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Im Fokus

The Fight against Corruption in Indonesia ***Der Kampf gegen Korruption in Indonesien***

Sofie Arjon Schütte

Abstract

Progress in the fight against corruption in Indonesia is slow and faces many obstacles and countervailing forces. Since the fall of Soeharto, a number of new Laws establishing a more effective anticorruption legislative framework and institutions were put on the statute books. With the presidency of Soesilo Bambang Yudhoyono, the Executive has shown more commitment to the fight against corruption than under his predecessors. The Corruption Eradication Commission (KPK) and the special Anticorruption Court established in late 2003 and 2004 respectively are seen by many as the last resort in a judicial system infested with corruption. The KPK has a wide-ranging mandate in both the prevention and prosecution of corruption, and has secured public trust through the bringing of a number of high-profile cases to court and upholding its own institutional integrity. Due to a recent ruling by the Constitutional Court, however, the fate of the Special Anticorruption Court post-2009 is now in the hands of the National Legislature. Many believe the Special Anticorruption Court is crucial to the fight against graft, and would favor allowing the Attorney General's Office to also prosecute corruption cases in the special court. Although the Attorney General's Office cannot prosecute former President Soeharto on the grounds of ill-health, it is preparing a civil case against the Soeharto foundations, and investigating a case against his son, Hutomo Mandala Putra (Tommy). Next year will be crucial for the fight against corruption due to the drafting of a new legal framework for antigraft efforts, the selection new KPK commissioners for the next four years, and the hosting of a number of international anticorruption events by Indonesia.¹

Keywords: Indonesia, Corruption Eradication Commission, Law Enforcement, Constitutional Court, Anticorruption Court, Corruption, Attorney General's Office, Asset Recovery

The New Order Legacy

Nine years after the stepping down of Soeharto, Indonesian society is still struggling with the legacy of the New Order regime. Even though general

¹ The author works as CIM advisor to the Indonesian Corruption Eradication Commission (KPK). This article is based on the writer's own analysis and does not necessarily reflect the views of the KPK.

elections have been held twice since then, three decades of exercising power through patronage have left their marks on both institutions and social structures. The criminal justice system, and the courts in particular, face the challenge of not only reforming their own institutions, but of also dealing with the Soeharto legacy literally in the form of his foundations and the assets of his family.

During, and in the direct aftermath of, the financial and political crisis of 1998, there was immense domestic and international pressure for reforms to tackle the infamous triade of corruption, collusion and nepotism (referred to in Indonesia by its local acronym “KKN”). The General Assembly (MPR) and House of Representatives (DPR) enacted a number of laws to establish a more detailed code on offences and institutions to go after those suspected of corruption. However, in hindsight, it was only with the election of President Susilo Bambang Yudhoyono in October 2004 that real commitment to the implementation of this legal framework came to be seen. Two months after his inauguration, President Yudhoyono issued a Presidential Decree on the “accelerated eradication of corruption”. Many saw this as initial proof that he would keep his campaign promises to improve overall governance and take the war against corruption to a new level. However, the National Anticorruption Action Plan that resulted from this decree has not achieved the hopes for strategic prominence, and progress in its implementation remains underreported (Schütte, forthcoming).

Through another decree, the President established an interdepartmental team under the Deputy Attorney General for Special Crimes to investigate and prosecute corruption in a number of susceptible sectors. After the two-year mandate of the team ended in May 2007, the public’s verdict on its performance has been mixed. However, it is acknowledged that the team managed to bring some high profile cases to court, and recover about USD 430 million in state assets. It may also have set a positive precedent for cooperation between the National Police, the Development Finance Comptroller (BPKP) and the Attorney General’s Office (AGO) when handling complicated financial crime cases (JP, 12.06.07).

Some observers consider President Yudhoyono’s most noteworthy achievement as being the fact that he has remained unaffected by the common failings of his predecessors, such as cronyism and political intervention in oversight bodies (Davidsen et al. 2006:2, 18-19).

Another important step was taken when the House of Representatives ratified the United Nations Convention against Corruption in March 2006, committing

Indonesia to comply with the international standards and rules established by the convention.

Although Indonesia is still considered to be among countries with a huge corruption problem, its ratings in international indexes such as the Composite Corruption Perception Index (CCPI) published by Transparency International (TI) and the biannual analysis by the Political and Economic Risk Consultancy (PERC) has improved slightly. In the 2006 CPI, Indonesia scored 2.4 (out of 10, with 10 being the cleanest) as compared to 2.0 in 1998, while the PERC analysis gave Indonesia a score of 8.41 (out of 10, with 10 being the most corrupt), on a par with Thailand, and 0.13 better than last year, and, for the first time, better than the Philippines on 9.40 (PPATK, 14.03.07).

Undermining the fight against corruption in Indonesia, as in many other countries, is rampant corruption within the judicial system itself. According to the *2007 Global Corruption Report* by TI, corruption remains widespread among lawyers, judges and police in Indonesia. Whatever the circumstances, a clean judicial system is a sine qua non for the eradication of corruption.

That may have been one of the major considerations behind the decision of the House of Representatives in 2002 to establish a special anticorruption commission with prosecutorial authority and a special court to try corruption cases. In other words, Indonesia's legislators decided that „it takes a clean broom to sweep the floor“.

KPK: A Powerful Antigraft Body

Under Law No. 30 of 2002, two new institutions were established: the Corruption Eradication Commission (KPK) and a special court to try corruption cases. The court was constituted as a chamber of the Central Jakarta District Court, although the jurisdiction of both the KPK and the court extends to the entire territory of Indonesia.

The KPK's power goes far beyond those of similar institutions in the past. Besides prevention, the KPK is tasked with coordinating and supervising the work of other institutions authorized to tackle corruption.² It has the power to take over cases from the Police and Prosecution Service, and to conduct investigations

² Authorized institutions in the context of this article include: the other components of the criminal justice system, the Supreme Audit Agency (BPK), the State Finance Comptroller (BPKP) and inspectorates in each department of state and non-departmental state agencies.

and inquiries into, and prosecutions of, corruption cases that involve components of the criminal justice system, give rise to particular public concern, and/or involve losses to the taxpayer of at least IDR 1 billion (approximately USD 100,000). To fulfil these responsibilities the KPK has been given legal power to investigate and prosecute, including the tapping and recording of communications, the investigation of suspects' bank accounts and inquiring into the wealth and taxation affairs of suspects.

In December 2003, the five commissioners of the KPK that were selected by the House of Representatives were sworn in before President Megawati. Since then, the KPK has grown into an organization with about 500 staff. It has its own recruitment, promotion and remuneration systems requiring its staff to only have one source of income, thus ensuring that no dubious sources of additional income endanger the institution's integrity.

The KPK has received about 16,000 complaints in its first three years, and 6,879 complaints in 2006 alone (KPK Annual Report 2006:5.5). This is a very high number of complaints indeed, compared with, for example, the 788 received by the National Ombudsman Commission in 2006, or other institutions that receive and process public complaints (JP, 08.06.07). This amply shows the comparatively high level of public trust reposed in the KPK, something that is also supported by a recent survey conducted by Global Integrity (*Global Integrity 2006*).

Of the nearly 16,000 complaints received to date, however, only about 3,000 have been found to show indications of corruption. A total of 223 of these have since been investigated by the KPK, with the rest being transferred to the Police, Prosecution Service, the Supreme Audit Board and other agencies. The fact that the majority of complaints do not fall within the jurisdiction of the KPK shows that many people are not aware of what exactly constitutes corruption under law. Another reason for this harks back to the high level of public trust in the KPK, namely, the fact that people do not believe there is any other agency to which they can turn. They therefore submit their complaints to the KPK in the hope that it will be acted upon, even though they may be aware that it does not constitute corruption in the legal sense. In some cases, copies of complaints made to the police or local public prosecutors are also sent to the KPK, as informed to the writer by an NGO, in order to ensure follow-up on the part of the authorities.

Another source of information on corruption is the mandatory financial

disclosure reports that must be submitted by state officials (*penyelenggara negara*)³. However, of a total of 111,756 state officials, only 58 percent had done so by the end of 2006. So far, only mild administrative sanctions have been imposed on non-compliant officials.

By law, civil servants are also obligated to report any gratifications they have been given within 30 days to the KPK. In 2006, a total of 129 reports were made to the KPK regarding gratifications, on the back of which IDR 829 million, AUD 650 and SGD 47,000 was turned over to the state. Moreover, the KPK confiscated about IDR 14 billion in 2006 (Hukumonline.com, 28.12.06).

By the end of 2006, a total of 20 convictions handed down by the Anticorruption Court have achieved final and conclusive legal effect; 19 of these were decided at the final appeal level. So far, the majority of convictions at first instance have been followed by appeals. However, to date none of these have resulted in acquittals. In fact, all of the sentences handed down have been upheld at the appellate level or even increased.

Table 1 Cases handed down by the Anticorruption Court

Year	Cases at Pre-Investigation Stage	Cases at Investigation Stage	Cases at Prosecution Stage	Final Judicial Determination Entered
2004	23	2	2	0
2005	29	19	17	5
2006	36	28	22	15

Source: KPK, *Annual Reports 2004, 2005, 2006*.

One may interpret this success as the result of strong case-building, the meticulous collection of evidence by the KPK – once it has brought a case to the investigation stage, the progress of the case becomes unstoppable – and consistency of approach

³ *Penyelenggara negara* are defined as members of the People's Consultative Assembly, the House of Representatives and high officials of the executive and judiciary. This includes the President, members of the Supreme Court, the State Auditor Board, the Advisory Council, and all ministers, governors, judges and civil servants with strategic functions in the state administration. Among civil servants with strategic functions are all civil servants of echelon I level. The Minister for Administrative Reform at the time issued a circular instructing all civil servants of echelon II level to also submit financial disclosure reports.

on the part of the different levels of the Anticorruption Court (first instance, appellate and cassation).

A number of defendants convicted by the Anticorruption Court, including defendants prosecuted by the KPK challenged the constitutionality of various provisions of the Corruption Eradication Commission Law (Number 30 of 2002) in August and September 2006. Although some were caught red-handed by the KPK, they argued before the Constitutional Court that their convictions were the result of an undue relationship between the Commission and the Court as both institutions had been established by the same legislation.

The Constitutional Court's Decision

The establishment of the Constitutional Court was provided for in the third amendment to the Indonesian Constitution in 2001, and came into being following the enactment of Law No. 24 of 2003 in August 2003. It has the mandate to review the constitutionality of laws, rule on disputes between state institutions, decide on the dissolution of parties, rule on electoral disputes, and conduct impeachment proceedings in respect of misconduct on the part of the President or Vice President as reported by the House of Representatives (Mahkamah Konstitusi, 10.06.07).

The abovementioned constitutional challenge included a request for the striking down of article 53 of Law No. 30 of 2002, which established the Anticorruption Court. While the other challenges were dismissed, the Constitutional Court in December 2006 found that the existence of the Anticorruption Court with its own procedures and jurisdiction to only hear cases prosecuted by KPK resulted in legal dualism. This legal dualism needed to be addressed through the enactment of specific new legislation providing a firm legal basis for the Anticorruption Court within a maximum of three years from the date of the Court's ruling. Until such time, however, the relevant provisions of the Law on the Corruption Eradication Commission (No. 30 of 2002) would remain in effect, and the Anticorruption Court, as currently constituted, would be able to continue its work (JP, 11.01.07).

For some time now, a team from the Ministry of Legal Affairs and Human Rights, consisting of representatives of the relevant state institutions and civil society, has been working on a Bill to replace Law No. 31 of 1999 on the Eradication of Corrupt Acts and its amending legislation, Law No. 20 of 2001. The need for new legislation arises from a lack of clarity in the existing legislation

on a number of issues, and also as a consequence of the ratification of the UNCAC in 2006 and the recent Constitutional Court's decision.

In February 2007, the NGO Indonesia Corruption Watch (ICW), walked out of the drafting team, as it refused to accept the abolition of the Anticorruption Court and the transferring of its jurisdiction to the district court, as suggested by the government representatives on the team. ICW also disagreed with the suggested abolition of non-career (lay) judges and minimum prison times (JP, 12.02.07; *Koran Tempo*, 12.02.07; *Kompas*, 12.02.07). Since then, a group of independent legal experts and NGOs has developed an alternative Bill for the purpose of helping to open up the discussion on the new legislation.

A separate anticorruption court or, to be more precise, separate chamber is believed by many to still be necessary, and should have jurisdiction to hear all corruption cases, whether prosecuted by the KPK or the Attorney General's Office. Non-career judges are seen as an essential part of this exercise, with the widely perceived integrity of the Anticorruption Court setting a good precedent in this regard.

Dealing with the Recent Past: Recovering the Assets

A particular challenge for the judicial system in Indonesia has been the prosecution of the former head of state, Soeharto, and his relatives. Having been at the top of the pyramid for three decades and having once been lauded as the "Father of Development", the former President still enjoys support from many of those who have done well under his rule. Some also consider it better to leave the past alone and concentrate on the present. However, it is the enormous amounts of money that have gone astray in the past, and the propensity for traces of these to surface from time to time, that require the recent past to be dealt with. Since the KPK can by law only investigate corruption perpetrated after 1999, it falls to the Attorney General's Office to deal with misdeeds that took place before the KPK's establishment by law.

In fact, the Prosecution Service has been investigating the wealth of the Soeharto family and its cronies since 1998. In August 2000, Soeharto was formally charged as a suspect for misusing the funds of charitable foundations he had established. However, the criminal charges against him were never heard in court due to Soeharto's poor physical and mental health, which his lawyers and doctors said rendered him unfit to stand trial.

In 2006 the Attorney General's Office decided to instead file civil suits against

Soeharto's foundations and the first case, involving the Supersemar foundation, is scheduled to come to the court in July (*Koran Tempo*, 06.06.07). The Supersemar foundation, which was established in 1974, obtained its funding from state banks, which were required to hand over to it 2.5 percent of their total income each year. It was later found that about 84 percent of this foundation's funds had been misused. However, since many original documents have apparently "vanished" it remains to be seen how strong this case will turn out to be in court. (*Tempo Magazine*, 12.-18.06.07)

Simultaneously, it has been discovered that the Ministry of Justice and Human Rights assisted Hutomo Mandala Putra (Tommy), former President Soeharto's favorite son, in bringing back to Indonesia some USD 11 million from an account at Banque Nationale de Paris (BNP) Paribas in London. This was at a time when Tommy Soeharto was still behind bars for his involvement in the murder of a judge.

The AGO and KPK were still investigating this scandal at the time of writing. The controversial role of the Ministry of Justice and Human Rights in this case is widely regarded as being behind the dismissal of both Hamid Awaludin from his post as Justice Minister, and his predecessor, Yusril Ihza Mahendra, from his post as State Secretary during a cabinet reshuffle in May 2007.

In June 2007, a court in the British crown dependency of Guernsey decided to continue the freezing for another six months of Euro 36 million belonging to Garnet Investment Ltd., owned by Tommy Soeharto, which is currently in an account with the Guernsey branch of BNP Paribas. The court has asked the Indonesian Government, which wants to prove that the money represents the proceeds of corruption, to press civil charges within the next three months. Tommy, meanwhile, has sued BNP Paribas after the Bank froze the account in line with increasingly strict international enforcement of anti-money laundering standards.

A breakthrough in bilateral relations between Indonesia and Singapore should soon allow not only the repatriation of crime proceeds that have been sequestered in Singapore, but also the extradition of criminals. In late April, the two governments signed an extradition treaty that covers crimes carried out up to 15 years ago. This would include among others those alleged to have misused emergency bank liquidity support funds, and who subsequently fled the country (JP, 28.04.07). The extradition treaty still needs to be ratified by both countries' legislatures, and the fact that it is coupled with a controversial defense pact may

cause some delay (JP, 12.06.07). Although some of those on the wanted list may no longer be in Singapore by the time the treaty comes into effect, the agreement is still widely considered to be a breakthrough, and in line with an international trend towards a reduction in the number of safe havens for criminals.

Outlook for 2007/2008

The coming year will be an important, if not crucial, year for the fight against corruption in Indonesia. With the Constitutional Court's decision on the Anticorruption Court and the ratification of UNCAC, a review of the existing anticorruption laws and harmonization of the penal code is a certainty. The question now is how quick and thorough this will be, and, most importantly, whether the reformist drive will not be undermined by those interested in maintaining the status quo or even turning the clock back.

Indonesia will host the next State Parties Conference on the United Nations Convention against Corruption in January 2008. Indonesia has also agreed to host the next meeting of the International Association of Anticorruption Authorities, as well as several other international events focusing on different aspects of corruption and the fight against it.

These international events will put Indonesia in the spotlight over the coming months, and are of strategic importance when it comes to garnering both international and national support for those who want to see the country's reform efforts maintained and deepened.

This year may see the first civil case against the Soeharto foundations coming before the court, and the first instance of recovery by the state. It may also be the year when the witness protection scheme, provided for under new legislation last year, is finally introduced.

Simultaneously the selection process of a new KPK leadership by the House of Representatives will take place. A selection committee is currently being set up, and will be chaired by the Minister of Administrative Reform and 14 members drawn from academia and state institutions. This committee will scrutinize the track records of applicants and propose a shortlist of candidates to the House, of which five will eventually be selected in late 2007. The choice of the right people will be crucial. The impressive performance of the current KPK leadership in securing public trust by establishing an "island of integrity" and upholding the independence of the institution has to be continued. With the institution and its staff in place, it is widely expected that the new commissioners will focus on

an increased number of prosecutions. Even though the corruption indices show things are moving in the right direction, it will still take a lot of courage and persistence to eradicate corruption in Indonesia.

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