No.	REGULATION	CHAPTER	ARTICLE SOUND
1.	Law Number 19 of 2003 concerning State Owned Enterprises	Article 33 letter b	Members of the Board of Commissioners are prohibited from holding concurrent positions as: b. Other positions that may give rise to a conflict of interest.
2.	SOE Minister Regulation Number PER-10/MBU/10/2020 concerning Amendments to SOE Minister Regulation Number PER-02/MBU/02/2015 concerning Requirements and Procedures for Appointment and Dismissal of Members of the Board of Commissioners and Supervisory Board of SOE	Chapter V: Concurrent Positions and Termination of Position, letter A	The Board of Commissioners and/or the Supervisory Board can hold concurrent positions as the Board of Commissioners in companies other than SOE, with provisions referring to sectoral laws and regulations.
		Chapter V: Concurrent Positions and Termination of Position, letter B	1. Members of the Board of Commissioners and/or Supervisory Board are prohibited from holding concurrent positions as members of the Board of Directors in SOE, ROE, private corporations, or occupying positions which are prohibited by law from holding concurrent positions with positions that may cause a conflict of interest with the SOE in question, unless they sign a statement letter willing to resign from this position if elected as a member of the Board of Commissioners/Supervisory Board of SOE.
3.	Minister of SOE Regulation 11/MBU/07/2021 concerning Requirements, Procedures for Appointment and Dismissal of Members of the Board of Directors of SOE	Article 17 paragraph (5)	Concurrent positions that are prohibited include the following: a. Directors at SOE, ROE, and private corporations; b. Board of Commissioners/Supervisory Board of SOE and other companies; c. Other structural and functional positions in central and/or regional government agencies/institutions; d. Other positions in accordance with the provisions of the laws and regulations; e. Political party officials, members of the legislature and/or regional head/deputy regional head; f. Other positions that may cause a conflict of interest; and/or g. A legislative candidate or candidate for regional deputy regional head.

B. Comparison of Regulations on Concurrent Positions in Various Countries

In this section, the authors will outline a number of regulations regarding the prohibition or prevention of conflicts of interest and the practice of concurrent positions in various countries. The purpose of doing the comparison is to see how other countries manage potential conflicts of interest, especially handling them, both through punishment and administrative/ethics sanctions. A number of countries used as objects of comparison include Denmark, France, Northern Ireland, Canada, and Australia.

The five countries were chosen for two reasons. *First*, the authors are aware that the five countries have a set of regulations in the context of administration and a code of ethics for public officials regarding the practice of holding concurrent positions within the framework of a conflict of interest. *Second*, the five countries have good handling procedures, including preventing indications of corruption originating from conflicts of interest of public officials.

These two reasons, according to the authors, are sufficient to observe a number of possibilities whether the good practices in other countries can be applied in improving regulations (*ius constituendum*), including their handling in Indonesia.



a. Denmark

As one of the member countries of the OECD, Denmark uses the standards of the organization to make regulations that prevent conflicts of interest in state governance. As explained in the previous section, the OECD emphasizes that conflicts of interest arise when a state administrator at the same time also holds another position. Some of those regulated include community groups or non-government organizations (NGOs), professional institutions or political parties, SOEs, or other commercial organizations.

This concept is at least reflected in two national regulations in Denmark, namely the Act of Public Administration or "*forvaltningsloven*" and its derivative regulations in the Code of Conduct in the Public Sector (2017). Basically, the regulatory framework aims to avoid potential bias in the policy-making process, as well as to prevent intervention from third parties against the government.

If further elaborated, specifically in Chapter II of the Act of Public Administration, it is explained that a conflict of interest is defined as a condition in which:

- a. There is a personal or financial interest in the policy-making process;
- b. There is a family relationship (hereditary) or a close legal relationship with interested parties or state administrators;
- c. A person is part of the management or has an affiliation with a company, association or other private legal entity that has an interest;
- d. A person has or is currently representing someone in a case with the same interest (also applies to a lawyer or legal adviser in a case); or
- e. Another condition that has the potential to raise doubts about the impartiality of the law enforcement process.

From the description above, it can be seen that the provisions regarding conflicts of interest in Denmark not only describe situations where public interests are interfered with by private interests, but also situations where there are interactions of different public interests that can create bias in the decision-making process.

Therefore, in the same section of the *a quo* regulation, it is emphasized that in case that anyone who has a connection with the administration of public interest makes a decision, it may be disqualified if it is proven that the decision has an element of conflict of interest.

The mechanism for dealing with this is further regulated in its derivative regulations, namely the Code of Conduct in the Public Sector (2017). If examined further, this regulation explains that the existence of a conflict of interest is the result of government administration without integrity. Basically in this provision it is explained that the prohibition against conflicts of interest aims to protect state administrators from doubts or public distrust of the government bureaucracy.

It was explained that the prevention of conflicts of interest should be regulated in each institution and government agency. In its implementation, every state administrator is required to report all potential conflicts of interest as a consequence of the duties carried out in the policy-making process. In simple terms, if the state administrator has a conflict of interest, then he or she is not allowed to be involved in the policy-making process.

However, what is important to underline is that this mechanism is not intended to measure a person's integrity. This is because this provision emphasizes that there is nothing wrong if a public official or state administrator has a conflict of interest as long as he is not involved in handling the particular case.

Apart from being regulated in administrative regulations, the conflict of interest handling mechanism can also be linked to the penal policy in Denmark. It was explained that the existence of a conflict of interest would eventually lead to abuse of power. There are a number of articles in the Danish Criminal Code (Amendment 2005), which strictly regulates the criminal prohibition of the practice of conflict of interest, including Articles 155,¹⁷ 278 paragraph (1),¹⁸ 279¹⁹ and 280.²⁰ All these articles further emphasize that misuse of public resources, including resources inherent in state administrator positions, is a criminal act.

In the handling of such cases, the Danish Police has the authority to enforce the law if there is a violation of the four articles mentioned. In addition to the police, the Danish Ministry of Justice can write to the Court Administration to prosecute an offense of abuse of public office. In addition to prosecution, prevention is also highly crucial, whereas the role of the Danish Ombudsman is highly emphasized. In its work, apart from receiving public complaints, the Ombudsman also ensures transparency in policy making.

¹⁷ Article 155 "If any person exercising a public office or function abuses his position to violate the rights of any private person or of any public authority, he shall be liable to a fine or to imprisonment for any term not exceeding four months. Where he commits such abuse in order to obtain an unlawful privilege for himself or for others, a penalty of imprisonment for any term not exceeding two years may be imposed".

¹⁸ Article 278 paragraph (1)" Any person who, for the purpose of obtaining for himself or for others an unlawful gain:

- 1) Appropriates any tangible object belonging to any other person and which is in his custody, in circumstances other than those covered by Section 277 of this Act; or
- 2) Refuses to acknowledge receipt of a pecuniary or any other loan, or of a service for which remuneration shall be paid;
- 3) Unlawfully spends money that has been entrusted to him, even if he was not under an obligation to keep it separate from his own funds.

Shall be guilty of embezzlement.

¹⁹ Article 279 "Any person who, for the purpose of obtaining for himself or for others an unlawful gain, by unlawfully bringing about, corroborating or exploiting a delusion, induces any person to do or omit to do an act which involves the loss of property for the deceived person or for others affected by the act or omission, shall be guilty of fraud.

²⁰ Article 280 "Any person who, for the purpose of obtaining for himself or for others an unlawful gain, involves some other person in a loss of property:

- 1) By abusing an authority conferred on him to act with legal effect on behalf of the latter;
- 2) By acting against the interests of the person concerned in respect of property held.

b. France

Strictly speaking, the French state regulates conflicts of interest in the public sector in the Transparency in Public Life Act 2013-907. Similarly to the generally accepted definition of conflict of interest, Article 2 paragraph (1) of this provision defines a conflict of interest as a situation where there is intervention between the public interest and other public or private interests that can objectively affect the implementation of a task.²¹

If examined closely, this definition links conflicts of interest with the obligation to have integrity for every public official, who is required to place the public interest above their personal interests and carry out their duties independently, impartially and objectively. This is because the responsibility in administering government is direct to the public.

At the level of bureaucratic control, France has three ethical commissions that are mandated to control conflicts of interest, namely the National Ethics Commission, Regional Ethics Commission and Ethics Commission for Health Services. These three commissions are tasked with supervising state administrators who are still active or not (either due to retirement or dismissal). In the event that state administrators are no longer active or leave the public sector and switch to the private sector, the commission is still given the authority to open and continue legal proceedings in case of a violation.

One of the good practices that can be implemented is the conflict of interest control mechanism which concerns the duties and responsibilities of the ethics committee. As regulated in Article L 124-2 of the General Service Code, public officials have the right to consult officers on ethics committees for advice or guidance on fulfilling their ethical obligations and adhering to the ethical principles of government.²²

At the same time, the obligations of the Ethics Committee are explained in article 8 of Decree 2017-519 dated April 10, 2017 stating that if the Ethics Committee receives a report on a situation that is likely to constitute a conflict of interest, the officer can provide relevant advice and guidance to the parties concerned as necessary to resolve the conflict of interest.²³

Apart from that, in contrast to Denmark, France specifically links the state administration system, in particular preventing conflicts of interest, through the framework of an anti-corruption program. The French Government's hard efforts to ensure that the public sector can avoid corruption are based on the principles set out in the 1789 Declaration of the Rights of Man and Citizen. This principle generally obliges every public official or civil servant to be capable of ensuring participation and transparency in state administration, including policy making.

²¹ Article 2 paragraph (1) Transparency in Public Life Act 2013-907 "Any situation of interference between a public interest and public or private interest that could influence the independent, impartial, and objective performance of a duty".

²² Agence Francaise Anticorruption, 2021. *Preventing Conflict of Interest in the Private Sector*. France, page 12.

²³ *Ibid*.

Furthermore, by incorporating steps to prevent conflicts of interest through the anti-corruption program framework, state administrators can obtain a clearer picture of the risks of corruption and better understand the legal consequences and stability of the country's economy. The French government believes that conflicts of interest can often lead to criminal acts of corruption.²⁴

To ensure that the management of conflicts of interest and the prevention of corruption can be well implemented, a state institution was formed, which was given the mandate for this, namely the *Service Central de Prevention de la Corruption* (SCPC). This institution can synergize with the Inspectorate, which has the authority to exercise control, and the Ethics Commission.

c. Northern Ireland

In many cases, Northern Ireland insists that conflicts of interest are not inherently wrong or unethical. However, this country, a part of the United Kingdom, emphasizes the importance of identifying conflicts of interest early so that every risk can be managed appropriately. Therefore, what is given the most emphasis is preventing conflicts from arising in the first place. However, if they do occur, it is important to declare them, to be handled in a sustainable and efficient mechanism.

No different from other countries of the United Kingdom, Northern Ireland also sees conflict of interest as an aspect of ethical standards in the public sector. In general, there are seven principles that must be applied in the implementation of the public sector in the UK, including selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. These principles are not only ethical guidelines in administering the state, but are also implemented in the life of the wider community.

More specifically, countries of the UK also specifically regulate conflicts of interest in regulation in the private sector. As regulated in Chapter 46, specifically in Article 175 of the Companies Act 2006 UK, actual or potential conflicts of interest are prohibited. Furthermore, conflicts of interest include within their definition those related to the use of company assets, information or others for personal gain.

Some potential conflicts of interest are relatively straightforward to identify and manage, however, others are more difficult and complex. Therefore, in areas where conflicts of interest are more common, strict controls must be applied. In order to facilitate identification, Northern Ireland classifies conflicts of interest as follows:²⁵

- a. Obtaining direct financial benefits for individuals, families, and close friends. It is defined that conflicts of interest can occur when individuals have the opportunity to use their position to obtain personal financial gain;

²⁴ *Ibid.*

²⁵ Northern Ireland Audit Office, 2015. *Conflict of Interest: A Good Practice Guide*. Northern Ireland Audit Office, page 10-12.

- b. Involvement of a public official or civil servant in the decision-making process which may lead to the appointment of a relative or colleague;
- c. Involvement in, or influencing, the awarding of contracts or grants where a public official or civil servant has a relationship with the applicant;
- d. Running a business on behalf of a government agency with a company owned by the official or a related person;
- e. Owning shares or working for the private sector or other organizations in a business relationship with the government agency where the public official or civil servant works;
- f. Receiving gratuities or other benefits.

Northern Ireland also regulates the prohibition of conflicts of interest in Article 5 paragraph (6) of the Public Service Pension Act 2014. This provision emphasizes that conflicts of interest are rooted in the existence of financial or other interests that may affect the quality of functions and policies of state administrators.

Meanwhile, the institution mandated to manage conflicts of interest is the Northern Ireland Audit Office (NIAO). This institution has a strategy to prevent conflicts of interest through the implementation of a management strategy to avoid conflicts of interest. This strategy emphasizes the following actions:

- a. *Register*, this refers to the obligation for institutions, organizations or bodies related to the public to register or declare details of potential conflicts of interest to related parties;
- b. *Restrict*, an attempt to limit public officials from being involved in processes related to the implementation of policy making;
- c. *Recruit*, this process is carried out by involving third parties who have no interest in overseeing the policy-making process;
- d. *Remove*, this strategy emphasizes the obligation for public officials to withdraw from a government activity or project.
- e. *Relinquish*, this refers to the choice for public officials to release their personal interests which have the potential to cause conflicts of interest; And
- f. *Resign*, this is giving a choice for public officials to leave their position in a public organization or institution

If examined further in the NIAO report, the existence of a set of rules and strategies for dealing with conflicts of interest aims to ensure that government organizations or institutions remain aligned with the public interest. At the same time, this is also done to maintain the reputation and public perception of the government.

Not unlike the implementation in other countries, NIAO explains that each department or public agency has its own responsibility to regulate conflict of interest. Furthermore, if a conflict of interest occurs and has an impact on the emergence of a criminal offense, the Northern Ireland Police have the authority to conduct an investigation into the matter.

In addition to conflicts of interest, Northern Ireland also regulates the prohibition for public officials from holding concurrent positions. This provision is further explained in the Northern Ireland Civil Service Staff Handbook, which clarifies that being an employee, director, partner of another business or organization, or pursuing a business opportunity constitutes a form of conflict of interest.

Furthermore, some of the criteria used in prohibiting civil servants from earning additional personal income outside of their official work are as follows:

- a. Work that takes up time and attention, or preventing them from functioning during normal working hours;
- b. Work identified in any way with the activities of political parties, organizational groups or other agencies;
- c. Work of an academic, literary or scientific nature that requires the use of official information belonging to the agency where they work, unless permission is obtained from their superiors;
- d. Work that is contrary to the duties of the institution where he works or the government in general or as a member of the civil service;
- e. Work that uses official property or equipment belonging to the agency; or
- f. Work that is not in accordance with the function of public service and can make government agencies get public criticism

d. Canada

Unlike the countries described earlier, Canada specifically regulates conflicts of interest at the legislation level, namely the Conflict of Interest Act SC 2006, c.9, s.2. There is no significant difference in terms of the definition of conflict of interest as regulated in Article 4 of the Conflict of Interest Act²⁶ compared to other countries, however, Article 6 paragraph (1) confirms that no holder of public office can make or participate in making a decision related to the exercise of powers, duties or official functions if the holder of public office knows or should have known, in making a decision, that they would be in a situation of conflict of interest.

In more detail, there are a number of activities that are prohibited for public officials categorized as forms of conflict of interest, including:

- a. Giving preferential treatment to individuals or groups based on identity or the organization that represents them;

²⁶ Article 4 of the Conflict of Interest Act states, "For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interest or those of his or her relatives or friends or to improperly further another person's private interest".

- b. Using information that should not be available to the public for further personal gain;
- c. Using their position to influence decisions on the basis of prioritizing their personal interests;
- d. Influenced in carrying out their duties by obtaining another job offer; and
- e. Receiving any gifts or other benefits that are reasonably considered to have been given to influence the carrying out of tasks, especially making policies or decisions.

In addition, Canada also categorizes concurrent positions as a form of conflict of interest, which is *termed outside employment or activities*. This provision is further regulated in the Values and Ethics Code of the Department of Justice. It is explained in these provisions that conflicts of interest, whether real or potential, do not only occur due to conflicting public and private interests. More than that, conflicts of interest can arise as a result of one or more competing and concurrent official responsibilities.²⁷

It is further explained that a civil servant could actually be involved in another occupation at the same time, as long as this does not create a potential conflict of interest that could undermine impartiality and objectivity in carrying out public service duties.²⁸

If examined further, the Conflict of Interest Act also regulates matters regarding the declaration of a conflict of interest for newly appointed public officials or state administrators. It is explained that within 60 days after their appointment, public officials must submit all confidential documents relating to assets owned, sources of income, and their activities to the Conflict of Interest and Ethics Commissioner. In addition, public officials also have 120 days to complete the necessary compliance measures to ensure that they comply with the provisions of the said regulation.

The verification mechanism for the initial report after the appointment of civil servants is submitted directly to the Ethic Commissioner. In the process, they will ask for information and clarification from the civil servant, and if there is non-compliance and identification of a potential conflict of interest, then the code of conduct regarding controlling conflicts of interest applies. This means that the civil servant concerned is not allowed to participate in the decision-making process.

Furthermore, the duties and responsibilities of the Commissioner for Conflict of Interest and Ethics Commissioner are explained in Article 43 of the Conflict of Interest Act. There are at least 2 (two) duties of the Commissioner, including:

- a. Advise privately to the prime minister, including at the prime minister's request, with respect to the application of this law to individual holders of public office; and
- b. Provide non-public advice to individual holders of public office in relation to carrying out their obligations under this law.

²⁷ Government of Canada, Department of Justice. "*Values and Ethics Code of the Department of Justice*". (online) available at <https://www.justice.gc.ca/eng/rp-pr/cp-pm/vec-cve/c2.html>.

²⁸ *Ibid.*

Referring to the duties and functions of the commissioner as mentioned above, one disadvantage of the Conflict of Interest and Ethics Commissioner's responsibilities is the tendency of lack of transparency. However, the approach taken in Canada to building and managing ethical structures is an attempt to rule out any possibility of a conflict of interest long before it occurs.²⁹ In other words, prevention is carried out even before someone takes office in a public institution, so there is no obligation for them to provide confidential information.

e. Australia

As with other countries, Australia regulates much of conflict of interest handling through Code of Ethics for Public Officials. As explained further in Article 5.1.3 of the Australian Public Service (APS) Code of Conduct, an actual conflict of interest occurs when there is a conflict between public duties and the personal interests of an employee which improperly influences the employee in carrying out their duties.

Furthermore, the *a quo* regulation emphasizes that state administrators are required to behave honestly in making decisions, and convey all information regarding personal interests that have the potential to affect their work. At the same time, state administrators are also prohibited from using power, status and information possessed by virtue of their position to gain personal or group benefits that could harm the public interest.

In addition to the APS Code of Conduct, Australia also regulates the prohibition of conflicts of interest in the provisions of the Standard Locally Engaged Staff (LES) Code of Conduct, as well as the Public Governance, Performance, and Accountability Act of 2014 (PGPA Act). The provisions in the LES Code of Conduct strictly prohibit officials or even contract employees from accepting gifts, sponsorships, facilities, accommodation or entertainment due to the position or duties required of them.

At the same time, the said regulations also prohibit private parties from providing such to public officials or contract employees. The private party is also required to sign a statement contained in each contractual obligation, of which one of the clauses contained in the agreement is a statement of being free from conflicts of interest. This provision is then further strengthened in the regulations of the PGA Act 2014, which emphasizes that state administrators, contract employees and private parties are required to work professionally, efficiently, effectively, ethically, and not use their position to gain personal or group interests, which can be detrimental to the state.

In the context of concurrent positions, the state of Western Australia specifically refers to it as secondary employment. According to the Integrity Coordination Group for Western Australia Public Bodies, holding concurrent positions for civil servants or public officials can lead to conflicts of interest and conflicts of duty. They stressed the importance for the public to be assured that government employees always put their public sector work

²⁹ Jeremy Pope, 2008. *Strategy to Eradicate Corruption*. Jakarta: Transparency International, page 42.

first and do not use government time, resources, or information in their work for other organizations.³⁰

In order to carry out and ensure the implementation of the provisions as described above, the government then gives a mandate to the Australian Public Service Commission, as further regulated regarding its mandate in Section 5 of the Australian Public Service Act of 1999.³¹ As explained in its structure, the APS has two main tasks, namely carrying out evaluation of the institutional performance of public agencies and conducting system evaluations related to institutional or state agency procedures to ensure that their implementation is in accordance with applicable regulations.

However, if a decision that has the nuances of a conflict of interest results in a criminal act, especially corruption, the case handling can be transferred to the Australian Federal Police and anti-corruption agencies in each Australian state.

C. Public (Official) Ethics

1. Public Ethics

In the increasingly complex development of human life, legal standards are no longer considered sufficient to improve the situation. The more sophisticated the law is, the more varied are the violations, developing beyond the reach of the law. This condition then underlies legal sociology thinkers to justify that law is always left behind the development of society. Therefore, relying solely on law to improve the situation, of course, will end in disappointment. In order for the expectations of the law to be achieved, the law must be equipped with standards that exceed it, namely moral and ethical standards.

Currently, moral and ethical standards are increasingly used as measures in governance. Many factors, of course, pushed in that direction. However, what is certain is that such awareness arises from the desire to oversee the direction of state administration to be on track, as desired by the 1945 Constitution as the state constitution.

Ethics comes from the Greek word "*ethos*" which means moral character or custom.³² Ethics is basically a principle that is closely related to morals, namely a rule that limits a person's life to do good deeds and avoid doing bad deeds. Ethics is formulated from the nation's cultural values, which are embodied in various life practices. The ethical principles in the life of the nation and state prioritize honesty, trust, example, sportsmanship, discipline, work ethic, responsibility and dignity as citizens.³³

³⁰ The Integrity Coordination Group. *Conflict of Interest Scenario 8: Secondary Employment*, (online) available at <https://www.wa.gov.au/system/files/2020-05/Conflicts%20of%20interest%20-%20Scenario%208%20-%20Secondary%20employment.pdf>, accessed on January 25, 2023.

³¹ Part 5—*The Australian Public Service Commissioner*. Public Service Act 1999.

³² Eka Martiana Wulansari, 2010. "*Regulation Concerning the Ethics of State Administrators in the Bill*". Recht Vinding Journal, ISSN 2089-9009, page 1.

³³ *Ibid*.

As explained in the previous section, along with the development in society, both nationally and internationally, issues regarding public ethics continue to be discussed. If examined further, there are differences between public ethics and the ethics of public officials. In general, public ethics itself means a guideline that applies to all ecosystems in a country, without exception.³⁴

Meanwhile, the subject of ethics for public officials is limited to public officials or state administrators. Fundamentally, the ethics of public officials is a guideline for separating public interests from private interests. It is further explained that the characteristics of public interest include being oriented towards the general good, carried out in a deliberative manner, relying on reason and logic, especially in the decision-making process.

This is at least confirmed in a number of literature, explaining the terminology of public official ethics, which will be directly related to the public service system, especially when talking about the integrity of public officials. Clearly, in carrying out the responsibility for the public service process, the integrity of a public official or state administrator will certainly be tested, including in matters of accountability and transparency. The issue of public ethics becomes increasingly worrisome and will have an impact on poor public service processes due to conflicts of interest and corruption.³⁵

Based on this definition, in the context of bureaucracy, ethics and morals have an important role in supporting the achievement of the goals of good governance and being free from corruption, collusion and nepotism. The impetus for the application and enforcement of ethics itself has developed for long enough and in the end, will only become a discourse for debate in various professions. This is because the notion of ethics itself is often associated with principles that are merely used as a basis for evaluating employees.

Yet at the same time, according to J. S. H. Gildenhuis, the biggest problems in the public sector are corruption and maladministration. Therefore there is a need to encourage politicians, civil servants and other employees who work in the public area to recognize ethical values and be capable of independently identifying cases where a behavior may be wrong. Some actions are definitely good or bad, but if they are in the gray zone, it will make it difficult for someone to make the right decision.³⁶

Malcolm Browne argues that ethics can be interpreted as an attitude of willingness of a person to submit and comply with a set of rules and norms established in society.³⁷ From the definitions, it can be concluded that ethics are general principles whose application is collective in nature, originating from the manifestations of values that grow and develop in society and are inherent in every action and decision taken by each individual.

³⁴ Mr. X, offline interview, November 22, 2022.

³⁵ *Ibid.*

³⁶ Mustika Prabaningrum Kusumawati, 2019. "Harmonization Between Public Ethics and Public Policy". *Yuridical Journal*, Vol. 6, No. 1, June 2019, <https://doi.org/10.35586/jjur.v6i1.794>, page 2.

³⁷ Silvia Puiu, 2015. "Ethics Management in the Public Sector – Background and Tools". *Procedia Economic and Finance* 23: 604-7, [https://doi.org/10.1016/s2212-5671\(15\)00566-3](https://doi.org/10.1016/s2212-5671(15)00566-3).

³⁸ Inu Kencana Syafie, 2011. *Government Ethics*. Jakarta: Rineka Cipta, page 3.

Broadly speaking, there are two main concepts regarding ethics, namely:

a. Descriptive Ethics

Ethics seeks to examine critically and rationally human attitudes and behavior and what humans pursue in life as something of value. Descriptive ethics provides facts as a basis for making decisions about the behavior or attitude to be taken. Descriptive ethics is a complete and critical description and study of universal human moral behavior.³⁹

b. Normative Ethics

Ethics seeks to establish ideal attitudes and patterns of behavior that humans should have in this life as something of value. Normative ethics provides an assessment as well as provides norms as a basis and framework for action to be decided. Normative ethics in general is classified into two forms, including:

■ **General Ethics**

Ethics concerned about the basic conditions of how humans act ethically, how humans make ethical decisions, ethical theories and basic moral principles that become a guide for humans in acting and benchmarks in assessing the good or bad of an action. General ethics can be analogous to science, which discusses general understanding and theories.⁴⁰

■ **Special Ethics**

The application of basic moral principles in a particular area of life. This application can be manifested by looking at how humans judge their behavior and that of other people in specific areas of activity and life which are motivated by conditions that allow humans to act ethically, the way humans make decisions or actions and the basic moral theories and principles that lie behind them.⁴¹

Special ethics are further divided into two types, namely: *individual ethics* and *social ethics*.⁴² Individual ethics contains human obligations to oneself, while social ethics discusses human obligations as members of the human race.⁴³ These two special types of ethics cannot be separated from each other. This is because humans as themselves cannot be separated from social life which is also an inherent part of one's personal life.

Furthermore, it is this area of special social ethics that branches into various fields, such as family ethics, political ethics, environmental ethics, professional ethics and so on.⁴⁴ This includes the ethics of government administrators.

³⁹ Franz Magnis Suseno, 1987. *Political Ethics, Basic Moral Principles of Modern State*. Jakarta: PT Gramedia Pustaka Utama, page 13.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Darji Darmodiharjo and Shidarta, 2006. *Principles of Legal Philosophy What and How Indonesian Legal Philosophy*. Jakarta: PT Gramedia Pustaka Utama, page 270.

⁴³ *Ibid.*

⁴⁴ *Ibid.*



When looking at the current conditions in Indonesia, this is increasingly confirmed. As can be seen in the context at the state level, the separation between politics and business is increasingly unclear. The rise of the phenomenon related to the large number of businesspersons who use politics to accumulate their wealth, further confirms that the ethics of public officials in administering government is getting worse.⁴⁵

Therefore, the internalization of the principles of public official ethics should be used as a guideline for every public official or state administrator in applying integrity standards. This, in itself, can influence action, particularly in the process of decision making, where one is expected to be capable of consciously differentiating between right and wrong. Such conditions can at least become the basis for demands for public officials to avoid potential conflicts of interest, including concurrent positions.

On that basis, looking at the current conditions, as explained in the previous section, there are still many regulations that overlap with each other, and thus the argument for rejecting the practice of concurrent positions cannot be based solely on the formal legal aspect. Especially if the existing regulations actually create legal gaps, then the general principles of good governance, as well as the ethics of public and government officials, should be used as the main guideline.

⁴⁵ Mr. X, offline interview, November 22, 2022.

Moreover, if examined further, theoretically ethics and law are interrelated entities. Even so, according to Despan Heryansyah, ethics is the field where the law is found, while the law itself is the embodiment of the form of regulations which contain formalized sanctions. Furthermore, in legal philosophy, the legal hierarchy itself starts from values, principles, norms and laws. That is, values or ethics are at a level above norms and principles, so ethical violations should be viewed sociologically as equal to, or even worse than, violations of law.⁴⁶

However, it should be noted that recent trends in a number of studies on conflicts of interest show that indeed the issue of integrity policies, forms of institutionalization of ethics, and identification of which infrastructure works best are among the incentives to continue. It is important to emphasize that an effective instrument must be planned to have a link between the design and how it is implemented. This means, any rule or policy must be tested to see if it can be applied and enforced. The attention to monitoring conflicts of interest illustrates a paradox: on the one hand, there has not been much effort to regulate and manage conflicts of interest, measure corruption and define unethical behavior. But on the other hand, scientific evidence on trends and data, and effectiveness is still lacking.⁴⁷

2. Republicanism and Political Ethics

In general, republicanism is defined as a collection of principles or teachings that theoretically explain republican government. Meanwhile, the republic itself is defined as a joint political community organized by a government based on democratic principles. This is no exception to the representative system which is held with certainty to serve the achievement of the goals of living together under the principles of law and equality.⁴⁸

From this understanding it is important to place that conceptually, the republic and republicanism are two different things. Simply put, republicanism is related to a democratic rule of law. The concept of republicanism originates from, and is inspired by, the patterns of *polis* life in Ancient Greece, which are none other than the philosophical and political views of Aristotle. The main source of the earliest teachings of republicanism itself is contained in the concept of *zoon politicon*, namely humans as political beings. Aristotle in turn defines politics as all efforts to achieve *eudaimonia* (a good life).

It is important to underline that humans must engage in politics or take an active role as citizens of the *polis*, because being in politics means realizing the noblest goals in human life. Therefore, human identity is determined in practice and involvement in the world of politics.⁴⁹

⁴⁶ Despan Heryansyah, 2018. "Ethics and Law". Kompas.id, February 27, 2018, <https://www.kompas.id/baca/opini/2018/02/27/etika-dan-hukum>, accessed on January 24, 2023.

⁴⁷ Congress of Local and Regional Authorities of the Council of Europe, 2018. *Conflicts of interest at local and regional levels*. December 2018, page 11.

⁴⁸ Robertus Robet, 2021. *Republicanism: Political Philosophy for Indonesia*. Jakarta: Marjin Kiri, page 18.

⁴⁹ *Ibid*.

Plato's thoughts on *Res Publica*, which were later refined by Aristotle, at least further confirmed the explanations in the previous section. Because, Aristotle divides two realities, namely *res publica* and *res privata*. The ideas and images developed in *res publica*, mainly concerning the economy, family, reproduction are taken care of in the realm of *res privata*. Therefore, the consequence is that the political arena must be separated from the private arena.⁵⁰

The teachings of republicanism were further strengthened by figures such as Marsilius. Marsilius is considered to have a role in bringing up teachings about elected government and people's sovereignty. After Marsilius, then came Machiavelli, who voiced the separation of powers. Politics must be totally an embodiment of the public sphere and must not be interfered with by private affairs such as personal, family, economic and religious values.⁵¹

Therefore, the concept of republicanism as explained above can at least explain the problem of the current practice of concurrent positions in Indonesia. This is because the current condition is that public officials often intermix private interests, especially economic issues, into the public interests inherent in their position as public officials.

One of them can be seen in the alleged practice of distributing "slices of power" for party loyalists or even supporters of certain figures to occupy the position of commissioner of SOEs.⁵² Instead of the appointment being based on the competency of the person in question, a loyalist or supporter is in fact appointed for his personal services or closeness to the government. Thus, the embodiment of the public sphere in a democratic country loses its characteristics.

This practice is not limited to the distribution of positions as commissioner of SOEs, but is also strongly suspected in the form of policies that benefit mining corporations seeking to obtain or extend and secure operating concession permits. These mining companies are affiliated either directly or indirectly with several members of the *Indonesia Maju* Cabinet.⁵³ ■

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Mr. X, offline interview, November 22, 2022.

⁵³ Ahmad Ashov Birry, online interview, October 27, 2022.

MAPPING OF FIGURES AND GAP ANALYSIS OF REGULATIONS ON CONCURRENT POSITIONS

Concurrent positions have a close relationship with the emergence of conflicts of interest, which lead to the crime of corruption. As explained in the previous section, concurrent positions have been regulated at various levels of regulations, starting from legislations (UU) to regulations of related institutions. Referring to Article 17 Letter (a) of Law Number 25 of 2009 concerning Public Services, it is prohibited for executors of public services to hold concurrent positions as commissioners or administrators of business organizations for executors from government agencies, state-owned enterprises, and regionally-owned enterprises.

Specifically on the prohibition of concurrent positions of members of Boards of Commissioners, Articles 25 and 33 of Law Number 19 concerning SOEs explain that members of the Board of Directors and Board of Commissioners are prohibited from holding concurrent positions. Furthermore, the prohibition of concurrent positions by members of Board of Commissioners is also regulated in Minister of SOE Regulation Article 17 Paragraphs (5) and (6) Number PER-11/MBU/07/2021 concerning Requirements, Procedures for Appointment and Dismissal of Members of the Directors of SOEs and Minister of SOE Regulation Number PER-10/MBU/10/2020 concerning Requirements and Procedures for Appointment and Dismissal of Members of the Board of Commissioners and Supervisory Board of State-Owned Enterprises.

Even so, the phenomenon of concurrent positions is still common in Indonesia. Quoting the report of the Ombudsman of the Republic of Indonesia (ORI), up to 2019 there were 397 state/government officials who are found to hold concurrent positions as commissioners in SOE and 167 in SOE subsidiaries.⁵⁴ Of this number, officials from ministries dominated with 64 percent (254 persons), 28 percent (112 persons) were non-ministerial officials, and 8 percent (31 persons) were university officials. Particularly for non-ministerial officials, concurrent positions were held by officials from TNI (27 persons), Police (13 persons), Prosecutor's Office (12 persons), Regional Government (11 persons), State Intelligence Agency (11 persons), and Financial and Development Supervisory Agency (10 persons).

ORI's findings showed that there are law enforcement officials (APH), namely members of the police and members of the Prosecutor's Office who hold concurrent positions as commissioners in SOEs/ROEs. This situation was influenced by several issues, among which were the ambiguity and conflicting regulations governing the prohibition of concurrent positions. Especially regarding the prohibition of concurrent positions for APH, existing regulations often overlap with other regulations. For example, Article 10 Paragraph (3) of MPR RI Decree No. VII of 2000 concerning the Role of the TNI and POLRI and Article 28 Paragraph (3) of Law Number 2 of 2002 concerning the Indonesian National Police explain that members of the police can hold positions outside the police force after resigning or retiring from the police service.

Nonetheless, the elucidation of Article 18 Paragraph (3) of Law Number 2 of 2002 allows members of the police to hold concurrent positions as long as these are related to police duties and/or based on assignments from the Chief of Police.⁵⁵ This is also confirmed in Police Regulation (Perpol) Number 12 of 2018 concerning Amendments to the Chief of Police Regulation (Perkap) Number 4 of 2017 concerning Assignment of Members of the Indonesian National Police Outside the Organizational Structure, which allows active police members to hold concurrent positions, including in SOEs /ROEs.

In the *Perkap*, assignments from the Chief of Police include those in country (domestic) and overseas. Domestic assignments include assignments at (a) MPR, DPR, DPD, (b) Ministries, institutions, agencies or commissions, (c) International organizations or foreign representative offices in Indonesia, (d) SOEs or ROEs, or (e) Certain agencies with the approval of the Chief of Police. Meanwhile, overseas assignments include (a) International offices/organizations, (b) Indonesian diplomatic representative offices abroad, (c) Other countries' police offices abroad, (d) Certain countries according to UN

⁵⁴ Yoanes Litha, 2022. *"RI Ombudsman: 397 SOE Commissioners Indicated with Concurrent positions in 2019"*. VOA Indonesia. June 29, 2020. <https://www.voaindonesia.com/a/ombudsman-ri-397-komisaris-bumn-terindikasi-rangkap-jabatan-pada-2019/5481391.html>, accessed on November 12, 2022, 13.07 WIB.

⁵⁵ In Paragraph (3), what is meant by "position outside the police" is a position that has nothing to do with the police or is not based on an assignment from the Chief of Police.

peacekeeping missions, and (e) Other countries or international organizations with the approval of the Chief of Police.

Regarding concurrent positions of prosecutors, this is also strictly regulated in Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia. Although concurrent positions can be carried out by a prosecutor, Article 11A Paragraph (1) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia explains that concurrent positions can be carried out as long as they are related to the competence and authority of the prosecutor. Prosecutors may be assigned to occupy or fill positions: (a) Outside the Prosecutor's Office, (b) Representatives of the Republic of Indonesia abroad, (c) In international organizations, (d) In international professional organizations, or (e) In other assignments. Further explained in the Elucidation of Article 202 Paragraph (1) Government Regulation (PP) Number 11 of 2017 concerning the Management of Civil Servants, the special position assignment for a prosecutor related to their competence is a special assignment to the KPK.

Concurrent positions carried out by members of the police and the Prosecutor's Office will certainly have much negative impact, among them violations of regulations and the independence of law enforcement. For public officials, a most important thing is the ability to ensure that there is public morality and government ethics, namely the absence of personal or group interests in the resulting public policies.⁵⁶ Public officials must be able not to mix the private and the public, to prevent overlap between the two. This aims to avoid conflicts of interest in governance.

Furthermore, state administrators holding concurrent positions are contrary to the implementation of the principle of organizing the public interest.⁵⁷ Furthermore, concurrent positions by law enforcement officials will certainly affect the independence of the law enforcement process. This is inseparable from the non-independence of APH due to intervention from the powers that be derived from the dual positions he has obtained. This section will explain two important things, namely

1. Mapping of official figures in the legal sector who hold concurrent positions in SOEs/ROEs, and
2. Analysis of regulatory gaps within law enforcement agencies and within SOEs/ROEs regarding conflicts of interest and concurrent positions.

⁵⁶ May Lim Charity, *"The Irony of Multiple Position Practices in the Indonesian State Administration System"*, page 6.

⁵⁷ Ida Ayu Pramesti Dewi Pidada, and Cokorda Dalem Dahana, 2021. *"Regulation of Civil Servants who Concurrently Serve as Commissioners of State-Owned Enterprises"*. *Journal of Kertha Negara* 9 (3).

A. Mapping of Public Officials with Concurrent Positions in the Legal Sector-SOEs/ROEs

Existing studies show interesting discussions about conflicts of interest that occur in law enforcement institutions. First, conflicts of interest can undermine the professionalism of law enforcement officials.⁵⁸ This is because officials will be trapped in a circle of interests that can affect their integrity in making policies. Second, conflicts of interest in concurrent positions by state administrators are actions that are contrary to the principles of morality, ethics, and the value of good governance.⁵⁹ Focusing on the study of concurrent positions and their relation to the law and ethics of government administration in Indonesia, other studies explain 2 (two) reasons for the difficulty of resolving the issue of concurrent positions in Indonesia, namely the lack of legal certainty and the low level of public ethics in state administrators.⁶⁰

The existence of concurrent positions of law enforcement officials in the business sector, such as SOEs, again emphasizes the influence of the business sector on law enforcement in Indonesia. The most worrying thing is the emergence of transactional practices in the law enforcement process. As a result, law enforcement is no longer based on the principle of justice, but rather the influence of groups and the intervention of strong capital forces. On the other hand, this situation reaffirms that business - and even political - groups are closely intertwined with, and gives pressure to the law enforcement in Indonesia.

Referring to the ORI data (see *Table 11*), there are five non-ministerial agencies that dominate the concurrent positions held by public officials⁶¹ From the data, law enforcement agencies, namely the police and the Prosecutor's Office are ranked 2nd and 3rd in the number of concurrent positions. There are 13 POLRI members who hold concurrent positions as commissioners in SOEs and several other members as commissioners in ROEs. Some of these are active members and some have been inactive or retired. The data also show that there are concurrent positions in the Prosecutor's Office. Concurrent positions also occur in the Prosecutor's Office. There are 12 attorneys who hold concurrent positions as commissioners in SOEs. Furthermore, referring to the media search conducted by the researcher, there are a number of findings related to the concurrent position of law enforcement officers as commissioners in SOE/ROE.

⁵⁸ Susan P. Shapiro, 2002. *Tangled loyalties: Conflict of Interest in Legal Practice*. University of Michigan Press.

⁵⁹ May Lim Charity, "The Irony of Multiple Position Practices in the Indonesian State Administration System", page 8.

⁶⁰ Tri Wahyuni, 2017. *Concurrent Positions: The Boundary Between Law and Ethics in Government Administration*. Jakarta: State Administration Institute.

⁶¹ Yoanes Litha, "RI Ombudsman: 397 SOE Commissioners Indicated with Concurrent Positions in 2019".

Table 11.
Data of SOE Commissioners Known to Hold Concurrent Positions in 2019

No.	AGENCY ORIGIN	NUMBER OF PEOPLE
1.	TNI	27
2.	Police	13
3.	Prosecutor's Office	12
4.	Local Government	11
5.	State Intelligence Agency	10

(Source: Ombudsman of the Republic of Indonesia, 2020)

Furthermore, from these findings, ORI explained that the concurrent positions carried out also had the potential to double the office holder's income and were contrary to existing regulations. Specific to concurrent positions by members of the police and the Prosecutor's Office, this is contrary to the Law on the Police and the Law on the Prosecutor's Office. Referring to Article 28 Paragraph (3) of the Police Law, members of the police can occupy positions outside the police force after resigning or retiring from the police service.

The existence of serious dual position arrangements, especially for APH, aims to prevent conflicts of interest that lead to abuse of authority in office or abuse of power to commit corruption. Therefore, serious efforts are needed to resolve the phenomenon of concurrent positions as an effort to increase the professionalism and quality of state officials.

In this section, the mapping of APH figures who hold concurrent positions as members of SOE commissioners is explained in two discussions, namely competence and authority, and the reasons for placement and timing of appointment as SOE commissioners. The *first* refers to the relationship between the competence of these law enforcement officials and the relationship between the original agency and SOEs. *Second*, the background and time or momentum of the appointment of an active APH as a SOE commissioner aims to find out the reasons and the political context that developed at that time.

1. Competence and Authority

Looking at the existing regulations, it is still possible for public officials in Indonesia to hold concurrent positions, including APH. For members of the police, concurrent positions can be carried out if they are assigned by the Chief of the Indonesian National Police and have something to do with police duties. For others, concurrent positions are carried out on the basis of the principles of legality, selective prioritization, objective, professionalism and cooperation. Meanwhile, concurrent positions at the Prosecutor's Office can be carried out as long as they are related to the competence and authority of the prosecutor.

Nevertheless, the problem with concurrent positions as commissioner is that the appointment of officials is often based on discretionary powers and does not refer to

the competence and authority of the agency of origin. This is in line with our finding that the concurrent positions held by APH are not in accordance with their competence and authority. An example is the appointment of Barita Simanjuntak, Chair of the Indonesian Prosecutors Commission for the 2019-2023 period, as Commissioner of PT Danareksa (Persero),⁶² and Bambang Sunarwibowo, First Secretary of the State Intelligence Agency (BIN), a General of the Police and holding the position as Commissioner of PT Aneka Tambang (Tbk.).⁶³

The two cases of concurrent positions will certainly raise questions in the public regarding the relationship between individual competence, authority of the originating agency, and related SOEs. How is the Prosecutor's Commission institution, tasked with overseeing, monitoring and assessing the performance of prosecutors and Prosecutor's Office, competent and authorized in properly leading a SOE engaged in the Indonesian capital market and national financial industry? Moreover, Presidential Decree No. 18 of 2011 concerning the Prosecutor's Commission prohibits the Chairman, Deputy Chairperson, and Members of the Prosecutor's Commission from holding concurrent positions.⁶⁴ Furthermore, what is the relationship between a mining SOE such as PT Aneka Tambang (Tbk.) and an intelligence and security agency such as BIN? Does the government use intelligence instruments in mining activities in this case?

Referring to relevant literature, the position and performance of the Board of Commissioners are related to the performance of SOE companies. The good performance of the Board of Commissioners will have an impact on operational activities and company performance that grows well.⁶⁵ On the other hand, the existence of political intervention, and the practice of concurrent positions, more or less, have an impact on the low professionalism of the SOE commissioners,⁶⁶ and the unclear functions and roles between the Board of Directors and the Board of Commissioners.⁶⁷ Additionally, other research found that assigning retired TNI-POLRI as SOE commissioners have no effect on the profitability or profits obtained by the company.⁶⁸

⁶² PT Danareksa. "The Board of Commissioners of PT Danareksa (Persero)", accessed on November 20, 2022 at 14.12 WIB, <https://danareksa.co.id/about/manajemen/dewan-komisaris>.

⁶³ PT Aneka Tambang (Tbk.), "The Board of Commissioners of PT Aneka Tambang (Tbk.)", accessed on January 31, 2023, 22.00 WIB, <https://antam.com/id/management>.

⁶⁴ In this *Perpres*, there is ambiguity about the prohibition of concurrent positions only applies to the Chairperson, Deputy Chairperson, or Members of the Prosecutor's Commission who come from elements of the community.

⁶⁵ Sophie Tiara Adriaty, Budi Purwanto, and Wita Ermawati, 2019. "A Determinant of State-Owned Enterprises Profitability with an Independent Board of Commissioners as Moderation Variables". *Journal of Finance and Banking* 23 (1), <https://doi.org/10.26905/jkdp.v23i1.2519>.

⁶⁶ Ronny Prabowo, 2009. "Commissioners' Attendance at Board Meeting: An Empirical Analysis of Indonesian State-Owned Enterprises", *SSRN Electronic Journal*, <https://doi.org/10.2139/ssrn.1646252>.

⁶⁷ Synthia A. Sari, 2013. "The Impact of Board Structure to the Roles of Board of Commissioners in Implementing Good Corporate Governance at Indonesian State-Owned Enterprises". *International Business Management*, Vol. 7, No. 4, page 303, DOI: 10.3923/ibm.2013.295.305.

⁶⁸ Novarialdi, 2022. "The Influence of Education, Retired TNI-POLRI, and Independent Commissioners and Human Resource Development on Profitability". *Journal of Accounting Trisakti*, Vol. 9, No. 1, 129-144, <https://doi.org/10.25105/jat.v9i1.12979>.

Furthermore, the existence of law enforcement officials who also serve as commissioners also contradicts the duties of the authority of the agency of origin. Some data that the researchers found show that the appointment of active members of the police and prosecutors as SOE commissioners is not suitable nor related to their duties and authorities. APH, especially members of the police, often hold concurrent positions as SOE commissioners in the mining and service industries.⁶⁹ This is certainly contrary to the main task of the police, which is to protect, shelter and serve the community.

Based on TAP MPR Number VII/MPR/2000 concerning the Role of the Indonesian National Armed Forces and the Role of the Indonesian National Police, Article 8 Chapter II concerning the Role of the Indonesian National Police, the police are a state tool that plays a role in maintaining public security and order, enforcing the law, provide shelter and service to the community. In addition, the function of the police is also explained in Article 2 of Law Number 2 of 2002 concerning the Indonesian National Police that the function of the police is one of the functions of the state government in the field of maintaining public order and security, law enforcement, protection, shelter and service to the community.

Referring to Article 30 of the Law on the Prosecutor's Office, the duties and powers of the Prosecutor's Office in the criminal field are (1) Carrying out prosecutions, (2) Carrying out judge decisions and court decisions that have obtained permanent legal force, (3) Supervising the implementation of conditional criminal decisions, criminal supervision decisions, and parole decisions, (4) Conducting investigations into certain criminal acts based on the law, and (5) Completing certain case files and for that can carry out additional examinations before being transferred to the court which in its implementation is coordinated with investigators.

Meanwhile, in the civil and administrative fields, the Prosecutor's Office with special powers can act both inside and outside the court for and on behalf of the state or government. In the field of public order and peace, the Prosecutor's Office also organizes activities to increase public legal awareness, safeguard law enforcement policies, control the circulation of printed materials, control beliefs that can harm society and the state, prevent abuse and/or blasphemy of religion, as well as conduct research and development of law and criminal statistics.

Whereas Article 31 of the SOE Law explains that the commissioners are tasked with supervising the Directors in carrying out the management of the company and providing advice to the Directors. This certainly confirms that there is no relationship between the competence of APH (police and prosecutors) and concurrent positions as Commissioners of SOEs. This is also reinforced by the ORI study. In the study *Analysis of Commissioners*

⁶⁹ Tangguh Chairil, 2020. "TNI-POLRI Active Concurrent Positions: Problematic" (Commentaries), Center for Business and Diplomatic Studies Binus University, July 2020, <https://ir.binus.ac.id/2020/07/06/tni-polri-aktif-rangkap-jabatan-problematik/>, accessed on December 2, 2022 at 19.46 WIB.

with Concurrent Positions in SOE and SOE Subsidiaries, ORI found commissioners from certain ministries or institutions that did not have adequate relevance in the business competencies carried out by the SOE.

2. Reasons for Placement and Time of Appointment in SOEs

Referring to the Regulation of the Minister of SOEs of the Republic of Indonesia Number PER-10/MBU/2020, members of the Board of Commissioners are selected through a selection mechanism or talent pool managed by the Ministry of SOEs through the Deputy of Human Resources. Quoting several sources, the talent pool is a forum for finding professional leaders to manage state companies, including becoming members of the Board of Directors or Board of Commissioners. This forum is not the only stage in determining the leadership of state companies. Furthermore, the candidates who have passed these stages are then selected and reported to the Deputy Minister of SOEs to be submitted to the Minister of SOEs.⁷⁰ In this case, the Minister of SOE has the authority to approve or reject the proposal regarding the names of the candidates for the members of the Board of Commissioners.

Nonetheless, for several strategic SOEs such as PT Pertamina (Persero), PT PLN, and several state banks, both the selection of members of the board of directors and commissioners will involve - even directly appointed - by President Jokowi. This is what then makes the president as a political power having great discretion and authority to regulate, appoint, and dismiss members of the SOE board of commissioners. Not to mention, the existing talent pool mechanism is also not open enough and known by the wider public. Until now, internal human resources of SOEs dominate 90 percent of talent pool participation, and only 10 percent of talent pool participants come from outside the ministry.⁷¹

Furthermore, the selection process through the talent pool is only applicable to candidates for members of the board of directors. Referring to Chapter III Article 5 of the Minister of SOE Regulation Number PER-11/MBU/07/2021, the talent pool is implemented through the process of:

- a. Selection of talents,
- b. Talent assessment,
- c. Talent classification,
- d. Talent development, and
- e. Talent turnover.

⁷⁰ See: <https://voi.id/en/news/7399>, and <https://www.antaranews.com/berita/2209474/erick-targetkan-sistem-talent-pool-sdm-BUMN-terintegrasi-tuntas-2021>, accessed on January 25, 2023.

⁷¹ Nindia Zuraya (ed.), 2020. "Selection of SOE Commissioners and Directors Through the Talent Pool ". *Republika.co.id*, June 16, 2020, <https://www.republika.co.id/berita/qc0r6a383/pemilihan-komisaris-dan-direksi-bumn-lewat-talent-pool>, accessed on January 25, 2023 at 13:59 WIB.

As for prospective members of the Board of Commissioners, the procedure for appointing members is carried out through selection by the minister, deputy minister, secretary to the ministry, and/or deputy who is administered by the deputy.⁷² However, even though the two have differences in the recruitment process, in this case the minister has the same authority to recruit outside the ministry. This situation certainly emphasizes that the minister has full authority over the process of selecting candidates for the Board of Commissioners and Directors of SOE. This is of course prone to abuse of the discretionary power possessed by the minister.

This situation is strengthened by ORI's findings in Analysis of Commissioners with Concurrent Positions in SOE and SOE Subsidiaries. Referring to SOE Minister Regulation Number 2 of 2015, the recruitment of commissioners has a number of weaknesses and has the potential to cause maladministration in the process. Some of them are conflict of interest, transparency, discrimination, competency, and performance accountability. For example, in relation to the recruitment process, the unclear talent pool and placement criteria have the potential to create conflicts of interest, especially in supervision, procurement of goods/services, granting of permits, and even law enforcement involving SOE leaders.

For example, the appointment of Barita Simanjuntak, Chair of the Prosecutors' Commission, who holds concurrent positions, has the potential to create a conflict of interest when there is a case involving the two agencies, namely the corruption case involving PT Danareksa Sekuritas in 2020, which was being handled by the Prosecutor's Office. As a state institution that has the task of supervising, monitoring, and evaluating the performance and behavior of the prosecutor/Prosecutor's Office staff,⁷³ it is a real cause of concern that the Chair of the Prosecutor's Commission may concurrently uses his discretionary power to intervene in the case.

Not only that, criticism was also directed at Barita Simanjuntak. Before becoming a SOE commissioner, he was known as a critical person, especially regarding the performance of the Prosecutor's Office. However, this did not appear when he tended to defend the Prosecutor's Office in a corruption case involving former Prosecutor Pinangki Sirna Malasari. In this case, Barita stated that the prosecutor's failure to submit an appeal against Pinangki's reduced sentence was in accordance with the Criminal Code. Whereas, former Prosecutor Pinangki was proven to be involved in three criminal acts at once,

⁷² CHAPTER III Procedure for Appointment of SOE Minister Regulation Number PER-10/MBU/10/2020.

⁷³ Article 3 of RI Presidential Regulation Number 18 of 2011 concerning the RI Prosecutor's Commission reads that the Prosecutor's Commission has the following tasks: a). Supervise, monitor and evaluate the performance and behavior of the Prosecutor and/or the Attorney General's staff in carrying out their duties and authorities as stipulated in laws and regulations and the code of ethics; b). Carry out supervision, monitoring and evaluation of the behavior of the Prosecutor and/or Prosecutor's Office staff both inside and outside their official duties; and c). Monitor and evaluate organizational conditions, work procedures, completeness of facilities and infrastructure, and human resources within the Prosecutor's Office.

namely accepting bribes, committing money laundering, and conspiracy. Several parties considered that what the prosecutor had done had violated justice.⁷⁴

In relation to the concurrent position of law enforcement officials as Commissioners of SOEs, our data show that there is no clear reason for their appointment as active members of the board of commissioners, except for certain reasons such as security and so on. For example, the placement of an active member of the National Police who is also the Main Secretary of BIN as Commissioner of PT Aneka Tambang (Tbk.) explains this situation. If we refer to Article 10 of Law Number 17 of 2011 concerning State Intelligence, the State Intelligence Agency is a state tool that carries out domestic and foreign intelligence functions, whereas this function refers to anticipating potential threats to state security. Clearly the following question is what is the main motive for placing an intelligence actor in the higher leadership of the SOE in the mining sector?

Furthermore, this was explained in the existing study, that the large number of deployments of security forces (including the police) in Intan Jaya Regency was allegedly aimed at securing many mining projects owned by SOEs so that there would be no resistance from the local community.⁷⁵ Moreover, several SOE companies in the regency are also led by Boards of Commissioners whose some of the members concurrently serve as active members of the police. This makes the suspicion of security motives for the concurrent positions of active members of the National Police in state-owned enterprises in the mining sector even stronger.

Instead, the position of commissioner was allegedly given as a 'reward' for what the law enforcement officials had done. For example, the appointment of commissioner of one of the state-owned enterprises in the mining sector is given to an internal official in a state-owned enterprise who is also an active member of the police. Another is the appointment of active police officers as commissioners of SOEs in the mining sector for the success of intelligence work in dealing with the pandemic crisis due to COVID-19. The placement of law enforcement officers as well as security forces in strategic sectors such as mining and services without any clear reason raises many questions, including the motivation for having law enforcement officers in these sectors. The concurrent positions of law enforcement officials as commissioners also have the potential to create conflicts of interest and lead to corruption.

Not only that, oftentimes the position of commissioner is also given to POLRI members who are nearing retirement age or are active members:

⁷⁴ Tsarina Maharani, 2021. "Prosecutor's Commission: Prosecutors Do Not Submit a Cassation on Pinangki's Sentence Cut in Accordance with the Criminal Procedure Code". Kompas.com, July 9, 2021, <https://nasional.kompas.com/read/2021/07/09/19113641/komisi-kejaksaan-jaksa-tak-ajukan-kasasi-potongan-hukuman-pinangki-sesuai>, accessed on January 25, 2023 at 17.51 WIB.

⁷⁵ Ode Rakhman, Umi Ma'rufah, Bagas Yusuf Kausan, Ardi (Study Team), 2021. *Economic-Political Military Deployment in Papua*. Clean Indonesia, YLBHI, Walhi National Executive, Pusaka Bentara Rakyat, Walhi Papua, LBH Papua, KontraS, JATAM, Greenpeace Indonesia, Trend Asia, August 2021, page 3.

Table 12.
List of Active Police Members Appointed as Commissioners

No.	NAME	SERVICE PERIOD	APPOINTED AS COMMISSIONER	SOE	INFOMATION
1.	Inspector General Pol. Carlo Brix Tewu	1985 - December 2020	June 2020	PT Bukit Asam (Tbk.)	Approaching retirement
2.	Inspector General Pol. Wahyudi Hidayat	1986 - 2021	December 2020	PT Dahana	Approaching retirement
3.	Inspector General of Police Condro Kirono	1984 - December 2019	November 2019	PT Pertamina (Persero)	Approaching retirement
4.	Police Commissioner General Bambang Sunarwibowo	Active Police	First Secretary of BIN	PT Aneka Tambang	Active service

(Source: processed from various sources)

Table 12 show that most of the active APHs appointed to become members of the SOE Board of Commissioners are at the end of their term of service, or approaching retirement. This further strengthens the allegation that the appointment is a form of power sharing for officials. In this case, the active officers who have concurrent positions are high-ranking officials who certainly have the interests and influence of power.

B. Analysis of Regulatory Gaps on Conflict of Interest and Concurrent Positions between Law Enforcement Agency Internal Regulations and SOE/ROE Internal Regulations

As explained in the previous section, conflicts of interest and concurrent positions have been regulated in many regulations in Indonesia, ranging from law-level regulations to internal institutional regulations. However, the discrepancy in these regulations has an impact on the practice of holding concurrent positions which results in conflicts of interest and corruption. Specific to concurrent positions by law enforcement officials (police and prosecutors) as members of the Board of Commissioners of SOEs, this section explains the gaps in conflict regulations and the importance of concurrent positions in the internal regulations of law enforcement agencies and the internal regulations of SOE.

1. Law Enforcement Agency Internal Regulations

Conflicts of interest and concurrent positions by members of the police are regulated by several regulations, such as laws, government regulations, regulations for the Chief of the National Police and other internal institutional regulations. However, existing regulations actually show gaps and overlaps between regulations which results in conflicts of interest and concurrent positions. The following is a mapping of internal police regulations in relation to conflicts of interest and concurrent positions.

Referring to Article 28 Paragraph (3) of Law No. 2 of 2002 concerning the Police, Members of the Indonesian National Police can occupy positions outside the police after

resigning or retiring from the police service. However, the elucidation of the article shows the opposite, where what is meant by 'position outside the police' is a position that has nothing to do with the police or is not based on an assignment from the Chief of Police. This certainly shows the inconsistency of regulations.

Furthermore, concurrent positions are also explained in Government Regulation No. 2 of 2003 concerning Disciplinary Regulations for Members of the Police. Article 5 Letter (f) of this regulation prohibits POLRI members from owning shares/capital in companies whose business activities are within the scope of their powers. This is also emphasized in the Chief of Police Regulation No. 9 of 2017 concerning Business for Members of the Police. Article 3 of the regulation explains that members of the National Police in carrying out their business activities should not: a) Interfere with the main task, b) Take advantage of the position as a member of the Police; and c) Use service facilities.

Referring to the regulatory mapping above, existing regulations have prohibited conflicts of interest and concurrent positions for members of the police. However, the relevant articles ultimately create ambiguity between the wording of the article and their explanation. On the other hand, this also shows the large amount of discretionary power of the National Police Chief which is prone to being abused, including giving concurrent positions that are not in accordance with the competence of its members. This is because the National Police Chief often uses secret telegrams to instruct his members, including their considerations in assigning members to be SOE commissioners.

A contradictory regulation, allowing concurrent positions by POLRI members, is PerKap No. 4 of 2017 concerning the Assignment of Members of the Indonesian National Police Outside the Police Structure. In this regulation, the types of assignments of POLRI members outside the POLRI organizational structure are described, including concurrent positions in SOEs/ROEs. Meanwhile, this contradicts the PP which explains that members of the National Police are prohibited from owning shares/capital in companies whose business activities are within the scope of their powers.

In relation to the above, PerKap No. 9 of 2017 concerning Business for Police Members emphasizes that POLRI members are prohibited from taking advantage of their position as POLRI members in their business activities as stated in the Chief of Police Circular Letter No. SE/8/XI/2015 concerning Instructions/Directions for Prevention of Conflicts of Interest. The existence of inconsistencies in the internal regulations of the POLRI institution further emphasizes that they are not yet fully committed to preventing the potential for conflicts of interest to arise due to concurrent positions.

Furthermore, conflicts of interest and concurrent positions for the Prosecutor's Office are also regulated in several existing regulations. Unlike the case with the police, the Prosecutor's Office is more assertive regarding the rules that prohibit its members from holding concurrent positions. Referring to Article 11 of Law Number 16 of 2004 concerning the Prosecutor's Office, prosecutors are prohibited from concurrently being entrepreneurs or administrators in SOEs/ROEs/private corporations.

Furthermore, the prohibition of concurrent positions by the prosecutor is emphasized in Article 9 Letter b of Attorney General Regulation No. PER-014/JA/11/2012 concerning the Prosecutor's Code of Conduct. In this article, in carrying out the duties of the prosecutor's profession, it is prohibited to: (b) Concurrently being an entrepreneur, administrator or employee of SOE/ROE/BUMS, member/administrator of a political party.

However, on the other hand the prosecutor is allowed to hold concurrent positions in certain positions. Referring to the explanation of Article 98 PP Number 11 of 2017 concerning Management of Civil Servants, in the elucidation of the article, several positions that can be concurrently held by the prosecutor are:

- a. Prosecutor appointed as head/deputy head of the Provincial Prosecutor's Office, head of a District Prosecutor's Office, or head of a Branch Prosecutor's Office;
- b. Drafting of laws and regulations intermediate expert on the Drafting of Legislation or Director of Harmonization of Legislation at the Directorate General of Legislation; or
- c. Primary level expert diplomat appointed to Director General of Europe and American Regions.

Even so, there are still prosecutors who hold concurrent positions as commissioners in SOEs. Referring to the 2019 RI Ombudsman data, there are 12 prosecutors who hold concurrent positions as commissioners in SOEs. This shows that many law enforcement institutions such as the Prosecutor's Office still practice concurrent positions.

Furthermore, in relation to the supervision of the Prosecutor's Office, there are inconsistent regulations in Presidential Regulation Number 18 of 2011 concerning the Prosecutor's Commission. In this regulation, the prohibition of holding concurrent positions applies only to members of the Prosecutor's Commission who come from elements of society.⁷⁶ The difference between the members of the Prosecutor's Commission from the government and the community elements certainly raises the question, is the prohibition on concurrent positions only aimed at members from the community element? What about those from the government?

2. SOE Internal Regulations

Concurrent positions are also regulated in SOE regulations, starting from the Regulations on the Ministry of SOEs to the related SOE Internal Regulations. Some of these regulations are the Law on SOEs, Minister of SOE Regulations, and related SOE Articles of Association. The mapping of SOE internal regulations intend to see how conflicts of interest and concurrent positions are regulated in these internal regulations.

⁷⁶ Article 35 of Presidential Decree Number 18 of 2011 reads as follows, "Members of the Prosecutor's Commission who come from elements of society are prohibited from concurrently being: a. State officials according to laws and regulations; b. Judge or Prosecutor; c. Advocate; d. Notary and/or Land Deed Making Officer; e. Entrepreneurs, administrators, or employees of state-owned enterprises or private business entities; or f. Political party administrators.

Referring to Article 33 of Law Number 19 of 2003 concerning SOEs, commissioners are prohibited from holding concurrent positions which may cause a conflict of interest. However, in SOE Minister Regulation Number PER-10/MBU/10/2020 concerning Requirements and Procedures for Appointment and Dismissal of Members of the Board of Commissioners and Supervisory Board of State-Owned Enterprises, the prohibition against concurrent positions is not explained as a requirement for candidates for members of the Board of Commissioners of SOE.

Concurrent positions are also clearly regulated in the Articles of Association (AD) in SOE companies. For example, Article 14 Paragraph 29 Letter (d) AD of PT Aneka Tambang (Tbk.) explains the prohibition of concurrent positions for members of the Board of Commissioners.⁷⁷ Another example is Article 14 Paragraph 29 AD PT Timah (Tbk.) which explains the framework of the position. Furthermore, the prohibition of concurrent positions is also embodied in the company manual. For example, the PT Timah (Tbk.) Board Manual concerning Arrangements for Concurrent positions explains that members of the Board of Commissioners are prohibited from holding concurrent positions as members of the Directors of SOEs/ROEs/private corporations (except members of the Board of Directors in SOE as the holder of the largest amount of series B shares), political party administrators and/or regional heads/deputy regional heads, candidates for legislative members/regional heads/deputy regional heads, other positions in accordance with the provisions of laws and regulations, and/or other positions that may cause a conflict of interest,

Referring to the regulatory mapping above, the prohibition on concurrent positions is intended so that members of the Board of Commissioners really devote all their energy and thoughts and/or full attention to the duties, obligations and achievement of the Persero's goals and avoid conflicts of interest. However, existing regulations do not clearly regulate the prohibition of concurrent positions.

On the other hand, these regulations show that there is overlapping between regulations. Described in Article 33 of the SOE Law, members of the Board of Commissioners are prohibited from concurrently holding other positions which may cause a conflict of interest. However, the SOE Ministerial Regulation does not require, and even allows, the prohibition of concurrent positions as a requirement for candidates for members of the SOE Board of Commissioners. As explained in the regulatory mapping table above, the prohibition of concurrent positions is explained in the SOE internal regulations. For example, the prohibition of positions is regulated in the AD of PT Aneka Tambang (Tbk.) and AD of PT Timah (Persero). The two regulations explain that members of the Board of Commissioners are prohibited from concurrently holding other positions which may cause a conflict of interest. ■

⁷⁷ Article 14 paragraph 29 regarding the Board of Commissioners is prohibited from holding concurrent: (d) Other positions that may cause a conflict of interest.

CONCURRENT POSITIONS AND POTENTIAL FOR INFLUENCE TRADING

There is no fixed definition of a conflict of interest, because fundamentally a conflict of interest is a condition that creates a conflict within the individual, and the conflict occurs between the obligations and authority of one's professionalism and the interests of the subject as an individual or person. These conditions are very diverse, so the first thing that must be done is to distinguish conflicts of interest from conflicting interests.

In order to facilitate the distinction between the two, or to identify which is a real conflict of interest, Erhard Friedberg provides a number of parameters. This parameter aims to test whether a conflict of interest occurs or not in a situation.

First, was the act committed in more than one different sphere of power? *Second*, is there any attempt to bridge, connect, broker, or regulate the position of each of the different spheres of power? *Third*, are there any resources that are taken or utilized from one scope of power, for the benefit of another scope?⁷⁸

A. Conflict of Interest

Various countries create conflict of interest management mechanisms, because these conditions cannot be completely eliminated. The OECD Council, in the Recommendations on the OECD Guidelines for Managing Conflicts of Interest in Public Services, states that, although allowing conflicts of interest is dangerous for the delivery of public services, regulations that are too strict have the potential to violate other rights or even be counterproductive in practice.⁷⁹

⁷⁸ Anne Peters, 2012. *Conflict of Interest in Global, Public and Corporate Governance*. Cambridge University Press, page 40-41.

⁷⁹ Number 7, "OECD Council Recommendations on OECD Guidelines for Managing Conflicts of Interest in Public Services". May 9, 2003, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0316>, accessed November 16, 2022.

The OECD Council also states that conflict of interest is not corruption. However, ignoring conflicts of interest can lead to criminal acts of corruption.⁸⁰ That is why various regulations governing conflicts of interest are focused on managing these conflicts of interest, not eliminating conflicts of interest altogether, but ensuring that policy making and the implementation of public services are carried out with integrity.⁸¹

At a philosophical level, the understanding and phenomenon of conflict of interest itself has been studied since the beginning of the modern ages and is believed to be one of the triggers for corruption. An Italian philosopher, Niccolo Machiavelli even mentioned that corruption is a condition when all actions place certain interests above the public interest.⁸²

Based on some of the views above, it can be concluded that corruption contains an element of conflict of interest, although not all conflicts of interest are corruption. Corruption can occur when conflicts of interest are not mitigated, managed, and instead allowed to occur, so that the space for abuse of authority is getting bigger, which in the end contains the personal interests of policy makers, instead they are "facilitated" by the authority and position they have.

Then, where exactly is conflict of interest related to concurrent positions? At first glance, the two seem unrelated, even though the two are often considered to be the same act. This can be identified from the regulation of conflicts of interest in several countries, which actually use the practice of concurrent positions as a form of conflict of interest.

An example is Northern Ireland, which regulates restrictions and limited exceptions to the practice of concurrent positions for its employees and public officials. As discussed in chapter II of this study, Northern Ireland regulates the prohibition of concurrent positions in the Northern Ireland Civil Service Staff Handbook.

In principle, concurrent positions are not permitted. However, there are exceptions to this prohibition, as long as the concurrent jobs performed by public employees meet a number of conditions. Conditions for allowing concurrent positions by public employees in Northern Ireland include, for example, as long as the work does not take up time and interfere with duties during normal working hours, work that is not related to a political party, organizational group or other agency or work that does not use official property or equipment belongs to the institution of origin of the public employee.

This reinforces the view that conflict of interest and concurrent positions are two inseparable sides of a coin. Concurrent positions increase the chances of a conflict of interest, and ignoring a conflict of interest will make the practice of concurrent positions more likely to be abused. For this reason, the concurrent positions of officials in the

⁸⁰ *Ibid.*, Number 4.

⁸¹ *Ibid.*

⁸² Robertus, Robet. *Republicanism: Political Philosophy for Indonesia*, page 56.

administration of the state should be strictly limited, accompanied by a thorough audit of public officials who are deemed qualified to obtain exceptions to concurrent positions.

At a glance, the link between conflict of interest and the practice of concurrent positions can be considered easily identifiable. However, enforcement practices are still far from expectations. The practice of holding concurrent positions is often even facilitated by state agencies, including law enforcement agencies.⁸³ In fact, similar to the judiciary, one of the principles that should be upheld by law enforcement agencies is impartiality. This principle is in danger of not being fulfilled if members or law enforcement officials themselves practice concurrent positions.

B. Concurrent Positions

There are no regulations that explicitly regulate the definition of concurrent positions, so that the limitations related to the practice of concurrent positions are generally regulated by the relevant state agencies. This is elaborated in chapter II of this case study, where the concurrent position arrangement itself is limited to related institutional personnel, for example, DPRD members, prosecutors, police, SOEs, and judges.

In addition, there are still a number of regulations that are inconsistent and tend to be disharmonious with one another. However, from the differences in these definitions, there are several similar elements that can be used as qualifications or characteristics of the practice of concurrent positions.

These elements are, a public employee holding more than one position in different institutions or entities, and this situation can affect their independence in making decisions. In addition, from the income side, a public employee who holds concurrent positions also has the potential to receive multiple incomes and utilize the facilities of one position for the benefit of his other position.

One example that is relevant to the discussion of this case study is the lack of harmony in the rules regarding concurrent positions between Law Number 2 of 2002 concerning the Indonesian National Police (UU 2/2002) and its derivative regulations, one of which is the Chief of Police Regulation Number 1 of 2013 concerning Assignment of Members Indonesian National Police Outside the Organizational Structure (Perkap 1/2013).

⁸³ See for example: Elucidation of Article 28 paragraph (3) of the Police Law which reads as follows, "What is meant by "Positions outside the police" are positions that have nothing to do with the police or are not based on an assignment from the Chief of Police. The elucidation of this article indicates that members of the National Police can hold other positions outside the police as long as they are based on an assignment from the Chief of Police.

Article 28 paragraph (3) of Law 2/2002 states that a member of the police can occupy positions outside the police force⁸⁴ after resigning or retiring from the police service. This article emphasizes that the practice of concurrent positions can only be carried out under conditions when a member of the Indonesian National Police has retired from their position in the police force. However, in the elucidation of the article it is stated that an active member of the National Police can also have other positions outside the police force, as long as it is based on an assignment of the Chief of the Indonesian National Police.

Apart from that, exceptions to this article are also recorded in *Perkap* 1/2013. The assignment referred to in the *Perkap* is the transfer of duties and positions of a members of the National Police to places and positions outside the organizational structure of the police, which are located both at home and abroad.⁸⁵

Concurrent Positions in Non-Public Offices

Interestingly, the practice of concurrent positions can be carried out not only at the formal level between state institutions, but also in community organizations, sports organizations, and hobby communities. Even though it seems harmless, the involvement of a high-ranking public official, even holding the position of chairperson, can still create a potential conflict of interest.

The Harley Davidson Club Indonesia (HDCI), for example, is chaired by a police general, who has been named a suspect in an alleged drug case,⁸⁶ Inspector General of Police Teddy Minahasa. The Executive Board of the Indonesian Bicycle Sport Association (PB ISSI) is chaired by the National Police Chief Listyo Sigit Prabowo,⁸⁷ and the Executive Board of Indonesian E-Sports (PB ESI), is chaired by the Chief of the State Intelligence Agency (BIN), Budi Gunawan. Another example is DPR RI member Ahmad Sahroni, who has also served as Chairman of the Ferrari Owners Club Indonesia (FOCI).

To identify potential conflicting interests as to what could arise from the involvement of these high-ranking public officials in hobby communities, sports organizations and other community organizations, the political-business relationship in the establishment of FOCI can be observed as an example. FOCI was founded in 2002, at the same time as

⁸⁴ In the elucidation of Article 28 paragraph (3) of Law 2/2002 it is stated that what is meant by a position outside the police force is a position that has nothing to do with the police or is not based on an assignment from the National Police Chief.

⁸⁵ Article 1 point 5 *Perkap* 4/2017 7.

⁸⁶ Jonathan Devin, Raga Imam, and Rini Friastuti (ed.), 2022. *Complete Inspector General Teddy Minahasa Drug Case Files*. Kumparan, December 21, 2022, <https://kumparan.com/kumparannews/berkas-perkara-kasus-narkoba-irjen-teddy-minahasa-lengkap-1zU0bCLFcW/full>, accessed on January 20, 2023.

⁸⁷ Nurdin Saleh (ed.), 2021. *Officiated as Chairman of PB ISSI, Listyo Sigit Prabowo Promises More Bike Tracks*. December 11, 2021, <https://sport.tempo.co/read/1538371/dilantik-jadi-ketua-pb-issi-listyo-sigit-prabowo-janji-perbanyak-trek-sepeda>, accessed on January 20, 2023.

the opening of the first official Ferrari dealership in Indonesia.⁸⁸ The club was founded by five persons, namely, Ruhut Sitompul, Jack Budiman, George Widjojo, Soetikno Soedarjo, and Indrajit Sardjono.

The establishment of FOCl is thick with nuances of business-political relations, allegedly disguised in the form of common interest and hobby of the founders and their members. In fact, if examined further, some of the founders of FOCl had close ties to the regime that was in power at that time. Later, one of the founders was even found to be involved in a corruption case handled by the KPK.⁸⁹

One of the founders of FOCl, Indrajit Sardjono, is not a new figure in the world of luxury cars, as he was the President Director of Megatech, founder of Ferrari Indonesia and CEO of McLaren Indonesia. Megatech itself is a company founded in Bermuda and was once the majority shareholder of *Automobili Lamborghini*.

This is particularly interesting, because before Megatech bought and became the majority shareholder of Lamborghini, the majority of the shares were owned by another car giant from the United States, Chrysler Corp. In 1994, these shares were purchased by two companies. The majority of the share, 60%, was purchased by the Bermuda-based Megatech, while the other 40% shares were purchased by Mycom Setdco, a property and gaming subsidiary of Mycom.⁹⁰

After Megatech and Mycom Setdco became owners of Lamborghini, Indrajit Sardjono was appointed President Director of Megatech.⁹¹ Later it was discovered that Megatech was a company owned by Hutomo Mandala Putra or Tommy Soeharto, son of former President Soeharto.⁹² Meanwhile, part of Mycom Setdco's shares are owned by Setiawan Djody, an Indonesian businessman known to be close to the Cendana clan, while other shares are known to be owned by the Malaysian Royal Police Cooperative.⁹³

Indrajit Sardjono's closeness to Tommy Suharto himself started from their similar interests, which led to Tommy's management as Chair of the Indonesian Motor

⁸⁸ Ferrari, "Ferrari Owners Club Indonesia", <https://www.ferrari.com/en-EN/auto/owners-club-indonesia>, accessed on January 20, 2023.

⁸⁹ Rosseno Aji, Juli Hantoro (ed.), 2019. "Soetikno Soedarjo Charged with Bribing Emirsyah Satar Rp46 Billion". Tempo.co, December 26, 2019, <https://nasional.tempo.co/read/1288026/soetikno-soedarjo-didakwa-suap-emirsyah-satar-rp-46-miliar>, accessed on February 3, 2023.

⁹⁰ Michael Harrison, 1998. "VW to Buy Lamborghini from Son of Suharto". The Independent, June 12, 1998, <https://www.independent.co.uk/news/business/vw-to-buy-lamborghini-from-son-of-suharto-1164653.html>, accessed on January 25, 2023.

⁹¹ Mark Smeyers, "The History Of Automobili Lamborghini SpA". Lambo Cars, <https://www.lambocars.com/the-history-of-automobili-lamborghini-spa/>, accessed January 25, 2023.

⁹² Jacques Neher, 1994. "Toy or Supercar for Asia?". The New York Times, February 9, 1994, <https://www.nytimes.com/1994/02/09/business/worldbusiness/IHT-toy-or-supercar-for-asia.html>, accessed January 20, 2023.

⁹³ *Ibid.*

Association (IMI) around 1992. During the same management period, Indrajit Sardjono served as Chair of the IMI's Sports Division. Thus, his appointment as President Director of Megatech should be suspected to originate from his close relationship with Tommy.

As a context, in the early 1990s until at least before the fall of President Soeharto in May 1998, Tommy Suharto and the racing car community in Indonesia were known to be actively encouraging the development of the Indonesian automotive industry. Before Tommy through Megatech became the majority shareholder of Lamborghini in 1994, the Sentul Circuit was inaugurated as the first international racing circuit in Indonesia in 1993. It is reasonable to presume that the purchase of Lamborghini through Megatech was one of Hutomo Mandala Putra's efforts to promote the Sentul Circuit, which had just started operating.

One of the other FOCl founders was Soetikno Soedarjo. He is the former Main Director and owner of PT Mugi Rekso Abadi (MRA), a conglomerate company with business units in the automotive sector,⁹⁴ magazine publishing,⁹⁵ hotels,⁹⁶ restaurants⁹⁷ and radio stations.⁹⁸ Later, Soetikno Soedarjo was proven to be involved in the bribery case of the Director General of PT Garuda Indonesia, Emirsyah Satar.⁹⁹

The history of the founding of FOCl and the involvement of high-ranking state officials and their cronies in hobby clubs, interests, or community organizations, is strongly suspected of being a cover to "safeguard" business-political relations which can be carried out without optimal formal oversight. It is not impossible for high-ranking state officials to take advantage of the facilities they have because of their position, for the benefit of hobby clubs that have nothing to do with their main duties and functions as state officials.

An example can be seen in MPR's public relations media coverage. One article published on the official website of the MPR RI actually reviewed Bambang Soesatyo's activities as the Chair of IMI, not his work as Chair of the MPR. Yet, the publication media used is the official publication media belonging to the MPR.

⁹⁴ Through one of its business units, PT Citra Langgeng Otomotif, PT MRA was once the official distributor of Ferrari in Indonesia, before being replaced by PT Eurokars Prima Utama in 2021 (see: <https://www.cnnindonesia.com/otomotif/20210315123857-579-617561/ferrari-pilih-importir-dan-distributor-baru-di-indonesia>).

⁹⁵ Harper's Bazaar, Cosmopolitan, Herworld, Casa, Mother & Baby.

⁹⁶ Bvlgari Hotel and Resort <http://www.mra.co.id/index.php/division/hotel-property/bvlgari-hotel-resort>.

⁹⁷ Hardrock Café Jakarta, Hardrock Café Bali, Haagen Dazs, Cloud Lounge and Dining, The Alley.

⁹⁸ Hard Rock FM, Cosmopolitan FM, Trax FM, Brava FM, I Radio FM.

⁹⁹ See: Corruption Crime Court Decision at the Central Jakarta District Court Number 122/Pid.Sus-TPK/2019/PN Jkt.Pst and Supreme Court Decision Number 3948 K/Pid.Sus/2020.

Figure 1.
Image Capture of a Report of Bamsoet's Activities at IMI
on the Official Website of the Indonesian People's Consultative Assembly¹⁰⁰



At a more formal level, a similar relationship is very likely to occur when a high-ranking public official holds two positions at the same time. This relationship does not have to automatically generate material benefits, but can also be in the form of trading in influence, as well as protecting the interests of other parties affiliated with high-ranking officials with these dual positions.

This case study seeks to identify the protection of the interests of other parties affiliated with high-ranking officials with dual positions. The subject that is the focus of this case study is a high-ranking officer in the Indonesian National Police (POLRI) who later filled a strategic position at the State Intelligence Agency, and concurrently serves as a commissioner for a state-owned company engaged in the mining sector.

Active members of the National Police holding concurrent positions is not a new phenomenon, as is the practice of holding concurrent positions by other ASNs. ORI findings in 2019 stated that there were at least 397 SOE commissioners and 167

¹⁰⁰ MPR RI, 2022. "Bamsoet Appreciates 20 Years of Ferrari Owners Club Indonesia Remaining Solid with the National Automotive Community". January 30, 2022, <https://mpr.go.id/berita/Bamsoet-Apresiasi-20-Tahun-Ferrari-Owners-Club-Indonesia-Tetap-Solid-Bersama-Komunitas-Otomotif-Nasional>, accessed on January 25, 2023.

SOE Subsidiary Commissioners who indicated concurrent positions and income.¹⁰¹ This reinforces the notion that the practice of holding concurrent positions is indeed normalized and supervision over the implementation of regulations that prohibit it is not optimal.

C. Analysis of Findings

In the previous section, a number of regulations regarding conflicts of interest and concurrent positions have been described. It can be said that these regulations have not fully answered the challenges and the need to minimize conflicts of interest and the practice of concurrent positions. The practice is not expressly prohibited in its entirety, and even seems encouraged to be carried out, including by law enforcement officials.

The subject that is the focus of this case study is known to hold at least 2 (two) formal positions. *First*, the subject is one of the SOE commissioners and is still listed as a member of the Indonesian National Police. *Second*, the subject is also one of the top officials in the intelligence agency. Such a strategic position of the subject raises a number of concerns, especially when it is associated with one of the working areas and exploitation locations of the SOE that currently houses the subject.

Based on the investigation, the subject has served as commissioner twice, in two different SOEs. He also has a travel agent and *umrah* travel business founded in 2004, which are currently being managed by his wife.¹⁰²

Prior to becoming the First Secretary of the State Intelligence Agency, the subject was noted to have held positions as Assistant for Planning to the Chief of the Indonesian National Police, Head of the Annual Budget Planning and Budget Management Section of the General Planning and Budgeting Division of the National Police, and Deputy IV for Economic Intelligence at BIN. He is also listed as the Daily Chair of PBESI or Indonesian E-Sports Executive Board, a sports organization under KONI, with the Chief of the State Intelligence Agency (BIN), Budi Gunawan as General Chair.¹⁰³

There are several important and interesting notes from the appointment of the subject as Commissioner at PT Timah, Tbk. (23 April 2019–11 June 2020). *First*, the subject was minimally present in the Board of Commissioners' Meetings and Joint Meetings of the Board of Commissioners and the Board of Directors. *Second*, the individual who was replaced by the subject in his position as Commissioner of PT Timah.

¹⁰¹ Letter of the Ombudsman of the Republic of Indonesia to President Joko Widodo, concerning "Submission of Suggestion Regarding Concurrent Positions and Income of Commissioners of SOEs". August 3, 2020.

¹⁰² There is no prohibition for a member of the Indonesian National Police to have a business or business, as long as the business does not fall within the scope of his powers (See: Article 2 paragraph (2) letter c Law 2/2002 on the Police).

¹⁰³ PBESI. "PBESI General Chairperson", <https://pbsi.org/id>, accessed on February 2, 2023.

The subject's minimal presence when he was a Commissioner of PT Timah, Tbk. can be found out in the annual report of PT Timah, Tbk. in 2019 and 2020. Since the subject served as Commissioner of PT Timah on 23 April 2019 until the year end, he was recorded as having only attended 2 of the 6 joint meetings between the Board of Commissioners and the Board of Directors, or only 33% attendance. His attendance at the Board of Commissioners' meetings was also only 65%, in which he attended 11 meetings out of a total of 17 Board of Commissioners meetings held.¹⁰⁴

This performance also did not change significantly until the time of his dismissal as Commissioner of PT Timah, Tbk. on June 11 2020. From January 2020 to June 11 2020, the attendance rate of the subject at the Board of Commissioners' Meeting was only 43% or only attended 3 meetings out of a total of 7,¹⁰⁵ and never attending a Joint Meeting of the Board of Directors and Board of Commissioners. There were at least 5 joint meetings between January 1 2020 to June 11 2020, and the subject attended none.¹⁰⁶

PT Timah Tbk.'s Annual Report noted that the subject's absence from the meetings was due to official reasons. This shows that one of the other effects of concurrent positions is the less than optimal performance of the subject as a Commissioner of PT Timah. The practice of holding concurrent positions in general has the potential to result in sub-optimal performance from individuals, which can affect the performance of SOEs in general.

Another interesting thing that became the second finding was the background of the commissioner who was replaced by the subject. The appointment of subject as Commissioner of PT Timah, Tbk. on April 23, 2019 was in substitution of 'SHP', who also came from the National Police and the State Intelligence Agency (BIN). Similar to the subject, SHP also had concurrent positions as Deputy IV for Economic Affairs at BIN during his tenure as Commissioner of PT Timah, Tbk.¹⁰⁷ SHP returned to the position of Commissioner of PT Timah Tbk. after the subject was honorably discharged on 11 June 2020.¹⁰⁸

This pattern is certainly interesting to deepen, moreover a similar pattern also occurs at PT Antam Tbk. The subject was appointed as Commissioner of PT Antam on 11 June 2020 to replace Z, who also served as Main Secretary of BIN. Prior to serving as BIN's Main Secretary, Z also held the position of Deputy IV for Economic Affairs at BIN for the 2010-2014 period.

Formally, there are indeed no problems with his competence, especially since subject has served as Deputy IV for Economics at BIN who also oversees the Directorate of

¹⁰⁴ Annual Report of PT Timah, Tbk. 2019, page 416.

¹⁰⁵ Annual Report of PT Timah, Tbk. 2020, page 354.

¹⁰⁶ *Ibid.*, page 363.

¹⁰⁷ SHP served as Deputy IV for Economic Affairs BIN from 2016-2018 and served as Commissioner of PT Timah, Tbk. from 13 June 2017-23 April 2019.

¹⁰⁸ Annual Report of PT Timah, Tbk. 2020, page 304.

Energy, Mineral Resources and Population. However, it is certainly interesting to study the pattern of placing people from the National Police and BIN as Commissioners of BUMNs such as PT Timah and PT Antam.

ANALYSIS I

■ Mine Exploitation Areas Vulnerable to Conflicts Over Land Grabbing and Resistance from Residents Around the Mining Area

Based on interviews with informants who monitor acts of violence by the state, the appointment of POLRI members, retired POLRI, retired TNI, and former POLRI members in the position of Commissioner of SOEs and companies engaged in the mining sector is to anticipate resistance from civilians who are often victims of land expropriation around mining exploitation areas.¹⁰⁹

This was reinforced by the statement of the Minister of SOE, Erick Thohir.¹¹⁰ Erick Thohir's statement can be seen as a basis for normalizing the dual positions of high-ranking public officials, especially law enforcers. This problematic statement can be read as a representation of the state in viewing mining conflicts that often arise in areas of mining production operations. Instead of using it as a basis for consideration to limit or readjust the direction of mining production operations to accommodate the interests of civilians, the state actually perceives the mining conflict as a threat.

This placement is allegedly based on the anticipation of the possibility of the emergence of the need to mobilize troops. The deployment of troops in these mining areas is even more complex when the exploitation areas are located at points prone to vertical conflict, due to a history of violence by the state, such as in Papua.

The placement of these security posts was confirmed by joint findings from Trend Asia, YLBHI, Walhi Eknas, Pusaka, Walhi Papua, LBH Papua, KontraS, JATAM, Greenpeace Indonesia, and #BersihkanIndonesia where the resulting map overlay shows the distribution of security posts around gold mining operation sites in Intan Jaya, Papua.¹¹¹ It is reasonable to suspect that the placement of security posts around the mining operation area was intentional and planned.

■ Nickel Mining on Gag Island, Southwest Papua

PT Antam, through its subsidiary company, PT Gag Nickel, is known to have a nickel mining location on Gag Island, Southwest Papua. The location of Gag Island which

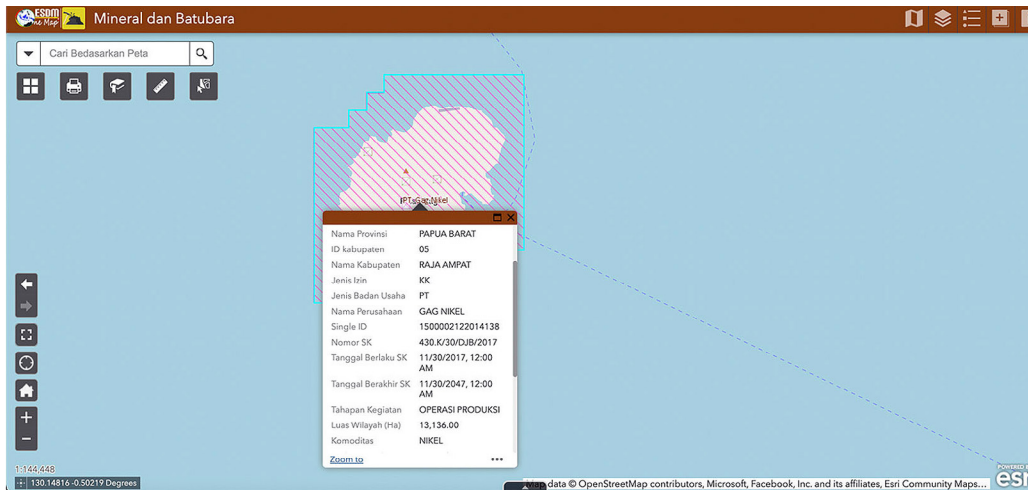
¹⁰⁹ Resource person who monitors the issue of acts of violence by the state, offline interview, October 11, 2022.

¹¹⁰ Danang Sugianto, 2020. *"Inviting Many Law Enforcers Into SOEs, This is Erick Thohir's Explanation"*. Detik Finance, June 12, 2020, <https://finance.detik.com/berita-ekonomi-bisnis/d-5051196/ajak-banyak-penegak-hukum-masuk-bumn-ini-penjelasan-erick-thohir>, accessed on January 21, 2023.

¹¹¹ Ahmad Ashov Birry, offline interview, October 27, 2022.

is included in the Raja Ampat nature conservation area, makes the exploitation of nickel mining very risky, because it has the potential to damage coral reefs and the surrounding ecosystem. Not only that, the living space of local residents is very likely to be expropriated.

Figure 2.
PT Gag Nickel's IUP Area on Gag Island, Southwest Papua¹¹²



Based on the picture above, it can be seen that PT Gag Nickel controls 13,136 hectares of nickel production operating area, with an exploitation area of 400 hectares.¹¹³ The exploitation area is still possible to be expanded further encroaching residential areas, considering that PT Gag Nickel still has time to carry out production operations until 30 November 2047 based on the Minister of Energy and Mineral Resources Decree Number 430.K/30/DJB/2017.

This concern is not without basis. Still based on *Kompas Id* reports, in the process of releasing land to the company, residents were asked to sign blank sheets. They did not know that the signature would be used for land release.¹¹⁴

The transfer of Gag Island from West Papua Province to Southwest Papua¹¹⁵ was the result of regional expansion carried out by the Central Government through Law Number 29 of 2022 concerning the Establishment of Southwest Papua Province. This is a follow-up to Law Number 21 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua.

¹¹² ESDM One Map, <https://geoportal.esdm.go.id/minerba/>, accessed on January 22, 2023.

¹¹³ Fransiskus Pati Herin and Tatang Mulyana Sinaga, 2022. "*The Irony of Mining in Coral Reef Paradise*". *Kompas Id*, February 26, 2022, <https://www.kompas.id/baca/nusantara/2022/02/22/ironi-tambang-di-surga-terumbu-karang>, accessed January 22, 2022.

¹¹⁴ *Ibid.*

¹¹⁵ Before finally being divided in December 2022, Gag Island was once part of West Papua Province, which in October 2022 was led by Komjen Pol (Purn) Paulus Waterpauw as Acting Governor. Now Southwest Papua Province is led by Acting Governor Muhammad Musa'ad.

The expansion was problematic and seemed to be forced. The chairman of the Papuan People's Council (MRP), Timotius Murib, in an interview with BBC Indonesia, said that the division of the province in Papua was suspected to make it easier for investors to enter and exploit Papua's natural resources, the benefits of which would be enjoyed by the central government, not the people of Papua.¹¹⁶

The subject is indeed not listed as a management or supervisory board of the company. However, two of the five commissioners of PT Gag Nickel are members of PT Antam's Board of Directors namely, Dolok Robert Silaban and Elisabeth RT Siahaan. Thus, it is also possible that the subject may use his position as Commissioner of PT Antam to propose certain decisions within PT Gag Nickel.

■ Memorandum of Understanding with the Police on the Security of National Vital Objects

After the Indonesian government's commitment to make an energy transition through the use of electric cars at the G20 Summit in November 2022, the value of nickel has increased, because nickel is the raw material for making electric car batteries. Thus, the existence of nickel mines becomes even more vital for the government of Indonesia.

Apart from the Gag Island area, where production operations are carried out by PT Antam's subsidiary company, namely, PT Gag Nickel, PT Antam itself holds IUPs for nickel production operations in the Southeast Sulawesi region, specifically North Konawe and Kolaka Regencies. There are 4 areas of PT Antam's nickel production operations in North Konawe Regency, namely, Lasolo Lalindu, Bahubulu, Tapunopaka, and Mandiodo. Meanwhile, in Kolaka Regency, PT Antam has a nickel production operating area in the Pomalaa area.

The areas managed by PT Antam in the Tapunopaka and Bahubulu areas measure 6,213 hectares, while for the Mandiodo and Lasolo Lalindu areas the measurement is 16,920 hectares. Thus, the total area of PT Antam's IUP in North Konawe Regency is 23,133 hectares. Apart from North Konawe Regency, PT Antam also has a production operation area in the Pomalaa, in Kolaka Regency, with a total area of 4,666 hectares.

All areas in the two regencies have been designated as national vital objects (*objek vital nasional*) at different times. The Pomalaa production operation area in Kolaka Regency was designated as a mineral and coal sub-sector national vital object on May 6, 2019 through Decree of the Minister of Energy and Mineral Resources Number 77 K/90/MEM/2019 concerning National Vital Objects in the Energy and

¹¹⁶ BBC Indonesia, 2021. "Division of Regions in Papua, Can it be a Solution to Existing Problems?". December 2, 2021, <https://www.bbc.com/indonesia/indonesia-59496244>, accessed on January 22, 2023.

Mineral Resources Sector. Meanwhile, the production operation areas for Lasolo Lalindu, Bahubulu, Tapunopaka, and Mandiodo in North Konawe Regency received their designation as *obvitnas* on November 22, 2022 through the Minister of Energy and Mineral Resources Decree Number 270.K/HK.02/MEM.S/2022 concerning the Third Amendment to the Decree of the Minister of Energy and Mineral Resources Number 77 K/90/MEM/2019 concerning National Vital Objects in the Energy and Mineral Resources Sector.

As a follow-up to the determination of the *obvitnas*, on January 19, 2023 PT Antam signed a memorandum of understanding (MoU) with the Southeast Sulawesi Regional Police. The MoU was signed in Jakarta between Antam's Director of Operations and Production, I Dewa Wirantaya, and the Southeast Sulawesi Regional Police Chief, Inspector General of Police Teguh Pristiwanto.¹¹⁷

The involvement of the National Police in protecting companies is not only seen in the context of securing the national vital object, but other companies whose business operations are prone to conflicts with civilians. This practice can be seen from the Memorandum of Understanding (MoU) between the Indonesian Palm Oil Association (GAPKI) and the National Police in 2016.¹¹⁸

It should be noted that the plantation sector is not definitively stated as one of the national vital objects and certain objects based on Article 3 paragraph (1) letter a of the Chief of Police Decree Number 13 of 2017 concerning Provision of Security Assistance to National Vital Objects and Certain Objects (Perkap 13/2017).¹¹⁹ This regulation still opens up the opportunity for the private sector to access POLRI security assistance, as stipulated in Article 3 paragraph (1) of Perkap 13/2017, but this actually reinforces the criticism of civilians regarding the tendency of POLRI to protect corporate interests, which often conflicts with the interests of civilians, and even prone to conflict.

The provision of such security services should be suspected as a form of shadow economy as alluded to by Jacqui Baker in her dissertation. This actually gives legitimacy for the police to take repressive actions against residents if residents are considered to be disturbing the security of private parties, who request protection services from the police.

¹¹⁷ Sultra Kini, 2023. "*Antam Collaborates with the Southeast Sulawesi Regional Police to Secure North Konawe Nickel UBP*" (*Advertorial*). January 21, 2023, <https://sultrakini.com/antam-gandeng-polda-sultra-untuk-amankan-ubp-nikel-konawe-utara/>, accessed on January 22, 2023.

¹¹⁸ Evalisa Siregar and Priyambodo RH (ed.), 2016. "*GAPKI-POLRI Work Together To Deal With Palm Oil Theft*". *Antaranews.com*, September 3, 2016, <https://www.antaranews.com/berita/582354/gapki-polri-kerja-sama-tangani-pencurian-sawit>, accessed on February 3, 2023.

¹¹⁹ Article 3 paragraph (1) Letter a Perkap 13/2017 reads thus, "*Obvitnas* and certain objects can be in the form of: (a). Industry; (b). Installation; (c). Liaison; (d). Mining and energy; (e). Government/private/foreign office buildings; (f). Tourist area; and (g). State institutions.

The practice of the shadow economy itself developed during the new order era, when state institutions were forced to seek independent funding to fund their work programs.¹²⁰ This is also inseparable from the international glorification of Suharto's leadership as being successful in attracting international assistance for development programs in various lines and regions of Indonesia.¹²¹ Finally, seeking funds from outside the APBN for institutional operations is a practice that is continuously being done.

The pattern of POLRI's involvement in securing national vital objects does not depart from the normative umbrella at the level of Law Number 2 of 2002 concerning the Indonesian National Police (UU POLRI). The establishment of the Directorate for Security of National Vital Objects (Dirpamobvitnas) was actually based on practices that had developed so far, related to conflicts with residents and threats of environmental damage, so it was deemed necessary to form a special directorate.

The existence of Dirpamobvitnas lies within the normative framework of Perkap No. 3 of 2019 concerning amendments to the Regulation of the Chief of the National Police of the Republic of Indonesia Number 13 of 2017 concerning Provision of Security Assistance to National Vital Objects and Certain Objects. This provision stipulates that the police can provide assistance to managers in the form of Obvitnas security services and Obvitnas security management system services.

Not limited to security matters, the police also have quite a lot of roles to play in the management of *obvitnas*. In fact, the police have the authority to conduct an audit, namely the process of checking activities to ensure the level of conformity between a condition concerning the activity of an identity and its criteria which is carried out by a competent auditor by approaching and evaluating the supporting evidence systematically, analytically, critically and selectively in order to provide opinions, conclusions and recommendations to interested parties. The wide scope of police authority in providing services at *obvitnas* often causes problems. KontraS divides the security of national vital objects into three discussion sectors, namely tourism, industry and mining.¹²²

The Police Law only provides the legal basis for the implementation of cooperation with other parties. This is regulated in Article 42 paragraph (2) of the Police Law.¹²³

¹²⁰ Jacqui Baker, 2015. "*The Rhizome State: Democratizing Indonesia's Off-Budget Economy*". Critical Asian Studies, Vol. 47, No. 2, page 325, <https://doi.org/10.1080/14672715.2015.1041282>.

¹²¹ Jacqui Baker, 2012. *The Rise of POLRI: Democratization and The Political Economy of Security in Indonesia (dissertation)*. London: London School of Economics, page 38.

¹²² Resource person monitoring the issue of acts of violence by the state, offline interview, October 11, 2022.

¹²³ Article 42 paragraph (2) of Law 2/2002 concerning POLRI reads as follows, "Relations and cooperation within the country are carried out primarily with elements of local government, law enforcers, agencies, institutions, other agencies, and the community by developing the principles of participation and subsidiarity".

However, the explanation of the contents of this article is also still brief and can be interpreted differently,¹²⁴ so that many voids in the norms of the Police Law are covered up through the Chief of Police's Regulations. The existence of the MoU certainly strengthens the basis for taking coercive and even repressive steps through the deployment and mobilization of security forces.

The Mining Advocacy Network (JATAM) noted that from 2014-2019 there were 111 mining conflicts with an area of conflict reaching 1,640,440 hectares. As an illustration, in 2020 JATAM recorded 22 cases related to environmental damage, 13 cases related to land grabbing, 8 cases related to the criminalization of residents who refused the mine, and 2 cases related to termination of employment. Of the 45 mining conflict cases in 2020, 13 cases involved the military or police.¹²⁵

Based on the description above, it can be judged that the placement of a figure like the subject as Commissioner of PT Antam is increasingly strategic to safeguard the interests of the central government. Moreover, for the production operation area in Southeast Sulawesi, PT Antam has conducted formal cooperation with the Southeast Sulawesi Regional Police. The Subject's position as a Commissioner at PT Antam and his experience as a member of the National Police and a member of BIN, especially in expertise in the security sector, is strengthening.

That is, even though formally the subject's competency that is recorded and considered to be taken into account by the company is his expertise in the field of law and energy, but an important skill that is not reflected openly in the company's needs is security and defense. This is the entry point for the emergence of conflicts of interest from concurrent positions, which cannot be narrowly assessed only based on OJK Regulation Number 33/POJK.04/2014 concerning Directors and Board of Commissioners of Issuers or Public Companies. The phenomenon of concurrent positions that creates a conflict of interest must be viewed more broadly, namely, as a space that has the potential to be used as a channel for trading in influence.

ANALYSIS II

■ Alleged Expansion of Interests and Acquisition of Material Profits

One of the important issues that also needs to be considered in the appointment of a number of BIN officials in the chair of SOE commissioner is the possibility of

¹²⁴ The elucidation of Article 42 paragraph (2) of Law 2/2002 on POLRI reads as follows, "The cooperative relationship between the Indonesian National Police and other parties is intended to facilitate the smooth functioning of the police by not interfering in the affairs of their respective agencies. Specifically, the cooperative relationship with the Regional Government is giving consideration to the general security aspect to the Regional Government and related agencies as well as community activities, in the context of upholding the authority of administering government in the regions in accordance with statutory regulations".

¹²⁵ Mining Advocacy Network, 2021. "2020 Is the Year of the Mining Politics Harvest, Criminalization Leads to Disaster" (Press Release). January 25, 2021, <https://www.jatam.org/2020-adalah-tahun-panen-ijon-politik-tambang-kriminalisasi-hingga-berujung-bencana>, accessed on January 22, 2023.

an exchange of influence and non-material benefits. In the previous section it was stated that the individual who was replaced by the subject as the commissioner was a high-ranking BIN official who also held concurrent positions, and had previously held the positions of Main Secretary and Deputy IV for Economic Affairs of BIN.

This pattern of appointment of BIN members is suspected to be related to the Head of BIN, Budi Gunawan (BG). Based on an interview with a Southeast Asian Studies expert and Indonesian National Police observer from Murdoch University, Jacqui Baker,¹²⁶ this is a possibility that cannot be ruled out.

Given the very strong culture of patronage¹²⁷ within the POLRI, a figure with great power and broad relations like BG is one whose strength cannot be ruled out, even though formally he is no longer registered as a member of the POLRI. It is suspected that this ability is often used to "maintain" the network and ensure that it continues to have influence in making decisions or policies related to its interests, or those of other parties affiliated with it.

One of the alleged forms of "network maintenance" is by giving strategic positions to the people around him. His current position as Head of BIN, makes the appointment of Z, SHP, and subject to be assessed as a series of efforts for BG to ensure that these people remain loyal to him and are under his control.

The emergence of the strong figure of BG in today's context is not without basis. Budi Gunawan is a former aide to the General Chairperson of the PDIP, Megawati Soekarnoputri, during her leadership as President and Vice President of the Republic of Indonesia. He is known as a power broker who is able to build networks with parties who have great power and wealth.¹²⁸ This ability is a major asset for BG to strengthen his position within the National Police.

It is strongly suspected that such a relationship cannot be separated from the "custom" of the police to build patron-client relationships with the owners of capital – who are generally private parties or company owners – who are able to provide financial assistance. This financial assistance is not only to support the luxurious lifestyle of POLRI officials,¹²⁹ but mainly for POLRI's operational costs.¹³⁰

This fee is still received regardless of the existence of the budget item in the APBN for POLRI's operational needs. There are at least two reasons for the practice of receiving kickbacks and economic "assistance" from the private sector. *First*, because in general

¹²⁶ Jacqui Baker, online interview, November 8, 2022.

¹²⁷ Patronage refers to material resources used for political "transactions", which are generally spread through power relations and clientelism networks, which aim to foster loyalty to patrons. (Abstracted from Edward Aspinall, *A Nation in Fragments*, 2013),

¹²⁸ Jacqui Baker, 2023. *"The End of Police Reform"*. Indonesia At Melbourne, <https://indonesiaatmelbourne.unimelb.edu.au/the-end-of-police-reform/>, accessed on January 22, 2023.

¹²⁹ Jacqui Baker, online interview, November 8, 2022.

¹³⁰ Jacqui Baker, *The Rise of POLRI*, page 67-68.

the budget allocation is not sufficient for the operational needs deemed necessary by the National Police, both at the central and regional levels.¹³¹ *Second*, in contrast to the use of the APBN which must be accompanied by evidence and accountability, financial assistance from the private sector does not require accountability.¹³²

The ability to build informal networks and "independent" funding of this kind then determines the pattern of relations within the police force. This informal financing from the private sector will eventually contribute to a certain level of police operations.

This pattern then becomes the "currency" within the police. In the end, figures like BG and Tito Karnavian will receive separate support from other POLRI members, so that in the end they will build factions with loyal members within the POLRI itself.¹³³ The magnitude of their influence can also be judged by their ability to place affiliated individuals or have relations with them in strategic positions, even though they no longer have formal positions within the National Police.

In addition to maintaining the loyalty of faction members, it is not impossible for such a relationship pattern to lead to corrupt behavior in the form of seeking inappropriate material gain, to then be shared with institutions, groups, supporters,¹³⁴ or even patrons. Individual POLRI members who build relationships and seek funding will generally take their share first and distribute it to their faction, before finally depositing the funding assistance for the institution's operations.¹³⁵

On the other hand, formal income as a SOE Commissioner in the form of salary, THR, allowances and *tantiem* is also not insignificant. Depending on their work performance, in 2021 PT Antam's Board of Commissioners will receive a total take home pay ranging from IDR895,782,524 to IDR3,862,938,057.¹³⁶ Inevitably, this position has become the target of various parties and is often used as a "gift" for political support to politicians or rulers who are currently in office.¹³⁷

¹³¹ The formation and operational financing of the Red and White Task Force is strongly suspected of adopting this pattern. The Red and White Task Force was established under the leadership of Tito Karnavian as National Police Chief and maintained by Indonesian National Police Chief Idham Aziz and National Police Chief Listyo Sigit, at least until the task force was disbanded after the Inspector General of Police Ferdy Sambo case on August 11, 2022, or after about one year of his leadership. (See for example: IDN Times, <https://www.idntimes.com/news/indonesia/santi-dewi/pbhi-satgasus-merah-putih-tak-cukup-dibubarkan-harus-ada-audit?page=all> and Tempo.co, https://nasional.tempo.co/read/1621958/profil-satgassus-merah-putih-dibentuk-tito-karnavian-dibubarkan-listyo-sigit-prabowo?page_num=1).

¹³² Jacqui Baker, *The Rise of POLRI*, page 72-73.

¹³³ *Ibid.*, page 86.

¹³⁴ Alamsyah Saragih, online interview, November 14, 2022.

¹³⁵ Jacqui Baker, online interview, November 8, 2022.

¹³⁶ PT Antam's 2021 Annual Report, page 55.

¹³⁷ Ahmad Naufal Dzulfarah, 2022. "*Jokowi is Called Out for Giving Out Positions, Commitment to Good Governance Principles Questioned*". Kompas.com, November 15, 2022, <https://www.kompas.com/tren/read/2022/11/15/143000065/jokowi-disebut-bagi-bagi-kursi-prinsip-good-governance-dipertanyakan?page=all>, accessed on January 25, 2023.

Reflecting on the amount of take home pay that can be obtained by a SOE Commissioner above, the omission of the practice of concurrent positions, of course, widens the gap in injustice between officials and public employees themselves, because there are employees or public officials who are actually approved by the state to receive double income.¹³⁸ Moreover, the opportunity to fill the position is thick with political overtones, rather than the merit system, which should be based on individual qualifications and competence.

This actually shows that the potential for conflict of interest from the practice of holding concurrent positions does not disappear even though formally there is no impression that there is a link between the concurrent positions held by the individual. In subject's case, his position as Commissioner of PT Timah and PT Antam must be read in a broader and holistic lens. The power relations and networks that were fostered throughout his active period as a high-ranking POLRI officer will still exist even though he is no longer listed as a POLRI member. That is why the window period, or the lull period often emphasized in the implementation of the *revolving door policy*, is very important to implement as will be discussed next.

D. The Need for the Implementation of a Cooling Off Period and Firm Limits on the Practice of Concurrent Positions

Given the vulnerability of the practice of concurrent positions, this practice should be strictly regulated or even banned altogether. This tightening must also be accompanied by a *revolving door mechanism* to remove the possibility that a public official still has influence from his previous position. The *revolving door* principle has also been applied in several countries mentioned in the comparison section in Chapter II of this study.

France, for example, regulates a gap period for retired public employees and public employees who have resigned from returning to work in the public sector. The rules regarding the gap period are regulated in the Transparency in Public Life Act 2013-907.

This waiting period can be equated with the norm in Article 7 paragraph (2) Letter g of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors (*UU Pilkada*), whose request for judicial review has been granted by the Constitutional Court through Decision of the Constitutional Court Number 56 /PUU-XVII/2019. The assembly emphasized the mandatory waiting period for former corruption convicts of 5 (five) years, or for one regional head leadership period.

In terms of regional head nomination, the waiting period for former corruption convicts aims to provide time for these former convicts who wish to run for regional head, to improve their attitude and prove their change of behavior to the public.¹³⁹ However, in

¹³⁸ Alamsyah Saragih, online interview, November 14, 2022.

¹³⁹ Constitutional Court Decision Number 56/PUU-XVII/2019, page 60.

the case of retired public officials, the waiting period aims to ensure that the influence and power relations possessed by the individual former official has faded away, so that conflicts of interest can be avoided.

The examples of prohibitions and limitations on concurrent positions as mentioned at the beginning of this chapter can serve as initial references for formulating strict prohibitions related to concurrent positions. Concurrent positions are implemented in a very limited scale in Northern Ireland, as well as in France.

Indonesia has many regulations related to the management of conflicts of interest, from the statutory level to internal institutional regulations. However, the implementation and supervision of the implementation of these regulations is still far from optimal.¹⁴⁰ Likewise, arrangements related to concurrent positions and potential conflicts of interest arising from these practices are often interpreted only as not to cause direct and blatant conflicts of interest.

In fact, the dangers of allowing the practice of concurrent positions and conflicts of interest include receiving double income, abuse of facilities, and trading in influence. This case study tries to offer a more structured mapping of various findings that have existed in the community, so that various snippets of these events can be interpreted in greater depth.

E. Going Beyond the Law on Concurrent Positions

Based on the discussion in the previous section, it can be seen that the practice of concurrent positions as a phenomenon occurs in various countries in the world. Similar to conflicts of interest, the practice of concurrent positions is a condition that cannot be completely avoided, so the exceptions and management of the practice must be closely monitored.

However, strict supervision cannot be achieved immediately, when the regulations governing the issue of concurrent positions are still lacking in harmony and not clearly defined. The discussion in chapters II and III of this study has described the problem of concurrent position regulations in several state institutions such as the National Police, the Prosecutor's Office, and the Judicial Power Institution or courts.

The lack of harmony and clarity of these regulations can be identified at least from the elucidation of the articles governing them. As also mentioned in the previous section, one form of the lack of clarity of regulations is contained in the elucidation section of Article 28 paragraph (2) of the Police Law. While the elucidation section of a regulation should

¹⁴⁰ UNCAC Thematic Compilation Of Relevant Information Submitted By Indonesia Article 7, Paragraph 4 Uncac Conflict Of Interest, Indonesia, Ninth Meeting, page 4.

provide a definition that is limiting and minimizes the space for multiple interpretations, this is not the case with the elucidation of Article 28 paragraph (2) of the Police Law.

The article reads as follows, "Members of the Indonesian National Police can occupy positions outside the police force after resigning or retiring from the police service". In the explanation section it is stated that "A position outside the police force is a position that has nothing to do with the police or is not based on an assignment from the Chief of Police".

The requirements for POLRI members to be able to hold other positions outside the police in the formulation of the contents of Article 28 paragraph (2) of Law 2/2002 should be quite clear, especially as in the formulation of the article no exceptions are mentioned in its application. The problem actually arises in the explanation section which provides for exceptions, especially the phrase, "...or based on an assignment from the Chief of Police".

The phrase "assignment from the Chief of the Indonesian National Police" can be read as, Members of the National Police may hold concurrent positions in the middle of their term of service, as long as the concurrent positions are carried out because of an assignment from the Chief of the National Police. This inconsistency has actually opened up more discretionary space for the National Police Chief.

The formulation of this article is different from the prohibition of concurrent positions as stipulated in the Prosecutor's Office Law and the Judicial Powers Law. Article 11 of the Prosecutor's Office Law definitively prohibits a prosecutor from holding concurrent positions as an entrepreneur, administrator, or employee of a SOE/ROE/Private corporation. Exceptions to the norms of this article emerged later through Article 11A of the Revision of the Law on the Prosecutor's Office.

Similar to the Law on the Prosecutor's Office, the Law on Judicial Powers expressly defines professional qualifications in the formulation of its articles, including exceptions. The elucidation of Article 31 paragraph (2) of the Judicial Powers Law details the prohibition norms contained in the substance of Article 31 paragraph (2) of the Judicial Powers Law.

As for the types of professions whose positions are prohibited from holding concurrent positions by Article 31 paragraph (2) of the Judicial Powers Law, they are guardians, office holders, and officials related to a case being examined by judges, businesspersons, and advocates.

Based on the explanation above, it can be said that one of the reasons why officials and law enforcement officers are still doing this is the ambiguity of regulations which still opens up opportunities for concurrent positions by law enforcement officials, especially the National Police. The limitation on concurrent positions in the Law on Police is still very general in nature, not as definitive as the Law on the Prosecutor's Office and the Law on Judicial

Powers, even though as fellow law enforcement institutions, the standard values should be the same, bearing in mind that the objectivity and impartiality of case handling are two important values that must be owned and upheld by law enforcement officials.

Also reflecting on the previous discussion, conflict of interest must be understood in a broader sense and not stop only at fulfilling the formal legal requirements of the relevant legal regulations. A member of the National Police or other law enforcement officials may be deemed not to have a conflict of interest in their concurrent position, even though there is a possibility that the concurrent position they hold as commissioner of a SOE is precisely aimed at securing interests that are contrary to democratic values.

This is further strengthened by the fact that many SOE Commissioners are filled by retired TNI officers, retired POLRI officers, BIN members, as well as members of the TNI and POLRI who are approaching retirement. Members of the law enforcement, security, defense and intelligence institutions are known to fill positions as Members of the Board of Commissioners of SOEs engaged in strategic sectors of the country's economy.

Table 13.
List of Senior and Retired TNI Officers who Serve as SOE Commissioners¹⁴¹

NAME	INSTITUTION OF ORIGIN	SOE POSITION AND NAME
Vice Admiral Achmad Djamaluddin	Indonesian Navy	President Commissioner of PT Pelabuhan Indonesia (Persero) or Pelindo I
Major General (Retired) Dody Usodo Hargo	Indonesian Army	President Commissioner of PT Adhi Karya (Persero) Tbk.
TNI Marshal Fadjar Prasetyo	Indonesian Air Force	President Commissioner of PT Dirgantara Indonesia (PTDI)
Lieutenant General (Retired) Doni Monardo	Indonesian Army	President Commissioner of PT Indonesia Asahan Aluminum (Persero) or Inalum
Vice Admiral Andy Pahril Pawi	Indonesian Air Force	Commissioner of PT Bukit Asam
Maj. Gen. TNI Eddy Kristianto	Indonesian Army	Commissioner of PT Wijaya Karya (Persero)
General TNI Andika Perkasa	Indonesian Army	President Commissioner of PT Pindad
Air Marshal Donny Ernawan Taufanto	Indonesian Air Force	President Commissioner of PT Dahana
Lieutenant General TNI Herindra	Indonesian Army	President Commissioner of PT LEN Industri

¹⁴¹ KontraS, 2021. "Appointment of TNI Officers as Commissioners of SOE, Disrespects the Security Sector Reform Agenda" (Press Release). July 22, 2021, <https://kontras.org/2021/07/22/penunjukan-perwira-tni-sebagai-komisaris-bumn-melecehkan-agenda-reformasi-sektor-keamanan/>, accessed on January 26, 2023.

The placement of the subject as a member of the Board of Commissioners of PT Antam, for example, is strongly suspected as a way for the state to anticipate vertical conflicts with civilians and/or facilitate security forces mobilization when mining conflicts occur with residents. It should also be remembered that mining conflicts that often arise in areas around mining production operations are, according to JATAM's records, environmental destruction, land grabbing, criminalization of residents who refuse the mining operations, and termination of employment. SOE Minister Erick Thohir has even acknowledged this.¹⁴²

Cases such as Wadas,¹⁴³ Parigi Moutong,¹⁴⁴ Konawe Islands¹⁴⁵ and other areas show that the state is not present to protect citizens from the destructive expansion of mining companies. In the Parigi Moutong case, it is even suspected that a law enforcement official committed a human rights violation by firing a gun and killing a demonstrator opposed to the gold mine.

Investigation of alleged conflicts of interest from officials holding concurrent positions must go beyond legal formalities. This is because conflicts of interest can arise not only in the form of biased decision-making, but also in the potential for trading in influence for the benefit of individuals, families, cronies or other interested parties.■

¹⁴² Mohammad Bernie, 2020. *"Risk & Potential Problems of TNI-POLRI Officers Serving as SOE Commissioners"*. Tirto.id, June 24, 2020, <https://tirto.id/fkPN>, accessed on January 26, 2023.

¹⁴³ Jamal Abdun Nashr, 2023. *"Continuing to Reject Andesite Mining, Wadas Village Women Bound Themselves on Trees"*. Tempo.co, January 6, 2023, <https://nasional.tempo.co/read/1676514/tetap-tolak-tambang-andesit-perempuan-desa-wadas-gelar-aksi-lilitkan-stagen-di-pohon>, accessed on January 26, 2023.

¹⁴⁴ CNN Indonesia, 2022. *"Demonstration Against Mining in Central Sulawesi Ends in 1 Resident Shot to Death"*. February 14, 2022, <https://www.cnnindonesia.com/nasional/20220214064339-12-758724/demo-tolak-tambang-di-sulteng-berujung-1-warga-tewas-tertembak>, accessed January 26, 2023.

¹⁴⁵ Ahmad Akbar Fua, 2022. *"Land Conflict in the Konawe Islands, Residents and Mining Companies Face Each Other"*. Coverage 6, March 3, 2022, <https://www.liputan6.com/regional/read/4901261/sengkarut-lahan-di-konawe-kepulauan-warga-dan-perusahaan-tambang-saling-berlawanan>, accessed on January 26, 2023.

CLOSING

Conflict of interest is a condition that is commonly found in state administration. Its existence is certain, but its abuse must be managed and prevented, to avoid irregularities in policy making by public officials.

That is why many countries, as described in chapter II, do not automatically criminalize or consider conflicts of interest held by public officials as a violation. Violations or even crimes related to conflicts of interest lie in acts committed by public officials as a form of ignoring these conflicts of interest.

As an example, a public official, becomes involved in making decisions or forming policies, which actually benefits themselves, their group, or other parties affiliated with them. In this example, it can be concluded that a conflict of interest is a real condition, its existence is disguised so that the public official who has the conflict of interest is still involved in making decisions or making policies that actually provide an undue advantage for themselves, their group, or other parties affiliated with them.

Concurrent positions are a manifestation of the conflict of interest. Like two sides of a coin, the practice of concurrent positions will definitely raise the potential for a conflict of interest. If these conditions are not anticipated, prevention and handling, it can lead to corrupt practices.

On the other hand, the existing arrangements regarding concurrent positions and conflicts of interest seem to be mere formalities, because based on the findings of this study, there is great potential for trading of influence in concurrent positions held by SOE Commissioners with backgrounds in law enforcement, security, defense, as well as intelligence.

A. Conclusions

Based on the results of the discussion described above, the authors can provide the following conclusions:

1. In principle, the practice of holding concurrent positions by law enforcement officials who at the same time also serve as commissioners of a state company

will open wide opportunities for conflicts of interest to arise. This is because they will have multiple loyalties and commitments, and will likely affect impartiality and objectivity in the law enforcement process if the company where they are placed is found to be involved in a case;

2. Seeing that there are still many overlapping regulations regarding the prohibition of concurrent positions, the argument against this practice cannot be based solely on formal legal aspects. More than that, the ethics of public and government officials should be the main guideline. Moreover, in the hierarchy, law is found below values and ethics, which in other words, sociologically, violations of ethics need to be seen as equal to or even worse than violations of law;
3. Findings related to the position of the Board of Commissioners of mining SOEs filled by elements of law enforcement and the military must be anticipated as a form of trading in influence and seeking improper profits;
4. Lack of clarity in the talent pool recruitment mechanism in determining SOE commissioners means that the selection of SOE commissioners is based on the discretion of the minister's power or other powers. This results in the company's performance often intervened by powers outside the company.
5. The involvement and deployment of forces at mining conflict points actually increases the state's contribution in committing violence against its own citizens. Elements of the military and police who fill the position of commissioner of SOE are strongly suspected of playing a role in facilitating the effort to mobilize and deploy these forces;

B. Recommendations

Based on the conclusions described above, the researcher can provide the following conclusions:

1. In order to improve compliance with the ethics of public officials to prevent conflicts of interest from occurring which lead to criminal acts of corruption, good practices such as those implemented in Northern Ireland through the Northern Ireland Audit Office (NIAO), can at least be implemented in Indonesia by granting similar authority to institutions given the mandate to follow up on conflict of interest declarations such as the State Civil Apparatus Commission (KASN) or the Ombudsman, namely institutions working independently and having legal authority to examine the finances, efficiency and effectiveness used by government agencies or other public sector bodies that use state finances;
2. The verification mechanism for the conflict of interest declaration document, including those related to assets owned and sources of income, should not only be

an administrative document, but the report should be used as a basis for further investigation by the competent authorities;

3. Policy makers, both the Government and the DPR, must immediately carry out regulatory reforms related to controlling conflicts of interest and concurrent positions by evaluating and implementing the many overlapping regulations that open up gaps in these practices. This is done to close the space for multiple interpretations of regulations that cause legal uncertainty. One of the steps that can be taken is to revise the Police Law which is known to open loopholes in the practice of concurrent positions;
4. The phenomenon of concurrent positions of public officials in hobby communities or other organizations must also be anticipated and should become the object of monitoring to assess potential conflicts of interest as well;
5. The talent pool mechanism to determine SOE commissioners should be improved, to ensure that the process is carried out in a more transparent, participatory and accountable manner. ■



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