

# **Safeguard Public Money...! The Constitutional Court Needs To Stamp Out Corrupt Regulations**

The Coalition for the Safeguarding of Public Money  
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# Law No. 17/2003 & 27/2009

- Theft of public money in APBN occurs often i.e. in the case of athletes, procurement of the Quran, DPID etc.
- The discussion and establishment of APBN regulations opens space for the DPR - especially the Budget Agency - to engage in transactional politics outside of public interests → Budget Agency has become a political party ATM.
- A number of articles in Law No. 17/2003 on State Finances and Law No. 27/2009 on MPR, DPR, DPD and DPRD (MD3) have the potential to legalise corruption.

**The articles are  
problematic** 

**Potential legalisation of  
corruption**

# 11 Problematic Articles

## Potential Legalisation of Corruption

- **Budget Agency's existence and authority**
  1. Article 104 Paragraph 105 (1) in Law No. 27/2009 **CONTRADICTS** Article 23 Paragraph 1 of the 1945 Constitution.
  2. Article 107 Paragraph (1) **CREATES LEGAL UNCERTAINTY, CONTRADICTING** Article 20A Paragraph (1), 23 Paragraph (1), 28D Paragraph (1) of the 1945 Constitution.
- **DPR authority discusses APBN in detail**
  3. Article 157 Paragraph (1) Letter C in Law No. 27/2009 **CONTRADICTS** Article 23 Paragraph (1) of the 1945 Constitution.
  4. Article 15 Paragraph 5 in Law No. 17/2003 and Article 159 Paragraph (5) in Law No. 27/2009 **CONTAINS LEGAL UNCERTAINTIES, CONTRADICTING** Article 23 Paragraph (1) and Article 28D Paragraph (1) of the 1945 Constitution.
- **Blocking the budget**
  5. Article 71 Letter G and Article 156 Letter A and B in Law No. 27/2009 **CONTAINS LEGAL UNCERTAINTIES, CONTRADICTING** Article 23 Paragraph (1) of the 1945 Constitution.
- **Process and scope of APBN-P discussions**
  6. Article 161 Paragraph (4) and (5) in Law No. 27/2009 **CONTRADICTS** Article 23 Paragraph (1) of the 1945 Constitution.
  7. Article 156 Letter C Number 2 and Article 161 in Law No. 27/2009 **CREATES LEGAL UNCERTAINTY, CONTRADICTING** Article 23 Paragraph (1) of the 1945 Constitution.

# Budget Agency's Existence and Authority

1. Article 104 and 105 Paragraph (1) of Law No. 27/2009 **CONTRADICTS** Article 23 Paragraph 1 of the 1945 Constitution.
  - The Budget Agency has low accountability; oligarchy is present in budget discussions and the Budget Agency has become a political party ATM.
2. Article 107 Paragraph (1) **CREATES LEGAL UNCERTAINTY, CONTRADICTING** Article 20A Paragraph (1), 23 Paragraph (1), 28D Paragraph (1) of the 1945 Constitution.
  - The Budget Agency's authority to discuss RUU APBN with the government has the potential to be misinterpreted; budget brokering is often practiced.

As the role of the Budget Agency is only to discuss the results of discussions, and establish macroeconomic assumptions, revenue targets and budget ceilings, the Budget Agency **doesn't need to be permanently fixed** and it **doesn't need to have many members.**

# DPR Authority to Discuss APBN in Detail

3. Article 157 Paragraph (1) in Law No. 27/2009  
Letter C **CONTRADICTS** Article 23 Paragraph (1)  
of the 1945 Constitution.
4. Article 15 Paragraph (5) in Law No. 17/2003 and  
Article 159 Paragraph (5) in Law No. 27/2009  
**CREATES LEGAL UNCERTAINTY,**  
**CONTRADICTING** Article 23 Paragraph (1) and  
Article 28D Paragraph (1) of the 1945 Constitution.
- DPR authority to discuss APBN in detail up to 3  
units is excessive – there's potential for budget  
brokering.

DPR authority to discuss APBN in detail (up to 3 units) drags DPR into detailed discussions of projects, tempting DPR to lead the projects themselves.

Although, the number of line items are in the tens of thousands which means it's not possible for the DPR to discuss them one by one.

The DPR should focus more on the performance targets of each program, because our budget system is based on performance.



# Blocking the Budget

5. Article 71 Letter G and Article 156 Letter A and B in Law No. 27/2009 **CONTAINS LEGAL UNCERTAINTIES, CONTRADICTING** Article 23 Paragraph (1) of the 1945 Constitution.
- The duties and authority of the DPR is to discuss and approve the RUU APBN submitted by the government, not to block it – incorrect interpretation.

Budget blocking occurred in the 2011 Financial Year (Rp 63.4 trillion) and in 2012 (Rp 78.5 trillion).

It opens up space for corruption because approval from the Chairperson and members of the Budget Agency is enough.

After the APBN is established, the DPR isn't allowed to submit any asterisks.

# Process and Scope of APBN-P Discussions

6. Article 161 Paragraph (4) and (5) in Law No. 27/2009 **CONTRADICTS** Article 23 Paragraph (1) of the 1945 Constitution.
7. Article 156 Letter C Number 2 and Article 161 in Law No. 27/2009 **CREATES LEGAL UNCERTAINTIES, CONTRADICTING** Article 23 Paragraph (1) of the 1945 Constitution.
- Practically, APBN-P discussions aren't accountable; the process is too short and there's often additions to the budget.

No new projects or budget additions are allowed in the APBN-P due to shorter realisation times.

APBN-P is only permitted to decrease the deficit. The APBN-P discussion process should be the same as APBN discussion processes.

# **The Constitutional Court needs to immediately provide legal certainty**

Increasing sluggish, the Constitutional Court needs to provide legal certainty in the form of a Judicial Review of Law No. 17/2003 and Law No. 27/2009. Otherwise, there will be further potential for abuse of the budget in the year leading up to the 2014 election, which will require great political costs.