

STEALING FROM THE PEOPLE

16 Studies on Corruption in Indonesia

Book 4

The Clampdown: In Search of New Paradigms

Editor of English Edition

Richard Holloway

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“Stealing from the People”

Foreward to the English Edition

Stealing from the People is published by the Partnership for Government Reform in Indonesia. The Partnership's aim is to promote and support a program of governance reform. The Partnership is governed by a Board consisting of senior government officials, private entrepreneurs, and Indonesian citizens who have a clear perception of the meaning and purpose of good governance. The World Bank, the United Nations Development Program (UNDP), and the Asian Development Bank are both founders and members of the Partnership.

The purpose of publishing the book *Stealing from the People* is to present the Indonesian public with a collection of research reports about how corruption has come about, spread, and held hostage the entire social fabric of the Indonesian nation. The book also aims at convincing the deeply concerned community of reform minded citizens in the country that somewhere, behind a mountain of hard and smart work, there is hope for salvaging the nation.

The editorial concept of the book emerged from the ranks of the Partnership. The editors wish to thank Ms. Merly Khouw, a consultant to the Partnership, for the selection of authors, and her persistent drive for precision, detail, and accuracy. Most of the reports were written in Indonesian and have been translated into English. It is not an easy task and the Partnership is grateful for the work done by translators and editors, particularly Michael Soldner, who understood that each language carries with it its own syntax and idiom which would result in distortion of intended meaning if translated literally.

The book's cover represents the work of Dolorosa Sinaga, an Indonesian sculptor who has generously permitted the Partnership to feature the fruits of her creativity at the front of this most important book. To the Partnership, Dolorosa Sinaga's sculpture symbolizes the resolve and the desperation of Indonesias's poor waiting for justice. Finally the editors thank Mr. Khateeb Sarwar Lateef, Senior Adviser to the World Bank in Indonesia and Ms. Sri Urip, Executive Director of the Partnership for their accessibility and wise counsel.

The book is up to date until April 2001. The findings, interpretations and conclusions

are those of the authors of each report and do not necessarily reflect the views of the Partnership. Neither the Partnership, the members of the Governing Board, the organisations or governments they represent, nor their affiliated organizations may be held responsible for the accuracy of the facts and data in this publication, or any consequence whatever resulting from their use.

Richard Holloway

Editor of the English Edition

Jakarta, January 02

“Stealing from the People” - Introduction

By Nono Anwar Makarim

The 16 essays in the 4 volumes of *Stealing from the People* report on research conducted by the authors. The book is about what people have always suspected, but didn't know precisely. How did they steal from the people? From the presidential palace to military headquarters, from state enterprise to national development planning boards, from foreign aid projects to courts of justice, from banks to political parties, entire sectors were examined. The result was a picture of systemic corruption. It is corruption conducted in an institutional and organized manner, covering all political and economic sectors. Highly placed government authorities cooperate with private businessmen, local government bureaucracies, customs, and the state security apparatus in order to maintain and develop the art of stealing.

The constant theme emerging from the studies is that the government must be controlled, that control cannot be done by government alone, and that those most entitled to exercise such control are the corruption's victims - who are the entire citizenry of Indonesia. A warning that also arises from the 16 studies is that news about corruption in the media is not about some distant crime occurring to some other person removed from ourselves. It is, in reality, a prior notice to everybody that a bill is on the way to pay for the luxury of the few.

Stealing from the People cautions that isolated measures are not enough to begin making a dent in the armour of corruption. Setting up anti-corruption task forces and watchdogs only won't do. When political pressure is strong, governments normally succeed in deflating tension by feigning serious attempts at dealing with corruption. Most of the time they get busy setting up commissions. In 1997, in Kenya, the government established 4 anti-corruption commissions within the span of one year. There was no significant improvement in the situation. During the rule of President Suharto no less than 5 anti-corruption committees were installed. In 1970, at the time of establishing No.2 in this series, Suharto even pledged to lead the fight against corruption himself. One of the cruel ironies of the anti-corruption efforts during the New Order era is that the country managed to gain a prominent seat among the most corrupt countries in the world.

Simply jailing the culprits won't do either. Pursuing corrupt officials, even in countries where the legal system has a tradition of working more or less effectively, has not produced the desired results. In the 80s and 90s waves of successful prosecutions and convictions of corrupt officials swept through the bureaucracies of India, Bangladesh and Pakistan. Soon thereafter, their replacements were doing the very same things for which their predecessors had been jailed. Law enforcement as a single anti-corruption policy tool in a broken down legal system such as we find in Indonesia is disastrous for two reasons. It is ineffective and it erodes what little social trust remains in society. Officials accused of corruption are interrogated, held in detention, milked by investigating officers, prosecuted and then set free by the courts. Arrests made by investigating officers against present or former government officials leave the general public cold. People already know what the outcomes of the arrests will be.

The 16 research papers warn that, unless law enforcement and anti-corruption commissions are accompanied by other policy reforms, efforts to reduce and eventually eradicate the most flagrant forms of corruption are doomed at birth. Such policies include institutional reform of the bureaucracy, the reduction of the public sector, privatization of state enterprises, and the launching of successive campaigns to raise public awareness of the evil corruption generates. The proposed policies may have big sounding names, but at closer inspection contain down to earth prescriptions. Institutional reform of the bureaucracy, for instance, calls for fit and proper criteria to be met by people joining the bureaucracy, and similar criteria for people to be promoted. The ethos of selfless service to the public, no matter how far removed from reality, must be inculcated and restored to each government agency in order for its members to regain their self-respect. Law enforcement, the punishment of those found guilty of violating the laws, is not merely a retributive measure, but aims at resurrecting the basic moral code of right and wrong. It should correct the disproportionate adulation of rich government officials and promote the embarrassment of association with persons whose wealth was accumulated by corrupt means.

The reduction of the public sector should not be seen as a capitulation of selfless public service to rapacious plunder by cut-throat capitalist monopolies. It is but a serious effort to reduce the space of corrupt activities and, sometimes, even to increase public gain. An example of this would be the take-over of Indonesian customs functions by a Swiss-based surveyor company. Government income increased, and the increase served as an indication of

what, in the past, would be lost to corruption. The same goes for the privatization of state enterprises. Protests against these measures are cloaked in nationalistic jargon. In reality it is but a political mask hiding the fear of losing resources from which to finance patron-client relations and political loyalties.

Finally, there is the need for sustained campaigns to broaden the pressure fronts and include both domestic and foreign fronts in demanding a stop to the plunder of citizens. Foreign pressure is much needed in a power structure dominated by a bureaucratic polity bent on protecting the status quo. If threatened, the system either resorts to sabotage through inaction, as we see today - or violence, as we saw in the past. This is why domestic pressure is not enough to bring forth significant results. An important phase of the campaign should stress the issue that good governance is not a sell-out of the national interest. On the contrary, corruption is such a sell-out. Stealing is bad. It does not matter whether the thief is Indonesian or foreign.

Introduction to Volume 4

The Clampdown: In Search of New Paradigms

The fourth volume in this four part series on corruption in Indonesia reflects on the extent and pervasiveness of corruption and looks at some possible new paradigms -including working through voluntary sector organisations and religious organisations.

Gary Goodpaster makes the very important point that, in Indonesia, corruption is normal: what is not normal is behaviour which is not -corrupt and movement away from corruption. In this he suggests that Indonesia is not different from many other countries. Countries try and “graduate” away from corruption, but very few exterminate or eliminate it. As an economic system Mr. Goodpaster points out that it provides livelihoods- but these are often in undesirable activities. What is bad about corruption is that it comprises essentially non-productive behaviours which are excessively costly to the host. It does not use resources efficiently nor incentivize people to engage in productive activities. As a social system, corruption appears feudal or colonial in character, with lower ranks supporting the upper. And it seems particularly adapted to strongly stratified societies in which the state asserts a commanding role in economic life. It also seems to thrive in situations in which the central state becomes enfeebled and loses the authority it once had. Indonesia falls into all these categories.

Mr. Goodpaster then takes the reader on a tour of rent-seeking activities in Indonesia- ordinary rent-seeking, corrupt rent-seeking and grand rent-seeking. He looks at judicial and legal system corruption, police, military and related corruption, and money politics. He looks particularly at the growth of corruption as a result of decentralization. This overview shows that corruption on Indonesia’s scale is immensely costly to the country and society. There are enormous economic efficiency losses and huge costs arising from misallocation of resources, but at the same time there are powerful vested interests and networks of corruption beneficiaries that profit from the status quo and continue to foil anti-corruption efforts.

At present money politics and corrupt ways of making livelihoods dominate the Indonesian environment. Survival in this environment appears to require playing the political game as it is played, as a deadly serious political power game. Outside the political power game, survival requires doing what is necessary to make, or protect, a living, and corrupt activities are an accepted way to do that. The changes will come from a political will to change which can be helped by pressure, particularly by donors over a long period of time.

Tim Lindsey looks at anti-corruption activities and suggests there are two reasons why NGOs are particularly suited to them. First, the NGOs' nominal structural independence from government and business allow them relatively more freedom to critique the state and commercial sectors; and indeed their legitimacy often depends on them doing so. Second, because NGOs do not rely exclusively on either the state or business for resources or authority, it is usually relatively difficult for either 'to control them.

This is, of course, not to suggest there are never instances of NGOs manipulated or even co-opted by the state or businesses; or of 'puppet' NGOs set up by state or private interests. However, 'true' NGOs -those that are able to operate more or less independently of state or business and are organizations for public benefit -are perhaps better situated than any other social entity to lead anti-corruption activities. Their only rivals are individuals (typically 'whistle blowers'), but they lack the resources and institutional support NGOs can offer.

This innate suitability of 'public benefit' NGOs as vehicles for anti-corruption activities is particularly important in Indonesia, where virtually every organ of state has been co-opted to some extent; and where, consequently, business has routinely been involved in corruption. Indeed, as Tim Lindsey says, the depth of corruption in public life in Indonesia is so long-established and so profound that state efforts to combat corruption will almost always be deliberately sabotaged by, or at least encounter resistance from, the bureaucracy. Accordingly, if anti-corruption efforts in Indonesia are to bear fruit, they must be driven or delivered to a large extent by those outside the state and the commercial sectors and that effectively means independent NGOs. This, of course, raises the issue of whether Indonesian NGOs are able to meet this challenge.

In the first part of his paper Tim Lindsey paper summarises the recent development and current state of Indonesian anti-corruption NGOs, focusing in particular on GeRAK (Jaringan Nasional Gerakan Anti Korupsi) the national anti-corruption NGO network. The second part of the paper considers the challenges that anti-corruption NGOs face, offers broad analytical frame- works for understanding corruption in Indonesia. The third part offers an assessment of whether Indonesian NGOs are, in fact, capable of delivering change, given the previous analysis.

Masdar Mas'udi approaches the issue of corruption from a different standpoint - that of the Islamic religion and belief system. Indonesia is the country with the largest Islamic popula- tion in the world. It is replete with all the "infrastructure" of Islam -the mosques, gatherings, madrassah, pesantren, holy days and rituals. The largest contingent of haj pilgrims comes from Indonesia (even though theirs are the most expensive tickets). If this is the case, Masdar Mas'udi asks, why is it that Indonesia is one of the most corrupt countries in the world?

A tentative guess is that the extent of corruption exists because religious leaders have, to date, taken a very literal translation of holy texts. For example "money politics" -an important issue in Indonesia -is not covered in the Koran, the Syar'iat or the Hadith. The only prohibition we can find is against bribing judges in order for them to abandon their independence or impar- tiality. A literal interpretation would suggest that therefore bribing ministers, police, government officials, village heads, Bupatis, governors and the armed forces is acceptable. Masdar Mas'udi moves beyond such a literal interpretation, and wants the prohibition to apply to all bribes.

Masdar Mas'udi then deals with the problem of defming independence or impartiality. He takes a theological position that these words actually mean "sticking to truth and justice". Since truth and justice are embodied in the nature of Allah, deviating from "impartiality" because of a bribe implies rejecting Allah Himself.

The chapter also deals with issues of tax. In the Koranic period (7th Century) the only tax was the religiously ordained tax of "zakat" collected from believers for Allah. This money was owned by Allah who had provided regulations for how it should be distributed. Stealing from it, therefore, is tantamount to sacrilege.

The Aksara Foundation provides the last chapter in the is book. It is a reprint of their article from Tempo 13-19 February 2001. Four authors from Aksara (Nono Makarim, Hamid Basyaib, Ines Handayani, Daud Sinjal) give an overview, a summing up, and an emotional call to action.

They point out that corruption permeates every aspect of life, but finding and nailing down a corruptor has proven to be an almost impossible task. This is an empire of kleptocracy without corruptors, a theatre of corruption without actors. Innumerable cases of corruption have been exposed by the media, seminars have been organised, talk shows aired on television and experts have commented on the issue of corruption. Not to mention special committees, commissions and watchdogs which have been formed to look into the cases and private auditors hired at great cost to examine records.

The bureaucracy is the most common location for corruption -and a corrupt bureaucracy spawns two forms of corruption: systematic corruption and systemic corruption. In a systemic form of corruption, bureaucrats buy loyalty by sharing "kickbacks" with subordinates. If the shares offered by other bureaucrats are bigger, the hangers-on will usually go to the other side. Criticism of corruption is used only to discredit the other side, not to promote democracy. Systematic corruption is a combination of corruption and politics, regularly committed with discipline by groups of people manipulating the process and results of elections. The established elite dictate and subject businesses to compulsory contributions. Both systemic and systematic forms of corruption could be minimized if there were political will on the part of the political elite, and a resolve convincingly demonstrated.

The Indonesian people have become accustomed to seeing the uncovering of corruption crimes, condemnation of the perpetrators, and calls for police investigations. In most cases the calls have gone unheeded. Occasionally an investigation has been launched, and the case has even reached court. But usually the defendant gets off.

The public has thus far been observing corruption like watching crime news reports on television. Local legislators from Party "A" in "B" regency are bribed to choose their chairman from party "C". We, the Indonesian people, watch it all as if it is something that goes beyond our concern. What we should ask ourselves is: who is going to return the embezzled money? Corruption is committed with respect to funds from the State budget.

This budget comprises foreign loans, tax revenues, and proceeds from oil, gas, and other mining contracts with foreign parties. Contracts with foreign companies are untouchable. Foreign loans cannot be left unpaid. Where then can the required money be obtained? It's 'the taxpayer again. Even the small man must pitch in to pay for corruption committed through the imposition of tax on deposit interest. All have to shoulder jointly the cost of corruption committed by government officials.

We cannot distance ourselves from corruption. Bills to pay for corruption will surely come our way. It is only a matter of time.

Richard Holloway

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Reflections on Corruption in Indonesia

By *Gary Goodpaster**

Just as it is impossible not to taste honey or poison that one may find at the tip of one's tongue, so it is impossible for one dealing with government funds not to taste, at least a little bit, of the King's wealth¹

* Professor of Law Emeritus, University of California School of Law, Davis; former Chief of Party, Partnership for Economic Growth, a joint economic policy development project of USAID and the Government of Indonesia. This article reflects my views, judgements, and conclusions, and none of them should be attributed to the U.S. Government nor to USAID. I would like to thank my colleagues at the Partnership for Economic Growth, Jeff Povolny and Thomas Timberg, for reviewing earlier drafts of this paper and providing helpful comments.

¹ Kautilya, The Arthashastra, quoted in World Bank, The Quality of Growth 135 (Oxford University Press, 2000).

Indonesian pundits often say that Indonesia has a “culture of corruption”,² or that Indonesian society is permissive and tolerates corruption. Proposals to establish a social norm that condemns corruption usually follow.³ These claims are efforts to explain why there is widespread, endemic corruption in Indonesia and why it persists over generations not with standing general notice and constant condemnation. Sadly, cultural explanations are often “that’s just the way it is” explanations. Even if in some sense correct, there’s not much explanation there. Cultural explanations also call for cultural remedies, such as education of children, whose efficacy one may doubt for the world of adults.⁴

We need a real analysis, something that generalized cultural explanations do not provide, to understand how corrupt activities enter people’s lives, what it does for them, and why they would tolerate it, given public condemnation. We must also begin by recognizing that what we call corruption serves legitimate human needs; it solves problems of making a living and getting ahead; and, depending on the circumstances, there may be impelling incentives for people to act corruptly. We need to understand how that occurs and why it is so difficult to do anything about it.

Corruption, collusion, and nepotism (corruption for short),⁵ are natural, not aberrational, behaviors. Consider the countries and governments of the world and their histories, and you will

²Indonesia’s first vice president, Mohammad Hatta, said this a long time ago, but it is often repeated. Most recently, T. Mulya Lubis, a prominent Indonesian lawyer and reformer, said the same in a speech in Washington, D.C., to the United States-Indonesia Society. USINDO Brief, USINDO(S.aol.com , January 18, 2001.

³New interpretation of laws sought to fight corruption, Jakarta Post, Jan 30, 2001, p. 2, col. 8.

⁴Education may teach people rules and how to talk about them, but such rules and talk rarely override contextual learning ‘rom peers regarding the necessities and practicalities of getting along in the world.

⁵Collusion is just cooperation for gain given a negative cast. It is very common, as noted by Adam Smith two centuries ago: “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public.” As for nepotism, evolutionary theories of the selfish gene and kin selection provide a biological and evolutionary basis for favoring one’s own. Actually, one need only consult one’s own behavior to estimate how natural nepotism is. If required to make a choice between relatives and strangers, most would choose relatives. An example will make the point. In 1997, in the United States, out of 4000 kidney donors;- only one gave .a kidney to a non-relative. Burnham, Terry & Phelan, Jay, Mean Genes 204 (2000).

conclude that, at some stage of national development, what we call corruption constitutes a norm of behavior. Much history comprises tales of corruption and nepotism, from the courts of Rome and Byzantium, through the palaces of popes, kings, and renaissance princes, down to the robber barons and tammany halls of yesteryear, to the political patronage, backroom deals, mafias, triads, and yakuza of today. By our standards, Elizabethan England⁶ and the late 19th century United States were quite corrupt. Corruption is also widespread in developing states and transition economies -particularly those, like Indonesia, where the state controls much of the economy.⁷ It appears in post-colonial states -there are "states" in Africa that could give lessons to the Devil- and in many of the states formed from the dissolved Soviet empire.

Throughout history, and even today, it is actually the countries and governments that are deemed not corrupt or that cabin corruption successfully that are abnormal. Corruption is the normal, or ordinary, state, and on this proposition, what needs explaining is not corruption, but moves away from corruption. History suggests that countries overcome or "graduate" from corruption, learning that it is an evil to fight and conquer. In democracies, the development of democratic voting, effective opposition parties and interest groups, and regulated yet "free" market economies are catalysts in this process. Even graduates, however, do not always completely succeed in eradicating corruption, but rather in conffning or limiting it. The recent French and German political corruption scandals and the unseemly story of "money politics" in the United States and most Western developed countries attest the difficulty in wholly exterminating corruption.

What we call corruption is a form of seeking personal gain. It is natural for individuals to seek their own advantage and that of their family members or relatives. If the government con-

⁶ The crown practice of granting monopolies or special privileges in order to obtain revenue or to reward services "reached its climax while Elizabeth was in power. A list of her grants includes patents giving the sole rights to sell or manufacture currants, salt, iron, powder, cards, calf-skins, feels, ouldavies, ox-shin bones, train-oil, lists of cloth, potashes, aniseseed, vinegar, sea-coals, bottles, lead, accidences, oil, calamine-stone, oil-of-blubber, glasses, paper, starch, tin, sulphur, new drapery, dried pilchards, beer, horn, leather, Irish yarn, importation of Spanish wool, and transportation of iron- ordinance." Miller, *The Case of the Monopolies*, 6 *Midi. L. Rev.* 1,2 (1907).

⁷ *Quality of Growth*, supra, n. 1, at 151.

trols access to economic opportunities or has large, exploitable resources, I would, of course, approach the government to gain access to them. As long as what I got justified the expenditure I had to make to get it, it would be rational for me to pay, in some way, for that access. From the individual's point of view, corruption is just securing some gain or advantage, and not unfairly, for others 'can do what I do. In fact, I am not likely to see how my gain hurts anyone else, except perhaps competitors for the deal. If I don't receive the gain, then someone else will. As between us, I am at least as deserving, and I would, of course, prefer that I or mine receive it. Once I and people like me secure a productive position, or more grandly, capture the state policy and decision-making apparatus, we will use it to benefit ourselves and ours as much as we can. In the latter case, we will push programs in directions that provide the greatest opportunities for rent-seeking.

To say that humans are naturally inclined to corruption is not to say that it is good, nor to claim that nothing can be done about it, nor to preclude judgments about corrupt activities. Claiming that corruption is natural no more endorses it than saying that wars are natural endorses war. Just like other natural human inclinations we would perhaps like to disown, say, for example, the tendency to overeat or inclinations to vice, corrupt behaviors can be brought under conscious control. It takes some learning and discipline, however. The case must be made why corruption is bad for you, or -if you personally profit from it -why it is bad for others and society and why, in the long-run, it may be bad for you and yours. To those who make livings corruptly, where many people do so, this is not an easy case to make. Worse, even when made, collective action problems may insure that while all agree in moral concert that corruption is an evil, no substantive remedy entails.

Assuming that humans naturally tend to engage in what we righteously condemn as corrupt behaviors, however, also suggests that moral condemnation alone no more serves to stem corruption than it does the classic human vices or the expression of genuine human needs. It may comprise a gesture of solidarity with the good and the right, but as Bertold Brecht once famously said, "Erst kommt das Essen, denn die Morale." (Eat first; moralize later.) Put otherwise, corruption is bound up with making a living for oneself and one's own, either through corruptly generated income or self-protectively through payments of bribes and corruption taxes to get on with one's business. People with full bellies and shelter are much more likely to

listen to moral arguments than people without, and we cannot disassociate issues of corruption from issues of self-provision. Corruption is primarily an economic and social issue, and only down the line a matter for sermons.

All this said, there are scales and degrees of corruption. Corruption can be narrow or widespread, petty or grand, restricted or free, disorganized or organized. On deeply infiltrating state instruments, corruption works a qualitative change in the way a society is organized and operates. Call this condition “structural” corruption, that is, corruption woven into the fabric of governance, so that governmental powers are co-opted to enable corrupt activities, and into the weave of a society’s social and economic affairs. Corruption can become so insinuated that, like a brain worm,⁸ it takes over its host, or at least some of its functions, for its own purposes. Eradicating structural corruption is immensely difficult because it operates as a governing economic and social system in itself and because so many livelihoods depend on it.

Widespread corruption, such as now exists in Indonesia and some other developing countries, forms a parasitic economic and social system. That is, it comprises adaptive and interconnected ways of making a living, certain kinds of incentives, characteristic ways of relating to others, and persistence across generations. It is not a self-sufficient or stand-alone system, but depends on co-existing economic and social systems, for example, on the agricultural economy, on markets or state enterprises, on the self-employed, on small and medium enterprises, on the informal or black economy operating outside, or on the contestable margins of, the law. In Indonesia, corruption interpenetrates these, and other, systems, and lives off of them.

Corruption is, in considerable part, exploitive. That is, many corrupt activities are nonproductive, and the corrupt make their livings rentier fashion by extracting wealth from others. Corruption may involve productive activities, e.g., an overpriced power supply contract, but these are generally priced at greater than market prices -and are exploitive to that degree -or

⁸ A brain worm is a parasite that infects ants. Ants, in scavenging, eat a larval form of this tiny creature, which then makes its way to an ant’s basal ganglia. From there it somehow impels ants to climb stalks of grass. Ruminants crop the grass, ingesting the ant and the brain worm, which then goes through another stage of its life cycle in the intestines of the ruminants.

depend on theft, such as illegal logging, or other illegal activity, such as smuggling. Even legitimate business activities, such as some of those the Indonesian military undertakes, while themselves productive, are sometimes intertwined with corrupt activities that are exploitive.⁹

Corruption feeds on poverty and widespread unemployment. Many find those desperate for employment particularly easy to exploit. For example, the systematized illegal gold mining in Kalimantan primarily uses poor migrants from Java and Madura for its workforce.¹⁰ The migrants get startup funds from local businessmen, who then receive half the take. To insure there are no governmental raids on the illegal mines, the businessmen then must pay off local police, the military, and government officials.¹¹

To the degree that corruption joins or creates organized criminality, as occurs in Indonesia, it threatens ominous social system consequences. The example reveals that systematic corruption may require large-scale cooperation. It also shows corruption as black or inverse kind of governance through which government officials protect illegal activities for a price, with their own "take" functioning much like a tax for government services. Finally, note that while productive, illegal mining is extremely costly in adverse environmental consequences, resulting in de spoilation, deforestation, and in mercury and cyanide poisoning of streams and rivers. It is also costly in terms of public goods such as governmental authority, rule of law, and accountability. There is a looting lawlessness in all this that is astonishing. There is, however, also an order in the lawlessness, a system of expectations, incentives, and arrangements that creates profit and grants impunity from law.

⁹ For example, in Medan, trucks that have a sticker from a military foundation routinely pass through check points at which money is demanded from truck drivers whose trucks do not carry the sticker. Recently, truck drivers plying the Banda-Aceh road staged a strike to protest illegal levies demanded at between ten to fifteen different checkpoints. One of the drivers spoke out: "We are tired of the levies demanded by officers and hoodlums along the road. Every day we have to spend millions of rupiah to pay these levies." Truck drivers strike against extortion, *The Jakarta Post*, Saturday, Feb. 2, 2001, p.2, col.4.

¹⁰ Anzis Kleden. Illegal miners, transient merchants thrive amid extortion culture, *Indonesian Observer*, November 25, 2000.

¹¹ *Id.*

As detailed below, Indonesians support large, and largely unproductive, rentier and pariah classes. The rentier class forms a kind of aristocracy, basing its position partly on capitalist profits derived from governmentally conferred privileges, and on rents extracted from businesses and from lower classes. The pariah class is composed of hoodlums and lower level officials and police officers who can use their official positions to coerce small payments from many people. There are also shadowy ties between these classes, with the former often employing the latter for various dark purposes.

As an economic system, what is good about corruption is that it provides livelihoods. To a certain degree, because corrupt payments for protection operate like a tax, corruption, in theory, may also serve to dampen certain undesirable activities, but that is an unintentional consequence. Indeed, because corrupt payments often protect what shouldn't be protected, e.g., prostitution or drug trafficking, they may actually encourage them.

What is bad about corruption is that it comprises essentially nonproductive behaviors or behaviors excessively costly to the host. It does not, in economists' terms, use resources efficiently nor incentivize people to engage in productive activities. Studies of the economics of corruption suggest that officials' proclivity to rent seek increases and distorts public investment, as such investment provides rent-seeking opportunities,¹² and causes all sorts of public losses.¹³ In governance terms, it does nothing to provide for the common good and actively detracts from it.

As a social system, corruption appears feudal or colonial in character, with lower ranks supporting the upper. And it seems particularly adapted to strongly stratified societies in which the state asserts a commanding role in economic life. Interestingly, it also seems to thrive in situations in which, like Russia, the central state becomes enfeebled and loses the authority it once had. Indonesia falls into all of these categories.

¹² Quality of Growth, *supra*, n. 1, at 145.

¹³ Mauro, Paolo, *Why Worry About Corruption* 6-7 (1997).

A HIGHLIGHT TOUR OF RENT SEEKING IN INDONESIA

Ordinary Rent-Seeking

As Indonesian basic salaries are quite low, workers welcome any additional increment of income. Many Indonesians hold several jobs and most are on a constant lookout for additional sources of income. This is true even of government employees, a fact that often surprises foreigners who assume that government employees are already paid to provide government services. Indonesia's bureaucracies, however, have been an employment sink for the country, and they are notoriously overstaffed. Low salaries accommodate these large numbers and explain some of their work habits. There is a common saying that Indonesian government employees are paid a salary to show up, not to work. These employees expect that if they are assigned special tasks, then there will be additional remuneration to carry out those tasks. This creates a certain kind of entrepreneurialism in government offices. Projects, and assignments to projects, are prized because there will be a payment, beyond the basic salary, associated with the work.

More broadly, there is an expectation that if anyone provides a service, there will be some payment for it. This is something like the custom of tipping, but has an even more mandatory character. The delivery man who wrestles the new refrigerator up to your flat, although a paid employee, nonetheless expects some additional money for the service. Speakers, presenters, moderators, organizers, and news reporters at conferences expect, and routinely receive, payments. Indeed, when, as sometimes happens, a foreign speaker rejects the "fee", there is befuddlement and consternation on the part of the organizers; they have no procedures for dealing with a refusal to take a payment. In fact, as the organizers usually get a percentage of what is paid out, it is in their own interest to insure that the participants receive their fees. It is also customary to offer attendees at conferences a "transportation fee" and even an "attendance fee", in addition to free meals. These fees are usually small, but they evidence the basic attitude. If someone does something at your request, you are expected to pay something for it. And if you are a government official, you are expected to have access to, and provide, information and services that a citizen wants if he is willing to pay.

In this transactional economy, these service payments to government official's mayor may not count as corruption, depending on the degree of organized "farming" involved, as I will clarify below. If corruption is defined as the abuse of public power for private gain, then the "transaction fees and payments" charged and offered primarily reflect a dysfunctionally incentivized administrative structure. In this structure, the economic incentives of public employees are to guard access to public information and services and to deliver them only in exchange for payment of a fee. In a sense, the ordinary functions of government have been quietly "privatized" in what we would think of as *perverse* ways. This comprises a certain kind of economy and a widely accepted way of making a living. Nonetheless these practices are quite close to what we think of as corruption. Indeed, close enough that it is easy to cross the admittedly indistinct line.

What, really, is the difference between a government employee that expects an extra payment for participating in an assigned project and a police officer who expects payment for providing "protection" to 11 business? The difference lies in what is "privatized" and in what we define as an abuse of public power. The abuse lies not in providing information and service or work for a fee, but in the deliberate distortion, or avoidance, of laws, rules and lawful procedures in order to secure a private gain. It also lies in appropriating the state's monopoly of coercive power for private purposes. For example, to get a passport or driver's license renewal, a citizen may have to make a payment, beyond posted fees, to expedite the renewal. But when a policeman shakes down a private citizen, threatening to use his power of arrest or citation unless a bribe is paid, the policeman enlists the coercive authority of the state to extract a gain. Law "enforcement" becomes an unauthorized toll gate. The policeman provides no lawful service of any kind, but rather victimizes citizens at will and as arbitrarily as he wishes.

Corrupt Rent-Seeking

We cannot, however, classify all low and mid-level bureaucratic rent-seeking as petty and as signifying only administrative dysfunctionality. For example, many positions in the bureaucracy are bought and sold. They are marketed because they are income generating, and the purchase of a position creates incentives to extract more rents and extract them systematically, what I call "farming".

The positions include the more desirable positions for traffic police, customs and immigration officials, and court clerks. Junior officials must pay their superiors a quota from their earnings to secure these spots. Any money raised by taking bribes from members of the public over and above their agreed quotas they keep. Those who fail to meet their quota are moved on in favor of those who can.¹⁴

This practice is also an example of a payment hierarchy or pyramid, something that seems common and that offers a glimpse of the organized character of predation. It is also clear, as noted below, that there is a substantial amount of leakage in departmental and state enterprise budgets, particularly development budgets, and that many rivulets of cash divert to eagerly cupped hands, then to be used for private purposes.

Outside the gloomy halls and offices of many state bureaucracies where the underemployed wait, government officials interacting with citizens on the street abuse their authority to engage in petty illegalities that impose additional regressive predation taxes on the producing populace.

Poor villagers in West Java were baffled when their government rice supply suddenly dried up. Suppliers complained that their payment was 60 million rupiah (\$6300) in arrears. But villagers were adamant that they had paid the bills, the Jakarta Post reported. It was discovered that one local official had collected money from 4,000 poor families and used it to build himself a house. Another village chief spent the money he was handling on a car. A third financed a wedding party. A fourth financed a second wife for himself. Investigators found that there was one village chief who had used the money to buy rice, as he should have done. But instead of distributing it to the needy villagers, he handed it out free to electors to win power for himself. "Oddly, none of these officials has been prosecuted," the newspaper reported. An article on the same page of the same newspaper reports that a survey revealed 12,000 malnourished children in the central area of Java alone.¹⁵

¹⁴ Backman, Michael, *Asian Eclipse: Exposing the Dark Side of Business in Asia* 31 (John Wiley & Sons, 1999).

¹⁵ Nury Vittachi, *Travellers' Tales*, *Far Eastern Economic Review* 96 (Dec. 7, 2000).

Consider also the case of weigh stations or bridges. A major reason for the establishment of weigh stations throughout the provinces is to prevent road damage from overloaded trucks. Ironically, weigh stations insure the opposite. This is because Department of Transport officers openly misuse the weighbridges, forcing drivers to stop for the extraction of illegal payments. To compensate for these and other illegal payments the police require, driver and traders must overload to ensure adequate margins.¹⁶ There are many other examples of similar rackets involving illegal taxes and charges on the movement of agricultural goods. For example, interviews with farmers, truck drivers, traders and shippers in South Sulawesi reveal that officers ranging from the air/sea police, customs, port authorities, the forestry department, and local police officers collect these levies.¹⁷

¹⁶When there are no weigh bridges on the planned route, drivers tend to reduce their load. However, drivers rarely do so. For a province with a relatively small population, South Sulawesi has, a large number of weigh stations. For example, on the road from the northern part of the province, Kabupaten Luwu Utara, to Makassar (the capital in the south) there are 6 weigh stations, including two that are less than 25 km apart (i.e. in the town of Datae in the Kabupaten Sidrap and in Lumpue near the port of Pare-Pare). The amount each truck must pay is between Rp 5,000 -20,000, depending on the amount of excess weight.

Provincial Department of Transport offices establish maximum truck weight capacities in ways insuring that all product transport vehicles are overweight. For example, six wheeled vehicles with a 6-7 ton capacity have a 4 ton limit, 12-13 ton capacity vehicles have an 8 ton limit. Drivers insist that transporting at, or under, the maximum tonnage allowed is extremely uneconomic. Of course, drivers do not abide by the limits even though, under regulations, any transport vehicle found at a weigh station to be overweight supposedly must be unloaded. This never happens. Drivers know that while in violation of the load limits, they can pay to avoid a citation and be on their way.

¹⁷For example, from the rice producing area of Sidrap to the port town of Pare-Pare (approximately one hour by road) there are usually 2 police posts where payments must be made. Further payment to the police is required for entry into the port of Pare-Pare. Each post requires payment of between Rp 3000- 5000 (although some drivers complain that demands are often for larger amounts). From Sidrap to the provincial capital, Makassar (approximately 4 hours to the south) there are seven police posts, as well as three weighbridges. Drivers and traders transporting cattle from Bone (on the east coast of the peninsula) to Makassar reported that the 5 hour trip might involve the payment of around 20 illegal charges. Traders typically estimate the largest expected loss from these charges and pass these losses on to farmers in the form of lower prices. Field trip to South Sulawesi, April 2000: David Ray and Rahim Darma, see Ray and Darma (2000). Report on file at the Partnership for Economic Growth Central Office, Jakarta, Indonesia.

Grand Rent-Seeking

Many people, within and without Indonesia, when reflecting on Indonesian corruption, immediately think of the grand scale corruption that Suharto and his chosen ones represented. Such corruption involved the conferral of special economic privileges on Suharto family members and favored associates. These granted monopolies, inflated government contracts and leases; and allowed access to departmental off budget slush funds. They also permitted misdirection and misuse of state enterprise and reforestation and social insurance funds; mandated bank lending to the favored and well-connected, in violation of prudent lending rules; and authorized diversion of development funds to personal uses. Suharto also apparently encouraged ministers to enjoy the largesse; or, noblesse oblige, looking smilingly aside when they did.

A World Bank report stated that approximately 20-30% of development aid was stolen or “diverted through informal payments to GOI staff and politicians. Most GOI agencies have sophisticated informal systems for diversion of 10-20 per cent of the development budget under their management and for utilizing the proceeds diverted to supplement both their inadequate operations funds and their compensation.”¹⁸

Recent audits of Pertamina, the state oil and gas company, and Bulog, the state grain agency, disclosed massive “inefficiencies” and corruption, much of that due to corrupt contracting practices. A Price Waterhouse Coopers audit of Pertamina, completed in mid-1999, reported losses of US \$ 6.1 billion over the two year period between April 1996 and May 1998.¹⁹ Similarly, an Arthur Andersen audit of Bulog found corruption losses of US\$ 2 billion over the four - year period between April 1993 and the end of March 1998.²⁰

Note, however, that while certain individuals, the aristocracy of the corrupt, profited hand-somely from grand corruption, there is more to it than that. The rule, “follow the money”, is a tool we can use to give us some insight into the real economy of corruption in Indonesia. Con-

¹⁸ Quoted in Schwartz, Adam, *A Nation in Waiting* 316 (1999).

¹⁹ Pertamina Stabbed by Audit Documents, GATRA 36/V, July 24, 1999. The Indonesian government later revised this figure downward.

²⁰ www.suarapembaruan.com/News/1999/10/111099/Headline/h103/h103.html.

sider the Bank Bali scandal.²¹ This involved the transfer of approximately \$80 million out of \$123 million owed to Bank Bali -under a government guarantee scheme on interbank debt -to a private company as a fee for “assistance” in collecting on the guarantee. The scandal was first disclosed in the midst of a national election campaign. It was alleged that the money was to be used as a slush fund for Golkar party election campaign activities, and that President Habibie and his lieutenants were deeply involved.

One enlightening result of the audit, however, was the disclosure that the \$80 million was distributed to an extraordinary number of businesses and private parties.²² While it is difficult to discern exactly what the distributions were for, not all, perhaps not even most, appear to have been intended for political purposes. What the Bank Bali funds flow chart shows is an immense network of corrupt payments and associations beneath the surface of a single grand corruption scheme. There are evidently-large payoff pyramids associated with grand corruptions, pyramids apparently the inverse of those noted concerning rent-farming in bureaucracies. There money flows up; here down. In either direction of flow, however, the flows implicate many people. We can now sense an unseen Indonesian economy organized as a web of corruption networks, net- works that are perhaps more than just distribution systems. The payments, particularly those downward, must buy something; and networks useful for one purpose may be useful for another.

While I have used examples from the New Order era, there are many allegations that not only has grand and mid-level corruption continued, but that it is worse than ever.²³ Habit, opportunities for those new to the feeding chain, and money politics are reasons, the breakdown

²¹ An excellent description and cronology of the Bank Bali scandal can be found at: <http://www.tempo.co.id/harian/fokus/16/2,1,4,id.html>.

²² A chart of the funds flows can be found at: http://www.thejakartapost.com/bbscandal_lf_fundsflows.asp

²³ “Di sisi lain, praktek korupsi yang menjadi penyebab ambruknya perekonomian hingga saat ini tidak ada yang diusut secara tuntas. Bahkan, praktek korupsi ini kembali terulang dalam pemerintahan Gus Dur dalam skala dan kualitas yang makin tersistem. “Kroniisme kini merebak diseluruh jajaran kabinet. Dan kantor kepresidenan agaknya mulai berubah menjadi bursa KKN,] tandasnya.” <http://www.suarapembaruan.com/News/2000/10/23/utama/ut01/ut01.html>. Politik Uang di DPR Makin Marak, http://www.hukumonline.com/cetak_artikel.asp?code=1733&artikel=berita.

of authoritarian rule, which in some sense controlled and directed these corruptions, is another. I consider these matters below.

JUDICIAL AND LEGAL SYSTEM CORRUPTION

It is widely accepted in Indonesia that the judiciary is largely corrupt,²⁴ that there are many corrupt lawyers willing to pay for decisions, and that there is serious corruption among Indonesia's prosecutors and police as well.

Indonesians have a very low level of confidence in the integrity and competence of their judicial system. Corruption is rampant, decisions can be purchased, the courts are subject to political interference, and legal transparency is inadequate. In many legal cases, plaintiffs are not seeking justice, but rather are using the judicial system as a mechanism through which to extort third parties. Such problems are by no means limited to the judicial system: they also extend to the legal profession, the attorney general's office, administrative agencies and, especially, the police force.²⁵

The corruption of so many actors in the legal system means that it cannot serve as a proper tool of governance nor as a just means of dispute resolution. Those who would bribe their way out of a legal problem have many gatekeepers to approach. Police, prosecutors, lawyers, and several layers of judges can each dispose of or divert cases. If one doesn't, another may.

Corruption in the legal system eviscerates Indonesia's reform efforts because the system by and large cannot be trusted- indeed, cannot be used -to render honest decisions, but may be trusted to protect corrupt activities. The cost to Indonesia of a corrupt legal system is incalculable. Aside from loss of governance capacity and social disaffection because people cannot use it to remedy real problems, there are clear economic losses. Donors, creditors, and potential foreign investors look upon the system with immense frustration, particularly at blatant fraud practiced

²⁴ Ruler's Law, The Report of the International Commission of Jurists Mission to Indonesia 24 (April 1999); T. Mulya Lubis, The Rechtsstaat and Human-Rights' in T. Lindsey (ed.), Indonesia, Law and Society 181 (Federation Press, 1999).

²⁵ Transforming The Legal System: From Rulers' law to Rule-of-law, Van Zorge Report on Indonesia, Vol. I, No.

²⁸, at 4.

in the courts.²⁶ Indonesia's current foreign investment is negligible, something that limits its ability to grow economically. While political instability is asserted to be a principal reason, investors also point in horror at the legal system because they know that, under current conditions, they have no security of investment whatsoever. Worse yet, they have come to realize that if they do invest, they may be subject to arrest on the complaint of a fraudulent debtor who has probably paid off the police.²⁷

Police, Military, and Related Corruption

The police, trustworthy confidential sources say, engage in three levels of organized corruption. There is a large scale protection racket where police provide protection to paying businesses. The protection may be from police predation or security from payment demands from other groups and may also include services in labor disputes. There is also street level corruption, the extortion of money from ordinary citizens through threats of arrest or citation. The police also require payments when someone seeks to file a police report, such as for the theft of a car. Police know that insurers' demand police reports before paying any theft claims, and they are able to charge substantial "filing" fees in such cases. Then there is the purchase of positions within the police force itself. To become a policeman requires the payment of two years' salary up front. The rookie expects to recoup this payment within six months of employment. Higher level offices are sold, and offer extraordinary opportunities for gain. The 4.5 million rupiah monthly salary that police generals earn doesn't adequately explain the mansions and fleets of luxury cars that some police generals own. Finally, as noted, this is all well-organized, and there is a payoff pyramid in police departments which is enforced through designation of some officer, a "hard plant" or quartermaster, to collect and distribute payments.

Where the *raison d'être* for the police force is money-making and the collection of rents, there is no public order and safety mission. Ordinary Indonesians understand this quite well and openly state that they hate the police, viewing them primarily as criminal forces preying on

²⁶ In at least two cases, fraudulent creditors have appeared in Indonesian bankruptcy composition proceedings to defeat claims of legitimate creditors.

²⁷ Indonesian Stake Leads to Legal Mess for Canadian Insurer, Wall Street Journal, Dec. 6, 2000.

members of the public. Store owners and traders, bus and bajai drivers, owners of night clubs and discotheques all must pay protection money to the police. If anyone needs convincing, the police can send thugs to demonstrate what it is like not to pay protection. Jakarta newspapers often report such "visits" by mysterious and unnamed groups, visits sometimes resulting in substantial property damage.

The Indonesian military, although alleged to engage in similar practices, is also a more difficult case. It operates many businesses, legal and illegal. The justification for its business empire has been the state's notorious underfunding of the military. The income the military derives from its businesses and foundations, however, is offbudget. No outside observer has a good idea of how much money the military takes in, nor exactly how it is distributed. A large part of it appears to go to military personnel, with commanders commanding a large portion of that.²⁸ The military also has close but shadowy connections with many Indonesian conglomerates. There is apparently some cross-shareholding in enterprises, and conglomerates in the past, at least, have allegedly provided funds for some of the military's blacker operations.²⁹

Without denying the military's need for resources beyond those provided by the state, the secret control of immense resources, derived from sources legal and illegal, without accountability for their use, is a structure for mafia-like corruption. There are, for example, allegations that the military has used its resources to fund the violence in the Maluku islands.³⁰ There are also allegations that the military has extensive arrangements with wealthy businessmen, under which the military provides "low-cost military manpower and equipment, threats and intimidation of business competitors, eviction of smallholders from land, and beatings and murder of those who might threaten the system."³¹

Premanism, or local gangster, mafia-like activities are an associated phenomenon. Preman gangs charge businesses monthly fees to insure there won't be any "disturbances" that interrupt business operations. Of course, since the preman gangs themselves are the source of these dis-

²⁸ Indonesia's Army: Friend or Foe?, Van Zorge Report on Indonesia, Vol III, No. 16, at 7.

²⁹ Aditjondro, George, Financing Human Rights Abuses in Indonesia, <http://www.koteka.net.part2.htm>.

³⁰ Indonesia's Army, supra, n. 28. id.

³¹ Id.

turbances, these guarantees are effective. Such gangs also appear prevalent at certain markets and transportation terminals, charging store owners, kaki lima, and bajai and taxi drivers fees for operating from the area. One example from Medan shows the extent and seriousness of the preman problem. On August 21, 2000, 17,000 local transportation drivers called a strike to protest preman activities. Drivers stated that they had to pay premans 5000 rupiah each day or suffer vehicle damage, and demanded police action.³² Protest actions like this are not uncommon.³³ Preman gangs, of course, can operate where police forces are either not effective or choose not to be effective. There is also evidence that in some places, preman gangs are in league with members of police forces,³⁴ and that preman are hired to undertake demonstrations and violent mass actions.³⁵ There may be military involvement as well, and certainly there are payoff pyramids.

Aside from the monetary losses the rent-seeking imposes on the populace, and note that the "protection tax" is highly regressive as far as the poor are concerned, there are additional and immeasurable social and monetary losses. These arise from the failure of the police to do what police and armed forces are supposed to do -provide security, safety, order, and defense -as well as the active doing of what they are not supposed to do. For we must add to this already scandalous story the illegal activities that these appropriates the subsidy intended to help ordinary people. Police and military involvement in illegal logging, mining, and smuggling also results in a larger web of corruption.

³² 17.000 Armada Angkot di Medan Mogok Total, Kompas, 22 Agustus 2000. ³³ Tanahabang, "Emang Abang Yang Punye"?, Kompas, 29 Juni 2000.

³⁴ Pemicu Bentrokan Preman di Blok M diduga Oknum Polisi dan TNI, Kompas, 15 Nov. 2000; Pungutan Preman Palembang Mengganas, Kompas, 8 Februari 2000.

³⁵ Political Gangsters, 53 Inside Indonesia. (Jan.-March, 1998).

It entails either “hush” or “facilitation” payments to bureaucrats, inspectors, and local officials or threats of violence, or actual violence, for interference or disclosure.

Money Politics

Money politics is a term used to describe the purchase of political favors or influence. It is a problem in all countries, even the most robust democracies, and reform efforts directed at money politics only cabin, rather than eliminate, it. There is a question of what part of money politics we should classify as a form of corruption. Of course there are degrees. Paying money for a legislative vote or to buy a governmental office is one thing, donating to a political campaign another. Although it is a complicated issue, “ordinary” money politics, I think, should not count as corruption. Politics is about power, gaining it and using it. We can no more separate money from politics than we can separate stargazing from stars. By “ordinary” money politics, I mean the use of money to support particular candidates or particular parties. Abnormal money politics would include using money to buy votes or offices, under the table transactions to procure governmental decisions, and the like.

While Indonesia has a mostly “democratically” elected national legislature, it is not yet a democracy where ordinary citizen opinions matter much, nor where officeholders are meaningfully accountable to citizens. Those who hold political power now did not gain it by offering platforms that citizens endorsed by voting. At the national level, elections to high office are indirect, as people vote for parties rather than individuals. This essentially means that the parties control seats. If the electorate votes for a party rather than for an individual, anyone wanting a seat can simply pay the party to designate him as the elected official, and that appears to have happened. In addition, no party in the national legislature holds an absolute majority, and every decisive action requires the building of coalitions, and coalitions are as readily built, perhaps more readily, with money as with ideology or shared interests.

In this way, the nature of money politics in Indonesia is closely tied to its electoral system, and there is a lot of “money politics” going on. In fact, if one draws inferences from various clues that surface from time to time, and credits allegations and rumors, Indonesian politics is fundamentally money politics of the worst kind. People, offices, and votes are bought and sold.

For those in power, and those who seek power, access to sources of money to play deadly serious political power games is an absolute necessity, and those who have money use it skillfully to defend their interests. It is also clear that Indonesian political parties use every avenue they can to obtain fluids. Everyone suspects the intense political jockeying around “cash cow” portfolios, such as IBRA, or state enterprises, discloses that parties are looking for fountains of money for present and future political activities and power. The immense foot-dragging of Indonesian officials in debt restructuring and privatization, where vast interests are involved, is perhaps best explained by money politics. There are widespread suspicions that the government’s favoritism toward three of its largest debtors,³⁶ expressed through a sweetheart IBRA bailout and decision not to prosecute, is also the result of money politics; In fact, an assumption of payment goes far in explaining a lot of otherwise mysterious, erratic, and puzzling official behavior.

THE REDISTRIBUTION OF CORRUPTION -DECENTRALIZATION

Kinds of Bandits

Mancur Olson, in discussing “governmental” incentives to tax or take assets of subjects, makes a useful distinction between “roving” and “stationary” bandits. Suppose a situation of anarchy in a territory. Warlords moving through it will appropriate whatever they can, wherever

³⁶ “On October 2, the Financial Sector Policy Committee (FSPC) approved major debt restructuring deals between IBRA and five of its top obligors: Texmaco Group (USD 2.1 billion), Tirtamas Majutama (USD 596 million), PT Kiani Kertas (USD 275 million), Sinar Mas Group (Rp 1.2 trillion swap), and Banten Java Persada (Rp 1.4 trillion compensation for return of assets). While some analysts supported the terms of the deals as the best the Government could hope for, others criticized them as expensive bailouts that expose the Government to high levels of contingent risk. The Texmaco and Tirtamas deals are particularly controversial because of the complex holding companies created as vehicles for the Government’s equity stakes as well as the deals’ generous financial terms. According to press reports, the local IMF and World Bank representatives wrote to the Government shortly after the deals were announced urging that they be reviewed. However, Coordinating Minister Ramli has vigorously defended the terms of the deals.” United States Embassy, Jakarta, Indonesia, Recent Economic Reports: Economic and Financial Highlights -October-November 2000.

they can. Because they steal, and steal all they can, they have no interest in ongoing productive activities. When an area is exhausted of wealth, they will simply move on to other territories and other plundering opportunities. By contrast, where a warlord takes over a territory and stays there, he has an interest in ongoing productive activities and output. He can steal from, or "tax", the same people on an ongoing basis. Since he has secured his source of revenue, he may even wish to protect the people from other predators. Eventually, his own predation may evolve into something like governmentally provided security, and even into the provision of public goods. After all, as he takes some percentage of the revenue generated in the territory, if the people generate more revenue, he will get more revenue. In other words, his interest in increasing his wealth is allied with the interests of the populace in increasing their wealth. He has what Olson refers to as an "encompassing" interest. (It's really just a goose-that-laid-the-golden-eggs story with different possible outcomes.)

Suharto was a stationary bandit running a stationary bandit regime. Under Suharto, businesses that bribed or shared wealth to obtain economic opportunities, advantages, or protection did get services in return. They obtained licenses, land and environmental concessions, security of investment, contract enforcement, and assistance in managing labor disputes.

The Suharto system of highly centralised rule did not eliminate the uncertainties and indignities suffered by business people trying to invest in the regions. A variety of local officials reporting to different ministries based in the capital oversaw various aspects of the business climate, from the environment to labour affairs to land use and taxation - with regulation often dependent on bribery. Police and military officers were frequently active in the selective prevention -and at times, active instigation -of labour disputes, with labour control bought at a price determined by local commanders and the superiors to whom they owed fealty .

Companies operating without the benefit of good connections in Jakarta would tend to suffer from these forms of irregular and illegal exactions. However, these pay-offs went to local bureaucrats [representatives of the central government], rather than local politicians, and Jakarta's insistence on the encouragement of private investment inculcated a measure of restraint and predictability based around central government interests in increasing the flows of private capital into the provinces.³⁷

With Suharto gone, Indonesia's stationary bandit government is gone, and the territory is open to roving bandits. With fiscal and governmental decentralization, power has flowed to the regions and kabupatens and has created greater opportunities for local corruption through regulatory activity. Their greater independence and a possible "it's our turn now" mentality also encourage predation.

Quasi-democratic politics, the emergence of political parties from rigorous government control, and decentralization have created local contests for influence and power. "[These processes] have politicized all aspects of business operations. Companies must now make under-the-table payments to a considerably broader range of politicians than before... ." ³⁸ With decentralization, businesses dependent on local government licenses, contracts, and regulation now have shifted "to spreading their money around different parties or else affiliating themselves with one or another party in the local assembly. In this regard, businesspeople operating in real estate, construction, and various criminal activities have become especially prominent " ³⁹

WHY CORRUPTION IS HARD TO END: COLLECTIVE CHOICE PROBLEMS

Widespread corruption, in the aggregate, creates collective choice problems. The first is overuse of resources; the second is the free rider problem. When everyone may use a resource freely, the resource will be overused. The individual user, whose percentage of the use of the whole maybe small, does not see that cumulatively, if all use as he does, the commons will be overrun - overgrazed if it is cattle land, overfished if it is a fishery, stripped if it is a forest. As should be obvious, there are corruption commons, the public fisc, the lower classes, and a country's natural resources, that are all grossly overused. The threat of overuse, of course, entails commons collapse. In this respect, Indonesia's 1998 financial crisis and sharp economic decline evidence just that kind of event. Many, perhaps most, of Indonesia's banks siphoned off bank liquidity credits, freely granted by Bank Indonesia to try to weather the crisis, in corrupt ways.

37 Oxford Analytica Asia Pacific Brief, December, 2000; copy on file with author.

38 Id.

39 Id.

This, along with other factors, resulted in a collapse of the Indonesian banking system, a catastrophe from which Indonesia has yet to recover.

Corruption also presents a free rider problem. Aside from whatever changes hands, there are passed-on costs of corruption that someone pays, but those who gain are not among the payers. In a normal case of high-level corruption -overinflated construction contracts, money siphoned from state enterprises -the population at large pays through loss or diversion of revenues or resources or through higher taxes. No one suffers a loss in any clear, direct way, and the small losses allocable to everyone are not sufficient to cause large numbers of people to organize and unite to fight them. In the case of street level corruption, those victimized pay directly and suffer a lower standard of living through what amounts to a highway regressive tax.⁴⁰ But street level corruption victimizes classes of people whose response is typically silent rage and suffering, not organized resistance.

There are also large, but intangible or unquantifiable costs -such as loss of governmental authority and legitimacy, absence of rule of law, misallocation of talent, and abuse of citizens. Those involved in corruption, of course, gain far more than their allocable share of any loss, and for practical purposes, can view any loss as entirely passed off to others. In this respect, corruption resembles environmental pollution, another case where individual actors do not internalize costs and do not consider the externalities of their actions.

Anticorruption programs are a common good, but these collective choice problems make the task of remedying or preventing corruption very difficult. Few who profit see the harm in their own behavior, the harms -aside from direct immediate financial losses -are diffuse, sometimes intangible, often difficult to measure. The remedy requires strong governmental commitment and that may require broad societal consensus. This will not arise naturally. *"In a really large group, the typical individual receives only a miniscule share of the benefit of an action he or she takes in the group interest. This miniscule share does not typically motivate individuals in a large group to voluntarily act in a way that is consistent with the common interest of the*

⁴⁰ "[P]oor households in Ecuador must spend three times more in bribes as a share of their income than higher income households for access to public services " Quality of Growth, supra, n. 1, at 146.

group. ⁴¹By contrast, it is much easier for small groups to organize and coordinate activities among members. Not only are communication problems much less severe, member shares in any payoff of group success are much greater. The corrupt, as members of various webs and networks, are much more effective in achieving policy and practical goals than the general public or the many unrelated victims of corruption.

Because the individual share of benefits from collective action is so small, voluntary collective action almost always fails in large groups. Small groups, however, are successful and have powerful incentives to undertake collective action -here, to prevent anticorruption efforts from reaching them. To these insights, we can add another important reason for the failure of the victims of Indonesian corruption to act. The Indonesian military, the police, government officials, the judiciary, and preman enforce structural corruption in Indonesia. Directly or indirectly, through threats, violence, buy-offs, coverups, they protect the system through which they make their livelihoods.

REMEDYING CORRUPTION IN INDONESIA

Corruption on Indonesia's scale is immensely costly to the country and society. There are enormous economic efficiency losses and huge costs arising from misallocation of resources. There are competitiveness costs, as corruption is a principal reason for Indonesia's notoriously high transactions costs economy. There are large lost opportunity costs from all the investors, both domestic and foreign, that withdraw or forego investing in Indonesia because of corruption and its associations. I have already noted the immense, but unquantifiable costs in individual and societal well being and losses in the provision of public goods.

Only Indonesians themselves can overcome the corruption in their economic, political, and social systems. At present, except for some NGOs and limited public outcry, ending corruption is not truly a priority issue in Indonesia. Aside from serious collective choice problems, the lack of clarity in what an anticorruption campaign would do and how far back it might reach may have something to do with this. Even reformed sinners would not relish jail time, nor, no matter how repentant, loss of wealth and reputation.

⁴¹ Olson, Mancur, *Power and Prosperity* 77 (2000).

Powerful vested interests and networks of corruption beneficiaries that profit from the status quo continue to foil anticorruption efforts. While anticorruption advocates have made the moral case against corruption, no one in Indonesia has deeply investigated and explained the economics of corruption, nor exposed in any thorough and convincing way its social and political costs. Nor have corruption studies focused sufficiently on the future consequences of continued corruption, the inter generational losses and costs: the destruction of Indonesia's commons, the plundering of resources, the environmental losses and illnesses. For today's currently costly economy of corruption is also a spendthrift economy destroying many of tomorrow's livelihoods and lives.

Only Indonesians can overcome corruption in Indonesia. They will do so if persuaded that they must. Careful studies exposing in detail the systems, networks, and social and economic costs of corruption are essential tools in the anticorruption campaign. Will, as Bhudda noted, attends knowledge.

Study and persuasion is not all there is to be done, however. Recent influential stances on corruption view it as a governance problem,⁴² and, indeed, the good governance program is part of the donor prescription for Indonesia. The program calls for key reforms.⁴³ These include enhancing competition in the economy through demonopolization and deregulation; and promoting the accountability of political leadership through public disclosure and transparency rules. It also includes creating merit -based and service oriented public administration, transparency and accountability in public expenditure management, and promoting the rule of law.

While most would agree that these are excellent and essential reforms, they have proven controversial, primarily because they assertedly ignore the realities of politics. Some critics believe that those who champion the good governance program; primarily the World Bank and the Asian Development Bank, import world views that do not fit the needs and realities of developing countries. For example, Jayasuriya, asserts that the new paradigm for development donors

42 Quality of Growth, supra, n. 1, at 135-168; Asian Development Bank, Good Governance and AntiCorruption: the Road Forward for Indonesia, paper presented at the Eight Meeting of the Consul- tative Group on Indonesia (Paris, My 27-28 1999).

43 Quality of Growth, supra, n.1, at 152-159.

is toward enhancing the regulatory capacity of the state. This entails that the state should not itself seek to conduct the economy, but instead create a set of regulatory institutions that facilitate the creation and proper operation of the market.

Economic constitutionalism refers to the attempt to treat the market as a constitutional order with its own rules, procedures, and institutions operating to protect market order from political interference. However, these forms of economic constitutionalism demand the construction of a specific kind of state organization and structure: a regulatory state, the purpose of which is to safeguard market order.⁴⁴

Jayasuriya critiques the new paradigm for seeking to insulate the market from politics. Howard Dick agrees.⁴⁵ Both believe that it is not possible to separate markets or economic reform from existing constellations of powers and interests that shape politics.

To be successful, economic reform needs to have the political support of a significant group of actors. Reform strikes at the heart of deeply entrenched political and economic interests; therefore, to be successful a programme of economic reform must galvanize its own political support. From this perspective, economic reform is not merely a technical exercise to implement the “right” policies, but a political project undertaken by the putative winners of the reform process. For this reason, market transformation is likely to be a deeply contested and prolonged process.⁴⁶

As I have argued, corruption in Indonesia is a governance problem because Indonesian corruption is intimately bound up with Indonesian governance. It is also true, as the critics of the governance paradigm have it, that you cannot insulate the politics of markets and the economy from politics. However, sometimes something causes reform politics to grapple seriously with corruption: we have evidence that countries can grow or evolve away from thorough-going and systematic corruption. The United States, for example, did it over a period of about 50 years, roughly between 1870 and 1920.

44 Jayasuriya, Kanishka, *Governance, Post Washington Consensus and The New Anti Politics*.

45 [Development theorists and policymakers] have maintained ...that economic and institutional development will proceed best in the absence of (messy and disruptive) politics. Dick, Howard, *Corruption and Good Governance, the New Frontier in Social Engineering*.

46 *Id.*

All things that evolve, evolve because of variation and what the evolutionary theorists call “selection pressure”. The environment in which the creature lives, and that includes other creatures that prey on it and on which it preys, favors some particular variation over another. Not intentionally, of course; that’s just the way it turns out. The moth that happens to have better camouflage, that looks like tree bark when it lands on a tree, will more likely escape bird predators and reproduce. These moths will reproduce successfully, compared to others, even of the same species, and, as long as the trees on which they hide remain the same, and as long as their predators do not evolve better detectors, they will survive and prosper.

At present, money politics and all it entails in the worst sense, and corrupt ways of making livelihoods dominate the Indonesian environment. Survival in this environment appears to require playing the political game as it is played, as a deadly serious power game, or gladiatorial contest, where money is the primary weapon to wield. Outside the political game, survival requires doing whatever is necessary to make, or protect, a living, and corrupt activities are an accepted way to do that.

If these observations are correct, it is a mistake to view the “good governance” paradigm as an effort to evade politics. Indonesian corruption is a matter of governance, and there is no way to address grand and petty corruption, and all intermediate forms, without engaging politics and political actors. If donors, in promoting the good governance paradigm, think that they can elude politics and insulate the economic realm from it, they are clearly wrong. But I do not believe they hold these views, and have other failings. The donor failures are impatience, short-term time frames, and inability to stay the course.

The donor demand for good governance, the negotiated letters of intent, the reviews, the granting or withholding of tranches dependent on the fulfillment of promises, creates a substantial selection pressure in the Indonesian environment: it changes it. Donors say: do this. Indonesia agrees that it will in order to get donor money. Indonesia does not fulfill its promises, and donors say, all right, you don’t get the money. Indonesia returns to its reform promises and tasks, and eventually complies, rarely completely, but sufficiently to get the tranche.

The point of the story is that there is movement in the right direction. There may be no stunning conversion, no mass baptisms in the anticorruption faith, but there is change that would not have occurred otherwise. Through continued selection pressure and through

changes stimulated in players in the system, donor involvement is part of the political mix. Indonesia may do its politics any way it wants to, but if it wants to take into account the money it needs and the donors are willing to give, on conditions, it will change and evolve in the direction of donor desires. One must also remember that there are reformist forces in Indonesia, both outside the government and within, and they are part of Indonesia's developing politics. Donor conditionalities, advice, and good governance ideas support them and help them make gains they would not otherwise make.

Remedying corruption in Indonesia, which ultimately only Indonesians can do, will likely take a long time; perhaps at least a generation.⁴⁷ The worry is not the good governance paradigm or program, but donor fatigue, donors giving up after a few years of stalled or stymied efforts. The game is selection pressure, consistent and constant selection pressure over a long period of time, not mandates to insulate the economy from politics. Indonesian politics must now take into account what donors are willing to do; as it must take into account whatever selection pressures globalization brings. The latter are considerable indeed. In the long-term, Indonesia will learn and evolve and confront the corruption that seriously damages its economy and polity, holds back its development, and victimizes its people.

Keep the faith.

⁴⁷ Although it is true that some polities, viz., Hong Kong and Singapore, overcame their corruption in relatively short periods of time, they are very different cases involving small, nondemocratic jurisdictions and strong, centralized governmental authority. These conditions do not exist in Indonesia.

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Anti Corruption and NGOs in Indonesia

By *Tim Lindsey*

INTRODUCTION: WHY NGOs?

Despite the sense that 'everyone knows what an NGO is', the reality is more complex. Steiner and Alston (2000:938) define NGOs as a broad range of:

(", non-governmental actors whose activities are part of what is now commonly referred to by such terms as 'civil society', 'transnational advocacy network' and 'social movements'. Until the fall of the Berlin Wall, the concept of civil society was little more than a heading in the history of ideas... Today the term is everywhere, even if its definition remains contested").

Cohen and Arato (1992: ix) describe civil society¹ as excluding actors directly involved in

¹ "The term 'civil society' came into prominence following the Earth Summit of 1993 where the declaration of that Summit, called 'Agenda 21' specifically used the term for the first time in an official international document. The term also gained prominence with the collapse of the Soviet Union as organizations like Solidarnosc of Poland and Eco-Forum of Bulgaria proclaimed the citizens' desire to associate as a 'civil society' outside the control of the state. Since that time it has almost become a 'mantra' in the development business as both governments and international donors proclaim how important civil society is, without, however, having clear agreement as to what it means." (Holloway and Anggoro, 2000: 4).

state power and economic production but including:

"... a sphere of social interaction between economy and state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations), social movements and forms of public communication".²

The organisations that make up civil society are diverse and their terminology is also diverse and frequently confusing:³ NGOs; INGOs (international NGOs); CSOs (civil society organisations), CBOs (community based organisations); PVOs (private voluntary organisations); QUANGOs (quasi-autonomous NGOs); GONGOs (government organised NGOs); BINGOs (business and industry NGOs); DONGOs (donor organised NGOs); and DNGDOs (domestic nongovernmental development organisations). In this paper, however, the term 'NGO' will be used here in broad sense, reflecting its use in Article 71 of the United Nations Charter.⁴

NGOs AS VEHICLES FOR ANTI-CORRUPTION EFFORTS

By excluding actors directly involved in state power and economic production, Cohen and Arato's definition suggests two reasons why NGOs are particularly suited to anti-corruption activities.

First, NGOs' nominal structural independence from government and business allows them relatively more freedom to critique the state and the commercial sector: indeed, their legitimacy often depends on them doing so.

Secondly, because NGOs do not rely exclusively on either the state or business for resources or authority, it is usually relatively difficult for either to control them.

² Cited in Steiner and Alston (2000: 938). Holloway and Anggoro (2000: 4), however, specifically exclude the family: "civil society comprises 'associational life in between the family and the State'.

³ This paragraph draws from Steiner and Alston (2000: 939).

⁴ Article 71: "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organization and, where appropriate, with national organizations after consultation with the member of the United Nations concerned".

The United Nations has also formally recognized that "these organisations should have the opportunity to express their views, and that they possess special experience or technical knowledge of value to the [Economic and Social] Council's work" (United Nations, 1999).

This is, of course, not to suggest there are never instances of NGOs manipulated or even co-opted by the state or business; or of 'puppet' NGOs set up by state or private interests. Indeed in very corrupt systems such as Indonesia's it is normal for opponents of anti-corruption NGOs to set up rival organisations, covertly funded or supported by the private or governmental targets of anti-corruption initiatives (Holloway and Anggoro, 2000:34-6). Soeharto himself was a master of the GONGO (government-organized NGO) and pro-New Order militia-like youth groups such as Pemuda Pancasila are examples of this syndrome. Likewise, contemporary Indonesia has no shortage of so-called plat merah⁵ - 'pretender' or private benefit (Fowler, 1997) -NGOs set up by government-linked individuals or groups to enable access to funding through the World Bank's Social Safety Net program (Jaringan Pengaman Sosial). One account even has half the NGOS in East Java identified as plat merah (Holloway and Anggoro, 2000: 35).

Likewise, BONGOs (business-owned NGOs) are common, with Soeharto again as the exemplar. His tax-exempt yayasan or foundations operated as a conduit for rent-seeking, extra-legal payments and 'money politics' patronage. Yayasan have long remained beyond legal scrutiny as they have not been subject to formal reporting obligations. Despite the introduction of a Bill to correct this situation, most have been able to escape real public monitoring save where they have attracted intense political controversy for close links to Soeharto (Holloway and Anggoro, 2000:35-6).

However, the argument holds that 'true' NGOs -those that are able to operate more or less independently of state or business and are what Holloway and Anggoro (2000: 15, 31-4) call 'public benefit' organisations -are perhaps better situated than any other social entity to lead anti-corruption activities. The only rivals to the independence that these 'good' NGOs can exercise are, of course, individuals (typically 'whistle blowers'), but they lack the resources and institutional support NGOs can offer.

This innate suitability of 'public benefit' NGOs as vehicles for anti-corruption activities is particularly important in Indonesia, where virtually every organ of state has been co-opted to

⁵ This is a reference to number plates for government motor vehicles, which are red. GONGO members supposedly conduct monitoring of the Social Safety Net program's implementation using government cars (Holloway and Anggoro, 2000: 35).

some extent; and where, consequently, business has routinely been involved in corruption. In- deed, as will be considered below, the depth of corruption in public life in Indonesia is so long- established and so profound that state efforts to combat corruption will almost always be deliberately sabotaged by, or at least encounter resistance from, the bureaucracy. An unhappy example of this is the recent annulling of the Regulation establishing the Attorney General's Joint Team for the Eradication of Criminal Acts of Corruption (Tim Gabungan Pemberantasan Tindak Pidana Korupsi) by the Supreme Court when the Team persisted with efforts to prosecute judges of that Court (discussed further below).

This sort of outcome is, however, hardly surprising. If bureaucrats rely on access to 'rent', or 'excess returns or incomes above the competitive norm' in the definition used by Krueger (1974, in Khan & Jomo, 2000:5-6), then why would they voluntarily "supply a set of institutions that served to constrain rent-seeking activities"? (J ayasuriya, 1999: 111). Indeed, Budiman (1990:6, 13) has described the Indonesian state built by Soeharto as the rentier bureaucratic- authoritarian state par excellence; and despite its founder's fall, that system continues to function (Lindsey, 2000b). If the state is a rent-seeker, then much of the rent obtained comes, naturally, from those most able to pay -the business sector. As is discussed in Part II, below, corruption scandals such as the Bank Bali case (Sulistiyadi, 2000) demonstrate the complex interweaving of the political with the commercial and the 'secret hand' of the state in the conduct of financial and trading affairs.

THE QUESTION FOR ANALYSIS

Accordingly, if anti-corruption efforts in Indonesia are to bear fruit, they must be driven or delivered to a large extent by those outside the state and the commercial sectors and that effectively means independent NGOs. This, of course, raises the issue of whether Indonesian NGOs are able to meet this challenge. Can they, in fact effectively lead and deliver anti-corruption initiatives?

In answering this, question, the first part of this paper will summarise the recent development and current state of Indonesian anti-corruption NGOs, focusing in particular on GeRAK (Jaringan Nasional Gerakan Anti Korupsi) the national anti-corruption NGO network.

The second part of the paper will consider the challenges anti-corruption NGOs face and will offer broad analytical frameworks for understanding corruption in Indonesia. The third part offers an assessment of whether Indonesian NGOs are, in fact, capable of delivering change, given the analysis in Part II.

The paper concludes with a list of brief recommendations for practical assistance for anti- corruption NGOs in Indonesia.

INDONESIAN NGOs AND ANTI-CORRUPTION EFFORTS IN INDONESIA

NGOs and Governments

Gharnovitz (1997) has observed that there is a cyclic pattern in the relationship between NGOs and government: the role of NGOs increases when governments, for whatever reason, feel they need them. When that assistance bears fruit and “governments and international bureaucracies gain self-confidence” (Charnovitz, 1997) NGOs find their influence declining.

Since the economic crisis (krismon) struck Indonesia in 1997, domestic public policy has been in disarray. The same is true of most foreign analyses of the country, which have frequently misread it since then -most notably the onset, severity and duration of the crisis itself. The well-established, if sometimes uncomfortable, certainties of the New Order have gone, replaced by a sense of opaque and tumultuous change. The continuing -and perhaps deepening -sense of uncertainty in politics, business and public administration has led Indonesian governments and foreign donors and lenders to turn to civil society and, in particular, academics, professionals and NGOs, for analysis and policy development.

Here NGOs have laid claim to a central role, first because they have long identified their exclusion from public debate under Soeharto as a reason for the failure of his regime (Budiman, 1990); and secondly because they are recognized as playing an important role in forging the loose coalition of opposition groups that led to his fall and gave the catchcry of *reformasi* some policy content (INFID, 1999).

A central part of *reformasi* has been criticism of the corruption of the public sector. State KKN⁶ (corruption, collusion and nepotism) was developed to its historically highest pitch under Soeharto and inherited more or less intact by his successors.⁷ Accordingly, anti-corruption has been a prominent and consistent feature of NGO agendas in Indonesia since 1997 (INFID, 1999: Statement on Corruption).

Numbers and Leadership

Charnovitz (1997 :268) also proposes two variables for measuring the significance of NGOs in public policy making. The first is the degree of penetration of NGOs into governmental meetings or international organisations. This variable focuses on process: the submission of petitions; attendance at meetings; participation on advisory committees etc. The second variable is the degree of influence NGOs have over governments. This is a test of substance - what difference have they made? The first of these measures is the one most often relied upon: most NGOs are process oriented rather than substance oriented. They therefore tend to measure their success by access to government, even if their advice is not taken (Ibid).

In Indonesia it is clear, however, that NGOs have had success in terms of both access and influence. The post -Soeharto rise of NGOs has resulted in a dramatic and continuing growth of anti-corruption activity, like 'mushrooms in the rainy season' as the Indonesian saying has it. A result of this growth in the NGO sector there is a proliferation of governance-oriented organisations. LP3ES has identified 450 leading NGOs (Holloway and Anggoro, 2000:33) but the total numbers are probably in the many thousands -although there is no way to determine this as there is no formal registration process that can produce reliable records. The current legal position is that citizen's organisations may take the form of a yayasan, an association, or a cooperative. Only the latter requires approvals by the government for legal validity, so it is typically less popular. By contrast, there are:

" many, many organisations of many sorts registered in the Courts as Foundations

⁶ Korupsi, Kolusi, Nepotisme.

⁷ This system of state corruption, even criminality, is examined in more detail in Part II, below

(yayasan), and no-one has a record of them, and no-one knows what they are doing unless they care to publicise their work. ...they have no obligation to inform the government or the people of Indonesia about what they are doing... There are [also] many organisations registered in the Courts as Associations and no-one knows whether the members are still governing the Association and whether the organisation is still reporting to [its] members" (Holloway and Anggoro, 2000: 37).

Accordingly, unless current proposals for reform result in strict reporting requirements - and extend those requirements to Associations as well as Foundations (Holloway and Anggoro, 2000: 36-7) -it will probably remain impossible to know how many anti-corruption NGOs exist, let alone how many are active and how many are 'good' public benefit organisations.

Despite uncertainty as to absolute numbers, however, many observers agree that leadership of the anti-corruption sector is probably limited to around 50 or so key organisations, whose identity can change as numbers will wax and wane from time to time. The International NGO Forum on Indonesian Development Conference held in 1999, for example, lists 43 Indonesian NGOs as participants to its Statement on Corruption (1999), most of which are principally motivated by human rights or regional issues. More usefully, perhaps, Masyarakat Transparansi Indonesia (Indonesian Transparency Society or MTI) (2001) has identified 43 NGOs across Indonesia that are specifically concerned with anti-corruption, on the basis of their attendance at the August 2000 Assembly of anti-corruption NGOs in Cisarua. Despite the coincidence of numbers, the Cisarua NGOs only overlap marginally with those on the INFID list. They include (by region, West to East):

- Peka (Aceh)
- Samak (Aceh)
- Simalungun Corruption Watch (N. Sumatra)
- SumateraCorruption Watch (N. Sumatra)
- Anti-corruption Body⁸ (W. Sumatra)

⁸Badan Antikorupsi.

- Indonesian Forum for Budget Transparency⁹ (Riau)
- Bengkulu Corruption Watch, South Sumatra
- Corruption Watch (Lampung)
- Gerak (Lampung),
- Anti-Corruption Committee¹⁰ (KAK, Lampung)
- ICW (Jakarta)
- LBH (Jakarta)
- MTI (Jakarta)
- Bekasi KKN Watch
- KRAB (W. Java)
- Konstan (W. Java)
- Sukabumi Corruption Watch
- West Java Corruption Watch
- Cirebon Corruption Watch
- Akarrumput (Ambarawa, Central Java)
- KP2KKN (Central Java)
- Solo Corruption Watch (SCWJ, IDEA (Yogyakarta)
- Yogyakarta Corruption Watch (YCW)
- Forum Kota Surabaya
- Malang Anti-Corruption Committee
- Surabaya Legal Aid ¹¹

⁹ Forum Indonesia untuk Transparansi Anggaran.

¹⁰ Komite Antikorupsi.

¹¹ Lembaga Bantuan Hukum (LBH) Surabaya.

- Madiun Corruption Watch
- Malang Corruption Watch
- Bali Corruption Watch,
- Kompak Bima (West Nusa Tenggara)
- Community Solidarity for Transparency¹² (Somasi -West Nusa Tenggara)
- Conet (East Nusa Tenggara)
- Centre for Community Information and Advocacy¹³ (FITRA -East Nusa Tenggara)
- Gemawan (West Kalimantan)
- Consortium of Central Kalimantan NGOs¹⁴
- Fakta (East Kalimantan)
- Pokja 30 (Kalimantan)
- Anti-Corruption Committee (ACC -South Sulawesi)
- YPR Bulu Kumba (South Sulawesi)
- Dopalak Indonesia (Central Sulawesi)
- Red and White Foundation¹⁵ (Palu)
- South- East Sulawesi Anticorruption Committee (KAK 'S)¹⁶
- Warrak (North Sulawesi).

The sheer weight of numbers is impressive. More interesting, however, in Charnovitz's terms, is the increasing prominence of a smaller number of extremely well-organised and efficient governance NGOs that are exerting disproportionate, and usually positive, influence on government in the area of anti-corruption.

12 Solidaritas Masyarakat untuk Transparansi.

13 Pusat Informasi dan Advokasi Rakyat.

14 Konsorsium LSM Kalteng.

15 Yayasan Merah Putih.

16 Komite Anti Korupsi (KAK) Sultra.

In fact, most of the prominent NGOs active in anti-corruption can now be categorized also as 'legal' NGOs. Almost all governance NGOs become involved with legal issues at some point in their existence. This is particularly the case in post-Soeharto Indonesia, where the reformasi movement is heavily concerned with law reform and governance issues. Advocating or supporting law and policy reform is the daily business of most NGOs in one way or another. There are some NGOs, however, for whom the law is more than simply an aspect of their work. These are NGOs that are led by lawyers; identify themselves as 'legal' in nature; or are predominantly concerned with what might be termed 'legal' aspects of corruption, such as regulation, detection, prosecution and punishment. It has now become increasingly normal for government- especially relevant Departments like the Ministry of Justice and Human Rights -to involve these NGOs in policy formation, drafting of laws and policy documents and 'socialisation' (education, dissemination and consciousness-raising).

This sub-set of NGOs therefore deserve closer examination before turning to the broader issue of attempts to coordinate NGO anti-corruption activity.

LEGAL NGOS AND ANTI-CORRUPTION

NGOs have provided intellectual and policy direction in the legal sector since the mid '60s when Soekarno deliberately set out to downgrade and suborn the legal profession and the judiciary. This policy was continued by his successor Soeharto from the early 1970s, notwithstanding Indonesia's sudden swing from the Left to the Right (Lev, 1999). Given that most post- Soeharto state institutional reforms can now be said to have failed, there has been very little change to the corrupt practices of the government legal sector established since the '60s and '70s (Lindsey, 2000b; Lev, 1999). In these circumstances, law reform leadership has remained with the NGO sector -which thus has enormous influence over anti-corruption policy.

For example, leading public law reform champions involved in governance reform such as Prof. Dr. Erman Rajagukguk (Deputy Cabinet Secretary) and Dr. Mulya Lubis (General Election Commission, Komisi Pemilihan Umum, KPU) have roots in NGOs, as do many other senior government officials appointed since Soeharto's fall- including President Abdurrahman

Wahid himself. If We are also beginning also to see NGO lawyers among those nominated for senior legal positions, including Chief Justice of the Supreme Court (Bambang Widjojanto; T Mulya Lubis; and Abdul Hakim Garuda Nusantara); and NGO figures are well-represented on peak legal bodies like the National Legal Commission (Komisi Hukum Nasional), the National Human Rights Commission (KomnasHAM) and major law-related reform programmes.

These leaders all have standing established over several decades, but it is of equal importance to the law reform process that a new generation of leaders is now emerging from NGOs, for example, Ibrahim and Rifqi Assegaf, PSHKI (Pusat Studi Hukum dan Kebijakan Indonesia, Indonesian Centre for Law and Policy); and Hamid Chalid and Nizar Suhendra, (MTI); and Irianto Subiakto, LBH (Director, Legal Aid Institute and Deputy chair of Kontras), to name just a few.

A selection of some of the more established and successful legal NGOs active in anti- corruption efforts are described below, as an indicative and non-exclusive sample.

YLBHI (Yayasan Lembaga Bantuan Hukum Indonesia -Indonesian Legal Aid Institute)

This is still Indonesia's leading legal NGO and has produced many of the current legal elite. It remains active as a think-tank, an activist organisation and a practical provider of case- based legal assistance, but is now also involved in critiquing government policy. LBH also has a history as an 'incubator' of other 'spin-off NGOs. Some of its traditional role of providing alternative legal analyses of controversial events, exposing corruption and conducting de facto inquiries has now been taken up by Komnas HAM and its intellectual leadership is now shared with other NGOs, as is its case load, but it remains a leading advocate of change and a key reform body.

Prominent among its leaders are Bambang Widjojanto and Irianto Subiakto as well as Teten Masduki, a labour law and anti-corruption campaigner of high standing who is also involved with Indonesia Corruption Watch. One important 'spin-off has been LBH -APIK, the

17 This and the following paragraphs under the heading 'Legal NGOs and Anti-corruption' draw in part on Lindsey, 2000e.

women's legal aid organisation, headed by Nursyahbhani Katjasungkana, another important legal reform champion. 18

Masyarakat Transparensi Indonesia (Indonesia Transparency Society)

This NGO is linked to a group of reformers around former Finance Minister and anti-corruption campaigner, Mari'e Muhammed and Nurcholish Madjid, the moderate Islamic leader.

MTI is an active anti-KKN educator, involved in extensive public education campaigns regarding corruption-related issues -so-called 'socialisation'. It is working with regional universities and the media to present anti-corruption training across Java, Sumatra, Kalimantan, Sulawesi, etc. Because MTI is active in building public awareness, it acts as a conduit to legal institutions in sectors including education, government, business, banking and finance and the media.

Indonesia Corruption Watch (ICW)

ICW has had spectacular success uncovering high-level corruption scandals, including the Bank Bali case, the Texmaco case and securing the fall of an Attorney General, Andy Ghalib (Zemenides, 1999).

Unlike MTI, ICW focuses on activism. It is an energetic investigator and works closely with the media. Of all legal NGOs, this is the one that has had the most direct effect on public affairs. Although often controversial, its key leader, Teten Masduki, is regularly invited to contribute to government policy development and is a member of the Preparatory Committee for the Anti-Corruption Commission.

18 On the history of LBH, see Lev (1972).

LelP (Lembaga Kajian dan Advokasi Untuk Independensi Peradilan - Institute for Study and Advocacy of Independence of the Judiciary)

This organisation, founded in 1999, is backed by leaders of the Indonesian Bar including Mulya Lubis, Prof. J E Sahetapy, Mas Achmad Santosa, Bambang Widjojanto, Frans Hendra Winarta and Benny Harman.

Its focus is on the independence of the judiciary and it acts as a think tank and watchdog. It has a particular interest in constitutional reform and publications but also has been outspoken on judicial corruption (Jakarta Post, 2001). LelP is well organized, has access to significant support and has established a remarkably accountable and open structure, with audited accounts and no distributions to its founders, unlike some other NGOs. It is closely linked to PSHKI.

PSHKI (Pusat Studi Hukum Indonesia)

This NGO is tied to a group of reformers including Prof Ennan Rajagukguk (Deputy Cabinet Secretary) and Prof Mardjono Reksodiputro and its leaders include Ibrahim and Ahmad Fikri Assegaf.

Linked by its members to LelP and MTI, PSHKI has had remarkable success in producing research and reporting, including on corruption issues, with a particular focus on problems in the judiciary. PSHKI's accountability, intellectual content and organisation is of a very high level.

PBHI (Perhimpunan Bantuan Hukum dan HAM Indonesia)

A more radical organization, PBHI is more involved in case work and representing accused in politically significant cases. It has strong focus on a criminal issue and on good governance and anti-corruption measures. It is doing impressive work on criminal law reform, designed to achieve greater transparency and accountability in government. It also currently runs major educational programmes throughout Kalimantan, Sumatra and Java in conjunction with the Attorney-General's Joint Team (Tim Gabungan). PBHI's leader, Hendaradi, has established a reputation for being determined and uncompromising.

GeRAK: A National Organisation for Anti-corruption NGOs

As mentioned, the NGOs listed above are only a sample of some of the more prominent and legally-oriented organisations concerned with anti-corruption. There are other groups that consider similar issues from a budget perspective (the Indonesian Forum for Budget Transparency for example) or from the standpoint of journalism (AJI)¹⁹, the Independent Journalists Association) or human rights (LBH). Probably none have unique interests, activities or even constituencies. Even among the 43 Cisarua participants there are obvious overlaps, both in terms of regional representation and nomenclature, as well as agendas.

Competition and coordination therefore represent obvious problems for the NGO sector, particularly given a scarcity of funds in economically difficult times. A second, related problem is communication and dissemination of information and agendas among a range of diverse and diversely-funded entities (Holloway and Anggoro, 2000: 39) scattered across a vast archipelago in radically varied conditions.

Given these problems, disappointments such as the failure of the Attorney General's Joint Team for the Eradication of Criminal Acts of Corruption (Tim Gabungan) or the acquittal of the accused in the Bank Bali case have forced anti-corruption campaigners to think about how they can maximize available resources now that the initial euphoria of reformasi -the fall of Soeharto and the loosening of restrictions on civil society -has worn off. In particular, anti-corruption NGOs have turned their attention to how efforts might be better coordinated on a national basis.

Membership

The main vehicle for national interaction between anti-corruption NGOs is the National Anti-Corruption Movement Network (Jaringan Nasional Gerakan Anti Korupsi) or GeRAK.²⁰ GeRAK is a national network that was originally made up of 27 NGOs active in anti-corruption initiatives. Covering most of the provinces, the initial members included some of those present at Cisarua, although this is not true of all. Listed by region East to West they were:

¹⁹ Assosiasi Journalis Independen

²⁰ 'GeRAK' is sometimes also referred to as 'GRAK'

- Walhi (Aceh)
- Simalungun Corruption Watch (N. Sumatra)
- Indonesian Forum for Budget Transparency²¹ (Riau)
- OW A Foundation, Palembang
- ICW (Jakarta)
- MTI (Jakarta)
- Malang Anticorruption Community
- Akarrumput (Ambarawa, Central Java)
- KP2KKN (Central Java)
- Solo Corruption Watch, IDEA (Yogyakarta)
- Yogyakarta Corruption Watch
- Independent Journalists Association, Yogyakarta
- Budget Oversight Foundation, Yogyakarta
- IDEA (Yogyakarta)
- Forum Kota Surabaya
- LAKPESDAM-NU Jombang
- Yayasan SINTeSA Banyuwangi
- Bali Corruption Watch
- Community Solidarity for Transparency²² (Somasi -West Nusa Tenggara)
- Centre for Community Information and Advocacy²³ (PIAR -East Nusa Tenggara)
- Fakta (East Kalimantan)
- Anti-Corruption Committee (ACC -South Sulawesi)

²¹ Forum Indonesia untuk Transparansi Anggaran.

²² Solidaritas Masyarakat untuk Transparansi.

²³ Pusat Informasi dan Advokasi Rakyat.

- South- East Sulawesi Anticorruption Committee²⁴(KAK)
- Wahana Informasi Rakyat (Warrak -North Sulawesi)
- Baileo Maluku (Ambon)
- Mahasiswa Kalbar

The NGOs forming GeRAK's membership are, generally speaking, both better organized and more formally structured than most, and tend to have broad anti-corruption objectives. They are focused on structural responses to corruption rather than local or specific issues, although there are some important exceptions, for example, AJI and WALHI, the environmental NGO. Both of these are leading NGOs, already well established under Soeharto. Although neither identify anti-corruption as a *raison d'être*, they nonetheless find themselves involved in anti-corruption initiatives. This is simply because their own agendas -freedom of the press and environmental protection, respectively -inevitably bring them into contact with both bureaucracy and private business and thus with the corrupt practices rife in both sectors (discussed in Part II). GeRAK holds regular joint sessions of members in provincial capitals that act as open forums for discussion on both anti-corruption issues and on management of the GeRAK network itself. These meetings are generally linked to other initiatives such as 'socialisation' programmes and other educational activities of member NGOs.

Email List

Potentially the most effective form of cooperation between the GeRAK members, however, is its email bulletin system. A series of lists are run, one for each major region of Indonesia (for example, there is a separate list for Java and Sumatra). Lists are managed by regional secretariats. The Java list, which is the most important, is based in Jakarta and managed by MTI. This email bulletin listing allows members to exchange information and correspond. There is ex-

change between secretariats where issues of relevance, international issues or issues pertinent to other regions are encountered.

It appears that GeRAK's email system has been developing steadily since 1999; and although it is hard to empirically assess the extent of its influence, anecdotal evidence suggests that the list may become a key mechanism for communications between anti-corruption NGOs.

NGO Groupings within GeRAK

As the Cisarua list also indicates, GeRAK's constituency is extremely diverse. It is important, however, for this analysis to identify key groupings. McDougal, Lasswell and Reisman (1981: 271-2) have developed the following framework of seven 'decision functions' to analyze NGO activities.

- Intelligence function: gathering, analysis and dissemination of information.
- Promotion function advocacy of policy alternatives to decision-makers directly
- or through the public
- Prescription function: development and drafting of policy and laws .Invocation function: monitoring, inspection and indicting
- Application function: deciding concrete disputes (not a common NGO function)
- Termination function: ending 'prescriptions that do not contribute to common interest'. Typically NGOs advocate for this. They do not do the terminating themselves.
- Appraisal function: evaluation and monitoring.

These categories include some which rarely apply to most NGOs (for example, the so-called 'application' function) and others that would seem to overlap (for example, 'termination' and 'promotion'; 'invocation' and 'appraisal'). They are to that extent somewhat clumsy. I have therefore preferred to characterize Indonesian anti-corruption NGOs in three major groups which loosely embrace McDougal's categories: Advocacy (invocation, termination and

appraisal); Research (intelligence, promotion, prescription) and locally-Focused (invocation, application and termination) .

Advocacy

Advocacy NGOs are not principally concerned with policy issues or with gathering of data and research in this field, although they do carry out such activities. They are chiefly occupied with lobbying government and media in relation to anti-corruption efforts generally and, in particular, individual corruption cases. One typical activity of the advocacy NGOs is investigating and publicising corruption “scandals”. These are the NGOs that target ‘big fish’, to use INFID’s terminology (1999).

The best -known example of this sort of anti-corruption NGO is, of course, ICW (Indonesian Corruption Watch). It was ICW’s advocacy that revealed theft of public funds by the former Attorney-General Andy Ghalib and its relentless pursuit of the case through the media led eventually to his fall. Advocacy NGOs have also been active in the Bank Bali case and the scandals surrounding President Wahid (the Bulog affair and the so-called ‘Bruneigate’ case).

Research

Research NGOs are less concerned with interaction with the media and pursuing individual cases of corruption. Instead, they focus on gathering data, writing policy papers and ‘filling the gaps’ in public, bureaucratic and academic understandings of corruption in Indonesia. Although not as high profile as the Advocacy NGOs, these NGOs are extremely effective in gathering the information on which advocacy NGOs rely and distributing it widely it through ‘socialisation’ programmes.

Research NGOs also tend to be closely involved in development of government policy and in developing position papers for other groups including foreign aid organizations. Research NGOs are estimated by GeRAK to number in total around 30 organizations across the whole of Indonesia.²⁵ Of these, the best known is probably MTI, which has, for example, been involved in

²⁵ Personal communication, Nizar Suhendra, Jakarta, February, 2001

establishing GeRAK and in the preparation of drafts of the two key anti-corruption laws: No. 31/1999, on the Eradication of Corruption requires the creation of an Anti-Corruption Commission; and No. 28 / 1999, on State Administrators Free of KKN .

Locally-Focused

According to GeRAK,²⁶ the total number of Advocacy and Research NGOs active in the anti-corruption field and chiefly focussed in and around Jakarta, is around 35. Most of the thousands of other NGOs that have arisen post -Soeharto and that claim to be active in this field are located outside the capital and are very different to the Jakarta-based organizations.

These non-Jakarta NGOs are best understood as located on a continuum from, at the high end (usually in regional centers), relatively well-organised, well-funded and tightly structured NGOs concerned with corruption generally that are either part of, or are indirectly linked to, GeRAK; to, at the low end, very small pressure groups that are unstructured, poorly funded and band together to deal with one or two short-tenn highly localised issues. These latter entities can be highly effective but the difficulty in dealing with them is, first, the transience of their membership and existence; and secondly, the extremely restricted nature of the issues they cover.

The overwhelming focus of anti-corruption activities of these smaller local pressure groups is on land disputes and allegations against local bureaucrats. They are involved in bringing disputes to public attention (McDougal's 'intelligence' and 'invocation' functions) and are often actively involved in prosecuting and resolving them as well (McDougal's 'application' function).

This should not be surprising as competition for land between government agencies, the wealthy elite and traditional land-holders has long been the major source of disputes in the courts in Indonesia, as well as a volatile political flashpoint (Fitzpatrick, 1999; Haverfield, 1999). The fall of Soeharto has resulted in a revisiting of many New Order land transfers conducted illegally or fraudulently, or simply through the application of force, both for the purposes of development projects (for example, the Kedung Ombo dam case) and for the benefit of

²⁶ Personal communication, Hamid Chalid, Jakarta, March, 2001

members of the elite. The recent conviction of Tommy Soeharto over a Soeharto-era corrupt land swap is the best-known example of this (Budi, SP, 2000: 16-7).

It is, of course, quite legitimate for the local populations to link land disputes to bureaucratic corruption. However, for the purposes of analysing NGO anti-corruption activity, this creates a large amount of 'static'. The situation is further confused by the nascent decentralisation or *otonomi* process. On top of, or intermingled with, anti-corruption concerns relating to land, there are now anti-corruption concerns relating to local government funding and administration, which in many cases do, or will, involve land as well.

To a large extent most of these 'other' local NGOs are concerned mainly to act as limited issue or short-term lobby or pressure groups, sitting outside the GeRAK network. It is likely, however, that there some of these NGOs will move into the GeRAK network -just as some may shift out of it in due course. Nonetheless, except where there is interest in particular local issues, aid agencies and government can best deal with anti-corruption initiatives through the GeRAK network, selecting local pressure groups for cooperation where necessary.

GeRAK's Objectives

The GeRAK network has been able to articulate three key short-term goals. Naturally, these are the stated goals of GeRAK's organizational leaders. Member NGOs may not be as fully committed. Likewise, NGOs outside the GeRAK network will be far more varied and less focussed in their objectives. Nonetheless, this list assists in understanding the priorities of leaders of the anti-corruption NGOs.

Anti-corruption Commission: Komisi Anti Korupsi

A key priority is ensuring that the Anti-corruption Commission (which is required to be established by August 2001 by Law No. 31/1999) emerges as the leading institution for anti-corruption efforts in Indonesia and that it is not controlled by government agencies such as the Attorney-General's Office or the Ministry of Justice. To this end, there is a concern among GeRAK members to support the development of effective legislation that

will guarantee the Commission's independence and its power to act, as well as in developing policy and position papers to flesh out the legislation.

GeRAK NGOs have also cooperated with the Commission's Preparatory Committee and with the key agency, the Ministry of Justice and Human Rights, in the Commission's development. Some GeRAK members are on the Preparatory Committee²⁷ and have agreed to become members of the Commission in due course, as this is seen as one way of ensuring the monitoring of its activities in the future.

Joint Team for Eradication of Criminal Acts of Corruption (Tim Gabungan Pemberantasan Tindak Pidana Korupsi)

The Joint Team was supported by the GeRAK NGOs and some officers of GeRAK NGOs were also members of the Joint Team.

The resignation in frustration of the highly-regarded Chair of the Team. Prof Adi Andojo, a former 'whistle blower' Supreme Court Judge and Rector of Trisakti University was a blow to the Team. The recent Supreme Court decision to annul the implementing regulation under Law 31/ 1999 by which the Team was established (Government Regulation No. 19 of 2000) has resulted, however, in the Team's dissolution. The annulment was ordered on poorly-explained grounds that, by establishing the Team, the Regulation contradicted the Law. The decision was made by a well-regarded judge, Justice Paulus Lotulung, but has been widely seen as an improper attempt by the Court to prevent prosecution of fellow judges. GeRAK members have been vocal in criticizing this decision (for example, Rifqi Assegaf of LeIP: Jakarta Post, 2001) because it fits a now long-standing and well-recognized pattern of judicial incompetence and active resistance to reform (Lev, 1999; Linnan, 1999; Lindsey, 20~ 1 b). In simple terms, this initiative has now been defeated by simple institutional resistance. The problem of how anti-corruption NGOs can deal with this sort of response from state organizations is dealt with in the next Part.

²⁷ Teten Masduki and Hamid Chalid, for example.

Public Awareness

On balance GeRAK members include more 'Research' than 'Advocacy' NGOs. They are therefore strongly supportive of moves for 'socialisation' and education of Indonesian society .²⁸ They argue that anti-corruption initiatives of the government at institutional level, however well-planned and well-intentioned, cannot succeed without popular understanding of corruption and of how it can be combated. They talk of popular and bureaucratic cultures of anti-corruption as absolute prerequisites for effective institutional reform.

In this they share a common Indonesian attitude to law reform, labelled the 'kebathinan' approach by Linnan (1999: 3), that is, the notion that cultural shift achieved by:

" ... raising the general population's legal consciousness (kesadaran hukum Masyarakat) to escape perceived cultural constraints. ..improving legal culture (budaya hukum) (and) implementation of 'international standards' under modernisasi "

They consider this is necessary before instrumental (statutory and institutional) change can have effect.

To this end, GeRAK plays an important role in coordinating anti-corruption 'socialisation' campaigns and educational programmes throughout Indonesia.

Complementing this, the Advocacy NGOs consciously see a role for themselves promoting anti-corruption issues through the media. They argue that prosecuting 'big fish' is equally effective in raising consciousness regarding anti-corruption issues. GeRAK appears to be content to fill a support role for these activities, providing resources and publicity for advocacy activities.

Political Attitudes of Anti-Corruption Leaders

Generally speaking, the leadership of the 'public benefit' anti-corruption NGOs represents a new generation of Indonesian lawyers and political activists. Many are in their 30s and were

²⁸ GeRAK attitudes described in the following paragraphs are taken from interviews with GeRAK members in Jakarta in February and March 2001.

students or young professionals under the New Order regime. They are only now achieving seniority in their careers. Unlike the generation which dominated government and business under Soeharto, many of the leaders of these NGOs have been educated overseas or hold higher tertiary degrees from Indonesian institutes. Most speak some English and some are very fluent. They thus have access to Western and 'international' culture. Many regularly use the Internet and are familiar with recent developments in legal and academic thinking and technology over- seas. PSHKI, for example, has developed 'Hukumonline.com', a pioneering Indonesian language legal news website.

Local Influences

Mixed in with these Western-derived influences are local themes as well. There is an influential tradition of modernist Islamic thinking among some anti-corruption NGO leaders, especially in a group linked to MTI. This modernism has more to do with an ethical attitude than with any political alliance to so-called Islamic modernist parties or organizations such as PAN (Partai Amanat Nasional, National Mandate Party) or Muhammadiyah. Leaders influenced by this stream view governance from a deep moral perspective and are fundamentally motivated by a view that corruption is a wrong per se that the pious person has a duty to prevent.

Another local theme is the often-ignored Indonesian liberal democratic tradition that mixes Muhammad Yamin's opposition to integralism²⁹ (Bourchier, 1999); with Sutan Syahrir's vision of a parliamentary democracy; and the social democracy of the banned PSI (Partai Sosialis Indonesia - Indonesian Socialist Party) to produce a model for current reforms. From this group's point of view the problems of corruption are fundamentally structural and date back to the abandonment of the 1950 parliamentary constitution in 1959.³⁰

²⁹ For the integralistic staatsidee see also Lindsey (1999: 11-20).

³⁰ The Constitution was dissolved by President Soekarno's unilateral (and probably illegal) decision to 'return to the 1945 Constitution' in July 1959, but the real collapse of parliamentary democracy took place 2 years earlier with the declaration of effective martial law with the declaration of the so-called 'State of War and Siege'.

A third local influence is that of student radicalism, expressed strongly through reformasi activism in 1998 and 1999. This stream now sees reformasi as failing because it has been coopted by the state it tried to dismantle. Proponents of this point of view argue that radical action is necessary and in this they reflect the hardline policies of the PRD (Partai Rakyat Demokrasi - People's Democratic Party). This influence is relatively weak among the current crop of anti-corruption NGO leaders, but it does inform some aspects of policy development and is certainly present among smaller local 'pressure groups'.

Generational Cynicism

Finally, many anti-corruption NGO leaders are extremely cynical about the New Order and current government attitudes to corruption and administration in Indonesia. Many see current national leaders -Abdurrahman Wahid (Editor's note: this was written before the change in Presidency), Megawati Soekarnoputri, Akbar Tanjung and Amien Rais- as products of a mindset developed under Soeharto's rule, inheriting ideas about the role of the state and commerce that are inimical to good governance, however good the intentions of these leaders may be. They believe that it will be extremely difficult, if not impossible, for the national leadership to move away from New Order attitudes and practices. For this reason, they believe that real anti- corruption reform in Indonesia is unlikely to succeed under the current crop of political leaders, regardless of their policies or public commitments.

Accordingly, many anti-corruption NGO leaders believe that real change depends on the ultimate fall of these leaders and the rise of their own generation. This is an attitude to political change that is historically common among young adult Indonesians. It underlay the transition from Soekarno to Soeharto in the mid 'sixties when a new generation of young reformers re- placed a generation it saw as outmoded (only to be disappointed by Soeharto: Lev, 1999). The same attitude can be traced also to the dominance of the pemuda or youth during and after the revolution for a decade or so from 1945 (Lindsey, 1999: 13-19). The implications of these attitudes for current anti-corruption initiatives are, however, significant.

First, they mean that there is a prevailing attitude of cynicism towards most government authorities amongst NGO leaders. This does not prevent them working with government. In fact, the contrary is true. Because members believe that the government

is incapable of properly dealing with corruption, they feel a duty to become involved in policy development and implementation. They nonetheless have little faith or confidence in the state's ability to deliver what it promises; and this motivates them to take responsibility themselves for delivery of a project regardless of government sluggishness or obstruction.

Secondly, many NGO leaders are increasingly adopting a 'neutral' approach to the power struggles within the current political elite. One view sometimes expressed is that the current competing leaders should all be given a chance to rule the country for a short period -one by one -so that they can exhaust their claims to power. The role of NGOs would therefore then be to maintain a constant level of criticism of leaders to ensure their rapid removal from power. Once the current political structure has exhausted itself with, for example, a new President every 18 months as some hope will be the case, they would expect to see the new generation 'move in'.

At this stage most NGO figures have no clear idea who the new leaders would be, but believe that they will 'emerge'. For this reason, NGO leaders -including GeRAK -are prepared to work at low-level institutional change and popular awareness and education (socialization) programmes that might be regarded sometimes as mundane by donor agencies. As Linnan suggests, however, NGO leaders believe that in this way they can build a 'critical mass' of institutional change and public awareness that can be relied on later when their generation moves into power.

Clearly these political ideas are predicated on the assumption by NGO leaders of the existence of a very corrupt, intransigent and obstructionist state, despite the removal of Soeharto and Habibie and the rise of democratic government in Indonesia. They also assume extreme elite resistance to the anti-corruption movement and widespread ignorance among ordinary Indonesians of governance issues. Are these attitudes justified? This issue is considered in the next Part of this paper and the author concludes that they generally are.

The New Order 'Franchise': Corruption as a State System

This Part considers briefly the nature of what is at once both the key target of, and the chief obstacle for, the anti-corruption movement in Indonesia: a state-constructed but cross-sectoral system of corruption. Analytical frameworks are proposed which are used in Part III to assess whether Indonesian anti-corruption NGOs can achieve their ultimate objective of dismantling this system.

Over its three decades of power, the New Order elite -and, in particular, Soeharto and his inner circle of family and friends -consciously created a parallel 'secret' state to ensure its access to illegal or extra-legal rents. It was through this system that business and administration was really carried out.³¹

By the end of Soeharto's rule, the judiciary, like the legislature) effectively functioned (or dysfunctioned) as an arm of the bureaucracy. The consequences of this were; firstly, the removal of any formal avenue of opposition to the executive; secondly, the absence of functioning formal mechanisms for rational transaction management or dispute resolution (whether between citizens or between state and citizens); and thirdly, the rise of alternative, irregular and informal methods of dispute resolution and transaction management to fill the vacuum created by popular fear of courts and politics. In other words, new 'soft' law arose -alternative, informal norms -to deal with issues that would be resolved by 'black letter law'

Formal Written Law in a State with a Functioning Legal System.

At their lowest level, these informal alternatives took the form of petty corruption and facilitation payments, as well as sophisticated traditions of informal dispute resolution. At their highest level they constituted something approaching a shadow system, a 'secret' cronyist 'black' state, in which 'real' business and policy-making took place. The New Order state thus became

31 This section draws heavily on Lindsey (2000b and c; and 2001).

one predicated on bad faith -which is to say that effective transacting, decision-making and politics at all levels were carried out in the shadow system, widely understood -a public secret -but not formally acknowledged.

The officially-approved outcomes of this 'real' informal system were later legitimised in what I have called (Lindsey, 2000b, 2001) the *aspa!* (asli tapi palsu: original but false) state legal system. The result is a highly developed legal formalism (hard law) and public rhetoric; seemingly impenetrable and secretive politics; state sanctioned 'corruption' and legal informality in practice (soft law norms); and apparent irrelevance and absurdity in the practice of law by reason of it being the interface between the two systems. To put it another way, there were lots of laws but, because only the politically powerful could ever win, they were reduced to nonsense.

The creation of this system was a rational response to the state's failure to provide a functional and relevant formal system, hard law that works.³² As such the 'black' *aspa!* state of soft law norms has necessarily grown to monstrous, if often invisible, dimensions and permeated most aspects of Indonesian public life. It has become the only effective way to 'do' politics and commerce -and thus law.

This *aspa!* metaphor is not, of course, confined to corruption and the judiciary. The same dynamics that drove the subversion of the bureaucracy also lay behind the institutionalization of state violence and official criminal behavior. I argue that the key to the creation of the 'black' state was the state's violence, which it used to force compliance. Violence became the sanction that acted as the mortar to hold the 'black' state system together. So pervasive was it that, for most, there was little real alternative. Complicity was the only real option for financial survival. However, for those who chose to operate outside it, either in competition as criminals, or as dissenters who attempted to assert the official state systems against the 'black' state, poverty, created by exclusion from access to jobs or rents and, ultimately, violence were the sanctions.

³² The pervasive corruption of Indonesian public life was not a product of an inherent cultural propensity to informal systems, as is often argued. Nor was the cause a supposed Asian preference for harmonious and informal dispute resolution or a deep-rooted tradition of corruption or informality. My argument that it is a logical response to prevailing circumstances follows Taylor & Pryles (1997).

Perhaps the most startling evidence of this formalized, unofficial but bureaucratic system of 'secret' corruption and state-managed violence was the extraordinary evidence given by a Ministry of Manpower official at the trial of those accused of the murder of Marsinah, a trade union activist, in 1993 (Fehring and Lindsey, 1995). The official claimed that regardless of the formal industrial relations system, labour disputes in the Sidoarjo region (where Marsinah had worked) were really conducted through a secret network of government, the military and employers, known as the Sidoarjo Intelligence System, run by the local Ministry office. What is more, identical networks existed all across Indonesia (Fehring & Lindsey, 1995:9).

The New Order state was thus a stand-over operation. The bargain it offered was the classic mafia gambit: protection (against *gali* or communists, for example) or punishment in the form of brutality. In this sense, the state was an enterprise that operated on the same basis as criminals -preman or, in their own slang, *jawara*, a word has long meant in common parlance bandits or gangsters or, more commonly, 'standover man',³³ Like the preman, the Indonesian state still occupies an ambiguous position, surviving through a grudging acceptance underscored by fear:

"... On the one hand, the jawara is resented for the extra economic burden he places on people, but on the other hand, there is always the attempt to keep up good relations with him..." If we are good to them, they don't hassle us." (Barker, 1999:121, n.49)

These words could apply equally to the New Order blend of violence and corruption typified by the Sidoarjo Intelligence System: state premanisme. This is a model of state oppression and intervention that goes far beyond the East Asian model of authoritarian state capitalism (economic constitutionalism) proposed by Jayasuriya (1999) and others of a powerful central state committed to economic development.

³³ Preman are the toughs found throughout Indonesia who extort illegal rents or *japrem* (*jatah preman*) from people living or carrying on a business in territory they have 'won' by fighting and defeating other preman (Barker, 1999: 119-22). Derived from the Dutch for 'free man' and used to refer first to irregular or demobilized soldiers, in everyday use the word has overlapped with *jago* (literally, 'fighting cock'), the village 'tough' of ancient tradition who in urban context became a gang boss; *rampok* bandits; and *laskyar*, militias or irregular forces, particularly during the revolutionary period (Cribb, 1991a:18-19; notes 26-7).

This system and the ideology it produced has been memorably described by Mcleod (2000) as an elaborate form of franchise. Put at its simplest, money derived from illegal rents flowed up from franchisors -office holders -to the head franchisor -Soeharto and his inner circle -in return for political favour, patronage and access to rents. Mcleod's analysis can thus be seen as an economic reading of my politically-oriented 'criminal state' critique. This blending of state and crime, economic policy and personal power is what anti-corruption NGOs are seeking to unravel. In other words, their target is not merely corrupt activities as such but the basic structure and mode of operation of the state and commercial sector.

A Theoretical Reading of Corruption and Law

A key analytical problem presented by this 'criminal franchise' model of state operation developed under Soeharto is therefore the role of governance systems and in particular, law, the principal means of restraining corrupt activities in most states. Obviously, the NGO anti-corruption movement is predicated on the idea that governance reform will, eventually, prevent corruption. But is this assumption correct?

Ugo Mattei offers a model for understanding the relationship between corruption, law and governance. Mattei's analysis assumes that it is the method of operation of a legal system that is the key to understanding it; and that, once understood, the nature of a legal system indicates how it deals with corruption. The

"...simple idea behind it -not completely new in comparative circles -is that in all societies there are three main sources of social norms or social incentives which affect an individual's behavior: politics, law and philosophical or religious tradition." (Mattei, 1997: 12).

By contrast, in 'Political law' systems the political and the legal cannot be formally separated. Of course, the two are always linked to some extent, even in a professional system: politicians make laws; laws regulate political conduct; and the practice of law always has political connotations, especially where the state is a party. Mattei accepts this. His argument rather is that in his 'Political law' system autonomous spheres for law and politics do not exist at all. This means that:

"...law in the professional term of the word is not absent, but it is extremely marginalized and weak before other sources of social rule-making (mainly political power) ...the outcome of litigation depends on 'who is who' in the political world ...in the rule of political law, there is not such a thing as formal law binding on government. Governments may make efforts to comply (e.g. in order to pay lip service to the western-centric requirements of international financing institutions), but the surrounding circumstances and the need to keep power... do justify the disregard for formal law. In the everyday working rule of law such a non-formalised model of decision making based on political power flavours the whole of the legal system. ..."when men rather than law govern, people usually find it more prudent to seek a powerful human protector than to stand on legal rights against the state."(Mattei, 1997: 28-9)

Thus, Mattei's reading of 'politics' is a broad one it is based on the notion of 'power' rather than being tied to the institutions of politics -government, parliament etc -alone. 'Politics' in this sense would extend, for example, to legal culture and 'other forms of social regulation.

It is also important in understanding Mattei's categories to appreciate that they are not exclusive.

"...In each legal system, where one pattern is hegemonic, the other two do not disappear. They will play a larger or smaller role depending on the scope of the alternative forms of social control left by the hegemonic pattern. Occasionally non-hegemonic patterns will determine certain legal outcomes in an unofficial, cryptic way..."(1997: 14)

Thus, a "legal system never corresponds perfectly with a legal pattern" (Mattei, 1997: 15). Patterns will co-exist, perhaps in different sectors or at particular times in particular circumstances.

'Political Law' and Corruption

So, to turn back to Indonesia and corruption, Mattei's classifications would give us a strongly political legal system.³⁴ Within this pattern, we can also find vestigial

professional sectors (for example, Jakarta's commercial advisers and the leading legal NGOs) and a more significant traditional sector, adat and its subset (in Indonesia, at least) of syariah or Islamic law. Both adat and syariah leach, at different times and to different extents, into the political pattern (for example, in dispute resolution (ILSAC, 1996: 16-19); and, less commonly, into the professional pattern, for example, in marriage law (Butt, 1999) or land disputes (Fitzpatrick, 1999).³⁵

The usual reason given for the failure of a legal reform is the failure of the Indonesians to implement it, either because of incompetence (weak laws, lack of training and inadequate institutions) or bad faith (bribery, theft or political opposition). But this response misses the point. Bad faith and incompetence are not just two of many obstacles. They are very essence of the problem. The issue is their basic cause, corruption, which is inherent in the Political pattern of law, as Mattei explains it:

"... within the role of professional law many aspects of the role of political law that are labeled 'corruption', are considered a pathology, and in general are not accepted or regarded by the social actors as structural elements of the social order. ..Labeling certain bureaucracy-lubricating practices as "corruption" or certain models of leadership as "anti-democratic" does not help much in understanding the aggregate of social incentives that are at play in legal systems belonging to the role of political law. Nor does it help to arrange massive transfers of institutional capital and knowledge to those contexts without taking into consideration the institutional change that will affect the imported law, or the process of rejection that will annul the social impact most of this institutional capital." (Mattei, 1997:29-30) .

On this view, politically-oriented reforms, including, for example, introducing 'Professional' anti-corruption statutes, are doomed to failure, because the entirety of the Political pattern of the legal system militates against implementing Professionalism, in no matter how discrete or limited a form. Put bluntly, anti-corruption initiatives will constantly founder against the rock of the (corrupt) bureaucracy and (corrupt) Courts until those institutions themselves are changed.

³⁴ although Mattei appears to consider the traditional law pattern more dominant in "China and in other Asian countries" (1997:33).

³⁵ This section draws in part on Lindsey (2001b)

So, in assessing the prospects for effective legal reform on Indonesia we need to look not so much at the programmes and plethora of diagnostic studies and blueprints floating around in Jakarta, but rather at whether the government is willing to embark on major system shift- moving to new patterns of legal behaviour. Without this, new statutes and institutions are doomed. This is, of course, precisely the point made by the anti-corruption NGO leadership when they implicitly adopt Linnan's 'kebathinan' interpretation of law reform (1999: 2-3): the state cannot change itself. Only a re-engineering of national culture can force it to change; and that is the role anti-corruption NGOs see for themselves. Unfortunately, these objectives appear to be beyond the reach of President Wahid's administration (Editor's note: this was written before the change in Presidency). Are they also beyond the reach of Indonesian NGOs?

ASSESSING NGO ANTI-CORRUPTION EFFORTS

The obvious question posed by the analysis of corruption in Indonesia in Part II is whether -regardless the rhetoric of reformasi - NGOs are capable of combating what has become a systemic problem that dominates not only the state sector and private business but also the operation of governance systems generally throughout the archipelago?

Mattei's model suggests that the answer must be 'no, unless the system itself is reinvented', shifting from the Political to the Professional model. That does not seem likely in the short term. The current government has lost much of its authority, as well as practical control of state apparatus and itself faces serious allegations of corruption. Reform has been stalled by the escalating conflict between the President and the DPR. These are direct challenges to anti- corruption NGOs who must now attempt to maintain the momentum of anti-KKN reformasi without expectation of significant support by the government or the key institutions of state. They are forced to rely almost completely on advocacy and 'socialisation' to alter cultures and thus institutional behavior. On the most generous interpretation this is a project that will require decades rather than years; so measuring success will depend on the chronological window chosen.

However, even if viewed in isolation from outside factors, the NGO anti-corruption movement faces other problems in pursuing its current agenda, most of them ideological.

Kennedy's analysis (1999) of what he calls the 'anti anti-corruption' movement provides useful insights into as yet unresolved debates on governance reform within the Indonesian reformasi movement.

'Anti Anti-Corruption' and Hostility to Foreign Donors

At its simplest, Kennedy's argument is that there are substantial problems with anti- corruption thinking and policies: there is not a universal consensus in favour of the sort programs proposed by multilateral and bilateral agencies in developing countries. He argues in particular that opposition to anti-corruption:

"...often seizes on what seems a stigmatizing moral tone in the campaign that makes the effort seem unfair to the periphery /that is, the developing world]. "
(1999: 458)

This critique takes three forms. First, a common claim is that anti-corruption is Western in origin and values, and moreover the product of double standards whereby lobbying and campaign financing in Washington is acceptable, but it is corrupt when practiced in Pakistan or Indonesia. Transparency International's overt and often triumphalist embrace of the Washington Consensus politics of deregulated market economies is perhaps the most provocative example of this (Boswell, 1998).

The second is a claim that public practices in developing nations are criticized when in fact they are no different from private practices in developed West that are not labelled as corruption. Here Kennedy compares of Imelda Marcos' extravagant shoe collection with Bill Gates wealth or lifestyle choices (Kennedy: 457).

The third allegation often made is that anti-corruption is essentially about 'blaming the victim' that is, locating responsibility in local elites at national level, whereas:

"...the decisions of foreign capital and the workings of the broader world system are far more important" (1999: 458).

In a sense these are not true 'anti anti-corruption' arguments but rather 'anti Western anti- corruption' arguments. Kennedy (1999: 458) argues that they are, in any case, 'off the mark' pointing out that, after all, Marcos' fortune was obtained through

blatant plunder of a state stripped of governance, while Gates -whatever the outcome of the Microsoft litigation -is operating within a functional system, essentially within a tight regulatory framework (hence the litigation). In other words, there are instances where non-Western local elites are deserving of blame for dismantling entire systems of governance.

Whether or Kennedy's defence is convincing, the questions he raises are certainly live ones within Indonesian anti-corruption NGOs. Referring back to my earlier description of political attitudes of NGO leaders, the Western -orientation of many of the leaders of GeRAK NGOs makes them vulnerable to criticism for complicity with the West from the radical stream within the anti-corruption movement.

The Dilemma for Donors

The anti-Western character of the anti anti-corruption critique creates significant problems for foreign donors and lenders seeking to work with anti-corruption NGOs. At best, it means that even the strongest NGO supporters of anti-corruption may be reluctant to become too close to Western donors. At its worst, it results in open hostility.

The latter reaction turns on the perceived complicity of most foreign agencies in the escalation of corruption under Soeharto, because they were active in funding Indonesian government policy in that period. Many Indonesian NGO critics argue that the foreign agencies have there- fore forfeited the moral right to determine anti-corruption policy for 'Indonesia. It is hard to convince critics that because mistakes had been made in the past, this is not a good reason to halt any further programmes in the governance sector. It is also hard to convince them that cooperation between NGOs and aid agencies is essential to avoid the repetition of former difficulties.

Whatever its problems, this reply is usually more domestically palatable than the other response sometimes heard, that foreign aid agencies had no choice under Soeharto but to participate. The nature of the regime, it is argued by some donors, was such that the alternative was to withdraw completely, which would have been unacceptable. This usually generates the answer from NGOs that Indonesians were in the same position. As argued in Part II, participation in the 'black' preman state is rarely a matter of choice for ordinary citizens. The Indonesian NGO argument thus becomes that it is hypocritical for foreigners now to seek to reform corruption

(or, more particularly, to seek to punish Indonesia by demanding action on corruption as precondition for grants and loans) when foreigners themselves participated in the corruption. The fact is that as Kennedy says, " anti-corruption campaigns are ...profoundly ideological" (1999: 468) and thus political. Bilateral and multilateral agencies need to be aware of this and understand that combating corruption is seen by most Indonesians as primarily a matter for Indonesians, not foreign agencies, who should therefore tread softly in developing anti-corruption policy. If not, there can be a real risk of exacerbating divisions within the NGO community between those happy to deal with Western donor and those who more reluctant; and between groups influenced by the various different streams of thought described in Part I. This would be highly counterproductive to donor objectives, given that NGOs are now critical to the success of future anti-corruption endeavours in Indonesia.

THE FUTURE

As Esty (1998: 716) says of WTO attitudes to NGOs and Al-Jurf of the World Bank (1999), major international organizations must overcome long-standing attitudes that NGOs are irrelevant or dangerous and must engage with them. The competition they provide for governments should be seen as necessary and as "sharpening... regulatory performance" (Esty, 1998:716) of both host governments and international organizations.

This is especially true of anti-corruption initiatives in Indonesia. The government now lacks the political authority necessary to proceed with anti-corruption reforms or even implement those it has already commenced (Lindsey, 2001). State institutions are either profoundly complicit in the corruption that is sought to be eradicated -or have been effectively hobbled by elite resistance (Lindsey, 2001 b). Initiative and intellectual leadership thus remains chiefly in the NGO sector and in linked enclaves within the private professions.

In the short term, there is arguably little else that can be effectively supported and strengthened for anti-corruption purposes but the NGO sector.

However, delivering assistance in this sector is not simple, not least because of its diversity and -to return to the discussion with which this paper opened -the relative

independence of NGOs from the usual mechanisms for political and commercial control. Some principles for assistance can, however, be drawn from the analysis above.

- NGOs are valuable in their own right, as leaders of the anti-corruption reform movement. They are also valuable as conduits to government and state institutions, particularly in relation to policy development.
- GeRAK is a useful mechanism for donor interaction with anti-corruption NGOs. It can act as both as a filter, identifying lead NGOs; and as a communications channel for exchanging information. It should itself be institutionally strengthened, subject to the following
- Support for anti-corruption NGOs must be diverse. The 'one basket' syndrome should be avoided. Assistance should be directed towards a number of different sorts of NGOs to achieve a mix of both 'advocacy', research' and some 'local issue' NGOs.
- Likewise, some non-GeRAK NGOs will also be suitable for funding. Champions of anti-corruption should not be selected from just one network or group.
- Assistance should also be spread across policy development as well as 'socialisation' projects.
- Funders need to be aware of sensitivities regarding local 'ownership' of anti-corruption policy and activism. Attitudes to the West among NGOs are not uniform.
- Becoming too close to individual NGOs may be counter-productive for both the funder and recipient NGOs. Careful responses to allegations of donor 'complicity' in New Order KKN should be prepared.
- There is a strong sense of cynicism among many NGO leaders towards current national leaders and an expectation that real reform is impossible until a new generation replaces them. Donors need to be aware of these attitudes in planning and implementing anti-corruption programs and projects.
- It is very unlikely that the anti-corruption movement in Indonesia could achieve a major 'culture shift' and a reinvention of state regulatory systems in the short term. Programs should be designed with this mind, that is, they should aim at the medium to long term, avoid ambitious targets, prioritise small and diverse seeding

projects and, again, aim for diverse coverage. Expectations should not be set to high-projects must not be designed for failure.

- If real anti-corruption reform is ever achieved in Indonesia, it will certainly involve NGOs as key players

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Corruption through the Perspective of Culture and Islamic Law

By Masdar F. Mas'udi

Indonesia is the world's largest Muslim nation. In recent years, religious practices facilitated by *Masjid* (mosques), *majlis taklim* (religious academies), and *madrasah* (religious schools), as well as active proselytizing have attracted an increasing number of adherents. In fact, Indonesians account for the largest number of pilgrims to Mecca annually despite having to pay far more for the journey than pilgrims from other Muslim nations.

However, this seeming revival has had little or no effect on the behavior and moral values of Indonesian society. Violent conflicts between warring ethnic and religious groups have erupted across the country and Indonesia continues to be rated as the most corrupt country in Asia, the third most corrupt in the world. Somewhat of a paradox, corruption has become a part of the local culture despite the fact that the wide majority of Indonesians claim to be deeply religious.

TORTURE AND REWARD

Human behavior is viewed from *Syariat Islam* as a moral law composed of five actions: 1) *Wajib* is an act that brings reward to the doer and torture to those who choose not to follow, such as taking action against the perpetrators of corruption; 2) *Sunah* is an act that brings reward to the doer, but not torture to those who choose not to follow; 3) *Haram* (the opposite of *wajib*) is an act that brings torture to the doer but reward those who refrain; 4) *Makruh* (the opposite of *sunah*) is an act that brings reward to those who choose to refrain, but does not bring torture to those who participate; and 5) *Mubah* is an act that brings neither reward nor torture to those who refrain or those who participate.

From the perspective of *Syariat Islam*, morally wrong actions are associated with the threat of torture, while righteous actions are associated with reward. This has given *Syariat Islam* a sense of formalized legality, the application of which would depend on the sanctions. Usually these laws are issued in written form and legalized for enforcement by way of *ukhrawi -akhirat* (the afterlife), and *duniawi -negara* (the present). No matter how positive the essence of morality is adhered to it is still the responsibility of the individual with the help of simple logic.

NOMENCLATURE IN SYARIAT ISLAM

The money politics surrounding the country's first democratic general elections following the downfall of Soeharto's *New Order* regime in 1998 were closely linked to the Bank Bali scandal that was uncovered around the same time and involved several sitting members of the Golkar Party. Money politics is most popularly defined as the use of money to purchase political support through vote buying.

The term *money politics* does not appear in *Syariat Islam*, as it is relatively new even to the English language. The same holds true for issues such as sovereignty, government structure, power sharing, the constitution and many other important issues that have no mention in the al-Quran or in the teachings of Rasulullah. On the other hand, national monetary policy is discussed in great detail from sources of funding, to budgeting, to the rights of the government and the public in this regard. Only these monetary matters are discussed in the al-Quran as they represent an issue of great importance on the national

level. Government decisions and objectives cannot be executed without finances, and the morality of society can often be gauged by the use and abuse of its resources.

ATTACK AT DAWN

Money politics has been with us since Indonesia's first general election in 1971. In every general election since, government officials' at each level of government have abused their authority to ensure a *favorable* outcome. What stands out most is the wide use of heavy-handed intimidation methods employed by Golkar. One such method, code-named *serangan fajar* (attack at dawn) involved village officials and Golkar representatives who would visit the homes of voters at dawn to try and influence their votes with money or threats to ensure that voters would select Golkar in the ballot booth. At dawn on Election Day Golkar officials are known to have disbursed large sums of money in a last minute bid to influence witnesses and electoral officials to ensure a win for Golkar. In the weeks leading up to the general elections, government officials from the Golkar party would visit religious schools and community centers to distribute monetary and other aid in the hope that the *Kyai* (Muslim leaders) would be able to influence their followers in favor of Golkar. Many Indonesians gladly supported Golkar; some did so half- heartedly, while still others defiantly refused to.

Of course all political parties would have liked to employ the same tactics, but under the Soeharto administration Golkar was the only party with sufficient access to funding and financial backing to do so. It is important to note that money politics does not only refer to the direct disbursement of capital, but also includes the awarding of authority, facilities, or positions of power from which one can derive funding. For example, in the Governorate elections Golkar's Development Committee used to select a winner before the voting process began. Members of the Legislative Council with legitimate voting rights simply had to accept the candidate selected by the Development Committee without protest in order to retain their lucrative positions. As for the lucky candidate, he was required to compensate those who selected him.

TRADING GOD

The anatomy of money politics clearly shows that it is simply another form of bribery. In *Syariat Islam* it is called *risywah*, meaning giving a material gift, or the promise of one in order to influence the receiver in favor of the giver contrary to the law. Profits from such *risywah* are received directly by the giver or indirectly by an associate. In days gone by, bribery mainly involved court officials. Today, bribery has moved from the courthouse and into the lives of ordinary people who are directly affected by the decisions of those in power -some good, some bad. Corruption has crept into the political arena where bribes are paid to influence political decisions and actions that translate into economic gain. It is understood that judges must be of an open mind and their judgment not biased or clouded by external influences. This principle applies not only to members of the judiciary but also to all those in positions of authority. The question is how can the presence of such influences be detected?

Islam teaches that God created man solely for the purpose of service to Him, *Wa maa khalaqtu al-jinn wa al-ins ilia li ya'budun -Tidak diciptakan jin dan manusia kecuali untuk mengabdikan kepada Allah* (Al-Dzaariyat: 56), which defines service to God as doing good to all in order to receive His love and wisdom. Other passages state that as a creature blessed with a conscience, man is the *khafilat*, or representative of God on earth (Al-Baqarah: 30). As servants and representatives of God all our decisions have consequences of which we must answer to God and understand as a form of sacrifice. In the language of Islamic theology, God is Himself the most righteous and fair, the supreme *al-Haq* (truth) and *al-Adl* (justice). Character is therefore measured by a person's will and ability to make decisions in the interest of justice and fairness independent of the opinions and criticism of others.

Bribery is viewed as an exchange of God, who is truth and justice, for material gain and is an action cursed by God. Man should also shun corruption on grounds of morality. If a judge accepts a bribe then someone may lose that which is rightfully his. If someone in authority is bribed, then another person may lose an opportunity that is rightfully his. Bribes accepted by those in power may result in a government post being awarded to someone undeserving of it. In the end, the losses caused by bribery impact not only the individuals party to it but also society as a whole.

In Islam, public interest has always been associated with divine will (*haq Allah* or *sabil Allah*). Bribery is clearly contrary to the principles of truth and justice and the

common good, and as such is condemned by God. Rasulullah states that God curses those who bribe (*al-raasyz*) and those who accept bribes (*al-murtasyz*) alike, *La 'ana allah al-raasyi wa al-murtasyi* (H.R. Bukhari-Muslim), reaffirming that bribery is considered as disgraceful and contrary to religious precepts and morality. Being as money politics is synonymous with bribery, those who engage in the practice can hope for nothing less than divine punishment, while for those who shut) or strive to prevent the practice and all other forms of corruption, God gives a promise of reward.

Throughout Islamic texts, especially in the *sufi* doctrine, it is said that all crimes in life are derived from three sources, namely poverty, ignorance and greed.

POVERTY

Poverty as an excuse for the acceptance of a bribe was addressed by a certain *Nabi* (Prophet), who preached that not only does poverty tempt people to commit crimes but also pushes them to renounce God and His truth. *Kaada allaqr an yakuuna kufra* translates to, *most of the time the desire to commit a crime is self-driven*. Thus it is not hard to understand why people living in poverty are without hesitation willing to sell their vote for material comfort.

In order to eliminate such extreme poverty, the government must implement development programs aimed at improving the welfare of society as a whole. The government is first obliged to use any and all means possible to establish an economic system that benefits those less fortunate. Section 34 of the 1945 Declaration of Basic Law incorporated the above obligation. To serve this end, Islam allows for the collection of taxes from the wealthy not for the enrichment of government officials, but to serve the needs of the people, the poor in particular (*At -Taubah* 60).

It is wishful thinking to believe that the abstracts of religion, morality, and courtesy alone can ensure the welfare of a society. The al-Quran states that devoutness is not measured by how frequently one worships at a Mosque but rather by his works. Sufyan al-Tsauri, a well-known *Sufi* is quoted as saying, *Barang siapa yang punya roti, beribadahlah, sementara yang belum, carilah Man kaana lahu burrun tal yata 'abbad, wa man lam yakun tal yathlub, or, those who have bread give thanks and pray, those who have none go and search*

IGNORANCE

Ignorance as an excuse for wrong doing contradicts religious doctrine, which forms the foundation of a given society. There is strong indication that many Indonesians, rich and poor alike do not equate immorality with corruption and money politics. Many do not see the wrong in receiving a gift, and as a sign of gratitude casting their vote in favor of the benefactor, after all what is one vote? What the academe condemn as money politics, the public sees as mutual assistance. Put simplistically, many view money politics and corruption as an everyday transaction where no one is at fault and no one can be blamed.

In Indonesian and especially Javanese culture, there are five acts deemed as criminal and worthy of condemnation. They are the *Mo Limo*, or five m's and consist of *main* (gambling), *maling* (stealing), *madon* (adultery), *madat* (the consumption of drugs and alcohol), and finally *mateni* (murder). Crime is defined as an act that causes harm or loss either material or immaterial to oneself or others. It is naive to think that money politics does not cause loss or harm, yet such transactions are carried out privately away from the prying eyes of the public, which may explain the low level of awareness in Indonesian society of the repercussions of corruption.

This cultural mindset is especially prevalent with Muslims, who make up the majority of the Indonesian populace. Moreover, an understanding of money politics within the framework of *Syariat Islam* is, according to Fiqh, yet to be reached. What is partially understood is bribery, however the bribery condemned by God in the al-Quran is limited to bribery involving judges. Those who follow only the letter of the law do not consider money politics as a sin because the term itself is not mentioned in any religious texts. This ignorance has resulted in tolerance of the criminal acts of bribery, corruption and money politics.

A cultural critique must be made to reassess the ethics formally taught within the framework of Islamic doctrine if we hope to avoid such moral distortions resulting from ignorance in the future. This especially applies to orthodox Muslim communities; they must be encouraged to reevaluate their dogmatic view of Islam. There is a need to reach a new understanding that places greater emphasis on the principles conveyed throughout religious texts as opposed to word-for-word literal applications. In fact recently a group of Fiqh's adherents admitted that such texts are limited in their treatment of the ever-expanding spectrum of modern social behavior.

Although the al-Quran and other holy texts set forth the basic principles of *makruf* (good) and *mungkar* (evil), modern man should be able to choose between the two through logic in addition to the teachings of Islam.

GREED

Different from the scourge of poverty that is prevalent of course among the lower classes, greed (*thama*) is particularly widespread in the middle to upper classes. It is pure greed that motivates a person or political party long since in power to expand their power base with vote buying; or a wealthy member of the judiciary to extort his clients; or provincial and national government legislators to sell their votes to power brokers rather than being true to their principles.

There are two methods that must be simultaneously employed in addressing the issue of greed amongst government officials. 1) Law Enforcement: A campaign must be launched to educate the public concerning the evils of money politics followed by widespread investigations, arrests and a legal prosecution process. Any actions that are immoral or contravene the principles of truth and justice, and that degrade public morality causing losses to all must be severely dealt with. 2) Religious Revival: The power of religion must be harnessed in the fight against corruption. The public must be reminded of its responsibility to each other and to God. Religious leaders must clearly convey the teachings of Islam and their modern application condemning corruption in all its forms in order to do away with the loopholes in the original text. Not all wrongdoing can be proven and prosecuted by the law and as such it is the purpose of religion to instill in its adherents a deeper knowledge of God who knows all the doings of man.

THE MISAPPROPRIATION OF NATURAL RESOURCES

Corruption requires funding and protection. Money politics generally involves the bribery of a group of people in exchange for their political support. If the bribe money originates from a public enterprise for example, then compensation would come in the form of legislation in favor of the said enterprise in the event that the party involved wins the election. The power to define national economic and political policy lies with the

people. When bribes are made using government funds the nation is robbed. No political entity has the right to utilize national resources at whim to its own benefit. The resources of the country are intended to serve the interests of its citizens without exception or discrimination. The practice of money politics has flourished on the misuse of national resources. How does Islam view such abuse of power?

Islam is *al-dien* and *al-dawlah*, which means that aside from providing mankind the opportunity for a relationship with God (*al-dien*) it is also empowered to dictate the basis of the relationship between individuals and the state (*al-dawlah*). The quality and legitimacy of a government from a religious point of view can be determined by 1) its ability to eliminate any and all misuse of national resources; and 2) the fairness with which it redistributes the nation's wealth for public welfare. In any government, credibility and public acceptance are paramount and can be achieved by adherence to the above.

It is the duty of religious leaders and institutions to explicate the issue of national resources -What is the source? Who is the rightful owner? For whom are they intended? What is the responsibility of the government in this matter? What are the rights of the people? The teachings of *zakat* as applied by the governments of Rasulullah and Klulafa Rasyidin in Medina, set forth the principles of *syariat* with regard to national resources as follow:

GOOD GOVERNANCE

As the emissary of God responsible for the welfare of the people, the government is required by law to maintain peace, to protect the safety of its people, and to ensure justice for all showing no respect to color, creed, or religion. *Inna allah ya-murukum antu-addu al-amanaat ilaa ahliha wa idza hakamtum baina al-naas an tahukumuu bi al-adl...* (God asks those who are worthy to rule with justice...) [Al-Nisa: 59]. Kaidah Fiqh also said, *TashamIf ai-imam 'ala al-raiyyah manuth bi al-mashlahah* (All decisions made by a leader concerning his people must be made in their interest) [Qawaid Al-Fiqh].

Syariat Islam stipulates five principle rights of the individual: 1) Protection of life and the safety of the body and the soul (*hifdzal-nafs*); 2) The right to believe and practice religion (*hifdz al-dien*); 3) The protection of mental development and the use of common sense (*hifdz al-aql*); 4) The right to protect legally obtained wealth (*hifdz al-maal*) and 5)

Respect and the right to bear children (*hifdz al-'rdl wa al-nasl*) [Al-Ghazali, Al-Mustasyfa, juz II, halo 14).

JUSTICE FOR THE WEAK

To ensure good governance, the government must take into special account the rights of minorities and protect them against exploitation by stronger groups. A country that does not commit to the protection of the weak is guilty of arrogance. *Ara-aita al-ladiy yukadzzib bi al-diin, fa dzaalika al-ladiyyadu 'ul yatiim, wa laa yakuddlu 'ala tha 'aam al-miskiin ... (Do you know who sins against God? Those who do not care for the orphans and who do not provide sustenance for the poor...)* (al-Maa'un: 1-3). Rasulullah preached, *La yuqaddis allah ummat la yu'tha dla'ijilha haqqah min syadiidiha hgaira muta'ta. (God will not protect a society where the weak are unable to defend their basic rights against the strong, with the exception of the use of force and aggression)* [HR. Al- Thabaraniy].

The role of guardian of the weak was clearly stated by Khalifa Rasul in his succession speech, *Alaa inn al-qawiyy fiikum huwa al-dla'iif 'indiy hatta aakhudz minhu al-haqq, wa al-dla'iiffiikum 'indiy huwa al-qawiyy hatta aakhudz minhu al-haqq. (The weak as I see them are strong, for I will return their rights to them; on the other hand the strong as I see them are weak as I will dare to take their rights [rights belonging to others especially the weak] from them).*

NATIONAL RESOURCES BELONG TO GOD

Taxes in Islam are equal to the institution of *zakat* -collection is made in the name of God. A country's right to collect taxes hinges on God's command to use the proceeds of such taxes to improve the welfare of the poor. God has given the government the right to tax the rich as the primary source of national income. Under the technical terms of *syariat*, taxes collected from Muslims are called *zakat*, while those collected from non-Muslims are called *jizyah* *Akim ya'lamuu ann allah huwa yaqbabal al-taubat 'an ibaadih wa ya 'khuidz al- shadaqah. (Do you not know that the only one deserving of offerings is God? He is also the only one with the right to collect taxes)* [at- Taubat: 104].

As God does not collect taxes himself, He has appointed the government as his proxy. *Khudz min amwaalihim shadaqah tuthahhirnhum wa tuzakkiihim biha. (Tax their*

wealth to cleanse and develop their lives) [al-taubat: 103]. Tax collection also has social logic as stated in the al-Quran, *kaila yakuuna dulatah bain al-aghniyaa minkum* (so that God's graces are not confined only to the rich) [al-Hasyr: 7]. Tax revenue belongs to God and is a gift from him to be distributed for the welfare of the people without discrimination. Every cent must be accounted for before God (in the afterlife) and the people (in the present). Rasulullah preached to the authorities, *Maa min 'abd yastar'iih allah ra 'iyyah yamuut yauma yamuut wa huwa ghasy li ra'iiyatih ilia harram allah 'alaih al-jannah* (No man is given the right to lead the people and die in lies unless he is cursed by the heavens) [HR. Muslim; 203].

Once again it is difficult to understand the *harfiah* text written half a millennium ago. If *zakat* were interpreted as something other than taxes, then it would not be a sin to steal from the government's coffers. If *zakat* is tax, still it constitutes only 12 percent of the national budget. Does this mean that those in power can steal the remaining 88 percent?

EIGHT USES FOR NATURAL RESOURCES

Islam views tax revenue as a gift from God to the government to be used according to His will, namely the welfare of the people with priority given to the poor. *Innama al-shadaqaat li al-fuqaraa wa al-masaakin wa al-'amilin 'alaih wa al-mu'allafah quluubuhum wa fi al-riqaab wa al-gharimin wa fi sabilillah wa aibn sabiil; faridlah min allah wa allah 'aliim hakiim*. (All forms of charity, even those determined and collected by the government, must serve the interests of the lost, the poor, public servants, the sick, the oppressed, debtors, the public and the law, and street children for this is the will of God who knows all and is righteous) [at-Tau bat: 60].

Rasulullah also preached to Mu'adz bin Jabal as the Governor of Prophets in Yaman, *A'limhum ann allah iftaradla 'alaih Shadaqat tu-khadz min aghniyaa-ihim fa turadd li fuqaraa- ihim* (Tell the people that God has commanded the collection of taxes from the rich and that the money be given to the poor) [H.R. Muslim]. However the concept of the eight *asnaf* (uses) must be redefined according to the condition of the people, which is continually changing. Fiqh defilled the eight *asnafin* the *Era of The Prophets* fourteen centuries ago, but his definition is no longer fully applicable given the complexities of modern society.

The public through its representatives in the national and regional legislatures

must determine the national budget according to the eight *asnaf* mentioned above within the context of the culture of modern society.

Fuqara are those whose earnings are insufficient for survival. This group must be given priority in government welfare programs (e.g. social welfare and healthcare) in order to allow them an improved standard of living.

Masakin earn slightly more than the *Fuqara* but still live in poverty. Welfare programs for this group could be similar to the *Fuqara*, consummative and productive in nature.

Amilin, or the needs of the Department of Finance and its employees as public servants.

Mu' allaf Qulubuhum -the sick that in a national context includes convicts, drug abusers, and other isolated communities.

Riqab refers to efforts to free the oppressed.

Gharimin are debtors such as farmers who default as a result of unforeseen events, or businessmen who go bankrupt due to factors beyond their control.

Sabilillah broadly defines public welfare and includes tangibles like roads, public buildings and public facilities, and intangibles such as defense and national security, public order, law, scientific and cultural development, and any other public interests.

Ibnu Sabil refers to street children made homeless by natural disasters or corrupt politics.

THE NEED FOR SOCIAL CONTROL

People *from* every walk of life at every social level need control. Such social control must be exercised equally in small villages as in large cities to ensure that national resources are not misappropriated for personal gain or other purposes that might bring harm or cause losses to individuals or the state.

Rasulullah declared, *Man ra-aa munkar fal yughayyirhu bi yadih, wa in lam yastathi 'fa bi lisaanih, wa in lam yastathi' fa bi qalbih, fa dzaalika adl' af al-imaan.* (Those who witness wrongdoing should take action against it if words or the heart are insufficient, the latter being the weakest manifestation of faith) [H.R. Bukhar-Muslim].

The writings of *Adab al-Dunya wa al-Dien al-Mawarariy state, la tazzaal ummatiy fi khair tahta yad allah wa fii kanfih maa lam yumaal qurraa-uha umaraa-aha, wa lam yuzakk shulaha-uha fujjaraha, wa lamyumaari akhyaaraha asyraaraha, . fa idzaafa'alu dzaalik rafa-'a (anhum yadah tsumma sallath (alaihim jabaabirata- fasaa-a hum suu al-'adzaab wa dlarabahum bi al-faaqahfa al-fagr wa mala-a qulubahum ru 'bu. (All worshipers are under the guidance and protection of God so long as their leaders do not side with the authorities, for the righteous should not justify the corrupt, and the good should not agree with cheaters, for if they do then the hand of God will be removed and they will be filled with unp.zeeasantness followed by torture, plague and hunger, and their hearts will be filled with fear).*

The above is a moral message commanded by Islam concerning *zakat*, and is a commandment that is easily broken if not adhered to by the faithful. This should instill a sense of responsibility to lead a life that protects the rights of all people, especially the weak, without discrimination, for herein lies the true mission of Islam if one wishes to spread God's grace.

In conclusion, we are all aware of the complexities of human life and mankind's actions. There is no single theory that can comprehensively explain the corruption that has taken hold on society, neither is there one single formula to eliminate it. Different paths must be taken with the understanding that we are all responsible to fulfill each other's needs. What is paramount is the will to try. *Walladziinajahadufiina lanahdiyannahum subulana; wa annalloha la ma'al muhsinin. (Only to those who are true will we show the way, and God will always be with those who do good) (Al-Ankabut: 69).*

An Empire of Kleptocracy

By *Ines Handayani, Hamid Basyaib,
Daud sinjal, Nono Makarim*

CORRUPTION IS RAMPANT IN INDONESIA, BUT WHERE ARE THE CORRUPTORS?

Corruption permeates every aspect of life, but finding and nailing down a corruptor has proven an almost impossible task. This is an empire of kleptocracy without corruptors, a theater of corruption without actors.

Innumerable cases of corruption have been exposed by the media. Seminars have been organized, talk shows aired on television and experts have commented on the issue of corruption. Not to mention special committees, commissions and watchdogs formed to look into the cases and private auditors hired at great cost to examine records.

But few corruptors have been clearly identified. Most records have been lost, concealed, forgotten, overtaken by new cases or simply shelved by order of the judiciary. One or two unlucky corruptors were brought to the court, labeled 'suspects' and then, feigning illness or unconsciousness, freed of the charges.

One of the cases that ended with the suspects being sentenced to a term of imprisonment was the scandalous land swap between the State Logistics Agency (Bulog) and the wholesale firm Goro. Even then, one of those convicted evaded the jail term by going into hiding-and it is costing a lot in political, social, and economic terms to put him behind bars. Many who should, by simple logic, be themselves suspects have been brought to the court only as witnesses.

It's a road without end, a tunnel that seems to get increasingly longer and darker and become more suffocating as one goes deeper inside.

The banking cases are a notorious example. It began in the 1990s, when the conglomerates vied with one another to set up banks, raising billions of rupiah in public funds that they pumped into hundreds of businesses within their own groups of companies. Some built shopping malls, factories and all sorts of ventures in and outside the country. Others not only built residential blocks but whole new towns. Fantastic, yet it all took place in Indonesia.

Stranger still, when the banks collapsed, they were not liquidated as 16 others before them, but were showered by the Central Bank with even more funds, in the form of Bank Indonesia Liquidity Support (BLBI). All 48 recipient banks misused the money, which amounted to some Rp 85 trillion.

They didn't use the funds to put their banks back on a sound footing. Rather they financed their own projects that had been delayed because of the monetary crisis. Some bought ranches, luxury houses and investment portfolios overseas. Nobody has been able or has the moral courage to control the unruly debtors in the jungles of the soft state called Indonesia.

The conglomerates laughed. The Republic of Indonesia is managed by stem-looking and seemingly respected officials that have been easily fooled by a gang of peddlers. Even the sums they gave in bribes to the officials were cheap in comparison to the amounts they stole from the government.

Investigations into the cases are proceeding at a snail's pace. A long debate is continuing between the State Audit Agency (BPK) and Bank Indonesia over the findings by

auditors of up to Rp 138.4 trillion or 97 percent of the total BLBI money having been misused by the conglomerates.

Is there anyone within Bank Indonesia who feels guilty? Apparently not. They speak in chorus, blaming it all on intervention by former president Suharto. But they were the people who had the authority to sign the papers, release the money and control its distribution. What they do not have is the conscience and dignity of government officials.

The audit findings by BPK confirming the misuse of BLBI funds clearly detail the losses suffered by the state. Before examining the records, the agency first determined the specific object of the investigation. All transactions and accounts were examined according to generally accepted audit principles.

In the case of BLBI funds, BPK started with a simple question: Had the funds been used in accordance with the terms of the contract? The answer: No. Subsequent findings revealed many facts: the background, the process and control of the release of the funds and the people involved in the process, however small their roles.

Data were collected on hundreds of officials of Bank Indonesia believed to be involved in the scandal. The names of 150 bankers and 48 recipient banks were mentioned. But the results of the investigation remain unclear.

Bank Bali is a case in point. Two suspects on trial in connection with the scandal were freed of the charges. Officials, then with the authority to make the decisions, were untouched by the law. Others who shared responsibility for the release of the funds continue to enjoy freedom.

In the case of Bank Bali, the owners paid out Rp546 billion to private factoring firm PT. Era Giat Prima to recoup inter-bank claims on closed down banks worth Rp. 904.6 billion. Since the claims were guaranteed by the government, it was unnecessary to use a third party to collect them. Allegations were made that PT Era's fee went into the campaign coffers of the Golkar Party .

Jamsostek is another case that was closed because prosecutors decided it had not caused any loss to the state. The money, amounting to Rp7.1 billion, released by then manpower minister Abdul Latief to pay for the cost of a labor law then under review by the House of Representatives (DPR), has since been returned to the workers' fund.

In this case, all elementary logic on criminal law was completely ignored. How could money belonging to a workers' fund be released, used by a minister and returned without question? Even a first-year law student would know that a criminal case such as Jamsostek should not be shelved just because the money was returned.

Then there is the case involving the Army Strategic Reserves Command (Kostrad) Foundation, from which some Rp 135 billion in funds belonging to members was misused by its officials. The Inspectorate General of the Army did not look into the case. It busied itself issuing denials. One or two people were subject to "administrative action." Nothing more was heard.

THE LUCKY ONES

Nurdin Halid prostrated himself in prayer on the floor of the Bantaeng District Court, South Sulawesi, when the council of judges freed him of charges of misusing Rp115.7 billion in savings funds deposited by members of a clove farmers' cooperative of which he was director. The prosecution, unable to come up with any proof, let him off. Thirty-five witnesses retracted statements made previously to the police. One of the key witnesses, a bank official privy to the transaction, was not present. Witnesses produced by BPK were rejected because they were not "competent", having learned the intricacies of clove trading only a week before the court session.

Beddu Amang was charged with misusing his authority in appointing PT Goro Bathara Sakti in a land-building swap with Bulog. The building for Goro was completed by Bulog, but Goro failed to provide the land in exchange. Goro then borrowed Rp 20 billion from banks using a guarantee from Bulog.

According to middleman Hokianto, the 150- hectare plot of land was duly acquired by Goro for Rp16.25 billion. The balance, Rp3.75 billion of the total paid to Bulog, was divided among officials of the agency. The case, which caused a loss of Rp 95 billion to the state, was closed, only to be reopened later by the court, which found Goro directors Ricardo Gelael and Tommy Suharto guilty of fraud. Each man was sentenced to 18 months in jail. The case against Bulog director Beddu Amang was closed because the prosecution

failed to produce a letter from the President permitting his trial. Amang is a member of the People's Consultative Assembly (MPR).

These are the recent cases. Previous ones, such as those relating to the Freeport contract of work, which degenerated into a libel case, and corruption charges against former president Suharto, have been closed and forgotten.

ICEBERG

All these cases are only the tip of the iceberg exposed by the media because they occurred at the center of power. What about the hundred the cases in the provinces that have been revealed by BPK but not brought before the courts?

So the empire of kleptocracy in Indonesia reigns on and Indonesians continue to serve and respect the kleptocrats in the garb of state administrators, unaware that the kleptocrat -bureaucrats, while shaking hands with their right hand, use their left hand to steal from the pockets of the people. Slowly but surely, the people's pockets are emptied by all sorts of taxes and charges, together with increased electricity, water, telephone, education and medicine costs, while the quality of public services continues to drop.

(Ines Handayani and Hamid Basyaib)

BEWARE GOVERNMENTS BEARING GIFTS

A government that hastily creates anticorruption laws and commissions is one to be cautious of.

If the government suddenly and efficiently creates an anticorruption body, it is something to be wary of. Forming groups with the intention to examine the wealth of bureaucrats, ombudsmen, supervisory committees, and 1,001 other such groups without undergoing comprehensive actions is clearly only aiming to temporarily satisfy the demands of the public.

The most explicit example is one that occurred in Kenya. In August 1997, the IMF postponed all loans to Kenya's government because of rampant, unchecked corruption

throughout the nation. Two months later, due to great public pressure, the president made a statement condemning corruption.

In no time at all the attorney general released the following communique: *“This morning the government formed an anti corruption team to investigate the actions of the anti corruption commission, which examines the anti corruption task force, which has been appointed to investigate the actions of an ad hoc government commission which was designated at the start of the year in order to investigate rumors of corruption in the high-level circles of corrupt government officials”*.

To avoid the obligation of eliminating corruption, the Kenyan government formed no less than four anticorruption bodies in one year.

ANTI -BUSINESS

A large barrier in the anticorruption battle is the array of blurriness, prejudices and misunderstandings about what are the principal factors in an anticorruption strategy. If the initiators of a successful earlier campaign against corruption move mechanically forward into the future, they will surely face a barrage of prejudices which will make their job more difficult.

This pile of prejudices will be taken advantage of by a corrupt government, to create the appearance of earnestly trying to eradicate corruption. The purpose of this is to assuage the anticorruption movement by extending it temporary relief.

One prejudice is against businessmen. They are perceived as the cause of rampant corruption across all economic sectors. A wrong move will mean a “warm welcome” from legal institutions: they quickly rush to investigate a businessman accused of bribing officials, all the while reluctant to act on the official himself.

This mistake prevents the cooperation that should exist between anticorruption activists and the business world.

TASK FORCES AND THE CORRUPT

Focusing efforts on the pursuit of perpetrators of corruption, while neglecting the search for the root cause, can create negative results for the anticorruption movement. If this mistake

were made in a country with corrupt courts and law enforcers, it would prove fatal. A government overwhelmed with the demands of the anticorruption movement could easily forsake a few of the guilty parties.

Tainted law enforcement bodies and legal systems usually release them. The government feigns sincerity. Anticorruption activists gain temporary satisfaction-but the legal system frees those accused, the public despairs, and finally becomes apathetic to the whole issue.

Obsession with one concept is usually accompanied by neglect for a number of other ideas that are essential for the success of this concept. Forming watchdog groups like the Anticorruption Committee, Ombudsmen, KPKPN (Audit Commission on State Officials' Wealth), is detrimental to the overall effort that must be carried out.

ICAC in Hong Kong succeeds because the government attacks corruption from four sides at once: institutional reform of bureaucracy, action against perpetrators, economic reform to restrict government sectors, and anticorruption campaigning. To ensure ICAC's righteousness, the Hong Kong government appointed a large number of expert British investigators and initiators as members of the watchdog group.

JUST DO IT

The time has come to end extravagant speeches, seminars, and declarations. Now is the time to upgrade the anticorruption movement to the level of action. The economy must be reformed with deregulation, privatization, and decreasing the role and authority of the government in the world of economy and business.

Then, there needs to be a thorough examination of the worst effects of corruption. Don't shoot randomly. Choose an anticorruption strategy that is more likely to succeed in the short as well as the long term: protecting state assets or chasing after the criminals?

Where are corruption's weak spots? Don't copy the strategy of another country, where the challenge and conditions could be different. An anticorruption program cannot be made to order, but must be meticulously formed according to the unique needs of each nation.

(From Corruption and Anti-Corruption Strategies: Issues and Case Studies from Developing Countries by Alan Doig & Stephen Riley; and Revisiting Anti-Corruption Strategies: Tilt

towards Incentive-Driven Approaches by Daniel Kaufmann, working paper at the Conference on Corruption in Developing Countries, Paris, 24-25 October 1997).

THE TRICK OF THE ANTI-CORRUPTION TALE

In the first half of the New Order era many anticorruption teams were formed. The result? An emphatic 'zilch'.

"There need be no more doubt, I will lead the fight to eradicate corruption," President Suharto pledged in a speech to the House of Representatives-Mutual Help (DPR-GR! August 17, 1970. The general, who had been president for just two years, stressed that corruption would not be tolerated. It cost the country money, which meant that it cost the people money. It endangered development, was against the law, was immoral and unjust.

On 2 December 1967, six months after inauguration as acting president by the Interim People's Consultative Assembly (MPRS), Suharto formed the Corruption Eradication Team (TPK) to help the government exterminate corruption *"as quickly and in as orderly a way as possible"*. The TPK was headed by Attorney General (AG) Lt. Gen. Soegih Arto.

The mass media, which enjoyed freedom at the start of the New Order reign, eagerly reported suspected instances of corruption within the Indonesian Military (then known as ABRI). People were already making a fuss about "generals immune from prosecution." Col. Sarwo Edhie Wibowo, commander of RPKAD (Army special forces, now 'Kopassus'!, who was very close to Suharto, advised the president to take action against four generals for the good name of ABRI. Sarwo Edhie was made commander of a military area command outside Java.

Big scandals involving generals who were close friends of Suharto were the Coopa (fertilizer for a government development program) and Pertamina cases. In February 1970 a meeting of ABRI's leadership summoned Pertamina managing director Lt. Gen. Ibnu Sutowo to explain himself. Yet the Coopa and Pertamina cases never even reached the courts.

THE ATTORNEY GENERAL INSULTED

One day in August 1970, AG Soegih Arto angrily left a meeting with a youth group who wanted to award him the title of 'National Hero' and winner of the 'Gold Star of Law Enforcement'.

He was ridiculed as the head of the TPK who had, "shown extraordinary courage in dragging nine perpetrators of corruption before the courts."

The nine had been proven guilty of embezzling between Rp 150 and Rp 35,000 in state funds, whereas Arief Husni-the man behind the Coopa case that had damaged the national food self-sufficiency program-had been freed by the attorney general just two months earlier. On August 19, 1970 KAMI daily newspaper printed an editorial titled '9 Corruptors, 5 cases and 2 principles'. *"As a response to the wave of anti-corruption feeling,"* it read, *"our champions at the TPK have arrested, beaten and killed no less than 9 corruptors."* It went on to give details: Moh. Jusuf, 46, between 1967 and 1968 obtained Rp 30,000 by corruption-equivalent to 60kg of rice that could be eaten by hungry children; Alexander Johannes, 67, obtained Rp 30,00 -the cost of 21 cartons of the 'State Express' cigarettes favored by government officials. Raden Matheus Sumardi, 31, "embezzled and swindled" Rp 150-the same as buying five portions of gado-gado (local salad dish-Ed.) on the street. Abdul kadir, 41, corruptly obtained Rp 1,500-the price of a shirt for the Idul Fitri holiday; Sudjadi, 33, pocketed Rp700-the price of nine packs of 'Davros' cigarettes; Djajadi, 36, obtained Rp 35,000-enough to buy two pairs of 'Persol' glasses as worn by government functionaries.

Three more corruptors: Sadeli, 31, obtained Rp 500-equivalent to 10kg of rice; Raden Harry Suhamo, 38, Rp 24,000-as much as 12 'Philips' tape recorders for the cars of government officials' children to listen to romantic music while on a date; Zainul Arifin, 42, a typist, obtained Rp 1,500-enough for 50 liters of premium gasoline for the Mercedes of a government official to go to Puncak for the weekend.

KAMI then passed on a message to the criminals: *"If you hang, then two fundamental principles of this country will hang with you: Social justice and Humanity. It is certainly difficult for the weak to live in this cruel country."*

LAWS AND OPERATIONS

In Sukarno's time, the National Army spearheaded the fight against corruption as the country was under a state of war emergency. There were no anti-corruption laws, except for sanctions in the Criminal Code taken from Dutch colonial laws.

The movement to eradicate corruption was established via a regulation from the Army chief of staff in his capacity as the military authority in “those areas under Army control.” In 1958 this became nationwide in scope with the Central War Authority regulation No. 013 after the chief of staff became the “Central War Authority”. It covered investigation, prosecution, interrogation of corruption suspects and control of assets.

In 1960 a government regulation to replace the War Authority regulation appeared. This was subsequently upgraded to become Law No. 24/1960. Meanwhile the military launched Operation Budhi to probe incompetent ABRI personnel. At that time Dutch companies had been seized and nationalized and were being run by Indonesian Military officers. Among others, Operation Budhi investigated Maj. Suhardiman. But he did not face charges.

At the end of 1967, Suharto established TPK based on Law No. 24/1960. The members of this team kept their other jobs and it was their industrious part-time work that led to those nine “corrupters” being hauled into court.

In January 1974, President Suharto set up Commission 4 to give an “objective assessment” of the steps the government had taken, and to “give consideration to more effective ways of eradicating corruption”. Former president Hatta was made an adviser to the committee. Its members were former prime minister Wilopo, I.J. Kasirno, Prof. Johannes and Anwar Tjokroaminoto. State Intelligence Coordinating Board head Maj. Gen. Sutopo Yuwono became secretary.

SISW ADJI AND BUDIADJI

On the streets, students gave the anticorruption campaign momentum by demonstrating and by forming the Anti-Corruption Committee (KAK) and Students Accuse (MM), and by organizing meetings where people spoke about corruption.

In the early 1970's, Suharto was still prepared to receive delegations of students and other groups both at the presidential office and at his Jl. Cendana home. March 1973 saw the birth of Law No. 3/1971 on Steps to Eradicate the Crime of Corruption. This law remained in force for 28 years, until the appearance of Law No. 31/1999 in the fleeting Habibie era.

In Suharto's time, the vice president was given a watching brief while the president was assisted by three development inspector-generals. Although a state body (the Supreme

Audit Agency (BKP)) was already in existence, the government still felt the need to set up the Development Finance Controller (BPKP) and the State Minister's Office for the Supervision of Development & Environment (PPLH).

And although there were already laws and bodies to uphold the law that should have been functioning, the government deemed it necessary to mobilize the Operational Command for the Restoration of Security & Order (Kopkamtib) and Laksusda (the Kopkamtib regional bodies in the area military commands) to implement 'Operation Order' to combat corruption, manipulation and the demanding of illegal payments. From its "birth" in September 1977, this operation worked with the Kopkamtib Intelligence Taskforce. An Operation Order inspector was posted in every province and departmental inspectorate general to "dynamize" the surveillance.

In 1976, Operation 902 was launched against smuggling aimed at customs and export-import companies, run by the AG. However, many prosecutions ran aground in the courts and the expression "justice mafia" was first uttered.

Despite all these efforts, only one corrupt senior government employee was jailed during the New Order regime. Deputy Head of National Police Lt. Gen. (Pol.) Siswadji was sentenced to eight years in jail in 1977. The heaviest punishment handed down to any government official was the life imprisonment meted out to chief of the East Kalimantan Logistics Depot, Budiadji. The president later granted clemency, reducing this to 20 years. The "rice warlord" embezzled Rp7.6 billion of state funds-a staggering amount at the time. However, the vast majority sentenced were only minor-league officials.

PROMISES AND REALITY

Leaving aside what was actually achieved and the way(s) in which those close to Suharto escaped justice-let alone the Newsweek statement that Suharto's government was corrupt from day one-there was a systematic effort to ensure that the New Order government was perceived as clean and authoritative. This was particularly true during the first four cabinets (1968- 1988). We can still read news reports about discoveries of corruption and the subsequent handling of the cases.

Apart from the AG's annual reports, the Operation Order's periodic reports and speeches to made to government departments at ceremonies held on the 17th of every month, the vice president's office made available PO Box 5000 to receive peoples' complaints.

From the period of Development Cabinet III (1978-1983) all ministers and senior government staff had to submit a real estate tax report to the president. The next level of employees had to send their reports to the minister. At the beginning of the fourth period of his government in 1983, Suharto, in his National Address, said that he *"would not take any half measures in eradicating corruption"*.

Although Operation Order had saved Rp 200 billion in state funds, took action against 6,000 people from 1977 to 1981 and sent reports to the president on the curbing of corruption in government departments and bureaus at least every three months, BPK head Umar Wirahadikusumah still said: "not a single department is free of corruption." A month later, Vice President Adam Malik added: "corruption is already an epidemic."

DPR Chairman Daryatmo was unsure that the government was capable of completely wiping out corruption. *"I want to know if there is any country in the world that can totally eradicate corruption. If there is I'll hire the head of state as president here,"* he said emphatically. That was 1979.

It's now 2001 and it is a given that we have not found the person whom Daryatmo sought to hire.

(Daud Sinjal)

CHASE A THIEF, SNARE YOURSELF

Corruption cases uncovered abound, the guilty parties caught number but a few, and those who land injail are rare. The anticorruption drive is facing a dilemma. Stopping is out of the question. Going on makes people more and more frustrated, causing them to take the law into their own hands. It is like a bus that stalls, its fuel line apparently clogged. Rev the throttle, and you'll hear the engine noisily sputtering amid explosions from the muffler. The vehicle stays put.

Chase the Thief

We have become accustomed to seeing the uncovering of corruption crimes, condemnation of the perpetrators, and calls for police investigations. In most cases the calls have gone unheeded. Occasionally an investigation has been launched, and the odd case has even reached court. But usually the defendant gets off.

People know our law enforcement system is seriously defective. There is no point in continuing to hope that a defective system will suddenly function once more. Apparently our "chase the thief" practice has not been so successful.

Comparative studies between different nations have demonstrated that an anticorruption strategy that chases the corrupt seldom bears fruit. There was a time when anticorruption drives calling for naming those guilty of corruption were successful in India, Bangladesh and Pakistan. Officials charged with corruption were interrogated, tried and jailed. This, though, usually happened when one regime was replaced by another.

A few months after the new regime had assumed power, officials went back to blithely committing corruption just as their jailed predecessors had done.

No less important is to see to it that the "chase the thief" calls are not diverted by the government to discredit political foes. Governments in developing nations have no qualms sacrificing two or three officials from the opposition camps by dragging them to court just to create the impression that they truly support the anti corruption drive.

Personification

The advocacy phase of the anticorruption drive has been very successful, but has run out of puff in the process. This phase must quickly be followed up by the careful formulation of an anticorruption strategy.

I don't agree with the view that sees the anti corruption activity in phases. The advocacy phase should not be stopped and then followed by the formulation of a strategy. Advocacy must continue and provide input to the strategy formulation phase. What must be done constantly in the anti corruption campaign is updating the material provided to the public at large.

The public has thus far been observing corruption like watching crime news reports on television. Bulog (logistics agency) money was spirited away by a masseur of the president. Local legislators from party "A" in "B" regency are bribed to choose their chairman from party "C". We watch it as if it's something that goes beyond our concern. What we should ask ourselves is, who is to return the embezzled money that last year amounted to Rp165.85 trillion.

Corruption is committed with respect to funds from the state budget. This budget comprises foreign loans, tax returns, and proceeds from oil, gas and other mining contracts with foreign parties. Contracts with foreign companies are untouchable. Foreign loans cannot be left unpaid.

Where then can the required money be obtained? Who else can be squeezed? It is the taxpayer again. And that is what is happening now. To the tune of kroncong (Javanese ukulele music) melodies, this democracy of extortion is now being spread, more or less. Even the "small" man must pitch in to pay for corruption committed through the imposition of tax on deposit interest. Business people, students, employees, becak (pedicab) drivers, teachers, office boys, couriers, bus and taxi drivers, professionals along the Sudirman-Thamrin- Kuningan roads, artists-all have to shoulder jointly the cost of corruption committed by government officials.

We cannot distance ourselves from corruption. Bills to pay for corruption will surely come our way. It's only a matter of time. Corrupt officials must show their faces, just as the people who have to finance the corruption committed by those officials are also identifiable-namely you, we, us, me.

This personification should henceforth be included in the material for advocacy of the drive against corruption.

(Nana Anwar Makarim)

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Timothy Charles Lindsey isn't merely knowledgeable about Southeast Asian Law, including Indonesia's, but is equally qualified in the Law of Insolvency and Business Law which he teaches as Bachelor of Commerce courses at the undergraduate level at University of Melbourne. His interests take him beyond law to such fields as Modern History, Politics, Art, and Architecture. In the Department of History and Politics of Melbourne University Lindsey teaches Modern Chinese History and Modern Indonesian History, and a new subject which he calls Military and State in 20th Century Indonesia. In the Department of Fine Art at the same university, Professor Lindsey teaches Asian Art. He completes his teaching activities by lecturing students on the Asian, City at the Faculty of Architecture of the Royal Melbourne Institute of Technology University.

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Richard Holloway is the author of a great many articles, papers, brochures, and books. Among the latter is the handbook he wrote on how to measure the health of civil societies (*Assessing the Health of Civil Society- a Handbook for Using the Civicus index on civil society as a self-assessing tool*). His book on how to achieve financial independence for NGOs (*Towards Financial Self-reliance: a Handbook for Civil Society Organizations in the South*) is becoming a standard for many NGOs. In The Unit of Development is the Organization, not the Project - Strategies and Structures for sustaining the Work of Southern NGOs, Richard Holloway criticizes donors for restricting their assistance to projects, and refusing to fund those who construct them. In recent years Richard Holloway has been a consultant to and resource person for Transparency International.

