

STEALING FROM THE PEOPLE

16 Studies of Corruption in Indonesia

Book 2

The Big Feast - Soldier, Judge, Banker, Civil Servant

Editor of the English Edition

Richard Holloway

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photograph of Dolorosa Sinaga's statue "Waiting for Godot"

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Book 2: The Big Feast - Soldier, Judge, Banker, Civil Servant

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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 Indonesia’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 faults 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 2:

The Big Feast - Soldier, Judge, Banker, Civil Servant

The second volume in the four part series on corruption in Indonesia underlines the fact that corruption has increasingly been seen as an opportunity for gluttony and greed to flourish, in which everyone wants a place at the trough, and in which those who stood aloof from the corruption opportunities were considered stupid.

M. Riefqui Muna looks at the world of the Armed Forces, long considered a byword for corruption in Indonesia since so much of their income was outside the government budget and so little was accounted for. Since much of the Armed Forces corruption has been linked to their dealings with government and business officials, it is not easy to isolate their corruption from others' corruption. In the New Order period the principle of territorial command duplicated the bureaucratic structure from the local, regional to national level. It was rampant with abuses and corruption acted as the engine for the authoritarian regime of the New Order.

The misuse of facilities together with the abuse of authority given to the military to defend the nation-state is at the heart of the problem of corruption - it is recognized that the TNI has betrayed the people's trust. The issues are not just the magnitude of the corruption, but more so the destruction of public trust - just for the benefit of particular groups or individuals within the Armed Forces. Another concern is the misapplication of military might to support the unlawful economic activities of the Armed Forces. These problems relate to the crux of the matter - the control of the military by democratic civilian authorities as well as their public accountability. Because the public and the civilian authorities do not control the military at present, corruption in the Armed Forces continues unabated.

In the second chapter Mardjono Reksodiputro looks at corruption in the Indonesian Legal System. He points out that corruption has spread as "a cancerous disease" within the entire civil and criminal judicial system. While it was almost never been mentioned previously, it is now realized that corruption not only exists at the bottom echelons of government (bribing the admin-

istrative employees and police officers in the streets), but has also been conducted regularly at the top echelons within government institutions (departments, police force and attorneys) as well as within the courts (starting from the Supreme Court of Justice). This shameful and shocking condition of the Indonesian legal system is the responsibility of the legal community. The fault also lies in the development program of the Suharto administration, thus responsibility for this condition must also be borne by economic technocrats and ministers who served in the Suharto administration.

Whereas there were previous reports of smaller scale corruption, it was only in 1999 that the public was shocked by various media reports on corrupt practices systematically conducted by elite groups during Suharto's administration. However, there have been no major cases where the defendant was a police officer, prosecutor, advocate or judge and has been brought to the court.

The main problems for the failure of law enforcement in controlling acts of corruption seen as (a) the absence of a legal consensus as to what is "judicial corruption"; (b) differences in perceptions on eradicating corruption among law reform advocates, law enforcers (police officers and prosecutors) and the courts; and (c) the lack of a clear political will to accompany any short or long-term strategies for eradicating corruption in Indonesia.

In the third book Lin Che Wei looks at corruption in the Indonesian banking sector where feeding at the corruption trough has surpassed itself - giving us the BLBI scandal, perhaps the largest corruption event in the history of Indonesia. He points out that after the change in government in 1998, corruption in the Indonesian banking sector became more rampant and should be a matter of great concern for Indonesian businesses and those interested in solving the problem of restructuring the Indonesian banking sector.

Lin Che Wei points out that authoritative quantitative data on the extent of corruption in the banking system has yet to be collected, and so the paper reviews a variety of corrupt practices in the banking system and describes the consequences and causes of this corruption. The paper also deals with the importance of transparency, the capital flows to revive the banking sector, public confidence in the banking sector; and most importantly, the issue of resuming the financial intermediary function within the Indonesian banking system. It focuses on the absence of good banking supervision, policy distortions, and political interference in causing the extensive

corruption that exists. While the paper proposes 15 recommendations to improve the situation, it points out that there may still be more “skeletons in the closet” that have not yet seen the light of day. It concludes that weak transparency increases funding costs - but transparency should not be seen as a cure for systems already under stress. It is but one factor that can help to prevent a further funding crisis. The importance of working in a positive market condition to improve transparency is stressed, so it will be a long time before transparency can be improved and corruption eliminated in the banking system.

Donny Ardyanto writes about the Indonesian public service in the third chapter - whose corruption is perhaps the best known of the lot - indeed almost legendary. Donny Ardyanto points out that the theoretical position is that the government bureaucracy should manage and produce goods and services that are economical, effective, efficient, and accountable to all levels of society. The government bureaucracy should also not provide services which discriminate among different parts of society based on status, title or group. The reality is, however, very different.

This paper deals with a number of public services that routinely interact with society, namely PLN (State Electricity Company), PAM/PDAM (Drinking Water Company / Regional Drinking Water Company), SIM (Procurement of Drivers Licences) and Taxes. These four sectors are selected to show the variety of structures: PLN and PAM/PDAM represent the BUMNs (state owned enterprises) sector of public service that is undergoing a process of privatization. The tax department represents public service from a bureaucratic environment, and the Police in regard to the procurement of SIMs represent the character of the military bureaucracy.

The reality of where corruption can be found is important given that the public service sector is one of the interfaces between citizens and bureaucratic personnel, and through them the government. The patterns of corruption that exist are clarified through an examination of the four sectors mentioned above. Whether the corrupt practices exist only in certain parts of public service, or whether they permeate the entire bureaucratic system is examined. In each of the public services discussed, instances of corrupt behaviour are provided and recommendations made for improving the situation.

Richard Holloway

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□ THE BIG FEAST - SOLDIER, JUDGE, BANKER, CIVIL SERVANT - BOOK 2

MONEY AND UNIFORM: CORRUPTION IN THE INDONESIAN ARMED FORCES

By M. Riefqi Muna

The Research Institute for Democracy and Peace (RIDP)

EXECUTIVE SUMMARY

Corruption in the Indonesian Armed Forces (TNI) should be examined within the framework of the nationwide problem and not as isolated in itself. As corruption usually involves two or more parties, corruption in the TNI is linked to endogenous as well as exogenous factors. The New Order regime is thought to have strongly contributed to the propagation of corrupt

practices such as bidding manipulation, purchase mark-ups, and the misappropriation of non-budgetary funds. Corruption in the TNI has its base in power politics and the politics of power; therefore any attempt to combat corruption in the Indonesian military must comprise comprehensive measures capable of affecting changes in every sector of government and society.

Corruption in the Armed Forces is a threat to national security. Its systematic processes destroy the capability of troops to defend the nation, destroy the moral of soldiers and their combat capability, and destroy the system of command and control.

Corruption is like an infectious disease that can be cured if each symptom is treated as it appears; but if the disease is already chronic, amputation becomes necessary.

BACKGROUND

This paper is a study of corruption as it occurs in the Indonesian Armed Forces - the *Tentara Republik Indonesia (TNI)*.¹ KKN (Korupsi, Kolusi dan Nepotisme) within the ranks of the TNI has come under public scrutiny for its role in the mishandling of the country under the *New Order*. Efforts to combat corruption, though a public concern, are far from conclusive due to the weakness of the law enforcement apparatus. Cases of corruption are rarely prosecuted, and the guilty remain unpunished.

The TNI is widely believed to be a hotbed of corruption, but no one has yet blown the whistle on the military. Corruption within the business interests of the Strategic Reserve Unit (*Kostrad*) is one example of how serious the problem of corruption is. However, it is important to note that the corruption in the Armed Forces is not singular in nature, but is instead merely a part of the wider national problem. Corruption also pervades government institutions, public service agencies and the private sector.

Corruption in the Armed Forces is an issue that must be addressed in light of its gross abuse of power under the *New Order* regime. Within the framework of the Dual Function (*Dwi Fungsi*) doctrine, the TNI was active on both the military and socio-political level. This doctrine was

¹ The Indonesian Armed Forces changed its name from ABRI (Angkatan Bersenjata Republik Indonesia) to TNI (Tentara Nasional Indonesia) after the national police became a separate entity.

supported by the military's Territorial Command (*Komando Teritorial Koter*) structure², which was exploited by military personnel for corrupt purposes. The principle of territorial command to *occupy* administrative space simply duplicates the bureaucratic structure from the local to the national level and, vulnerable to abuse, functions as no more than an extension of a totalitarian regime.

This study will focus primarily on the nature of corruption in the Armed Forces its description, scope and extent. I will also examine the structure and organization of commercial military corruption from the *New Order* to the present.

PROBLEM STATEMENT

The study of corruption in the Armed Forces is probably among the toughest assignments in the field, not only because of the secretive nature of the corruption but also because its perpetrators are individuals authorized to use lethal force. As an institution comprising trained professionals entrusted with the legitimate use of force, it is important that civil authorities within the framework of democratic civilian control supervise the military. This issue is at the heart of the civil-military relationship. However, the fact is that the Indonesian military has for decades abused its power to serve the interests of Soeharto's *New Order* regime. Similar abuses of power for economic gain continue to this day.

The abuse of TNI's authority to defend the nation is at the heart of the problem. The issues at hand are not only the magnitude of said corruption, but what is more, the extent to which public trust has been destroyed for the benefit of only a few individuals or groups within the Armed Forces. Another concern is that force has been misused to support illegal economic activities. These problems all point to the need for control of the military by democratic civilian authorities and public accountability, without which corruption in the Armed Forces will only continue.

² The territorial structure is the structure of command and the deployment of military personal within the framework of Territorial Command (*Komando Teritorial Koter*). *Koter* is a hierarchy that at the provincial level is called KODAM (*Komando Daerah Militer*), KOREM (*Komando Resort Militer*) at the regency level, KODIM (*Komando Distrik Militer*) at the Kabupaten level, and KORAMIL and Babinsa at the village level. *Koter* in essence is a military duplicate of the local political administrative structure.

Corruption destroys trust within a society, and turns the bureaucratic-public relationship into one not based on service, but rather on exploitation. The quality of government services suffers while civil servants begin to utilize their *connections* not to improve their level of service but instead to engage in bribery and extortion.

METHODOLOGY AND THE PROBLEM OF DATA COLLECTING

In social research, the data gathering stage is the most difficult and time consuming. This study does not rely on any specific methodological approach, or investigative reporting technique in an attempt to uncover details of corruption in the Armed Forces, but simply on materials accessible to the public. The problem in researching corruption is the secretive nature of corruption itself, which is an even more the case in the military. Most cases of corruption are conducted purposefully and in secret and unfortunately society has become quite tolerant of corruption, viewing it as normal and almost culturally acceptable. This study uses public information in order to avoid speculation that it is outside the normative approach in social science. Studies on corruption in the Armed Forces are technically handicapped due to the secrecy of the issue. The military as an institution is behind the abuse of power and economic resources, but is beyond public scrutiny. This article was not written from a position of investigation, but one of research supported by interviews.

EXPLANATION OF CORRUPTION

Corruption is one of the oldest crimes known to mankind. The study of corruption has in the past focused primarily on bribery, but in this modern day and age other forms of corruption, many more deleterious than bribery, have gained prominence.³ The definitions of corruption vary, however in general corruption is *any act that damages the interests of the public or the wider community for the gain of certain individuals or groups*.⁴ Within the spectrum of

³ Amanda L. Morgan, Corruption: Causes, Consequences, and Policy Implications: A Literature Review, The Asia Foundation, Working Paper No. 9, 1998, p. 6.

⁴ Badan Pengawasan Keuangan dan Pembangunan, Strategi Pemberantasan Korupsi Nasional, March 1999, p. 257.

corruption are several individual phenomenons such as bribery, extortion, collusion and nepotism. Extortion is the unlawful exaction of money or property through intimidation. A complement to bribery, both crimes involve the interference of public officials.

Corruption creates political instability. In the 1990s, governments in Italy, Brazil, Pakistan, Zaire and Indonesia fell partly because the people they governed would no longer tolerate the corrupt practices of their leadership. Initiatives to eliminate corruption were brought about as a result of the crises that laid low economies from Indonesia to Russia in the late 90s, which were to some extent caused by a corrupt form of capitalism that diverted resources from economically sound enterprises to merely well-connected ones.⁵

New literature on corruption focuses on three central issues mostly related to combating the problem: 1) it address why policymakers, business leaders, and private citizens should concern themselves with the existence and the elimination of corruption; 2) it examines how and when political, social, and economic forces contribute to the reduction of corruption; and 3) it focuses on what types of policies effectively counter corruption. Three known reform methods have been effective corruption deterrents, they are: 1) changing policies that allow for political corruption; 2) the imposition of an incentive structure in administrative and political institutions; and 3) the reform of legal institutions to improve enforcement capacity and strengthen the rule of law. The most successful anti-corruption strategies are comprehensive ones that draw on all three methods.⁶

Within the framework of the global fight against corruption, Indonesia has commandeered the attention of the world. According to The Economist, a World Bank memo stated that 20-30 percent of the loans disbursed by the Bank to Indonesia disappeared into the deep pockets of local officials and their associates.⁷ As late as last October, the World Bank found that, *despite apparent compliance with World Bank guidelines and documentation requirements for procurement, disbursement, supervision and audits, there is still significant leakage of Bank funds.*

⁵ "A Global War Against Bribery", The Economist, January 16, 1999.

⁶ Amanda L. Morgan, *Opcit.*.

⁷ "A Global War, Loc. Cit.

THE ECONOMY OF SOLDIERS AND THE IMAGE OF CORRUPTION

Before we discuss the problem of corruption in the Armed Forces, we must address the economy of those individuals deemed as perpetrators of corruption as this will explain why military personnel at all levels have to survive by finding alternative sources of subsistence, such as business and other economic activities. Below is a list of the monthly wages for military personnel:

Figure 1: Wages Of Military Personnel

Rank	Years of Served	Dependants	Total (incl. Allowances)
Brig. Gen.	26	3 children + wife	3,736,500
Colonel	26	3+1	1,815,800
Lt. Col.	26	3+1	1,435,900
Major	16	3+1	1,276,500
Captain	10	2+1	1,097,600
1 st Lt.		2+1	1,080,800
2 nd Lt.	9	0+1	983,900
Sergeant	14	3+1	887,600
1 st Sergeant	4	0+0	757,800
1 st Sergeant	14	2+1	877,800
2 nd Sergeant	4	0+0	725,000

Ministry of Defense figures dated August 2000, as quoted in Leslie McCullach's, *Tri Fungsi: The Role of the Indonesian Military in Business*, presented at the International Conference on Soldiers in Business, IPCOS – BICC, Jakarta 17-19 October 2000.

Looking at the above figures it is clear that the salaries of soldiers are very low, even below the actual cost of living. Similar to public servants, the economy of soldiers is a deficit economy. Some may ask, why then do they join the military if the remuneration is so poor? The answers to this question are varied and are drawn from the cultural and political orientation of the individuals concerned. Many believe that even though the wages are low the opportunities to earn additional income are many. In view of this, nearly every civil servant in the public service sector generates additional income from activities beyond the scope of their duties.

The same can be said of the military. The deficit economy of its personnel is widely believed to be the primary cause of corruption within the ranks. However, the dilemma is that were higher salaries to be paid, this would not and could not guarantee the elimination of corruption in the TNI or public service sector. There is evidence that corruption is also practiced by wealthy military personnel who steal sums of money in amounts far greater than their living costs.

Corruption in the day-to-day lives of Indonesians is widespread; the TNI is no exception. Within society there exists two economies parallel one to the other in the public service sector, in which the term salary is different from income. Salary refers to the money that the public servant receives, usually monthly, based on the existing pay scale. By popular definition, income is the total take-home-pay. This includes salary and any additional funds derived from other sources.

This explains the public perception of military and other civil service personnel. There is a saying in Indonesia, *gaji si kecil, sabetannya yang besar*, which literally means, *the salary is small but the benefits are great*. This perception is related to the two types of positions available to public servants namely, *wet and dry positions (posisi basah dan kering)*. A wet position means that there is the potential to make extra income, while a dry position is one in which there is no extra money to be had. Public perception has also contributed to the prevalence of corruption amongst civil service and military personnel, as it appears society is ready to turn a blind eye to individuals who maintain luxurious lifestyles despite their menial positions.

Based on this economic system, the discrepancies between the salaries and incomes of middle to high-ranking military officers are clearly visible. Many such officers enjoy affluent lifestyles, which raises the question, how could individuals who receive a minimum wage afford luxury cars, mansions and the trappings of wealth? Even many mid-level officers enjoy luxurious lifestyles while the lower rank and file lives in poverty.

The above describes the existing dual economic system in the military, and one would assume that commercial endeavors on behalf of the military would be an obvious solution. Such commercial endeavors have over the years been undertaken but have only resulted in the enrichment of those officers at the top of the power structure and not in the generic subsidy of low level officers or the support of the military institution. As such, the troops in the barracks remain in poverty and

are forced to scrounge for additional income many of them seeking employment as private security officers or debt collectors.

Figure 2
Perception on Corruption in the Armed Forces⁸

Question:		
Is there any corruption in the foundation belong to Kostrad? (22-29 September 2000)		
Answer	Number of Respondent	Percentage
Yes	613	95.3%
No	13	2.0%
Dont know	17	2.6%
Total	643	100%

Figure 2 shows that public perception of corruption in the TNI (referring to the Kostrad case) is very high (more than 95 percent), even though at the time the poll was taken an investigation was underway. Unfortunately, the public was disappointed when the Inspector General of Auditing at the Defense Headquarters released a report denying the existence of any corruption and instead alluding to procedural errors - the customary official response to allegations of corruption. Such cases have damaged image of the Armed Forces, and the internal efforts to combat corruption within the Armed Forces have come up against significant opposition.

⁸ Sources: Tempo <http://www.tempo.co.id/harian/hasil-poll/hsl-indikator-29092000.html>

BUSINESS AND CORRUPTION IN THE ARMED FORCES

Corruption in the military is strongly linked to its business interests. Indeed, there exists a great deal of evidence of corruption in authoritarian regimes in developing countries including China, Nigeria, Vietnam, Myanmar and many others.

In China the number of business entities controlled by the PLA (People's Liberation Army) grew from 200 to 5,000 between 1982 and 1997.⁹ Other studies report that between 1978 and 1998, the PLA underwent a dramatic transformation, converting and expanding its internal military economy to market-oriented civilian production and consequently becoming a force in the national economy, controlling a multi-billion dollar international business empire incorporating large farms, world-class hotels and transnational corporations. This amalgam of military and commercial interests, known colloquially as *PLA Inc.*, resulted in a dramatically new organizational form, termed *the military-business complex*.¹⁰

The Nigerian experience is a clear case of collusion between the military and the oil industry in a country with a history of political repression. 1 June 1999 marked the resumption of civilian rule after years of a corrupt military dictatorship that left a country that should be, due to its oil reserves, one of the richest in Africa, with 30 percent of its GDP servicing a USD 30 billion foreign debt.

Under the totalitarian regime, The Nigerian National Petroleum Company, a military run government enterprise, held sway over the national resource in collaboration with five western oil multinationals Shell, AGIP, Elf Aquitaine, Chevron and Mobil. Shell, in particular, has come under intense fire from international environmental advocates for its practices under the protection of the Nigerian military in the Ogoni Delta. Human Rights Watch has called upon the Nigerian government to adopt a code of conduct supportive of increased transparency that international oil companies must follow. Bertral Ross, in *Obstacles On The Road To Democratic Consolidation In Nigeria*, offers a

⁹ www.bicc.de/milex/spotlights/china/china.html

¹⁰ Describing the works of James C. Mulvenon, *Soldiers of Fortune: The Rise and Fall of the Chinese Military-Business Complex, 1978-1998*, at <http://www.bicc.de/budget/paper15/paper15.pdf>. See also Swaran Singh, *Rise and Fall of the PLA's Business Empire*, Institute for Defense and Study Analysis, at www.idsa-india.org/an-may9-4.html.

good overview of the constraints left behind by the former military government and the Obasanjo government's inability to deal with them.¹¹

In Myanmar the military has the entire spectrum of social, political and economic activity in its iron grip. The junta in Yangon is out of control, and being that the country is located in the Golden Triangle, the international center of opium and heroin production, the drug trade constitutes the military's primary source of income.

TNI AND BUSINESS

Like its counterparts in China, Thailand and Vietnam, TNI - the Indonesian Armed Forces - became involved in business to supplement an inadequate budget. Profits from military businesses are intended to support projects like housing for troops and the military's *dwi-fungsi* role of ensuring national security and socio-political stability. However, reformers inside and outside the military argue that its commercial interests encourage corruption, violate the officers' oath and widen the *gap between the haves [the officers] and have-nots [the rank and file]*.¹² A military withdrawal from business would create many opportunities for the private sector, as currently the military has its fingers in almost every industry pie. The army operates a charitable foundation and more than 64 companies, including one that partly owns Jakarta's Sudirman CBD.

The navy, air force and police as well as the reserve command (Kostrad) and the elite commando unit (Kopassus) each maintain their own business empires. In all, the corporate wealth of the Armed Forces is estimated at more than USD 8 billion exclusive of the tens of thousands of distribution cooperatives across the country and the security and debt-collection network that services numerous enterprises from small corner stores to conglomerates. Then there are the informal arrangements - soldiers acting as personal bodyguards and such. The military's influence extends to the boards of corporations, many owned by ethnic Chinese, which co-opt retired and even serving generals and other officers. In the past, state-owned enterprises like oil and gas giant Pertamina were run by former military men, the most well-known being Soeharto confidant

¹¹ <http://www.bicc.de/milex/milbus/nigeria.html>

¹² <http://www.cnn.com/ASIANOW/asiaweek/99/0205/biz1.html>.

Ibnu Sutowo, who quietly left Pertamina after a USD 10 billion corruption scandal nearly sank the company. He went on to build his own conglomerate Nugra Santana.

ABRI's business ties have for many years been a kind of *open secret*. However, their true extent is only now being revealed as the cries of *reformasi* (reformation) in the media, academe and other sectors of society grow louder and increasingly violent. In September a team of researchers from the Center for Political and Regional Studies at LIPI, published a book on the topic of the military and business. The LIPI researchers focused on ABRI's charitable foundations, which are tax-exempt and difficult for government agencies to monitor, the largest being the army's Yayasan Kartika Eka Paksi (YKEP), established in 1972 by army chief of staff Gen. Umar Wirahadikusumah. The mission of this foundation is to provide assistance to army personnel and their families. Since its founding, YKEP has built 13.700 houses and several schools, including Ahmad Yani University in Bandung. The foundation grants high school and college scholarships to the children of military personnel and veterans and contributes to bonuses given to personnel during Christmas and the Muslim holy month (Ramadan). YKEP also operates medical clinics and hospitals, and during the 1990s is estimated to have spent USD 11.5 million on what it terms *army welfare*.¹³

CORRUPTION AS A THREAT TO NATIONAL SECURITY

Defense capability is an element of national power, and the strength of said capability determines the security of the nation. Military might consists not only of sophisticated weaponry, but also qualified human resources. Further, competent leadership significantly contributes to the morale of the men and women charged with defending the nation.

Indonesia's defense capabilities consist of several aspects including the quality of its personnel (training, discipline, morale), the competence of its leadership, and its readiness.¹⁴ Corruption impairs the morals and discipline of military personnel at all levels and directly weakens

¹³ For the comprehensive study on military business see: Indria Samego et.al., *Bila Abri Berbisnis, Bandung*" Mizan, 1998

their ability to perform their duties. Corruption also destroys the spirit of patriotism, and when patriotism is in question, the defense of the state is at stake. Self-enrichment must never be allowed to take primacy over the patriotic commitment to defend the country.

National security consists of two components that comprise, *tangible and intangible assets*. The tangible assets of national security include geography, natural resources, human resources, education, science and technology, and economic and defense capabilities. The intangible assets are the political system, social and economic systems, the state ideology, and the integrity of the national leadership.

The morale of the public and military personnel is an important factor in the building of a strong institution of national power. In theory, military might must be supported by high morale and fierce patriotism. The military is very different from other civilian entities due to its specialized mission and its use of force. Civil authorities and the citizenry rely on the military as their guardian and as such it must be professional and accountable, for how can the military gain the trust of the people if it is robbing them.

Corruption also has a moral explanation. Many facets of corruption such as bribery and extortion are little more than robbery. The moral question is *what went wrong with our society?* The current prevalence of corruption in Indonesia is evidence of the permissiveness with which society views corruption, a crime that is for the most part considered acceptable at many levels of bureaucracy.

The implications of corruption in the process of government are far reaching both at home and abroad as it not only serves to tarnish the country's image in the eyes of the international community (Indonesia is reportedly one of the most corrupt countries in the world according to Transparency International) negatively impacting its economy, but also directly influences the day-to-day management of the state resulting in inefficiency and a culture of exploitation that ultimately destroys the social fabric of trust and human dignity.

¹⁴ For the widely used classical studies on the elements of national power, see: Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, New York: Alfred A Knopf, 1966 (fourth edition)

CORRUPTION AND THE ABUSE OF POWER

During the *New Order* the power of the President and the political elite was absolute. The President's children, who were known as *P3 (Putra-Putri-President)*, condoned corrupt business practices. Many P3 businesses were operated unfairly using political power as a tool. Not surprisingly the tentacles of the Soeharto family's business empire also encompassed the Armed Forces, which used its might not only in the political arena but also for commercial undertakings.

The *New Order* administration was exploitative and its power used to fulfill the private agendas of the political elite, those closest to the seat of power - the Soeharto family. Over time these same corrupt practices became an integral part of Indonesian culture as political might came to determine success in bidding for military contracts. The formula was simple: powerful political affiliations = successful contract bids.¹⁵ The abuse of power practiced within the ranks of the Armed Forces utilized both the top-down memo method, and the *name-dropping technique*. Military personnel supervising certain projects would receive phone calls from Soeharto's cronies conveying instructions they could not refuse under fear of dire consequences. The same problems facing the Armed Forces were also found in many other government institutions and in the private sector as it became clear that if you compete with the P3, you will lose unless *you play by their rules*.

THE BUDGET FOR THE ARMED FORCES

The budget of the Indonesian Armed Forces is the lowest in the region if compared to the country's GDP see Figure 3. Its ratio of personnel to population is also the smallest in the region (see Figure 4).

BUDGETARY AND NON-BUDGETARY FUNDS

According to a report from the Department of Defense, the budget revenue for the Armed Forces FY.2000 is IDR 9.768.355.280,00 plus an additional USD 172 million in export credits,

¹⁵ Interview with a serving three-star general.

Figure 3: Five ASEAN Defense Budgets As A Percentage Of GDP, 1990-99¹⁶

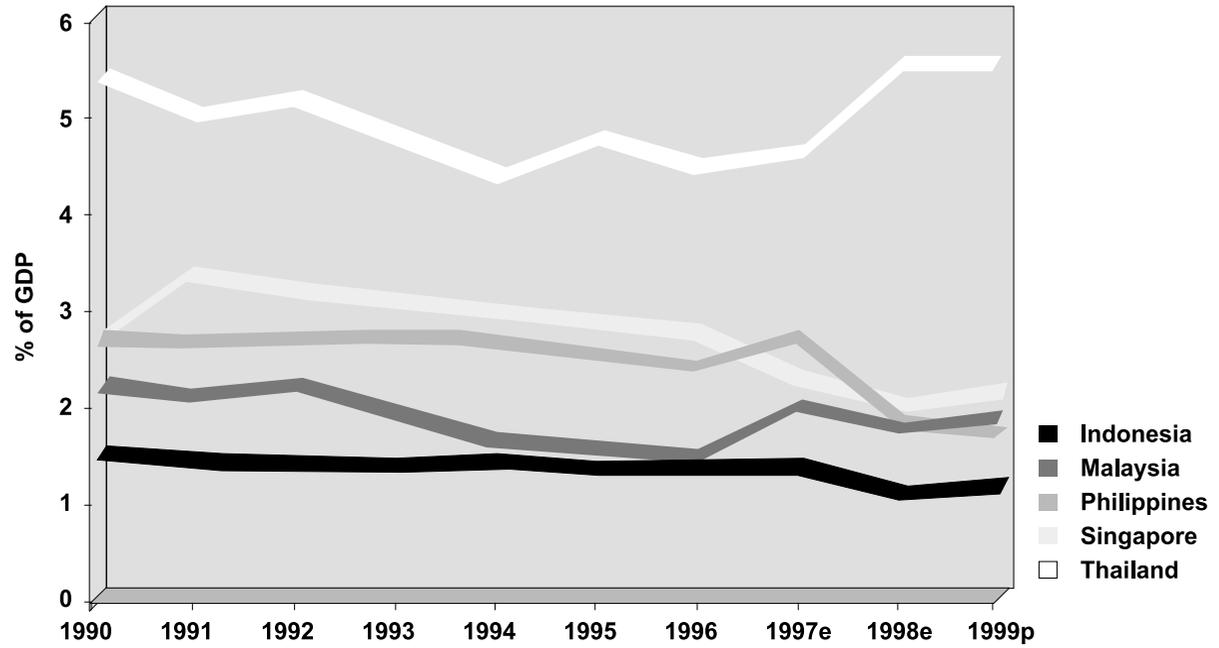
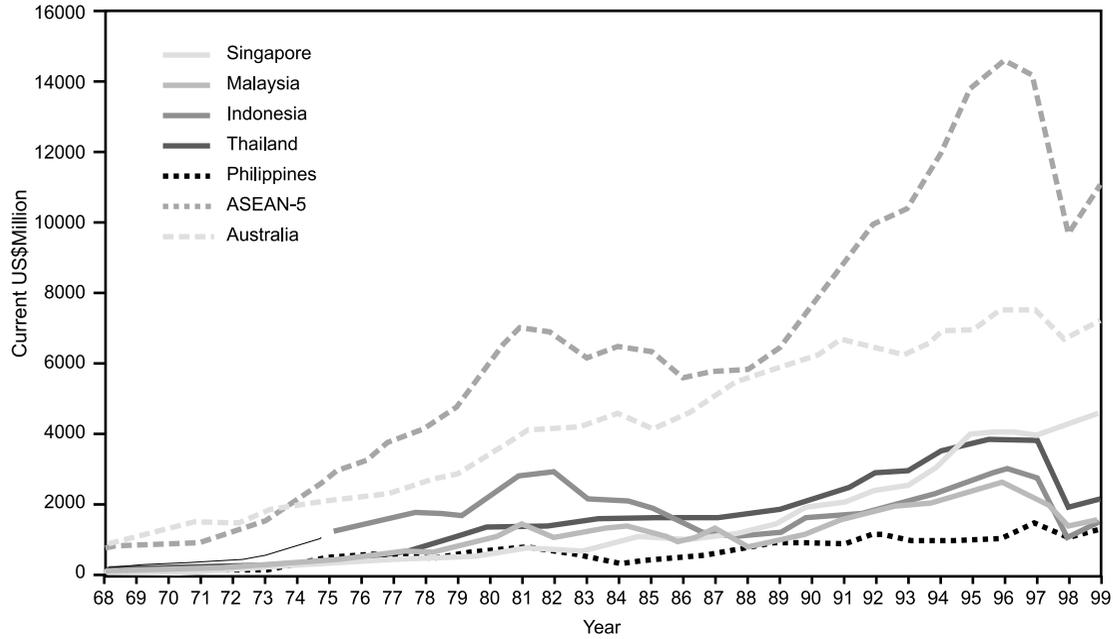


Figure 4: ASEAN and Australian defense budgets 1968-99 (current USD)¹⁷



¹⁶ Defense Economic Trends in the Asia-Pacific, Defense Intelligence Organisation, Australian Department of Defence, Canberra.

¹⁷ Ibid.

bringing the total to IDR 11.058.355.280,00 (at a USD 1/IDR 7.000 exchange rate), which amounts to 1.2 % of GDP.

The sources of funding for the Armed Forces consist of budgetary and non-budgetary sources. Budgetary means that the funds are recorded and available within the framework of the annual budget, while non-budgetary funds come from other sources not recorded in the annual budget.

Figure 5: Routine and Development Budget Allocation For TNI and POLRI¹⁸

FY	Routine		Development		Total	
	IDR	IDR	USD (CE)*	IDR	USD (CE)*	
1999/2000	11.298.502.355,00	1.273.300.000,00	202.000.000,00	12.571.802.355,00	202.000.000,00	
2000	9.020.855.280,00	747.500.000,00	172.000.000,00	9.768.355.280,00	172.000.000,00	

* Credit Export Facility

Financial resources are allocated in two budgetary categories 1) the *routine budget (anggaran rutin)*, which consists of day-to-day operational expenses; and 2) the *non-routine budget (non-rutin)*, also known as the *project development fund (anggaran proyek)*. These funds are then distributed across all sectors of the military from the national headquarters to the provincial battalions.

The military's budgetary funds are subject to a public audit by two agencies namely, the Agency for Monetary Supervision (*BPK-Badan Pemeriksa Keuangan*) and the *BPKP (Badam Pemeriksa Keuangan Pembangunan)*. In addition to public audits, the military's finances undergo an internal audit conducted by its own *inspectors*.

Non-Budgetary Funds have at least two sources - the president or state secretariat, and the military's commercial enterprises. These funds are beyond public scrutiny as all information

¹⁸ Department of Defense, State Defense Policy 2000 (Kebijakan Pertahanan Negara 2000), Jakarta 2000.

pertaining to them is *classified*. Even military personnel have no knowledge of the amount of money accumulated or of how that money is used. Although the total figure is unknown it is believed to be a substantial one. These non-budgetary funds are also known as on-top funds. Many acquisitions and purchases of weaponry or *Alutsista (Alat Utama Sistem Persenjataan)* are made using funds that are processed directly through the state secretariat. For example, the ammunition provided by PT. Pindad was directly purchased (using on-top funds) by state secretary from the contractor using the rolling system.¹⁹ To maintain readiness and sustain logistical support it is sometimes necessary to purchase old, no longer adequate equipment in order to comply with the *RMA (Revolution in Military Affairs)* concept. In order to do this, a budget was allocated using non-budgetary funds and expended under a rolling contract between the State Secretariat and PT. Pindad without the knowledge of the Armed Forces.

Several expensive defense equipment transactions have used a combination of non-budgetary funds and the military's export credit facilities. The so-called *on-top* approach included a great many dubious transactions as the P3 and other powerful parties influenced the purchase process often serving as self-proclaimed *brokers* between the relevant parties. The purchasing of the *Rapier* air defense system for instance was made using non-budgetary funds. Indonesia's F-16 fighter planes were acquired in the same manner. The fact that the Thai government purchased *Scorpion* armored vehicles at only half the price that Indonesia paid for the same hardware is evidence enough that the degree of corruption in the Indonesian military is at a very dangerous level. When the prices paid by the government for military equipment are high this indicates a surplus of *non-budgetary* funds, and when the tender process is closed the public can only conclude that it is also corrupt.

The internal auditing board of the Armed Forces is responsible to monitor all budgetary funding sources. At the highest level is the Inspectorate General or *Irjen (Inspector Jenderal)* and in the various branches i.e. the army, navy and air force, are *Irjenad (Inspectors Jenderal Angkatan Darat) Irdam (Inspektorat Kodam)* and *Irkotama*. However, non-budgetary resources

¹⁹ From a logistical standpoint, ammunition must provide six basic supports, which means that 6 times the amount of ammo needed must be purchased: 450 bullets for rifles, 30 bullets for pistols, 72 shells for launchers etc.

pose the risk of corruption due to the classified nature of their sources of origin, which are non-auditory and under the direct control of the state secretariat. The auditing of such funds is also outside the jurisdiction of the inspector general and state auditory bodies such as BPK and BPKP.

CORRUPT PRACTICES

Corruption in the Armed Forces is similar in practice to that in other government institutions. However, due to the secretive nature of the transactions there exists a higher potential for corruption in the military compared to other government and public entities.

Mark-Ups of project values is believed to be the most popular form of corruption in the TNI.²⁰ This practice is related to the intervention of powerful parties in the tender process that in the case of the military usually involves more than one line of process. The standard mark-up rate is believed to be approximately 50 percent of the original price. Most mark-ups succeed due to the participation of members within the inner circle of power, as the will to resist such interference within the Armed Forces is very low, and military contractors are more often than not in cahoots with those responsible for the bidding process.

One notable example is the purchase of Scorpion armored vehicles that was negotiated between 1993 and 1994 and concluded in 1995. The mark-ups on these highly sophisticated tanks exceeded the 50 percent mark in a process that involved the P3 and others close to the first family. According to a reliable source within the Armed Forces, the Scorpion tanks purchased by the Indonesian military cost the government more than twice as much as the Thai government paid for the same vehicles.

The *Scorpion* purchase also involved an unfair bidding process, which was conducted from the top-down and did not follow procedure. Most bids were falsified as the bidders and the relevant authorities were in collusion with one another. The weapons contractors also maintained a network of political influence that could make or break the military personnel involved. This kind of behavior has spawned the public sentiment that there is no truth in the Armed

²⁰ Interview with a high-ranking military officer at the Defence force office on 23 March 2001.

Forces even with regard to the manner in which it provides for it own in the form of materials, logistic support, recruitment and training.

The bidding and acquisition process in the Armed Forces was standardized under the *New Order*. The legal contractual mechanism at the time was essentially invalid and the bidding process itself amounted to no more than a facade rife with KKN nuances and external intervention. In the army, the *Dewan Penentu dan Pengadaan (WANTUDA)* commission is responsible for the entire bidding and acquisition process from start to finish. WANTUDA consists of several high-ranking officials and was established to ensure a fair and transparent process. The chairman of the commission is the Vice-Chief of the Army, and his executive is the Assistant for Operations (ASOP). The ASOP selects the materials to be purchased based on his assessment of defense requirements.

Another corrupt practice common to the Armed Forces is the purchasing of unnecessary materials at the behest of contractors. For example, a special kitchen set was purchased and imported from Korea in the mid 80s outside the official tender process. This particular purchase served no useful purpose as it was not required by the military, but was instead bought at the behest of contractors in collusion with officials.

The state has also been cheated a great deal due to the illicit practice of issuing fictitious reports, a practice steeped in KKN. For instance, several years ago it was reported that the army purchased mountaineering equipment or *Almon (Alat Montenering)* three years consecutively at a cost of IDR 20 billion. However, a check of the warehouse failed to turn up any of the fabled equipment. According to information released by the army,²¹ nine individuals were interrogated and two high-ranking officers exposed as protagonists in the fictitious bidding.

One widely publicized corruption scandal involved the charitable foundation of the Army Strategic Reserves, *Dharma Putra*. It is public knowledge that Kostrad Commander Lt. Gen. Jaja Suparman embezzled IDR 190billion from the foundation's coffers after only several months as its chairman. Lt. Gen. Agus Wirahadikusumah, the current Kostrad Commander discovered the malpractice and brought in into public view. Yet the Kostrad scandal is only the tip of the

²¹ Information received from a 3-star general in the Armed Forces.

iceberg of the culture of corruption fostered by the Armed Forces, in which those in positions of leadership abuse their power for self-enrichment, all the while ignoring the welfare of those in their charge. The Inspector General of the Armed Forces eventually dismissed the Kostrad scandal stating that it was merely a case of procedural error and not of corruption. However, the military's attempts to cover up its wrongdoings have not served to alter public perception, as 97 percent of respondents polled believed that the Kostrad case involved corruption and foul play.

Corruption in the Armed Forces is not exclusive, but is instead merely representative of a more complex national problem. This means that efforts to eliminate corruption in the Armed Forces cannot succeed without a nationwide campaign. Corruption must be addressed up and down the chain of command and the bureaucracies of government institutions must be systematically examined.

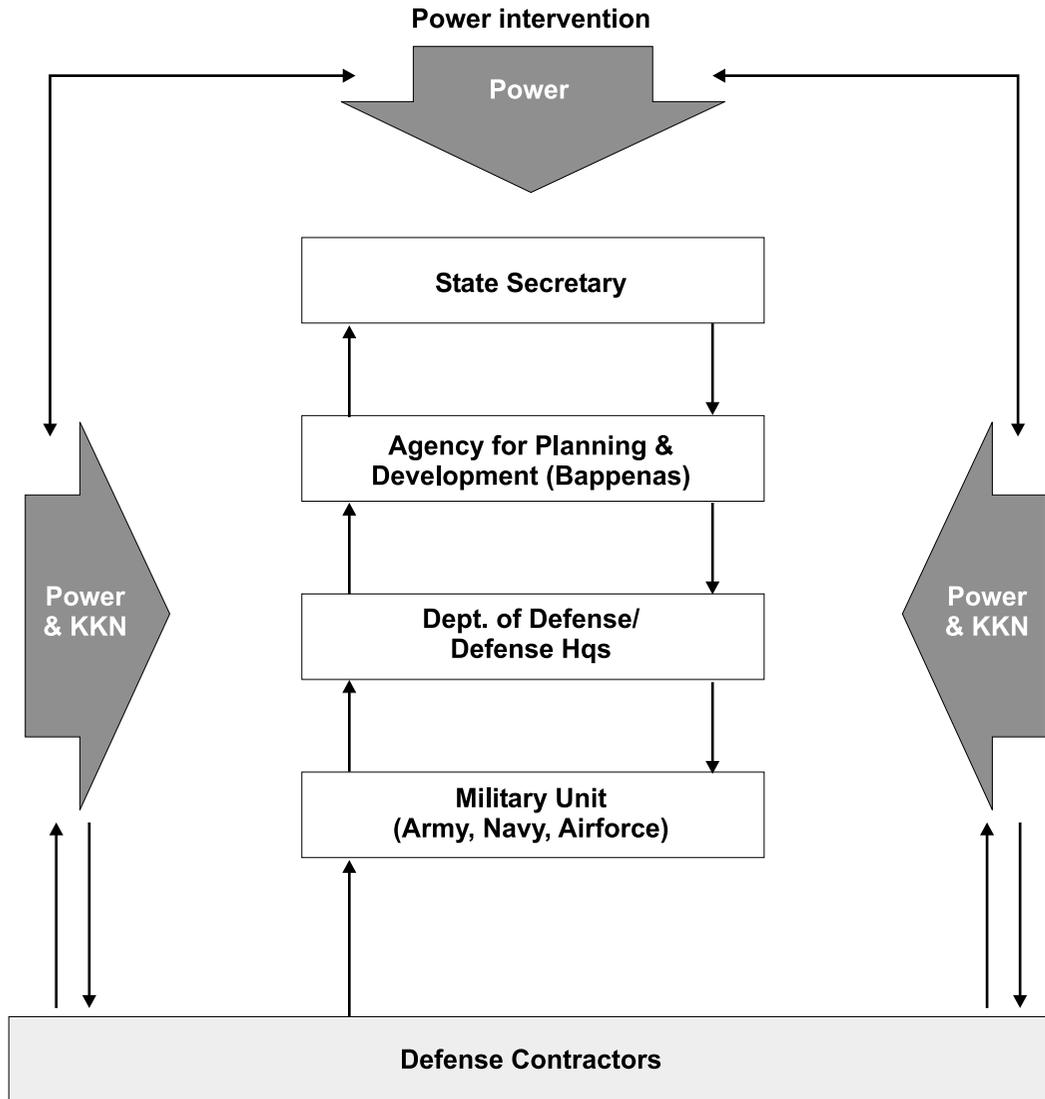
We have seen that during the bidding process and budgeting and negotiation procedures, external intervention in military affairs, especially on behalf the political elite, is a primary cause of corrupt practices such as collusion, mark-ups and the purchase of unnecessary materials all to the detriment of the Armed Forces whose interests are meant to be served and not those of private (external) parties.

POWER POLITICS AND THE POLITICS OF POWER

In the preceding pages I have attempted to draw the reader's attention to the problem of corruption in the Indonesian Armed Forces. The examination of the said problem has also provided evidence of abuse of power within the framework of parallel civil-military governance, embodied in the territorial structure of the Indonesian military, and a corrupt budgetary process through which the military draws its financial resources from other government institutions.

The economy of the military when coupled with its business interests produces a profoundly confusing financial arrangement conducive to corruption. What is most disconcerting though is the power base itself that is widely abused to the benefit of groups and individuals within the Armed Forces itself. The external power base of the political elite and defense contractors is also abused in collusion with the military creating a kind of joint venture for corruption.

Figure 6: The Possible Trail of Corruption in the Armed Forces and Beyond



The legacy of authoritarianism in Indonesia is that many of its most powerful elements still wield a great deal of influence and are slowing the implementation process of objective and democratic civilian control of the military and hampering any effort to combat corruption in the Armed Forces. Given the current climate fostered by complex power plays, political aspirations and the pursuit of wealth, the elimination of corruption in the Armed Forces is an aim that calls for a massive reform effort consistently applied over time.

The civil-military relationship must be redefined in accordance with the principles of democracy and good governance in order to prevent these illicit practices. Indeed, while this must correspond with a national move towards good governance, it is clear that the non-budgetary aspect of the defense budget must be minimized and that all military funding should originate from the same source and be open to public scrutiny. Furthermore, a legislative body within a democratic institution must be established to monitor the Armed Forces in order to regulate its use force and to prevent the abuse of power, public intimidation and extortion.

One element of failure in previous attempts to address the issue of corruption in the military is the misunderstanding of the so-called *esprit de corps*, which is erroneously interpreted fostering the opinion that any attempt to prosecute, especially high-ranking military personnel, dishonors the military institution. This paradigm must be changed in order to preserve the true *esprit de corps* and the credibility of the Armed Forces. This can only be accomplished if the military is compelled to bring those party to corruption within its ranks to justice.

SUMMARY

Corruption in the Indonesian military points toward a larger national problem. Transparency International in its Corruption Perception Index listed Indonesia as one of the most corrupt countries in the world, indicating a problem deeply rooted in the permissiveness of Indonesian culture.

Despite the fact that the Indonesian Armed Forces has one of the lowest budgets in the region both in terms of its total and its percentage of the national budget, it is important to note that there still is plenty of money in military coffers to be misappropriated and stolen. The facts have proven that the theft of public funds is rampant in nearly every sector of government.

The non-budgetary funding of the Armed Forces - unlike the budgetary funds that are used for routine expenses such as salaries and maintenance - is source of corruption because it is variable and not based on proposed projects nor is it publicly audited

Military personnel, much like their counterparts in the civil service, receive very low wages a condition viewed by many as a cause for corruption and the abuse of power. The elimination of corruption in the Armed Forces and the public service sector will remain a dream if the issue of compensation remains unresolved. However, from a moral point of view, low wages does not justify corruption, as morality must supersede material considerations.

Corruption in the Armed Forces is a threat to national security. Within the larger framework of national security, considering that in order to effectively defend a nation its military must be disciplined and patriotic, it seems almost foolish to entrust such a weighty responsibility to an institution given to corruption. Corruption weakens the military apparatus at all levels, from the central command, to the communications hub to the intelligence division.

The problem of corruption in the Armed Forces can be summarized as follows:

- Corruption in the military is caused by the lack of an effective internal monitoring system.
- Corruption in the Armed Forces is linked to its pay scale, as the wages paid to military personnel are simply insufficient to afford an acceptable standard of living.
- Corruption in the Armed Forces occurs across all administrative levels, but is frequently quite petty.
- Project mark-ups of up to 50 percent constitute the highest nominal of corruption and the squandering of limited government resources.
- Unfair bidding, the purchase of unnecessary materials, and the issuance of fictitious reports are all forms of corruption commonly practiced in the Armed Forces.
- In the case of unfair bidding, the process is closed and the contractor is often pre-selected.
- Military foundations are source of non-budgetary funds that are highly susceptible to corruption. The lack of accountability and supervision encourages the use of resources for individual interests.
- There is no mechanism in place to monitor the military's non-budgetary funding. This has

resulted in numerous instances of embezzlement and outright theft.

- The military also suffers from the intervention of power brokers who use their political clout as a means to extort economic targets.
- The trail of corruption in the Armed Forces also leads to individuals in the institution responsible to assess budget proposals (Bappenas), and the government cashier (Depkeu).

RECOMMENDATIONS

- The problem of corruption in the Indonesian Armed Forces is linked to the discourse on the civil-military relationship. This considered, the most effective strategy to combat corruption would be the democratic civilian control of the military;
- An effective mechanism must be put in place to control the bidding process and prevent third party interference and unfair practices. The same process must also be open to the public and the previous system of limited and selected bidders should be eliminated, as this would promote austerity and transparency.
- The corruption in the Armed Forces engages other institutions involved in planning and costing. As such, a massive reshuffling should take place and those officers who have worked in these areas both in Bappenas and the Depkeu, and especially at Dirjen Anggaran, must be replaced because in most cases they have been involved one form of corruption or another that has resulted in massive collective losses to state.
- A mechanism to audit the charitable foundations of the Armed Forces must be installed to prevent the kind of embezzlement that took place in the Kostrad scandal.
- The military's commercial enterprises are another source of corruption. The commercial activities of the Armed Forces should be restricted to those sectors directly related its operational requirements, and the military should not be given free reign to operate in the public business sector.
- At the national level, the complete military budget must be included in the APBN in order to reduce non-budgetary funding.
- The principles of accountability and good governance should become a policy commitment, and the

military should not be beyond the jurisdiction of the national auditing board.

- Finally, the government must institute a systematic program to increase the military budget and the wages of its personnel. However, such increases should only be made once the principles of good governance and accountability are firmly instilled.

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CORRUPTION IN THE INDONESIAN LEGAL SYSTEM

By *Mardjono Reksodiputro*

BACKGROUND

Adam Schwarz comprehensively documents the corruption in the Indonesian government, particularly during the thirty years of the *New Order*, in his book *A Nation in Waiting: Indonesia in the 1990s*¹. The corruption, collusion and nepotism (KKN) practiced by Soeharto, his family and cronies as documented by Mr. Schwarz shocked the nation. Now, at the beginning of 2001, the country is again shocked by the decision of the House of Representatives to issue a memorandum to President Abdurrahman Wahid requesting an accounting of his involvement in two financial scandals, namely, those concerning the State Logistic Agency (Bulog) and the grant awarded by the Sultan Brunei (known collectively as the *Buloggate* and *Bruneigate* scandals). The latter has caused quite a stir (though it first came to light some time ago), as the transfer

(1) Schwarz, Adam, 1994. *A Nation in Waiting: Indonesia in the 1990s*. St. Leonards, NSW 2065 Australia: Allen & Unwin Pty. Ltd.

of power from the *New Order* to the *Reform* government of Wahid was expected to signal the cleansing of the Indonesian government of corruption.

The problem of governmental corruption is widely examined in the media. Early this year, the Philippines underwent a crisis also pertaining to corruption within its government that resulted in the replacement of President Joseph Estrada by his vice-president Gloria Macapagal Arroyo. This particular political crisis was resolved by the Philippine legal system through a Supreme Court ruling. In crises involving high-level government officials (such as a President), it is preferable that the law determines the resolution procedure.

Unfortunately in Indonesia - due to a weak legal system with faltering public credibility - it is not that easy. The foibles of the Indonesian legal system have been reported in research conducted by the National Development Planning Agency (Bappenas), with the financial support of the World Bank (IDF Grant no. 28557/1996).² Although the purpose of the research was to render a positive report of the country's economic development (GDP growth: 6-7% p.a. with a 9% growth forecast for 2020), its findings are still relevant.

The first segment of the said research project revealed weaknesses in the human resources systems of Indonesia's legal institutions and in the institutions themselves, while the third segment examined the imperfections of the legal and judicial systems pronouncing them *desperate but not hopeless*. Now, four years after the issuance of the report, the government has changed substantially, but whether or not the government is fully aware of the crisis that is crippling the legal system and hurting its credibility remains to be seen.

The major corruption scandals that have surfaced must be settled by the judicial system as only by legal means can the demands of the public for the eradication of corruption be met. The speedy prosecution of such cases would be a sign that the government is serious about creating a clean government and would constitute an acknowledgement of the supremacy of law and the constitution. Thus far President Wahid has not convinced the public, which has been further disappointed by allegations of bribery that have recently been leveled against the Attorney

² Ali Budiardjo, Nugroho, Reksodiputro (Co-operation with Mochtar, Karuwin & Komar) 1999. *Law Reform in Indonesia: Result of the Study on the Development of the Law* - World Bank Project. Jakarta: CYBERconsult.

General's Office (AGO) and the courts concerning the Bank Bali scandal.³ In their report on Indonesia (*Mission to Indonesia*), the International Commission of Jurists stated thus:⁴

We were deeply concerned to hear that corruption in the Indonesian judiciary appeared to be widespread. No one can believe that a country is governed by the rule of law when judicial decisions are traded for cash.

Corruption in the legal system not only involves the judiciary. This paper (which is not meant as a report of empirical research) will discuss corruption as related to the issuance of work permits, the police force, the AGO, the courts and the professions of advocate, notary and Land Deed Officer. The attitudes of those in the legal profession are also amiss as reported below:⁵

The performance of the legal system and its functionaries is woefully lacking. The main critique pertains to those legal professionals who are incapable of keeping pace with the changes of economic development. It is also apparent that the members of the legal profession (solicitors, legal consultants, notaries, prosecutors, and judges) do not fully understand their fundamental responsibilities as servants of society and the law. On the contrary, they seem to primarily consider themselves as part of a profit-driven industry.

ENFORCEMENT OF THE LAW ON CORRUPTION AND SEVERAL THEORETICAL PROBLEMS

One reason why Indonesian law enforcement agencies have been near powerless against corruption is the absence of a consensus with regard to what actions constitute punishable corruption. Without theorizing further, the approaches set out below provide explanation of the reasons for this lack of consensus.

In the study of criminology, a great many discussions concerning the relationship between

³ The Bank Bali scandal is a typical corruption case where the political pressure and the authority's involvement require the entrepreneur to present a "gift" in order to obtain a favor. The gift bearer is the Bank of Indonesia who exploited the Entrepreneur (Bank Bali)'s fear.

⁴ International Commission of Jurist. October 1999. *Ruler's Law: Mission to Indonesia*. Chatelaine, Switzerland: International Commission of Jurist (ICJ), page 53.

criminal law and morality, and what actions should be classified as criminal have been published. I intend to hold a limited discussion here pertaining to the definition of corruption. Two approaches are proposed. The first views criminal law as a source of social order that settles and prevent disputes. The law is considered to be a product of a consensus and its enforcement an effort to maintain that consensus. The second approach views criminal law as an instrument to be used in social conflicts, particularly to preserve the status quo against opposition. Here, the law is a product of conflict between various groups with different interests.⁶

In the first approach, the law is a social norm, which has its roots in traditional rules and social mores. Therefore let us examine the criminal act of corruption as anti-social behavior. Corruption is deemed a crime that must be eradicated, but this is not a final assessment as different interest groups frequently adopt different moral perceptions. Sometimes the formulation of law only reflects the interests of certain parties, while at other times it serves to protect public interest. Given these two possibilities, the definition of the criminal act of corruption can be found in the rules governing the social behavior of every member of society deviation from which is considered as anti-social or even immoral behavior. Such conduct is the responsibility of each individual and the classification of individual conduct as a criminal act forms the basis for the utilization of criminal law.⁷

The second approach offers a different perspective. The different interest groups within a society perceive the gravity of the criminal act of corruption differently. In Indonesia for instance, supporters of legal reform and the eradication of KKN perceive the act of corruption as a crime; there are however, interest groups within our society who perceive practices generally considered as acts of corruption, merely as necessary business, political or other processes.

⁵ *Reformasi Hukum di Indonesia. op.cit.*, hal. 147.

⁶ Theoretic description provided in this paper can be read, for example in: Hagan, John, 1985. *Modern Criminology: Crime, Criminal Behavior, and Its Control*. New York: Mc.Graw-Hill Book Company, and Van Dijk, J.J.M.et.al. February 1999. *Actual Criminology* (translation of Soemitro, Bachelor of Law from the original title of: *Actuele Criminologie*). Surakarta: Sebelas Maret University Press.

⁷ See also Robert Klitgaard, 2001. *Membasmi Korupsi*. Jakarta: Yayasan Obor Indonesia (translated by Harmoyo from the original title of: *Controlling Corruption*), which criticized the opinion that "corruption is caused by immoral people... and that is conducted ... moral education from generation to generation". (page xxi).

These groups maintain that corruption can only be deemed to have occurred in the event that the state is harmed. They also maintain close relationships with policy makers and the authorities in order to protect their economic interests, conduct that they refuse to recognize as corruption by reasoning that it is not detrimental to the interests of the state.⁸

Acts of corruption categorized as criminal pursuant to Law no. 31/1999 are often viewed in the framework of the social status of their perpetrators. For example, a minor infringement could include a traffic police officer who accepts bribes to turn a blind eye to a traffic violation, while more serious acts of corruption might include a prosecutor who accepts bribes to recommend a lighter sentence for a felon, or a judge who acquits a suspect for a price. Such corrupt practices are differentiated based on their perceived degree of severity and although all three of the above examples constitute acts of bribery, there are however, conflicts in determining the social implications of each.

The following details the problems of anti-corruption law enforcement in lieu of social perceptions that can be explained using the above theoretical approach.⁹

THE NATURE AND EXTENT OF THE PROBLEM

Corruption in the Indonesian legal system as discussed herewith can be classified as bureaucratic corruption, not to be confused with political corruption or money politics. With bureaucratic corruption, payments are made in order to resolve difficulties under the guise of gratitude. For example, a person requires a passport but hasn't the time or patience to wait in line so requests the assistance of the relevant official. In return for such assistance, money is paid to the official as a show of gratitude. Another example: an individual wishes to have the tax imposed on his company reduced. After an agreed upon sum of money is paid to the authorized

⁸ In the case of BLBI (liquidity assistance by the Bank of Indonesia), there is a different perception between the Bank of Indonesia (only following the prevailing laws and regulations) and the entrepreneurs (only saving their companies during a very serious financial crisis condition) and "reformation"ists (there have been collusions that poses detrimental effects to the state).

⁹ This different approach is also resulted from "politics": who is harmed by and who enjoys a profit from corruption as well as any kinds of effort to fight against the corruption? See Robert Klitgaard, *op.cit.*, page 245-247.

tax official he will then assist in reducing the said tax by up to half of its total, in accordance with prevailing tax provisions. However, the said tax official becomes susceptible to suspicions of inflicting losses to the state.

The payments made to civil servants (within the bureaucratic system) increase according to the value of the service or commodity purchased. If the matter at hand is has high economic value such as the license to practice law or to avoid deportation with respect to immigration violations, or the closing of a criminal case or the acquittal of a defendant then bribes equal to the value of the service must be paid.

The two examples cited above constitute payments for convenience.¹⁰ The difference between them and the high-value transactions also referred to is that in the former a request for assistance is made, while in the latter the official concerned violates his oath of office for a price. This *paying for convenience* form of corruption is very contagious as not only is society involved in providing bribes to civil servants, but legal advocates also feel obliged to satisfy their clients' wishes.

At present society's attention to the corruption in the legal and judicial system is not significant. One way to gauge this is by the frequency with which the mass media visits the subject. In general, the media reports cases of corruption involving major projects (Bank Bali and Pertamina) or high profile individuals (former president Soeharto and Hutomo Mandala Putra). Only when cases stagnate in the criminal court system are allegations of corruption leveled against the AGO and the courts. Allegations such as those made by PERADIN and the Indonesian Bar Association concerning *court mafias* or contained in the diagnostic study of legal developments published in 1996, never receive widespread press coverage. This is because the AGO and the courts prosecute so few cases. There has also been no continuing coverage in the media concerning the ongoing investigations into several Supreme Court judges.

I herewith offer my explanation of why so few corruption cases are brought to court:

1. The closed door characteristics of convenience payments which are rarely if ever disclosed to outside parties.

¹⁰ Lee, Rance P.L. (editor), 1981. *Corruption and Its Control in Hong Kong*. Hong Kong: The Chinese University Press, page 133 etcetera.

2. Especially in cases of court corruption (the bribing of court officials), technical-judicial authentication is difficult since in principle the issue to be proven is an abstract, namely, a loss of impartiality.
3. Payments made to police officers or prosecutors usually constitute blackmail and extortion.
4. Bribes by way of a legal advocate are paid in an orderly fashion and are hard to prove after the fact.
5. The law concerning the eradication of corruption is addressed primarily to civil servants who misuse their authority and thus incur losses to the state, and fails to address the problem of corruption in the judicial system.

The weaknesses of the former corruption law (no. 3/1971) or the current one (no. 31/1999) become apparent if we examine the definition of judicial corruption:¹¹

1. When any act or omission occurs results in the loss of impartiality of the judiciary.
2. Whenever a judge or a court officer seeks or receives benefit of any kind or the promise of such with respect to an exercise of power or other action.
3. When instead of being concluded on the basis of evidence and the law, legal proceedings are affected by improper influences, inducements, pressures, threats, or interference, directly or indirectly, from any quarter or for any reason.
4. Deliberately delaying a matter before the courts in the interest of one of the parties.

Payments to an enforcement officer (police official or prosecutor) or a judge are made in order to influence the recipient to act in a certain manner. Such bribes are often justified as simply expressions of appreciation for the relevant official. Difficulties frequently arise in de-

¹¹ Quoted from an International Bar Association source (IBA-14 April 2000) by Mardjono Reksodiputro in a presentation titled *"Corruption and the Judicial System"*. 12 October 2000, in Indonesia: Anti-Corruption Workshop held by the World Bank in Jakarta.

termining which gifts influence the decisions or actions of their recipients, and which ones are indeed only tokens of appreciation or gifts of assistance. The following quotation attempts to explain Indonesian society's tolerance of corruption:¹²

The giver of a gift to a public servant or agent hopes to obtain some favor which he would not, in the ordinary course of events, be entitled to ... To that extent, the public servant ... is in a position of power or the giver of the gift may ... simply believe that the public servant is in a position of power. It matters little from the giver's point of view. In either case, he gives to keep the public servant ... favorable in any event. From the recipient's point of view, he may understand the mentality of potential givers; and, quite apart from the case where he is called upon to confer some specific favor, there is ample scope for him to profit from the unreasoning fears of potential givers.

SOME EXAMPLES OF CORRUPTION IN THE INDONESIAN LEGAL SYSTEM

It is difficult to document examples of corruption as the best ones have been ruled upon by the courts. As was previously explained, not many corruption cases have been brought to court in Indonesia, and as for those cases that have been settled in court the relevant files are often very difficult to come by. Mass media sources (particularly newspapers and magazines) can be used to this end, and although this method of documentation is easier, it is also time consuming as the relevant reports generally constitute pices of the puzzle that must be joined together in order to form a conclusion. The final method is to document eyewitness accounts and the experiences of entrepreneurs, agents, criminals and any other relevant parties. The latter two methods were employed in documenting the examples cited herewith.

¹² Lee, Rance P.L. (ed). *op.cit.*, page 22; compare also with Robert Klitgaard, *op.cit.* page xix-xx, who does not want to "waste time to discuss ... the basic motives of corruption".

The Department Of Justice

Departmental functions that offer opportunity for corruption mainly involve the granting of licenses or the dissemination of information as required by the public such as the placement of notaries, the legalization of limited liability companies, matters pertaining to Indonesian or foreign citizenship, immigration, facilities for prisoners within the correctional system, and the nomination of candidates for judgeships. In general, individuals pay to obtain favors that they are not or should not ordinarily be entitled to. For example, obtaining placement as a notary in advance of those priorly recorded, or obtaining an initial placement at the regional instead of the district level as required by law, or being transferred from a town post to a city post.¹³

Matters relating to the legalization of a company as legal entity, or legalization in relation to the amendment of a company's articles of association also offer opportunities for gift-bearers to expedite the approval process. Favorable relationships are maintained with traditional gifts (birthdays and religious and other holidays) or gifts given at crucial processing stages. Efforts to computerize to enable online settlement have not succeeded in eliminating this culture of gift giving.¹⁴

In the area of citizenship and immigration, the problem is quite different. In the abovementioned cases, the favorseekers were notary-candidates and notaries with special relationships to controlling officials. Officers in the realm of citizenship and immigration have direct contact with the public. Being that most private persons are usually unfamiliar with

¹³ Sometime ago (+ 1998/1999) a big commotion surfaced as the Minister of Justice "releases" all names waiting for their turns to be placed as notaries in many regional capital city in Indonesia. Among the lucky one is the son and son-in-law of the Minister concerned. Besides this placement is deemed "unfair" (nepotism), such issuance of decision received many critics, among others, due to the loss of the main source of negotiation by using gifts and favors in the respective department, and since the competition amongst the notaries is deemed to have been surfeited.

¹⁴ "On-line" mechanism in conducting application for legalization or amendment of the company's articles of association produces new problems, namely, the payment for official legalization fee becomes high (increased eight folds), as it is processed by a private company, and the admission of the Directorate General to the reporters that: ... in the settlement process of legalization of a legal entity... bribing practice, corruption and collusion exists ... have been carried out in an organized manner for 30 years..." (*Pos Kota*, 7 March 2001).

bueraucratic processes this has given rise to the process-brokers. These brokers have mastered all the legalities and loopholes concerning such processes as residential letters, birth and marriage certificates and changes of citizenship, and as such render their services to the public for a fee. This fee includes the payment of gifts to the relevant officers for actions ranging from those that serve to expedite a given process to those that consititue violations of the law.¹⁵

Preferential treatment is also frequently bought in the context of the correctional system such as the placement of a prisoner in better surroundings with additional facilities by way of an agreement between the advocate or family of an inmate and the officials in the correctional institution concerned. Rumors of the sale of narcotics to certain prisoners by similar means have also surfaced.¹⁶

As with many official placements, in order to become a candidate for a judgeship, additional unofficial fees are required, which are said to be used to supplement the insufficient budget provided by the government to recruit the necessary personnel (reviewing applications, organizing an examination, and the final selection process). With regard to the final selection process, it is customary to inform pledgers that if they wish to make the grade they must be willing to provide gifts to the committee through certain channels. The result of this is that those selected expect to not only reimburse themselves in their position as judges, but also to receive significant additional income for personal use.

¹⁵ There is strong assumption that the absence of no transparent, clear and detailed regulation on the procedure of submitting an application and the requirements to obtain a license is one of the sources of the occurrence of corruption in the public service offices. This thing is perhaps done on purpose to give authorization to the official in order to issue a "discretion" (under Indonesian terms: "policy") as "a favor" given. The absence of a clear complain procedure provided for them who are being treated unfair is also a source of corruption

¹⁶ The transaction of narcotic substances has been widespread in major correctional institutions. If in 1970s until 1980s, narcotic substance is still in the form of hemp plant (marijuana), now it is extended to "hard drugs" (heroin, etcetera). (This information is given by several ex-prisoners and is obtained in a confidential manner). In contrast with other officers, it should be observed that the guard-inmate interaction is very special. The officer extremely depends on the prisoner in conducting his works properly. Cooperation of the prisoner is required. Therefore, the officer also often tries to look for "a favor" from the prisoner community by giving "a favor" and closes his eyes to the violations conducted by important figures among the prisoners. Relation of "giver" and "receiver" (holding "power") is turning over (see note in 13 hereunder).

Above all, judges seek placements in cities that allow for high standards of living. This results from the unequal distribution of the social welfare facilities provided in Indonesia's towns and cities. A transfer from a small town to a big city or to the district court, represents a change of status and reflects the appreciation of high-level elements in government and expands the career opportunities of the beneficiary judge. This system serves to make judges extremely dependent on the evaluation of the officials who hold the power to effect such transfers.

The culture of gift-giving in order to maintain favorable relationships with high-ranking officials is misused when these officials exploit the fears of judges for personal enrichment. This mechanism reduces the system of placement to an auction of sorts as the most sought-after placements are awarded to the highest bidder. Some judges use money that they have saved over the years for this purpose while others who do not possess sufficient personal resources opt to borrow money. The personal savings or borrowed money expended is reimbursed when the desired position is achieved. This cycle is prevalent in Indonesia, yet there exists an optimistic belief that not all judges behave this way and that there are some who value honesty and moral integrity.¹⁷

The Police Force

Most literature published on the subject of criminology and corruption in the criminal judicial system also deals with the issue of police corruption. International studies rarely examine corruption in the AGO, the office of the public prosecutor or in the courts and if such

¹⁷ A discussion which has been established regarding corruption in the judicial system produced interesting opinions, among others, as follows: (a) The judge who receives a gift is not guilty, so long as he receives such gift after the court order is issued and he does not behave dishonestly or unfair in his decision; (b) it is proper for judges, who are placed in an isolated district court with modest houses and no good school available for their children, to seek "additional income"; all civil servants do that; (c) it is proper if an advocate who may obtain big income from his client also shares such income to the law enforcers and judge (points a and b are stated by a supreme judge and point c is stated by a senior advocate whose practice is very successful). Compare them with the opinion of Robert Klitgaard, *op.cit.*, page 82-85 that criticizes an opinion regarding cultural factor that facilitates corruption by reason that cultural difference may be misused as an excuse that supports corruption (see also chapter 6: page 177-207, clashes among cultures).

issues are examined they are in the context of politics, where external (political) influences, pressures, inducements or threats direct the course of the law. This paper does not discuss political corruption and its affect on law enforcement institutions (the police force and AGO).

Corruption in the police force, as witnessed by the public, takes place on the street and in licensing offices. Less obvious manifestations of corruption include the presentation of gifts to obtain a favorable settlement of a criminal case, or additional facilities for detainees and to close investigations. Other more veiled transactions are publicly viewed as conspiracies between the police apparatus and elements of organized crime in control of certain metropolitan territories or the sale and purchase network of narcotics and other illicit substances.¹⁸ The police force is the primary means of law enforcement in criminal cases and is often perceived as the gatekeeper of the criminal justice system. Prior to the year 1999 the police force was a part of the armed forces, a condition that gave rise to suspicions of military involvement in the extortion and drug trafficking conducted by the local mafia.¹⁹

The most widespread form of police corruption is the bribing of police officers by traffic violators who are able to come to an amicable settlement by way of offering a gift of money at a publicly accepted rate. Although frequently protested as police corruption, the public has come to accept bribery as a part of the transportation system.

An equally common form of police corruption concerns the office of licensing and payment of motor vehicle tax. Similar to the corruption in the immigraton office, described previously, motor vehicle taxation and licensing involves many brokers who offer their professional assistance in expediting the process or arranging the necessary documentation. These brokers are widely

¹⁹ See also, International Crisis Group. 20 February 2001. *Indonesia: National Police Reform*. Jakarta/Brussels: ICG Asia Report No. 13, which reports that the police receives ... "tokens of appreciation from tycoons who have benefited from police protection." (page 10-11). Also in *Van Zorge, Heffernan & Associates*. September 25, 2000, it is said that there is "... extensive network of private arrangements between military commanders and Indonesia's wealthy businessmen" (page. 6).

¹⁸ The Hong Kong Police suffers a similar condition in the beginning of the 1970s, as described in the report of Sir Alastair Blair-Kerr (1973) copied by Robert Klitgaard, *op.cit*, page 6-7 (in chapter 4: page 130-160 it is described how Hong Kong faces such condition through an Independent Commission Against Corruption - ICAC).

suspected of involvement in the legalization of illegal motor vehicles (luxury cars obtained by illegal means). As in the immigration office, the fees paid to these brokers include gifts for the relevant officials.

Corruption also exists in the reporting process and the public has adopted the cynical adage, *report a lost chicken and in the end a goat is lost also*. This means that those who report crimes are also forced to finance the investigation of such incidents resulting in the victims of the crime sustaining greater losses in the criminal investigation than suffered to begin with. In many cases, the blame for such losses cannot be solely placed on the police force since in reality the operational funding provided by the government is grossly insufficient.

The presentation of gifts in exchange for facilities while incarcerated is an equally common practice. Rumors have circulated that in addition to the conditions of detainment there exist other risks to detainees such as threats from fellow inmates. The most serious accusation that has been made in connection with the settlement of criminal cases is that the investigating officers can be persuaded to close their eyes to the crime committed and close the case under investigation citing insufficient evidence (to the detriment of the victim). This condition has incited loud protests from the public in high profile cases involving high level corruption.²⁰

Indonesia was for many years considered a transit point in the international drug trade through which narcotics were channelled to Australia, Europe and the United States. However, since its economic development of the 1990s, Indonesia has also become a consumer of narcotics, ecstasy in particular, being the drug of choice for young affluent Indonesians who frequent the bars, discotheques and nightspots in urban centers.

The National Intelligence Coordination Board (BAKIN) also known as BAKOLAK INPRES has been unsuccessful in its efforts to halt the distribution of narcotics to regions outside the capital city. It is widely suspected that elements of the government are involved in the local narcotics trade and that the family former president Suharto protects the importation and

²⁰ The people who are eager to see entrepreneur figures or the close cronies who have a close relation with President Suharto brought to court on the basis of major corruption case (highway construction project, power generation contract, banking) becomes very critical (upset), as can be read in the newspaper or heard in the interactive discussion program in television, when seeing the incompetence of the Indonesian criminal judicial system.

distribution network of narcotics in Indonesia. This suspicion was confirmed when a pilot of the national carrier Garuda was arrested in Amsterdam and immediately protests were filed by the Indonesian embassy in the Netherlands in his defence.²¹

The inability of the national police force to uncover the sponsors of Indonesia's narcotics trade has only served to further confirm the public's perception that the police are protecting and profiting from Nightspots in Jakarta and other major cities across the country are centers of black market narcotics transactions and high class prostitution and gambling. Everywhere in the world the narcotics and sex trades are run by criminal syndicates who operate locally as organized crime. Organized crime at the street level is operated by hoodlums who control various territories in and around large cities. Protection money is paid to these hoodlums for the operation of illicit activities. Law enforcement agencies are reluctant to repress criminal enterprises because they profit from and exploit them for financial gain.²²

The Attorney General's Office (AGO)

The struggle for the authority to investigate corruption cases (and previously cases of subversion and economic crimes) between the AGO and the police began in the late 70s (as of the issuance of the Law of Criminal Procedures [KUHAP]). In the reform era under the banner

²¹ The pilot who brought the "ecstasy pills" in great number in the vest that he was wearing, in the end must be released by the Netherlands court due to technical error in his arrest and interrogation conducted by the Netherlands police. In Indonesia no "reproach" expression was given against this pilot's wrongdoing, in fact the Indonesian ambassador in Netherlands busily defends the pilot. The Indonesian police "closed their eyes"; news has it that the Cendana family is "the stakeholder" in narcotics transaction in Indonesia (with the protection of senior officers in the armed forces, including police senior officers, of course).

²² As can be seen in the sources and notes no. 20 and no. 22, the police (including other armed forces elements) closely cooperate under "a big-business", but a favor required by the entrepreneur from the police and armed forces is "a protection" which also often includes the action of: "... threats and intimidation of business competitors, eviction of small holders from land and beatings and murder of those who might threaten the system" (Van Zorge, page 7). Example of this "cooperation" may take place between the police officers and hoodlum organization holding power of certain commercial places in the cities. See also what will happen in the Special Capital District of Greater Jakarta in regard to "the eradication of mafia-hoodlums", based on the contradictory information given by the officials in mass media.

of the eradication of corruption, the AGO's official authority to investigate corruption cases that occurred in the *New Order* has posed the risk of further corruption with allegations that the closing of such cases is brought about by gifts presented by the suspects.

In addition to the above, the possibility of political corruption has also presented itself because of the fact that powerful elements of the *New Order* have bitterly opposed the prosecution of such cases. The procedure to close a case due to a lack of evidence is similar to that conducted by the police. The AGO and the public prosecutor may also negotiate the criminal charges submitted to the court and tamper with the evidence used as the basis of the case. In the United States plea-bargaining is a legal procedure between the prosecutor and the advocate, however in Indonesia, the presiding judge is aware of and in some cases even involved in the plea bargaining.

The same applies to charges brought to the police as they tend to extort the suspect charged with corruption during the AGO's investigation and blackmail his/her family. Suspects in corruption cases are generally of good financial and social standing – poster white collar or necktie criminals, which is the cause for the public assumption that the office of the public prosecutor is interested not in serving the interests of justice but its own financial interests. The AGO has denied that public prosecutors are obliged to submit prosecution plans prior to bringing a case to trial, a practice not deemed as corruptive but that serves as an incentive for the defendant to increase the value of his/her gift.²³

²³ Under the management of the Attorney General Marzuki Darusman, an institutional audit with the assistance from ADB has been (is currently) conducted in the beginning of this year 2001. This is a courageous policy. It is expected that other institutions: the Police, Supreme Court of Justice, and Department of Justice will also be courageous enough to do the same thing. By means of a different method, the former Head of the Police National, Drs. Kunarto has undertaken reform in the Police by translating several books into Indonesian language. Through those books (published in Indonesian language in 1998/1999), Indonesian National Police may find its true self in the reformation era; among others, these books are: *Het Blauwe Recht – Op Weg naar een Beroepscode van de Politie* (concerns the Code of Ethics for Police; original 1986); Thomas Barker and David L. Carter. 1986. *Police Deviance*; David H. Bayley. 1994. *Police for the Future*.

The Courts

Allegations of corruption in the courts were originally expressed by advocates using the term mafia-court, and later conveyed by the Association of Indonesian Advocates (PERADIN) in the 1970s (PERADIN was established in 1964 and the Legal Aid Institute in 1970). These allegations took on greater prominence with the formation of the Indonesian Bar Association (IKADIN) in 1985, and a year later the Indonesian Advocate Association (AAI). The allegations referred to collusion between advocates, unlicensed advocates and judges in order to secure a legal victory for a party to the case by way of bribery. Only several such cases of bribery have been brought before the district court of Central Jakarta (among others the Judge Loudou case).

Indications of court corruption again surfaced in the 1990s and were detailed in the diagnostic study of legal development in Indonesia, issued in 1997. During President B.J. Habibie's administration, Minister of Justice Muladi (1998) declared his intention to eradicate the mafia court. His successor, Yusril Iza Mahendra (1999), took drastic action when he removed nearly all the chief justices of Jakarta's District Courts and replaced them with judges from district courts outside the capital. Minister of Justice Baharuddin Lopa, who replaced Minister Yusril in 2001, issued a reminder to judges to act honestly. Minister Lopa has also made several judges under suspicion of accepting bribes redundant.

The numerous cases of judicial corruption that surfaced between 1996 and 2001 are proof enough that the allegations made by the public and legal circles pertaining to the bribery of judges were based in fact. Recently, further allegations of corruption have been leveled not only against the judges of the district and high courts, but also those of the Supreme Court of Justice. Adi Andoyo Sutjipto a Supreme Court judge (and Deputy Chairman of Criminal Law) examined this issue after becoming the chairman of the Joint Team for the Eradication of the Criminal Act of Corruption (TGPTPK) in 2000.²⁴

Claims of judicial corruption have also been made by international organizations such as the International Commission of Jurists (1999) and by the World Bank who held an anti-corruption

²⁴ Adi Andoyo Sutjipto has just (March 2001) resigned from his position as the Chairman of the Joint Team since he does not see any benefit incurred by this Team in eradicating the corruption.

workshop in Jakarta (October 2000) at which corruption in the judicial system was one of several discussion topics. The World Bank expressed concern about the development of the Commercial Court in Jakarta (established in 1999) that presides over civil cases relating to bankruptcy petitions made by creditors. The tribunal of judges in the Commercial Court often rejects such claims based on legalities that are unacceptable to creditors. Allegations of incompetence and corruption abound and are detrimental to the credibility of the Indonesian judicial system. The accusations made by the International Commission of Jurists are even more scathing:

We were informed of cases, for example, where judges converted criminal charges into less severe ones in exchange for financial rewards. Similarly, litigants have been threatened with the prospect of civil charges being converted to criminal ones unless a secret payment was made. In another case, a judge suggested that a suspect would receive harsher treatment if he engaged a private lawyer to represent him. Similar threats have been issued to deter the calling of witnesses.

...Corruption within the ranks of the judiciary, as well as among prosecutors and advocates, tends to have a self-perpetuating effect. Once bribery is accepted as a characteristic feature of the judicial process and a lack of participation is seen as a disadvantage to oneself and to those one represents, then a culture of deceit and conspiracy will develop. It now appears as if just such a culture prevails in Indonesian legal and judicial circles".²⁵

Advocates (Including Legal Consultants)

Although in the 1970s an advocate association was formed for the eradication of corruption in the judiciary, still many local advocates have been tainted by allegations of corruption. In fact many in the public believe legal advocates to be the primary perpetrators of judicial corruption as they have resigned themselves to engage the culture of deceit and conspiracy so prevalent

²⁵ International Commission of Jurist, *op.cit.*, page 49

in the Indonesian legal system.²⁶ Society as a whole views advocates as no more than process-brokers, similar to those in the immigration and permit offices. If this is the case, what then is the purpose of pursuing an education in the field of law?

The involvement of advocates in court corruption must be attributed to the profession's inability to discipline its members. There is no strong leadership composed of senior advocates whose integrity is publicly acknowledged. Perhaps the primary contributing factor to this condition is the questionable motives of law school graduates who choose advocacy as a profession. As such, the system of legal education in Indonesia has produced graduates who do not view the legal profession as a commitment to uphold the principles of justice and fairness.

Members of this profession must be made aware that the final bastion of justice in Indonesia is no longer the courts but rather the advocates themselves. A sense of professional responsibility must be instilled into the members of the advocate profession for the critical condition of Indonesia's judicial system and a commitment made to restore it.

Notary And Land Deed Officers (PPAT)

Notaries (and Land Deed Officers) have also contributed to the culture of deceit and conspiracy with their issuance of deeds that do not truthfully reflect the facts (identity, land area coverage, and value of commercial transaction). Moreover, such fallacious deeds (such as false testaments or false deeds of the sale and purchase of land) are fabricated to the end of harming the interests of another party.²⁷

As with the advocate profession, the organization of Notaries and Land Deed Officers is also weak in terms of imposing disciplinary sanctions against its members who violate the profession's code of ethics. There are also no senior notaries in this organization with reputations for integrity who may serve as leaders of or models for their junior colleagues.

²⁶ The Practicing Attorney's Examination held by the High Court every year (for 3 consecutive days) is one of the first experiences of an advocate candidate to negotiate "gifts" that is "rewarded" by passing the examination, in his future career.

²⁷ An actual case is the criminal case where a notary is accused to have forged a document of testament together with a number of heirs, a local officer of the district court and the Testament Section with the Department of Justice and Human Rights.

LAW EDUCATION AND PROFESSIONAL RECRUITMENT

Complaints are frequently made that law graduates in Indonesia have insufficiently mastered the skills required by their profession. Although such skills can be honed in the workplace, not all law firms can provide their new recruits with further training in the area of professional ethics. A lack of skill or education on the part of an advocate creates opportunities for malpractice, as instead of utilizing the ethics of the justice system said advocate instead seeks out the shortcuts of bribery and corruption.

There exists no relationship between the legal theory learned in the faculty and continuing professional training in the ethics and working standards of the legal profession. The Commission of Law Study Discipline and the Department of National Education, in collaboration with the Department of Justice, must look to remedy this condition.

RECOMMENDATIONS²⁸

A clear government policy must be set forth by the President to the House of Representatives, its main agenda being the eradication of corruption in every aspect of the legal system including the police force, the AGO, the courts, and the Department of Justice; and every aspect of the legal profession - judges, advocates, notaries and Land Deed Officers (PPAT). The government must provide funding sufficient to repair the legal system and improve the quality of law education in Indonesian universities.

²⁸ This recommendation cannot be separated from the perception of the writer, who wishes to activate the external supervision with the involvement of legal community itself (eradication of corruption must be initiated from the admittance of the parties involved: police, prosecutor, judge, advocate, notary-Land Deed Officer and the officer of the department of Justice that the corruption in their institutions has been shameful). In comparison, the idea provided in the book of the Financial and Development Supervisory Board (BPKP). 1999. *National Corruption Eradication Strategy*, Chapter 2: 31-80, which divides it into the strategies of: preventive, detective and repressive (BPKP has also circulated questionnaires to the public to be returned before 30 June 1999 in order to know the public response on this strategy. The result of such questioner has not yet been published) can be taken into consideration. The book of Robert Klitgaard, op.cit, also studies the implementation strategy in chapter 7: 208-251 and offers 7 steps including to look for a *Mr. Clean* and gives him a support.

This policy can be implemented through the following means:

1. All parties to the legal system - judges, prosecutors, police officers, advocates, notaries and Land Deed Officers, the government and the House of Representatives, and the general public - must assent that corruption in the legal system is shameful and intolerable. Through various forums (seminars and workshops) hosted by The National Law Commission in collaboration with the Department of Justice, the Police force, the AGO and the Supreme Court of Justice and assisted by the mass media, a clear signal must be given concerning the government's commitment to the eradication of corruption.
2. A comprehensive strategy for the settlement of past corruption cases and an effective method of settlement for future cases must be adopted. This strategy will be insufficient if it relies only on the establishment of a Joint Team and Commission pursuant to Law no. 31/1999. The mechanism for the submission of a report regarding corruption must be closely and transparently regulated, and must involve the public (through the representatives of NGOs) and the media and furthermore shall require that quarterly reports be submitted to the House of Representatives Commission II.
3. Cases shall be processed by way of existing investigative and prosecution channels pursuant to prevailing regulations. The police force, the AGO, the Joint Team and Commission, and the courts must also provide written quarterly reports regarding the status of the corruption cases currently in the system. In all such reports, only the initials of the defendant need be stated alongside their position.
4. An independent supervisory commission shall be established, the membership of which shall be composed as follows: 50 percent retirees of the police force, the AGO and the courts; 25 percent representatives of state universities; and 25 percent representatives from NGOs. This supervisory commission shall observe the mechanism for the submission of corruption reports (see point 2) and be authorized to receive reports regarding particular cases of corruption within the police force, the AGO and the courts.

Chapters of this commission shall be formed in provincial capitals and shall submit their findings to the Regional Legislative Councils with a copy sent to the House of Representatives Commission II. The National Ombudsman Commission shall prepare the regulation for the establishment of this supervisory commission.

5. In each provincial capital, a Legal Profession Supervisory Board must be formed as a forum of communication between the Supreme Court of Justice, the High Courts and the associations of advocates, notaries and Land Deed Officers under the jurisdiction of the relevant High Court or province. Aside from serving as a forum of communication (to resolve the differences of the police force, the AGO, the courts, advocates, and notary and Land Deed Officers), this agency will also acts as the final appeal authority in cases concerning disciplinary sanctions meted out by legal profession associations to their offending members.

This agency shall consist of 25 percent retired judges or prosecutors; 25 percent retired advocates; 25 percent retired notaries; and 25 percent retired Land Deed Officers. A quarterly report must be submitted to the Regional Legislative Council with a copy sent to Commission II. The National Legal Commission in co-operation with the National Ombudsman Commission, the Supreme Court of Justice, and professional associations shall prepare the governing regulations.

6. A Legal Profession Educational Accreditation Board that serves to develop and supervise legal skills training and education in government and private institutions shall be established in each provincial capital. This board shall also develop and monitor the training of prosecutors, judges, advocates, notaries and Land Deed Officers.

The membership of this board shall comprise representatives of the courts, the AGO and legal organizations, and shall be chaired by a senior lecturer of a state or private law faculty. A quarterly report shall be submitted to the Regional Legislative Council with copies sent to Commission II and the Directorate General of High Education, the Department of National Education. The Law Study Discipline Commission and the Department of National Education shall prepare the governing regulations.

CONCLUSION

In order to successfully eradicate corruption in Indonesian society, it must first be purged from within the Indonesian legal and judicial system.

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Corruption in the Banking Sector

By *Lin Che Wei*

BACKGROUND

Research on corruption in the Indonesian Banking system is a relatively new undertaking. In an attempt to determine the causes and consequences of corruption we must concentrate on the modus operandi of such practices. These determinations are based almost entirely on professional observation with reference to research being done in the field. As evidence of banking sector corruption is not widely available to public in the form of reliable data, the author has at times observed instances of corruption while trying to determine national banking system risks in order to advise investors accordingly. Other data sources utilized, such as surveys, have been compiled in recent years to assess the quality of certain banks and the extent to which corruption affects the integrity of financial institutions. This data has proven useful to the investiga-

tions carefully documented in this report. Any data on corruption within a given sector comprises for the most part largely subjective assessments, however such assessments are often an indication of fact.

Unfortunately the approach taken by Goel and Nelson [1998] and Fisman and Gatti [1999], who calculated the actual level of corruption based on the number of public officials convicted for abuse of public office in the USA, cannot in this case be utilized. Assuming that their formulae is capable of producing an accurate indication of corruption, such a calculation would be easy to perform were it not for two simple facts of the Indonesian model, namely that the relevant data is not widely reported and that the sacking of public officials on charges of corruption is not only uncommon but virtually unheard of.

In the pages that follow, I will endeavour to paint a picture of the nature and extent of corruption in the banking sector by citing cases of such financial malpractice as they have occurred within the central bank, the Indonesian Bank Restructuring Agency (IBRA), state banks, private banks and recapitalized banks.

PROBLEM STATEMENT

The Consequences Of Corruption In The Indonesian Banking Sector

Waning confidence in the banking sector and its effect on total investment

The decline in confidence in the domestic banking sector is evident in the higher deposit costs that must be paid by local banks in comparison with their international counterparts. Another clear indication of waning confidence is the burgeoning private banking services offered by international banks to their local clientele.

Indirectly, the deterioration in public confidence brought about by rumours or evidence of corruption, effects a reduction in total investment. The first investigation of this kind was undertaken by Mauro [1995], who made use of an older corruption index provided by Business International, a private firm that publishes and sells such risk indicators to banks, multinational

companies, and individuals. In his study of 67 countries, Mauro found that in each case corruption negatively impacted the ratio of investment to GDP.

It is interesting to note that under the *New Order* regime, Mauro's argument might not have appeared valid, as the flow of foreign and domestic investment into the Indonesian market remained relatively stable despite the high degree of corruption in all sectors. An entrepreneur quoted in the World Development Report [1997:34] contends that, "*there are two kinds of corruption; the first is the one where you pay the regular price and you get what you want. The second is the one where you pay what you have agreed to pay and you go home and lie awake every night wondering if you will get what you want or if somebody is going to blackmail you instead.*"

This statement exemplifies the differences in New Order and post-New Order corruption. During Soeharto's totalitarian regime, both domestic and foreign investors viewed corruption as a necessary evil - simply one of the costs of doing businesses in Indonesia. In our current post-Soeharto system corruption remains rampant, however investors are becoming increasingly frustrated, as even after money has been expended to facilitate their endeavours they still do not fully benefit and as a result are reluctant to invest further.

Fons (1999) rationalizes the correlation between the TI Index and Moody's bank financial strength ratings. The first of the two indices aims to provide investors and inter-bank lenders with an indication of the soundness of a given bank independent of external risk factors. The latter relates to the default risk for debt obligations issued by a national government. Fons argues that poor transparency and high levels of corruption increase credit risks. Those holding deposits or granting loans to such banks are likely to withdraw their bids, which as a consequence produces an observable impact on capital movements. This particular effect of corruption can be plainly witnessed by the public in the inability of local banks to attract foreign capital to rebuild the ailing sector.

A delay in foreign aid and other bilateral loans

The repeated delays in IMF fund disbursement to revive the Indonesian economy clearly demonstrate the importance of eliminating corruption in the banking system, as proven by the

recent Bank Bali scandal. From an empirical point of view, Alesina and Weder [1999] examined whether corrupt governments tend to attract or deter aid from OECD countries. Using a variety of indicators of corruption and investigating a number of countries, which they tested for measures of regression, the authors did not find any evidence of discrimination against known corrupt states by foreign donors. Quite to the contrary, some results suggested that such countries were even more likely to attract foreign aid from OECD countries.

However, in observing the Indonesian experience a change of attitude is apparent. Take for instance the comment from the World Bank to President Habibie (see below), which in no uncertain terms sets the elimination of corruption in the banking sector as a precondition to an infusion of financial aid.

Excerpt of a letter to President B.J. Habibie from Mr. Wolfensohn of the World Bank:

"It is very clear that Indonesia needs to reorganise itself internally in order to continue to grow. If you want to ensure stability in the country you need some growth (and) resources need to be made available"... "But it would make no sense to continue contributing aid until you've got the foundation secured and they stop stealing all the money put into place to bring about a recovery."

The Functional Breakdown of Financial Intermediaries

The most detrimental consequence of corruption is the banks' inability to function as financial intermediaries, as the business sector can no longer receive funding for new ventures and account holders do not receive a fair return on their deposits.

The Causes Of Corruption In The Indonesian Banking Sector

I will herewith try to offer some insight into the perceived causes of corruption in the Indonesian banking sector.

Press Restrictions under the New Order Regime

According to a study by Brunetti and Weder [1998b], a free press is an effective deterrent to corruption. The variables of corruption consist of “laws and regulations that influence media content”, “political influence over media content”, “economic influence over media content” and “repressive actions”. These four separate indicators and the aggregate index of press freedom, when combined, serve to impact the level of corruption to varying degrees.

Brunetti and Weder [1998c] investigate the impact of openness and democracy on the level of corruption in selected countries over periods of time. Making use of a time series for the level of democracy, the authors report reductions in the level of corruption in South Korea, Paraguay and Bolivia, as measured by the PRS corruption index. I believe that these results can be replicated in Indonesia with the increasing freedom of press, which has already begun to play an active role in the elimination of corruption.

A Weak Judiciary

Indonesia's weak judicial system may also be a contributor to the high level of corruption in the country. As demonstrated in the Manulife and Panca Overseas Finance (POFI) cases, our inadequate judiciary has offered unscrupulous parties the opportunity to use it to their own advantage. According to the *World Development Report* [1997:104 & 168], while allowing for explanatory variables, an index of the predictability of the judiciary from the WB/UB significantly influences the levels of corruption in 59 countries. A similar correlation between corruption and the independence of the judicial system is proposed in Ades and Di Tella [1996].

The Recruitment Process, Wages and the Punishment System

The absence of meritocracy in the banking system also contributes to the high level of corruption. Evans and Rauch [1996] investigated the impact of merit-based recruitment on corruption in 35 developing countries and discovered that higher values in the merit-based recruitment index are associated with a greater proportion of upper-level officials in the core economic agencies either in possession of a university degree or having entered the civil service

through a formal examination system. While maintaining the income level, the results of the investigation indicated that the higher the level of education the lower the propensity to become involved in corruption. The average level of education found in the country's state banks is significantly lower than in international banks.

The low wages paid out to employees of state banks fosters further cause for corruption. Rijckeghem and Weder (1997) argue that low salaries force public servants to supplement their incomes illicitly while high salaries mean higher losses if a public servant is caught doing so. The absence of an effective system of crime and punishment (as noted previously) when coupled with low wages only serves to encourage and stimulate corrupt practices in the Indonesian banking sector. In a survey of 28 developing countries, Rijckeghem and Weder discovered a negative pattern of corruption in cases where civil service wages were relative to manufacturing wages. Doubling the civil service wage, i.e. from 1 to 2, improves the corruption index by the order of 2 points on the TI index, and by acknowledging the existence of more indirect effects; the impact might be even greater.

Whether low salaries are the direct result of corruption, as corrupt countries tend to have fewer resources with which to compensate their civil servants, or are in themselves the primary cause of corruption is yet undetermined. More recent studies by Swamy et al. [1999] and [Treisman 1999a] investigated inter alia the impact on corruption of the average government wage as a multiple of per capita GDP, allowing for a variety of other influences. The results of these studies were ambiguous and mostly insignificant.

Cultural Determinants

Some societies are characterized by a high degree of corruption, and such cultural determinants clearly influence the continued existence of corruption in the Indonesian banking system.

DESCRIPTION OF THE NATURE AND EXTENT OF CORRUPTION IN THE BANKING SECTOR

Corruption In The Central Bank And The Indonesian Bank Restructuring Agency

"Bank Indonesia is a den of thieves," was the shocking statement made by Mr. Anwar Nasution the deputy governor of the Central Bank (Bank Indonesia), which sparked a fury of questions concerning the integrity of the country's highest monetary authority. The combined function of Bank Indonesia as lender of the last resort and absolute monetary authority has recently been a subject of intense debate. Not long ago the International Monetary Fund (IMF) also requested that the principle debt restructuring initiatives in IBRA along with the reasons behind them be disclosed. Both these cases, the one of the governor's remark and the other of the IMF's request, highlight the gravity of corruption in Indonesia and its implications on the country's banking system.

To further emphasize the seriousness of the allegations of corruption against IBRA and Bank Indonesia, I bring to your attention the involvement of both these institutions in the Bank Bali financial scandal that rocked the nation two years ago. The proceeding is an excerpt from the summary of the PricewaterhouseCoopers audit of the management of the Bank Bali scandal by IBRA and BI and their involvement in it:

"During the course of our investigation, overwhelming amounts of evidence came to hand from Bank Indonesia and IBRA which proved their jointly held view that the Bank Bali claims were administratively ineligible." The summary continues, "despite this ineligibility, Bank Indonesia and IBRA subsequently processed the Bank Bali claims. In short, they stole the money without any intent to return it."

The above considered, I would like to reiterate the importance of transparency in combating the plague of corruption in Indonesia's banking system. However, it is also important to remember that transparency can only help to prevent a financial crisis and should not be seen as a cure for systems already in distress. In the long run though, a concerted effort to improve transparency

combined with a proper recapitalization method should be able to revive the banking industry. In a case where a system is already in distress, a move to greater transparency may even serve to accelerate its destruction. However such a process of destruction is in my view one of positive destruction, as the increased transparency should give the relevant authority the opportunity to install a new system free of corruption. It is in this view that this paper is written. The objective of the paper is not to place blame on any one person or group, but rather to reflect on what must now be done to improve and revive the ailing banking sector.

Transparency And The Banking System

Poor transparency increases funding costs, especially in times of financial crisis, as is characterized in Indonesia by the unchecked economic power of conglomerates, high level bureaucrats and individuals guilty of corrupt business practices. As corruption is a deep rooted almost cultural practice in Indonesia it may be many years before changes in the level of transparency can begin to occur.

The financial crisis affected every aspect of the country's economy including its currency and bond and equity markets and contributed to the shrinkage of the credit supply to Indonesia. A permanent solution to the local banking crisis calls for a restoration of public confidence as well as the confidence of international banks in the domestic banking sector, which will require massive restructuring, additional recapitalization and credible transparency in the banking process.

The first two requirements have been fulfilled and yet very little progress is visible. This is because the government has not attempted to improve the transparency of the banking process as required to regain its credibility. The Indonesian government has a tendency to view the country unrealistically, assuming that broad ambiguous guarantees and only small steps towards transparency are sufficient to lure depositors, foreign investors and inter-bank creditors back to the domestic banking sector. The truth of the matter is however, that these potential stakeholders demand not only solvency and profitability, but also, and even more importantly transparency.

Unfortunately the drawback to transparency is that it reveals insolvency, poor asset quality and banking malpractice, further undermining creditor confidence and wiping out the existing shareholder equity base, which is the primary reason why the management of many local banks have not supported efforts toward improving transparency. Despite recent bank restructuring and recapitalization efforts, some of the participants of such capital-raising initiatives (BII, Lippobank) are beginning to see a recurrence of some of their former problems. We have also in recent times seen foreign investors (Standard Chartered Bank in the Bank Bali scandal) badly burned by the corrupt practices of some and domestic credibility further lessened. In addition, revelations of poor asset quality and insolvency due to capital constraints is likely to bring to light managerial corruption and incompetence, requiring further examination of the existing management structure.

Theoretically, credible transparency could be determined if banks were to be examined on an arms-length basis by qualified practitioners. For example, Bank Indonesia's assessment that the Sinar Mas Group loan should be classified as not in violation of the legal lending limit (Pelanggaran BMPK) is a clear example of why bank examinations must be conducted by more credible parties. BI's assessment allowed BII to participate in the recapitalization scheme despite the fact that after further examination it became clear that the bank could not meet the recapitalization requirements. It is very important that loan classification policies are adopted and conducted by independent and incorruptible bureaucrats. The million-dollar question is, where and how are such independent and incorruptible bureaucrats found.

A reformed banking system cannot be achieved without an improvement in the integrity of the civil servant. Incorruptible, independent civil servants are the key to reforming the banking system. This being the case, I am sceptical that transparency and solvency will be achieved in the short term, but instead believe that the challenge to restore the confidence of the public and foreign investors is one that will remain for years to come.

DISCUSSION AND ANALYSIS

Cases of corruption, financial mismanagement and malpractice in Bank Indonesia and IBRA are so numerous and complex that they would require a lengthy dissertation to fully

divulge. As such I have adopted only to briefly explicate several of the most significant of such cases.

Case One: The Blanket Guarantee Scheme On Deposits

All banks that were closed, liquidated and seized by the government received a blanket guarantee on deposits. When they went belly-up or faced financial problems, it was the Indonesian taxpayer who paid. As Bank Indonesia was the financial regulator only BI could close those banks. Bank Indonesia and IBRA also started to prosecute some bank owners while allowing for the more lenient treatment of others depending on their political affiliations. From my observation it is clear that the system was widely abused and that the blanket guarantee scheme gave rise to the embezzlement of funds. Blanket guarantees, while perhaps useful from a systemic risk perspective, can lead to morally hazardous issues. Upon examining the limited resources available, such guarantees only serve to further burden an already exhausted system.

Case Two: The Scandal That Defamed BI And IBRA - Bank Bali

This scandal erupted from a payment of more than USD 70 million paid by PT. Bank Bali to a firm run by Setya Novanto (a leading Golkar party figure), for the recovery of loans from the Indonesian Bank Restructuring Agency (IBRA). Bank Bali's former president director, Rudy Ramli, testified that he tried for months to get the loans repaid through official channels before turning to Novanto, who offered to return the money at a commission of 60 percent, which is the amount typically stolen by government officials from domestic and foreign aid development projects.

Case Three: Banking Secrecy And The Debt Restructuring Deal

In the typically Indonesian fashion, the investigation into the Bank Bali scandal was hidden behind a smokescreen of banking and debt restructuring secrecy, and on 20 September Bank Indonesia announced that Indonesia's bank secrecy laws prevented it from publishing an independent audit of the smouldering bank scandal, despite the demands of international donors that the investigation into the affair be transparent.

One IBRA official from its Asset Management Credit Division in particular, has continued to prevent a clear explanation of the principle of the debt restructuring deal, which for the most part is a rather dubious transaction of questionable value and that sometimes lends the impression that the government is using public funds to bail out certain conglomerates or parties. The IMF has requested that IBRA be more transparent and explain its internal debt restructuring principles.

I herewith list several official practices within IBRA, which may foster corruption:

I Rescheduled payment, which has tendency to postpone a problem, as was the case when the Sinar Mas Group (SMG) and Texmaco received a new schedule of payment void of any commercial value or guarantee that the debtors would be able to fulfil their future obligations.

I Failure to realise collateral because debtors raised legal defence.

I High ranking officials too dominant in realizing debt restructuring deals.

I IBRA's failure to solve problems or to move against collateral when deterioration becomes obviously unsalvageable.

I IBRA's failure to adhere to its own written policies and procedures when, for example, it agreed to provide a Government guarantee to BII while according its internal regulations IBRA is only permitted to issue such guarantees to BTO's and liquidated banks and not to recapitalized banks like BII.

What is most ironic is that the government never reviewed the background and performance of the loan officers, directors and other bank personnel responsible for the banking failures described above. In fact the Indonesian Bank Restructuring Agency (IBRA) has recruited many former staff of Indonesia's delinquent banks. Without trying to appear prejudiced, it is valid to question if policies such as these can do more than give rise to conflicts of interest and further tarnish the credibility of the agency. From the cases where debt restructuring has been completed it is clear that most debt restructuring deals are purely mechanical in nature.

I also deplore the minimal disclosure approach as it concerns the problems currently faced by the banking sector, such as the fear of a run on the banks. The biggest mistake made by IBRA and BI was to engage a culture of complicity that has permitted the promotion of a bank whose

risks were extremely high. The practise of bailing out bankrupted financial institutions has been deemed acceptable while precious little has been done to assess the actual costs involved.

Corruption in the Indonesian Banking Sector is a subject with far-reaching implications. To centre the content of this paper, I will only focus on those corrupt practices with the most disastrous affect on the banking system and bring to your attention only the most common of such practices as they occur in state banks, recapitalized banks and private national banks

CORRUPTION IN STATE BANKS

The most common line of defence raised by state bankers under investigation for questionable practices is that they were only carrying out the government's instruction to inject capital into a state-owned project, company or the pet project of a party with political affiliations. We have often been told that such policies have saved thousands of Indonesian jobs, however it seems that one thing the proponents to these policies fail to realize is that if the participating bank were to fail, such a failure would cost taxpayers much more than the price of saving those jobs.

The most common corrupt practice within state banks is granting loans to obviously infeasible projects, as was the case in Golden Key Group scandal, Texmaco scandal and several other scandals.

The professionalism of state bankers is always subject to public scrutiny. Those who join government banks do not usually have high salary expectations, as the salaries paid by state banks are far below those paid by their private sector counterparts. By the same token, the quality of the loans and the terms given to third parties are well below their private sector and international counterparts.

In order to improve the state banking system, Indonesian banks should conduct a post-mortem on loans that resulted in losses for the banks. This is undoubtedly the strongest option available to strengthen the effectiveness of loan policies, documentation, loan officers and the loan review function. It is also very important that the salaries paid by state banks be comparable to their private sector counterparts, that is if the state banks hope to attract qualified banking personnel. However, the primary motivation of the personnel in state banks must be a desire to

serve the nation. The importance of increasing compensation for staff of state-owned financial institutions also applies to BPPN and Bank Indonesia.

Another common corrupt practice in state banks is the abuse of the bailout money from state owned entities designated for particular projects. To support certain projects or impracticable business ventures, the managers of state banks often request funding from state financial institutions such as Government pension funds or state owned companies in the form of huge deposits at interest rates far below the market average.

State-owned banks are not transparent and do not like to reveal their lending policies or schemes to finance state projects (very often these state projects are nothing more than individual pet-projects as was the case of IPTN, Chandra Asri, Texmaco and many others). As most of these companies do not have access to a capital markets, state banks are used as instruments of economic policy. Very often, state banks direct funds to targeted industries in order to gain a foothold in international markets as without state funding most of Indonesia's major projects would not be financed.

One of the primary causes of corruption in state banks is the low level of competition. Theoretically competition would motivate state banks to strive to lower their costs and improve their services. Such an atmosphere would be an added incentive for state bankers to avoid participating in extortion and corruption.

CORRUPTION IN RE-CAPITALIZED BANKS

Under the recapitalization scheme, several eligible private banks were allowed to join the programme; only absorbing 20 percent of the cost of the recapitalization while the government absorbed the remaining 80 percent. The potential for corruption under this scheme was intensified by the fact that the former shareholders retained the management of the recapitalized banks. This offered a huge incentive to the recapitalized banks to take risks, as the government would be left holding the bill. This moral hazard become obvious when some banks began financing their affiliated companies and engaging in transfer pricing.

Another more serious malpractice is the transfer of non-problematic loans to IBRA. Under the recapitalization scheme, the recapitalized banks were required to transfer all their Non-

performing loans to IBRA. Unfortunately this scheme provided a loophole that some unscrupulous shareholders took full advantage by transferring not only their non-performing but also their performing loans (belonging to their affiliated companies). It is interesting to note that the burden of any write-offs in these cases would have been borne for the most part (80 percent) by government and as a result of the recapitalization policy and its loopholes, these unscrupulous shareholders were able to take a free ride on the government's coattails.

A further corrupt practice involves the management control remaining in the hands of the founding shareholders. Theoretically, as the government is the biggest shareholder in a recapitalized bank, the management should represent the interests of all stakeholder groups. In reality though, many recapitalized banks are still controlled by their founding shareholders. As a result, the policies of these banks do not necessarily represent the interests of all their stakeholders but more often than not primarily represent the interests of the founding shareholders.

CORRUPTION IN PRIVATE NATIONAL BANKS

The most acute problem in private national banks is corruption with regard to the violation of the legal lending limit. Many local private banks were established not to provide financial services to the public or other third parties but rather to their majority shareholders or similar groups. Banks as financial institutions require very little capital. With a Capital Adequacy Ratio of 4 percent, theoretically banks can borrow up to 25X their capital as deposits, and with a reserve requirement of only 5 percent they can dispense up to 95 percent of this borrowed fund as loans. Unfortunately the legal lending limit ruling is not strictly adhered to and the use of the nominee, back-to-back loans and other banking practices that serve to masquerade lending to affiliated groups, is all too common. Despite Bank Indonesia's attempt to eliminate these corrupt practices, post-mortem analyses of liquidated and recapitalized banks indicate that they remain a major problem in the private (national) banking sector.

All the banking deregulation of 1980 accomplished was to lower the cost of setting up banks and provide the opportunity to borrow capital from the public (by using a Bank as a financial vehicle). This tempted risk takers to establish banks by borrowing from the public without the

proper accountability. While not resulting in criminal charges, many of the country's most notorious financial distresses have involved bankers who saw huge opportunities for personal wealth, but who in the long run greatly miscalculated their venture.

A REGISTER OF CORRUPTION AND MALPRACTICE IN THE BANKING SECTOR

The following is a brief listing of some of the most common corrupt practices in the Indonesian banking sector:

- Failure to conduct a review of the financial condition and repayment ability of the borrower.
- Inconsistency of loan policy.
- Incomplete security interest on collateral.
- No apparent profitability.
- No legal and regulatory compliance.
- Overvalued collateral; very often improperly margined and documented prior to loan disbursement
- Loan officers disburse loans based on instructions from the top and receive political pressures or incentives (kickbacks) to do so.
- Renewing a loan for an increasing amount - Loan plafondering.
- Ignoring the symptoms of a problematic loan.
- Lending against the fictitious book net worth of a business entity, very often with no external audit or verification.

Some common cases of fraud that occur in the Indonesian banking sector include:

- Falsified financial statements, or the misclassification of loans.
- Inflated collateral for borrowing purposes (mark-up exercise).
- False documents, securities and titles for collateral.
- Kickbacks to lending officers or high-ranking bank directors.

- Political loans without a logical commercial basis, practices especially popular with state banks

Many banks disguise their loans to affiliated companies, thus violating the legal lending limit, through one of the following methods:

- Back-to-back loan agreements between two or more banks. (An I scratch your back - you scratch my back arrangement).
- Using a nominee to avoid detection. The post-mortem analysis of the BTO and several recapitalized banks indicated that many banks employ this technique. It is very common for funds to be channelled through dummy companies to conceal the amount of money going to a single borrower or group.
- Fraudulent transactions where loans were dispersed to dubious businessmen, who paid their state banker a commission, stashed the funds - very often in Swiss bank accounts - and then proceed to promptly go out of business. This technique would leave a bank with irrecoverable bad loans.

Here are some additional thoughts on the corrupt practices so rampant in the Indonesian Banking Sector:

- Contrary to conventional wisdom, state ownership not only imposes bureaucratic and political interference that encumbers management, it also lends itself to extraordinary audacity, the main problem being that an effective system of checks and balances is curiously absent from Indonesia's modern banking system. Very often the Ministry of Finance as a shareholder and Bank Indonesia as a supervisor opt to observe a code of silence in place of calling into question the competence and decision-making abilities of senior members of state banks.
- It is common practice in Indonesia for major banking and financial institutions to doctor their books in an effort to promote or maintain confidence in the system. In any case, I have found the process of collecting evidence of financial malpractice and corruption in the banking sector to be slow and delicate. As such, I believe that the road to justice and the eradication of corruption will be long and winding one.
- Recently during a public hearing in the House of Representatives, Bank Mandiri (Indonesia's

largest state bank) indicated that the Texmaco Group had requested additional funding. It is impossible to understand why state banks choose to work so closely with such a group when every private sector bank in the country is warning about the potential credit risks involved.

- Very often funds are not utilized for their stated purpose and in most case loans are diverted for the borrowers' personal use, whilst the lending bank makes no attempt to verify the purpose for which the funds were used. The Indonesia Corruption Watch (ICW) recently issued a report to President Wahid on the potential involvement of the current minister of finance in the bogus loan related to The Nien King when he was the director of a state bank.
- Indonesia is not only lacking in comprehensive money laundering laws, but also possesses only the most rudimentary forms of banking regulations.

WHO IS TO BLAME?

So what is the end result of all these incidents? Having written numerous articles to the public concerning Indonesia's major business scandals and financial failures, I can only conclude that these unpleasant episodes only serve to heighten the suspicion of the public and cause further distrust of the monetary authority, state financial institutions and the banking system as a whole. Often though, Indonesian government officials tend to ignore such scandals unless their self-interests are at stake, and the public is rarely concerned with the total economic cost of these incidents.

CORRUPTION AND TRANSPARENCY

Transparency in the Indonesian banking system and the process of analysis

Due to the low level of transparency in the banking system, banking and credit analysts must rely on institutions and soft data sources. The lack of transparency among Indonesian banks has forced analysts to base their opinions on criteria obtained through indirect means,

which at times result in inaccurate information. Objective data is typically scarce and costly to acquire and very often analysts, inter-bank treasurers and the public are expected to rely solely on the reputation of the relevant source.

Moreover, it is natural to take government assurances of the soundness of the banking system with a grain of salt. Where transparency is lacking, a more conservative view is typically favoured. As a result banking and credit analysts are generally willing to trust the source of their data so long as the data is confirmed by other sources, and it is this confirmation process that is often very costly. For example, international banks require that any Letter of Credit issued by an Indonesian bank be confirmed by another international bank, and it is confirmations such as these that substantially increases the cost of banking in Indonesia. Analysts, international bankers and depositors have in the past been often misled or lied to, and trust that has been betrayed is difficult to restore.

The Definition of Transparency

Transparency, as used in a financial context can be defined as obvious; guileless (free of deceit, cunning or craftiness); candid and open. This means that banks must provide an accurate financial portrayal of themselves. Transparency ensures that reported financial data reflects reality. If there is a change in the financial status of a reporting entity, full transparency requires that such a change be communicated immediately to all parties concerned.

Over time greater transparency is likely to build confidence and repair trust as well as make for better economic decision making. In the long term increased confidence and trust will translate into a lower overall cost of funds bringing about higher levels of profitability. As Indonesia's banks shift from their traditional modus operandi to more sophisticated banking services such as investment banking, equity investment and margin lending, which are all very vulnerable to the mood swings of the economy, the need for transparency also will increase. But without drastic improvement in transparency, banks will continue to conceal their failures causing depositors, inter-bank lenders and analysts to require higher costs of fund transactions, further burdening the Indonesian banking sector.

Examples of Poor Transparency

We In Indonesia have witnessed many cases of poor transparency. Our biggest problem however, is not the quantity but rather the quality of such information. The list below, while not exhaustive, provides examples of the issues faced by those parties involved with trying to determine a bank's true financial condition.

- The finances of related companies are not consolidated and often debtors distribute their borrowed capital across several separate accounts to masquerade the problem
- Delays in financial reporting or the absence of quarterly and semi-annual updates. Banks tend to delay the publication of bad news, often failing to publish quarterly statements entirely when the information contained is negative.
- Complex corporate structures with a lack of clear ownership data and hidden affiliated party lending praxes. The abuse of nominee companies.
- Plafondering: Continuing to accrue interest on problematic loans.
- Undisclosed or inadequate information regarding derivatives transactions.
- A lack of independent directors, external auditors and audit committees.
- The unavailability of information and the poor distribution of information.
- Independent auditors that are not truly independent but influenced by management or majority shareholders.
- Poor accounting practices, especially those relating to loss and impairment definitions of financial assets, and the common absence of the mark to market exercise.

Transparency in the Indonesian Banking System

Accounting transparency is essential to the health of the Indonesian banking system. Without transparency, very often problem banks that are technically insolvent are given a clean bill of health by their auditors. The price of allowing this to continue is that these problem banks may eventually contaminate the entire banking system (as demonstrated in the recent difficulties facing Bank Mandiri and Bank Internasional Indonesia).

If the banking system were transparent, problem banks would be naturally weeded-out of the system thus reducing the total number of banks and creating a healthier system. However as Indonesia continues to negotiate its standard of transparency and its current clouded system continues to permit problem banks to exist, this regulatory forbearance is unfortunately resulting in the weakening of the strong banks. Healthy banks become infected due to the policy forbearance and this pattern of decay results in a higher cost for the restoration of the system. With the advantage of hindsight, the costs of solving individual banking problems would have been far lower than the resources expended to restore the entire banking system through the ill-fated blanket guarantee scheme.

As problem banks are identified by depositors, market participants and other banks despite the efforts of BI, IBRA and bank officials to minimize the problems, the entire banking system is penalized with higher funding costs. The affected banks also face increasing pressure to retain their deposit base and the bailout costs skyrocket.

In my view, Indonesian banks are very lacking in transparency, as many of them provide volumes of detailed information with very little economic value. For example, when I enquired after the loans to affiliated companies made by a recapitalized bank the most crucial information was not available. While many banks adhere to BI regulations in terms of classifying problem loans, they do not meet the objectives of the regulations.

For example in the BII case, Bank Indonesia as the auditor, chose to classify the loans to the Sinar Mas Group (SMG) as current and performing. In a strict accounting sense, the loans were performing as interest continued to be paid. However, because the loans were made to borrowers with a high probability of default, and because the valuation of the bond issues indicated that SMG was in a serious financial trouble (as reflected by its S&P and Moody's ratings), therefore the loans were, in an economic sense, problem loans and should have been classified as such.

This is one of the most important lessons to be learned from the Indonesian banking crisis as Indonesia tries to woo back domestic depositors, investors and correspondent banks. The core of the problem is yet to be known and appears to be intensifying as many restructured banks resume business by issuing new loans to insolvent debtors to help them finance the payment of existing loans.

Probably the biggest single problem facing Indonesian banks, as was clearly demonstrated in the handling of the BII and SMG cases, is the unwillingness of the government (BI, IBRA, Ministry of Finance) to allow banks to fail. This approach is a reflection of the unrealistic perceived cost of such failure, and as a result public money is squandered to finance bailout while the shareholders and management of the banks are not held accountable for their malpractice and their sins go unpunished. A side effect of the problems in the banking sector is the falling Rupiah and depressed equity prices further deterring foreign investment into recapitalized banks and causing a flight of capital to safer, mostly international banks - all of which serves to prolong the economic crisis.

Transparency is also lacking when it comes to the official creditor protection policy. The handling of the SMG loans, for example, prompted very conflicting statements about the treatment of the case from various officials in the Ministry of Finance, IBRA and Bank Indonesia. The government appears to concentrate primarily on securing their interests and grabbing all the fixed assets despite the risk of a legal struggle with various stakeholders and creditors. How the authorities treat international creditors, senior unsecured bondholders, subordinated bondholders or minority stockholders has wide implications for investor confidence toward Indonesia. Remember that a consistent, equitable, authoritative statement would work wonders in restoring confidence.

How Can Banking Transparency in Indonesia be Measured

Due to the lack of research done in this field (and being that I perceive the level of corruption in the banking system to be a reflection of the general level of corruption in Indonesia), I recommend the use of the corruption index adopted by the international community. I believe that there is a strong correlation between the corruption within a country and the transparency of its banking system, and that higher transparency will result in lower risk and will translate into lower funding costs for Indonesian banks in the long term. The question is do we as a society have the courage to increase disclosure and run the risk of additional shock to the system in the short term in order to realize benefits to the system in the future?

Why Bank Indonesia, IBRA and Others do not want Increased Transparency

The above discussion clearly defines the positive aspects of increased transparency. The destabilising panics that Indonesian banks have experienced in the past have given rise to certain secrecy especially with regard to sensitive issues. This clearly demonstrates the government's lack of trust in the instrument and system itself. Despite the blanket guarantee, the government continues to assume that the average account holder is incapable of acting rationally based on financial data, or rather, fears that depositors will act rationally based on financial data that reveals the true condition of the system and relocate their assets elsewhere.

It is obvious that Bank Indonesia and BPPN favour banking secrecy as a measure to deflect public opinion arising from their failure to resolve the banking crisis. More importantly this attitude is a clear example the government's unwillingness to admit failing miserably in its recapitalization programme, and that a second recapitalization seems inevitable. Although BI, IBRA and the Indonesian government have in principle agreed that transparency is essential to restore confidence, at the same time they clearly fear its consequences.

After examining the regulators I hypothesized a justification for the resistance to increased transparency on the part of bank managers and concluded the following:

- Transparency is very costly and its implementation requires additional resources. For a small bank the cost of installing transparent information systems would be prohibitive.
- Transparency restricts the ability of shareholders and management to engage in affiliated party transactions. Loans to affiliated companies, loans based on political lobbying, and loans to family and friends would be easily detected. Very often LLL finds its way into such speculative activities. LLL is also often used to support inefficient and corrupt businesses. In certain state banks this would mean that loan officers would not receive kickbacks for issuing loans as such activities would theoretically be discontinued under a transparent system.
- Bank managers are further stirred to oppose transparency, as by law they may be subject to civil or criminal claim if found guilty of corrupt and irresponsible business conduct. Further, bank managers fear that greater transparency may

reveal the vulnerability of their banks and their large un-hedged positions in foreign currency. Some banks are also very susceptible to downturns in selected industries.

SUMMARY OF RECOMMENDATIONS - WHAT MUST BE DONE

In a more complex banking system increased emphasis must be placed on improving transparency. There is no substitute for a concerted effort to improve transparency by all parties concerned including IBRA, BI, and bank management teams. A proper system of credit analysis should also be implemented especially as regards the lending policies of banks.

Considerable attention must be focused on attaining an international standard of banking excellence in the exchange of information, the establishment of links for co-operative investigation, and in overcoming political resistance to transparency and the elimination of corruption in the banking sector.

The Indonesian government must issue laws that require transparency the elimination of corrupt practices in all financial institutions and that are applicable across the board with every financial transaction, and that facilitate the sharing of financial and corporate ownership information with law enforcement agencies and judicial authorities. It is also important that the government establish strategies to maintain certain initiatives over time on a continuing basis in order to keep pace with the dynamics of the required transparency of international banks. What follows is a list of the actions required to improve transparency and prevent the proliferation of corruption in the Indonesian banking system.

The Introduction of Measures to Increase Transparency in the Banking System

Measures to improve the degree of transparency must be based on international standards and gradually implemented.

The Constant Monitoring Of Transparency Implementation, Financial Corruption Patterns, Trends And Methodology

More sophisticated methods of identification; tracing and investigation into corruption involving all financial institutions must be implemented. The free exchange of information has been improving, but the critical gaps in know-how must be closed in tandem with improved cooperation. There is a high priority need to share data, even critical intelligence between various government institutions, such as between Bank Indonesia, IBRA, the Attorney General's Office and the Police. However the pervasive corruption in the cited agencies and institutions remains the biggest obstacle to effective information sharing.

The Issuance Of National Identification Numbers For Banking Transactions

The Bank of International Settlement has in the past recommended the usage of national identification numbers for banking transactions. This recommendation could prove useful in forming a database to prevent banking malpractice, which could be integrated to the benefit of the entire banking system.

Effective Analysis Of Corrupt Banking Practices

Indonesia needs more accurate information from more banks concerning the factors that influence corruption in the industry - inadequate or low wages being an example of one such factor. Post-mortem analysis of bad debts and losses are producing detailed profiles of banking corruption schemes, but the best data in existence thus far concerns the loans being restructured by IBRA.

Mapping Economic Power with Political Clout

The increasing concentration of wealth among Indonesian business groups, which are also the nation's largest debtors, is a cause for concern not only because of their impact on the investment climate, legitimate commerce & government integrity, but also because these conglomerates have the resources required to make large campaign contributions to political parties in exchange for assistance or protection. Illicit funds and corrupt government officials constitute perhaps the greatest continuing threat to Indonesian democracy.

The Enhancement of Functional Supervision and the Elimination of Systemic Weaknesses

Indonesian banks must maintain the same kinds of records on (financial) institutional clients, as they do for their other customers, and must report suspicious transactions executed by their (financial) institutional clients as they would with any other party, especially when those same financial institutions are named repeatedly in investigation after investigation. Some currently available but under-utilised mechanisms include the revocation of licenses, changes in ownership and management, the levying of fines, and civil or criminal prosecution. Perhaps the most intrinsic weakness is the lack of qualified personnel, not only in government regulatory agencies but also within the banking system itself, who are insufficiently trained in the implementation and management of such oversight systems and are generally incapable of handling complex monetary transactions.

A Clear Separation Of The Borrower And The Lender

Most cases of corruption in the Indonesian banking system constitute a violation of proper lending practices due primarily to the fact that nearly all banks in their function as lenders are also borrowers, a condition clearly prone to moral hazards and conflicts of interest. It is therefore crucial that the regulations on loans to single affiliated borrowers that prevent the concentration of a bank's assets be closely adhered to. The recent recapitalization drive notwithstanding, we continue to witness gross violations of this principle time and again.

The Indonesian government should try to emulate the US Depository Institutions Act, which established a complex mechanism for the limitation of loans to individual borrowers or consortiums of borrowers within a common enterprise or who are otherwise financially interdependent. Indonesia should also adopt a more stringent policy on loans to corporate insiders (executive officers, directors and principal shareholders).

The Prevention Of Unethical Conduct And Conflict Of Interest

The key to the success of any bank lies in the confidence its depositors place in the management and ownership of the bank that they will not betray their trust through unethical business conduct and financial malpractice.

Analysing The Impact Of Fraud And Corruption On Governments And Economic Systems

We must identify the major factors that influence bankers and other financial managers in some jurisdictions to accept money that they have reason to believe is tainted. As we better identify where corrupt banking practices are most likely to have a macroeconomic or political impact, the potential effectiveness of economic countermeasures can be analysed.

The Establishment Of An Agency To Combat White-Collar Crime

The task of exposing corrupt banking practices should be the responsibility of a government body similar to the ICAC in Hong Kong. In Indonesia, except for the supervision of Bank Indonesia, no effective enforcement agencies exist. More effective strategies must be formulated and enacted to combat corruption, which is often well funded by large corporations, conglomerates or political interests.

The Pursuit Of An Evolving Strategy

I am aware that the proponents of corruption - crooked politicians, bankers, government officials and businessmen - are continuously honing their skills in order to cover their tracks and utilized their illicit proceeds to procure every possible means of protection from manipulating the

legal system to influencing the executive office in their favour. In order to counteract such deviance and cunning, the scope of financial regulation, supervision and enforcement must expand to cover transactions that transcend national boundaries and the burgeoning financial service industry. The challenge is not only to detect corrupt practices, but what is more, how to prosecute such practices once they have been well identified.

The Establishment Of A Financial Action Task Force Against Corrupt Banking Practices

The establishment of such a task force is crucial to the integrity of the banking system. In collaboration with the Association of Private National Banks and the association of State banks and other relevant other organisations the Financial Action Task Force would be charged with promoting ethical banking practices.

A National Credit Information System

A national credit information system such as the one developed by the SWIFT banking information network is a must. All users should be able to contribute and share relevant credit information about borrowers. This system, if properly implemented would foster improved credit records among borrowers.

Increased Vigilance

In their efforts to accurately detect and speedily prosecute corrupt practices, the Indonesian government and financial regulators must maintain a state of high vigilance if they hope to prevent financial crimes. Certain schemes involving collateral suggest a need for an international independent valuator to assist banking and financial systems monitors outside major financial centres in determining the value of collateral.

Conclusion - Improving Transparency In The Indonesian Banking System - A Catch 22 Situation?

The Indonesian banking system has for decades been operating in a state of poor transparency, and the majority of existing banks are badly managed and have fundamental problems with asset quality. However until 1997, economic growth and prosperity concealed these ills. During the growth years, analysts, investment bankers, depositors and regulators were for the most part not alarmed by the poor transparency. However, following the economic crisis of 1998 the problems with the system surfaced and stakeholder groups began to lose confidence. The pressing concern now is that there might be more skeletons in the closet yet to be discovered.

In order to resolve the credit crunch the banking system is facing (based on the advice of the IMF, World Bank and other multinational bodies), regulators must embark on a transparency improvement programme, the main objective being to relieve the current credit shortage without attempting to establish full transparency as BI, IBRA and other regulators are concerned that full transparency may reinforce market fears causing a further drop in confidence which could exacerbate the situation and push the economy into depression. Such a move on the part of regulators may only serve to reset the vicious cycle and affect a second economic crisis causing a virtual collapse of the system. The real irony in the Indonesian experience is that any effort to improve transparency may in fact accelerate the deterioration of the system.

One economic school of thought advocates that transparency should be introduced when confidence is on the rise and any ensuing knee-jerk reaction would be offset by positive expectations. In my view, the election of President Abdurrahman Wahid set the stage for the introduction of transparency, and it is my sincere hope that similar opportunities will in the near future present themselves and that when they do the government will take full advantage of them.

This paper has argued the importance of improving transparency in the banking system in order to build a stronger economy. It is clear that poor transparency has greatly contributed to the current banking crisis. I have examined cases of poor transparency and corruption and have demonstrated the toll such corruption and poor transparency has taken on the overall cost of funds and the Indonesian banking industry. I have also highlighted the importance of utilizing positive market sentiment to improve transparency in the banking system.

I herewith conclude that transparency can only serve to prevent a financial crisis and as such must not be seen as a cure for already ailing systems. In considering the problems presently faced by the Indonesian banking system and the corruption that has its roots deep in the Indonesian psyche and culture, I believe that transparency will only be achieved over time that corruption in the Indonesian banking system will only be purged through consistent and long-term counteraction.

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CORRUPTION IN THE INDONESIAN PUBLIC SERVICE SECTOR

By Donny Ardyanto

INTRODUCTION

Background

The problem of corruption in Indonesia, as in many other countries, is a topic of intense debate. The debate itself, on the practical implementation level, concerns the eradication of corruption, while on the theoretical level concerns the root and definition of corruption itself¹. The differences between the theoretical definitions of corruption are evident from the various

¹ A relatively comprehensive debate regarding this matter can be read in Amanda L. Morgan, *Corruption: Causes, Consequences, and Policy Implications*, Working Paper #9, The Asia Foundation Working Paper Series, October 1998, page 9-26.

approaches taken in the effort to eradicate corruption in Indonesia. The two dominant approaches are 1) the political super structural approach, and 2) the public level approach. Both of these differ in the prioritisation of the issue of corruption. The first approach targets the government for eradication efforts (top down), while the public approach concentrates its efforts at the social level - the primary victim of corruption (bottom up).

In order to affect changes within the political superstructure, such as amendments to the Anti-Corruption Act or a revolution in the law enforcement apparatus, significant public support is required. On the other hand, the social approach of strengthening public awareness requires sufficient space for democracy. This means that both approaches must be implemented simultaneously. In order to synergize these seemingly opposing methods, it is important to first examine the problems that arise within the relationship between the two.

Issues

The government and the public maintain a relatively tense relationship within the scope of public service. In this matter, the direct connection between the state and the people occurs in relation to the role of public service. The needs of the public grow in tandem with economic growth, industrialization and political change, and being that national resources are controlled by the state, it is then obliged to further distribute them in a fair manner. This gives rise to public service institutions that are authorized to carry out the government's task of providing various public services and social facilities such as education, health care, garbage disposal, drinking water and so forth.²

Corruption in the relationship between the public and the state in the framework of public service is an issue of importance, firstly because it directly affects public interests and secondly because the argument that corrupt practices are espoused by the middle to lower classes on the grounds of economic justifications is unacceptable. Corruption is corruption, and is a detriment to society regardless of the low welfare of its perpetrators.

² M. Nawir Messi et.al, *Bureaucracy, Corruption and Reform: The Case of the KTP Service*, Indef, 1999, Jakarta, page 12

In this paper, the various sectors of public service discussed are those that routinely interact with society, such as PLN (State Electrical Company), PAM/PDAM (Drinking Water Company/Regional Drinking Water Company), vehicle licensing and taxes. These four sectors were selected under the assumption that there are differences in the character and the structure of the various entities within the public service sector in Indonesia. PLN and PAM/PDAM represent the state owned enterprise segment of public service that is currently being privatised. Tax collection is a public service of a bureaucratic nature, and the vehicle licensing process conducted by the state police represents military bureaucracy.

To understand the patterns of corruption in public service institutions and to formulate recommendations based on research is not an easy task. The differences between one public agency and another restrict such research to a degree.

Electricity and clean water as utilities are relatively similar in the sense that the relationship between the public and these agencies is clearly one of consumer-producer where the consuming public pays for the utility produced and supplied by the relevant agency, the consumers primarily being households and families. As for vehicle licensing, the producer-consumer relationship is similar to the above, except that the consumers are individuals. The most singular of public service entities is the tax collection apparatus, because society is not the consumer. Within the tax relationship, paying taxes is a public obligation reciprocal to its right to receive protection from the government.

In the public service sector, the dynamics of corruption between the government and the public can be examined through direct contact with individuals. The importance of the public service sector as an indicator of public confidence in government personnel, and more importantly, in the government itself, makes it essential to understand the patterns of corruption in interactions between the public and the bureaucratic personnel within the public service sector. It is also important to determine if certain forms of corruption are only found within particular elements in a given sector or in the entire system of public service.

Corruption: An Economic-Political Understanding

Corruption is most succinctly defined as the abuse of power for personal gain.³ Thus far, this definition is still able to explain the various forms, types and levels of corruption. In a legal context, pursuant to Law no. 31 regarding the criminal act of corruption, persons guilty of the criminal act of corruption are those... *who illegally enrich themselves or others through a cooperation that causes losses to state finances or the state economy* ... this means that corruption includes only those practices that are detrimental to the state.

Sociologically, Syed Husein Alatas defines corruption as the abuse of trust for personal gain. The essence being that corruption is synonymous with theft by fraud and the betrayal of trust.⁴ Mark Philip offers three definitions of corruption based on orientation, namely public office-centred, public interest-centred and market-centred.⁵

Public office-centred corruption comprises devious acts conducted by public officials for personal gain. Public interest-centred corruption is any behaviour that is detrimental to public welfare, and market-centred corruption is based on the utilization of economic methods in political analysis, where corruption constitutes an abuse of power by public servants in order to extort money from the public. In general, the main understanding is that corruption is viewed as the abuse of power for personal gain. Based on this understanding we can track matters related to power, and public and private interest.

In this paper corruption is defined not only as deviance identified by the law, but is also deemed to be an implication of the incompatibility of political and economic systems.⁶ In situations where corruption is endemic, it is still important that we differentiate between where such corruption occurs, such as between one country and another or between different institutions in the same country and so forth. Aside from that, the aim of this paper is not to formulate a theory on corruption and as such it adopts the more useful political approach in order to reveal the role of the state in providing certain conditions conducive to corruption,

³ Amanda L. Morgan, Op.Cit., page 12.

⁴ Syed Hussein Alatas, Corruption: Nature, Cause, and Function, LP3ES, Jakarta, 1987.

⁵ Amanda L. Morgan, Op.Cit., page 10-11

⁶ John Girling, Corruption, Capitalism and Democracy, Routledge, London, 1997 page 30.

and thereby influencing the behaviour of public officials. Therefore, political intervention is determined as the primary method for the prevention and elimination of corruption.⁷

A synthesis of a structural, historical and interpretive nature is more conducive to conducting a study of a given society.⁸ The general theory of corruption from an economic-political approach that is used as a tool for analysis emerged from the premise of the incompatibility between the political system and the economic system, where in terms of social science there exist *contradicting pressures between capitalism and democracy*.⁹ In order to overcome these pressures, or at least to *maintain the system*, politicians and public officials collude with businessmen or others in society to their mutual benefit.

As referred to above, the degree of potential corruption is influenced by the special characteristics of a certain country or community. For instance in post WWII Japan and Italy, the opportunity for the emergence of a totalitarian power base during the said period set the groundwork for corruption. On the other hand, the government, businesses and bureaucracies joined forces into a three-sided alliance in a strategy focusing on economic growth. At that point a climate suitable to various forms of political manipulation and corruption emerged. In an institutionalised theoretical context, the two factors suspected as most contributory to the said condition are 1) the fundamental weaknesses of political parties, and 2) the absence of a professional government bureaucracy.¹⁰

More revisionalized theorists examine corruption by asking if corruption has made the existing sub-systems functional for the entire system in the widest sense possible, or if to the contrary, it renders the entire system dysfunctional. Some experts have stressed the fact that functional corruption for a wider system is based on reasons such as imperfect market conditions or excessive political intervention that does in fact improve the performance of the state

⁷ Mark Robinson, 1998, loc.cit., page 5

⁸ Corruption is such a diverse phenomenon, occurring in so many different forms in so many diverse setting, that is extremely unlikely that all its manifestations have some irreducible set of shared consequences—as implied by abstract formulations, or models. See John Girling, *Corruption, Capitalism, and Democracy*, Routledge, London, 1997, page 12

⁹ John Girling, 1997, *ibid.*, page 30

¹⁰ John Girling, 1997, *ibid.*, page 13

economy while avoiding the detrimental affects of state control. Meanwhile, others opine that corruption is dysfunctional and argue that such acts distort the operational mechanism of the markets.¹¹

Being that neither of these opinions fully explains the complexity of the issue. John Girling has provided several analytical dimensions that can be utilized as such:¹²

The extent of the various forms of corruption, namely:¹³

- a. Incidental-Individual: An individual within a certain environment perpetrates such corruption within an institution or agency that is in actuality relatively free corruption. This form of corruption is recognized in countries with a low national rate of corruption such as New Zealand, Denmark and Sweden.
- b. Institutional-Agency: Corruption is referred to as institutional if it affects a certain entity within a sector that in its wider scope is not corrupt.
- c. Social-Systemic: Social-systemic corruption attacks all levels of society and the public system, as with every process corruption is routine and acceptable. Systemic corruption affects agencies and the behaviour of the individuals within them, and affects individuals at all levels of the political, social and economic structure. Social-systemic corruption has several singular characteristics, namely:
 - It is inclusive within its social-cultural environment and is thereby accepted as a part of the social-cultural context of society itself.
 - It tends to be monopolistic controlling all public systems, and thereby making it difficult for society to obtain public services that are free of corruption.
 - It is well organized and difficult to avoid being that it is a routine process of social economic activity, and is therefore either consciously or not, integrated into the behavioural pattern of the individual.

¹¹ John Girling, 1997, *ibid.*, page 13

¹² John Girling, 1997, *ibid.*, page 14

¹³ See Revrisond Baswir et.al, *The Public's Perception on Corruption within the Municipalities of Yogyakarta and Surakarta*, report on research (not published), IDEA and PACT Indonesia, Yogyakarta, 1999, page 20-21 and Mark Robinson (ed.), *loc.cit.*

The Locus of the perpetrator, namely:

- a. The functions of those in public office, in this case the bureaucrats, based on the orientation of the implementation of the said institutional function, such as whether public officials are considered as masters or servants? As independent or as pawns? If pawns, whose interests are they serving?
- b. The relationship between welfare and power is a matter of public interest, which can be synthesized because it depends on context and other related matters. In this dimension, corruption can be classified into three definitive points of view, the first centring on the obligations of holders of public office, the second on the two-way relationship between welfare and power, and the third centring on the context in which corruption occurs riding on the focus of public interest. These three definitive views are set forth below:

- *Corruption is a behaviour, which deviates from the formal duties of public office because of private regarding (personal, close family, private clique), pecuniary status gains, or the exercise of certain private influences. It includes such behaviour as bribery (use of reward to pervert the judgement of a person in a position of trust); nepotism (bestowal of patronage by reason of an ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private use).¹⁴*

- *Corruption is an extralegal institution used by individuals or groups to gain influence over the actions of bureaucracy. As such, the existence of corruption per se indicates only that these groups participate in the decision making process to a greater extent than would otherwise be the case.¹⁵*

- *Corruption is a decomposition of the body politic through moral decay.¹⁶*

¹⁴ J.S Nye, Political Corruption: A Cost-Benefit Analysis, in Heidenheimer, et.al (ed.), Political Corruption: A Handbook, New Brunswick Transaction, 1997, page 966

¹⁵ Nathaniel Leff, Economic Development through Corruption, in Heidenheimer, et.al (ed.), op.cit., page 389

¹⁶ John Girling, 1997, op.cit., page 20

The first definition is analytic regarding individual behaviour, while the second stresses the institution, and the third looks at corruption on a more macroscopic level - the system itself. The definition used as a stepping point for further development is the third. The formulation of the premise from the basic idea of the said definition, is:

Corruption is the culmination of a systematic process of relatively continuous collusion between the political apparatus (politicians and bureaucrats) and the economic sector (private and public) that results in a kind of dilemmatic situation (re-confusion) in setting the boundaries of the scope of 'public' and 'private'.¹⁷

The word collusion refers to a secret agreement to the mutual benefit of the parties involved that is usually illegal or forged in nature,¹⁸ while the point of culmination can take the form of public scandals, the economic bankruptcy of a state, or even a coup d'etat or social revolution.¹⁹ Collusion is the pre-condition for the emergence of corruption because collusion is conducted in order to maintain the existing system, either within the political or the economic sector.

The rate of tolerance of values and ideas acceptable to the public as regards corruption is also of importance. These are certain factors that indicate the public integrity of a given society at a given time, even when those in public office consider corruption customary. This dimension emerges because corruption thrives through the loopholes of disparities between economic and political power, irrespective of whether the national ideology is capitalist or communist.²⁰

¹⁷ Unofficial translation by the author. See John Girling, 1997, *ibid.*, page 1

¹⁸ Victoria Neufeldt and David B. Guralnik, *Webster's New World Dictionary*, 3rd College Edition, Simon and Schuster Inc., 1988, New York. Inside, the word collusion is synonymous with conspiracy.

¹⁹ "This problem (corruption) is an important issue for governments in South Asia, because the custom of bribery and dishonesty has paved the way for authoritarian rulers that justify themselves by raising the issue of corruption and then taking conclusive measures to punish its perpetrators. The eradication of corruption is usually the main justification for a military coup." See Gunnar Myrdal, *Asian Drama, An Inquiry into the Poverty of Nations*, Vol.II, Pantheon Books, New York, 1968, page 938. The author added unofficial translation and words in parentheses.

²⁰ John Girling, 1997, *op.cit.*, page 22

The consequences of corruption are to the economic and political condition of the state. The dimension of these consequences can be examined from at least two points of view as follows:²¹

- a. The basic opinion is that corruption allows the business community, based on certain ethnic or traditional binds, to be able to directly cut through the political barriers erected against them. At this point analysis regarding groups that are involved in the amassing of capital and the practice corruption is discussed.
- b. The basic opinion is that corruption provides a kind of service that benefits investors when dealing with an oppressive political regime.

The social significance of a given act of corruption lies within the existing symbolic dimension within society.

In short, corruption is not merely a kind of deviation identified by the law but rather is a social cancer that thrives on the incompatibility between political and economic systems. Collusion between the political and economic elite, while allowing for corruption, has tried to resolve such incompatibility. When instances of corruption surface, the resultant scandals are proof enough that such actions are not simply individual mistakes or misdemeanours but more of a social pathology.²²

The above definitions generally place the point of observation for the phenomenon of corruption within the framework of the public service sector. The nature of corruption varies in the political and bureaucratic levels within the public service sector or the private sector. Corruption can also be defined in accordance with its degree of intensity, for instance, whether it is systemic or isolated, grand or petty, local or national, personal or institutional, and traditional or modern in nature.²³

²¹ John Girling, 1997, *ibid.*, page 24

²² John Girling, 1997, *op.cit.*, page 30

²³ Paul Heywood, *Political Corruption: Problem and Perspectives*, in *Political Studies*, Vol.45, No.3, Special edition, 1997

To assist in identifying corruption patterns within the public service sector, the typology of corruption used in this paper is based in the typology constructed by Syed Hussein Alatas, which is based on the argument that the said analytical tool describes more than just the variations of the corruption phenomenon. Aside from his typology, Alatas offers a more direct definition of corruption without adhering too closely to the aspects of legality or even certain conventional norms or social mores. The advantage of the said mental framework is important bearing in mind that in this paper, the typology and the relatively neutral definition of corruption has turned the process of analysis into a more prudent one, especially in studying the aspects of complexity related to corruption.

Syed Hussein Alatas has developed and identified corruption from its somewhat minimalist definition²⁴ into several types:²⁵

- 1) *Transactional* corruption constitutes a reciprocal agreement between the beneficiary and benefactor for mutual benefit in which both parties actively participate.
- 2) *Extortive* corruption is accompanied by forms of coercion where one party is coerced into bribing the other in order to prevent self-threatening losses, losses to profit or to people or things the party appreciates.
- 3) *Investment* corruption involves an offer of goods or services without direct connection to profit apart from the promise of future gains.
- 4) *Nepotistic* corruption takes the form of giving special treatment to close friends or associates within the framework of a position of public office. In other words, preferential treatment in all its contradictory forms and in violation of valid norms or regulations.
- 5) *Autogenic* corruption is perpetrated by an individual who sees an opportunity to profit from his knowledge or understanding of certain matters that only he/she is privy to.
- 6) *Supportive* corruption refers to the creation of an atmosphere conducive to the protection or maintenance of corruption.

²⁴ Corruption according to Syed Hussein Alatas is defined as the abuse of trust for personal gain. See Amanda L. Morgan, Op.Cit., page 12.

²⁵ Unofficial translation by the researcher.

7) *Defensive* corruption is practiced as a form of self-defence against extortion.

Based on the said typology of corruption, we are able to identify the phenomenon of corruption within the public service sector to a certain degree. Even though helpful, in the end our typology depends on the numerous differentiating factors between corruption in one country and another, the existing formula for national policy, the tradition of bureaucracy, the development of political dynamics and social history.²⁶ The typology of corruption is not without its faults, one of which is its relatively static nature. Corruption is rarely limited to just one pattern because any given corruption pattern is simply the intermediary variable for further corruption. Therefore, in certain cases, the said typology is positioned as a medium for the emergence of other types of corruption.

The existence of the public service sector depends on the government's ability to increase its capacity to fulfil the needs of every member of society. These needs will continue to develop concurrent with the rate of economic growth, industrialization and political changes meaning that a good or service previously considered luxurious and limited in ownership can quickly become a necessity required by a large portion of society. The rewards of economic growth and industrialization must in turn be distributed and allocated to each participatory member of society. Such distribution and allocation is carried out by government agencies in the form of services based on the interests of the public served. The concept of public interest itself is defined by the following:

*Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or the interest of particular localities.*²⁷

From this we can see the legal rights and liabilities attached to society in general whereby the general meaning given in such context is defined as public. The realization of such public

²⁶ World Bank, *Helping Countries Combat Corruption: The Role of the World Bank, Poverty and Economic Management Network of the World Bank*, September 1997, page 12

²⁷ Henry Campbell Black, *Black's Law Dictionary*, West Publishing Co., St Paul-Minn, 1979.

interest occurs in relation to resources and their allocation. The process of allocation is realized through public service, which is defined as follows:

*Certain kinds of corporations that serve the needs of the general public or conduce to comfort and convenience an entire community... A public service or quasi-public corporation is one private in its ownership, but which has an appropriate franchise from the state to provide necessity or convenience to the general public...owe a duty to the public which they may be compelled to perform.*²⁸

Because public service is closely linked to tradable goods and services, it is also important to define public utilities as the provision of goods or services by means of public facilities by an individual or a corporate body.²⁹ The parties managing resources for public interest may also be bureaucratic agencies, both state and private, through the position and authority of public office in the form of the delegation of power of the state administration to a certain public official. A public official in this context is a person that carries out his duties as part of the state administration.³⁰

In Indonesia, there are many public service offices that are still under government bureaucracy. Theoretically, there are three functions that are performed by the said bureaucracy, namely the service function, the development function and the general government function.³¹ The service function relates to the organizational unit of the government that in essence is part of or related to the public. Its main function is to directly service the public. The development function is that of government organizations that play a part in a particular sector in order to achieve development - principally development or adaptive functions. The general government function relates to the succession of government organizations that perform tasks of general governance including maintaining order and security. The function of these government organisations is more regulative in nature.

²⁸ Ibid.

²⁹ Ibrahim R, *The Prospect of State owned enterprises and Public Interest*, PT Citra Aditya Bhakti, Bandung, 1997, page 19

³⁰ Ibid., page 38-39

³¹ J.W Schoorl, *Modernisasi: Introduction into the Sociological Development of Developing Countries*, Gramedia, 1984, Jakarta, page 175

In short, public service comprises activities conducted by an individual or group of individuals based on material factors under a certain system, procedure or method in an effort to fulfil the needs of the public in accordance with its rights.³² The relevant government regulation defines public service as *all forms of service activities performed by government institutions within the central and regional government and within the environs of state owned enterprises, both within the scope of fulfilling public needs and of exercising the provisions of the law.*³³

According to Stiglitz the two elements that exist in every public service are 1) the absence of the possibility to ration public goods or services to each individual, and 2) if such rationing is possible, it is very difficult.

One important facet that supports the implementation of such functions is the ability of government bureaucracy to manage and produce goods and services (utilization) that are economical, effective, efficient and accountable at all social levels. Such functions are ideally implemented based on the principle of equality, meaning that the government cannot provide discriminative services based on status, title and ethnic or other persuasions.³⁴

In economic terms, public utilities and services comprise of categories that encompass both public and private goods. In the event that the said goods and services are categorized as private, but are also a part of a public service (vehicle licenses; drinking water and electricity), they are then referred to as publicly provided private goods.³⁵ Goods and services that are categorized as public goods and are a part of a public service are known as pure public goods. Both public and private goods within the sector of demand are determined by the consumer's taste. However, if profit-oriented producers determine private goods within the supply sector, then the supply of public goods is determined through a political process.³⁶

³² Ibid., page 14

³³ Decision Letter of the Minister for the Development of State Apparatus No.81/1993.

³⁴ M. Nawir Messi et.al, Op.Cit., page 13

³⁵ Joseph E. Stiglitz, Economics of the Public Sector, 1st edition, W.W Norton Co., New York, 1986, page 107

³⁶ Syahrir, Public Utilization and Services: An Economic Review and the Social Political Implications, in Prisma, No.12, LP3ES, Jakarta, December 1986, page 4

At the implementation level, the government needn't perform all the required functions as certain functions are performed by the private sector through a partnership system. This partnership system between the government and the private sector is in line with the concept of a reinventing government developed by Osborne and Gaebler.³⁷ Therefore, the partnership system in the public service sector must continue to satisfy the public's consumption of goods or services provided jointly by the government and the private sector.

*...A public service or quasi-public corporation is one private in its ownership, but which has an appropriate franchise from the state to provide necessity or convenience to the general public...and owes a duty to the public which they may be compelled to perform.*³⁸

Because the position of the said partners or associates is part of the process of public service, I refer to the private sector as part of the entire formal system of bureaucracy within the public service sector.

DISCUSSION AND ANALYSIS

Vehicle Licensing And The Culture of Military Bureaucracy

The national police force, which was recently divorced from the structure of the Armed Forces has left behind the culture of militaristic-bureaucracy. During the New Order, the regime and particularly the military, was of a closed and exclusive organisational character that somewhat coloured the corruption patterns within the police force, especially in its function as the vehicle licensing authority. Even though civil servants are also involved in the licensing process, they have little impact on the existing hierarchy, which is reminiscent of a military structure where low ranking officers must explicitly obey their superiors. The position of these civil servants is further weakened by the fact that they are considered as only additional help and can be dismissed at any time.

³⁷ M. Nawir Messi et.al, Op.Cit., page 13

³⁸ Henry Campbell Black, 1979, Ibid.

The dominant corruption pattern in the management of vehicle licensing lies in the problem of scalpers involved in the procurement process. Police officers, service companies and individual scalpers who have a network of people inside the management structure can participate in the procurement of vehicle licenses. Whoever the scalper may be, within this structure is a mutually agreed upon mechanism of income distribution. Superior officers are prioritised as scalpers and staffs that obtain additional income from the sale of vehicle licenses must contribute a portion of their earnings to their respective superiors. The additional fee to obtain a license from a scalper typically ranges between IDR 100.000 and IDR 150.000.

This mechanism could not operate without the support of the entire network. If even one party ignores procedure, pressure is exerted on the party concerned either to leave or to participate. The hierarchy supports the mechanism thereby making this corrupt system impossible to change without a radical shift in policy. The internal control within the ranks has gradually been weakened by the prevalence of this systemic corruption.

In terms of payment for the procurement of a vehicle license, two forms of corruption occur. The first involves scalpers and can be categorized as corruption occurring within the procurement process. The second form of corruption involves the production of licenses within the ranks.

Corruption as it occurs within the management of vehicle licensing is due to the existence of certain conditions. First of all, it is difficult to remove scalpers because of the role they play in the procurement process that benefits themselves, the public and the officials. Secondly, the procurement process can be a considerably time consuming one without the help of a scalper to expedite the process. Finally, public demand for vehicle licenses is substantial but at the same time were individuals to undertake the procurement of a license independent of a scalper they would most probably fail the driving test. The corruption pattern in the management of vehicle licensing by the regional police has always involved scalpers, and so long as scalping is profitable and no other work is available, scalpers will always be with us. As for the insiders involved, they will continue to extort the public until their superiors take action against such practices.

Based on media reports³⁹ and the results of a field investigation, it has been determined that the official cost of a vehicle license is IDR 52.500 from which IDR 4.000,50 is paid to the state treasury and IDR 48.499,50 is paid to PT. CPP. The funds received by PT. CPP are allocated as follows: IDR. 11.000 is paid to the Police (recorded as operational costs [DOS]) from which IDR 4.500 is allocated to Police Headquarters and IDR 6.500 is paid to the relevant Regional Police HQ. The allocation for Police Headquarters is divided into amounts of IDR. 2.000 for the HQ itself, IDR 500 for Army Headquarters, IDR 1.000 for the Police Directorate of Traffic and IDR 1,000 for the Principal Police Cooperative (Inkopol). The IDR 6.500 paid to the relevant regional police HQ is allocated differently in different regions as shown below.

The Jakarta Regional Police allocates its share as follows:

IDR 3.000 - Head of the Regional Police

IDR 2.000 - Head of the Police Directorate of Traffic

IDR 1.500 - Head of the Sub-Division of licensing

Regional Police without any organizational structure (Polwil) allocate the funds as follows:

IDR 1.500 - Head of the Regional Police

IDR 1.000 - Head of the Police Directorate of Traffic

IDR 4.000 - Head of the Police Resort

For structured Regional Police departments, the funds are allocated as follows:

IDR 1.300 - Head of the Regional Police

IDR 700 - Head of the Police Directorate of Traffic

IDR 650 - Head of the Area Police

IDR 2.000 - Head of the Police Resort

IDR 1.500 - Head of the Traffic Unit of the Police Resort

IDR 350 - The institution of the Area Police

³⁹ Suara Pembaruan, August 19, 1998

Income beyond the official IDR 52.500 fee has its own mechanism. The scalper functions as a replacement to stand in line for the applicant and lodge the necessary documents and additional fees at each of the various counters and divisions. The collection of the money from each counter is conducted by the supervising officer while comparing the number of license files that each of his subordinates have processed. The supervising officer then allocates a portion of the income to his subordinates on duty at each counter.⁴⁰ Part of the income is given to the administration and internal affairs department (Taud). The administration and internal affairs officer further allocates the income to the Head of the Sub-Division of licensing.⁴¹ Aside from payments made to superiors, the administration and internal affairs department also divests the income into two treasuries, namely:

1) Treasury of the Sub-Division of licensing

This first treasury is designated for operational necessities related to the issuance of vehicle licenses such as the preparation of instruction boards, office stationery, the installation of telephones, the payment of utilities bills, and the construction and maintenance of additional facilities.

2) The operational reserves of the Regional Police

This treasury is designated for the operational activities of the National Police such as meal allowances for the riot taskforce, the operation of trucks to replace public transportation in the event of national strikes, purchases of spare parts for the operational vehicles of the National Police, and the personal necessities of high ranking officials and their cronies such as car tires and golfing fees.

The said funds are also used to subsidize the cost of issuing licenses for priority applicants such as the relatives and friends of senior officers and journalists. In maintaining the funds allocated

⁴⁰ With the decentralized system of levies, the average additional income obtained by each officer at the counter with the status of Civil Servant-Police is around IDR 100.000 per day and the headcounter officer can receive up to around IDR 250.000 per day.

⁴¹ The higher the rank, the greater the income; for instance the Head of a licensing Sub-Division can receive up to IDR 5 million per day.

as a result of the subsidy for priority applicants, each Sub-Division Head employs different means. The patterns of corruption in the management of vehicle licensing are itemized in the table below.

Corruption Patterns In Vehicle Licensing

No	Scope	Field of Activity	Management Level	Corruption Pattern
1.	Internal	Private Cooperation	High	Transactional & institutional patronage by the theft of assets (Supportive).
		Personnel	a. Middle b. Lower/operational	Nepotistic-Investment through bribery (Supportive).
		Processing	Middle	Extortive Individual Patronage through collections (Supportive).
2.	External	Processing	Lower/operational	Extortive-Autogenic corruption through unofficial levies.

Supportive corruption is corruption that fosters an environment conducive to the preservation of corruption, in which the corrupt mechanism is protected and even strengthened in cooperation with the private sector. This form of corruption occurs in the processing of a vehicle license. The relevant hierarchy also plays an important role as the code of silence among members of the corps is strictly adhered to.

The recruitment of personnel and the relationships between employees involves corruption of a nepotistic-investment nature. In addition to providing easy entrance into the institutional structure based on certain affiliations, there is also the need for long-term career prospects within the organization. At the internal level, a system of extortive individual patronage is in place under which employees must tithe their incomes to their respective superiors.

Extortive-autogenic corruption also occurs as the public is forced to pay additional costs when procuring a license because only scalpers and licensing officers understand the complicated procurement process.

Corruption Within The Tax Sector

As explained previously, this sector is comparatively more complex in nature. The many kinds of taxes and levies, the technical procedures, and the different collection agencies have spawned numerous problems at the personnel level in the payment of mandatory service, the processing of tax negotiations and several other loopholes that allow for corruption inside the Directorate General of Taxation.

Corruption at the personnel level within the tax sector is mostly related to the process of recruitment and placement, during which a transaction of some sort typically occurs between the potential employee and his/her potential superior in order to secure placement in a lucrative division within the Directorate General of Taxation. Concerning the extortion of the public by tax officers, during inspections taxpayers are often forced to pay bribe money in order to expedite processes that in reality should be completed at little or no official cost. This happens because taxpayers are often intimidated by tax officers due to their lack of knowledge of the taxation process.

As a follow up to the payment for mandatory services, negotiations are conducted between the tax officer and the taxpayer. Two distinct forms of corruption emerge during these negotiations; the first is the extortion of additional fees based on the ignorance of the taxpayer and his/her desire to expedite the tax process. Secondly, at the behest of the taxpayer the tax officer accepts bribes to reduce the outstanding amount payable.

Within the Indonesian tax system, there are several loopholes that provide opportunities for corruption. The first is the official assessment system. The sweeping authority of tax officers allows them to act discriminately without much supervision. The self-assessment system was once tried, but because the Directorate General of Taxation could not accommodate the required changes it was discarded and the official assessment system was reinstated. Secondly, the model for tax inspection currently in use is one where the purpose of the inspection is to verify compliance in the fulfilling of tax obligations. This makes it difficult for taxpayers to calculate tax obligations. Even if taxpayers intend to request restitution, it is likely that they will be suspected of fraud and the process made even more difficult. The final loophole is the nominative list, which allows for corruption outside the tax apparatus. Tax officers usually

decline to examine expenditures considered entertainment funds, which are usually entered under the corporate grant section of the tax report. As for the individual receiving the said entertainment funds, his report categorises them as income but in reality, the transactions based on such entertainment funds are strongly flavoured with corruption and collusion.

During the process of tax collection as illustrated in the following table, five corruption patterns occur. Transactional-nepotism occurs within the recruitment process. Autogenic corruption occurs during the data collating process. Autogenic-extortive corruption occurs during the payment process for mandatory services, and during tax negotiations. Corrupt transactions also occur within the reciprocal (transactional) and coercive (extortive) mechanism, depending on the situation arising between the tax officer and the taxpayer. Corruption that occurs with the taxpayer as the active perpetrator can be categorized as transactional-defensive.

Corruption Patterns In Tax Collection

No	Scope	Field of Activity	Management Level	Type of Corruption
1.	Internal	Personnel	Middle Lower/operasional	Transactional - Nepotism through bribery
		Data Collection	Lower/operasional	Autogenic through unofficial levies against fellow tax officer
2.	External	Payment for mandatory services	Lower/operasional	Autogenic - Extortive through bribery
		Tax Negotiations	a. High b. Middle c. Lower/operasional	Transactional - Autogenic or Extortive - Autogenic through commission
			Taxpayer*	Transactional - defensive through bribery

* Occurring when taxpayers try to avoid the burden of tax risks

Corruption In State Owned Enterprises (PLN And PAM Jaya)

State owned enterprises (BUMN) that manage state assets related to the general welfare of the public should function as public servants. In general, the problems within BUMN in

Indonesia are related to professionalism and quality of service. In order to improve the professionalism of state enterprises, the privatisation of several BUMN including PLN and PAM has been explored. In the case of PLN, privatisation takes the form of purchasing electricity from the private sector, while in PAM Jaya privatisation comprises cooperation with several foreign companies for the supply of water to Jakarta. Within these BUMN, PLN and PAM Jaya, corruption exists internally and in the privatisation process.

Privatisation And Corruption In PLN

Corruption in PLN concerns the supply of electricity and usually takes the form of budget mark ups. On an internal level, corruption occurs within the procurement process of required operational goods. Corruption also takes place within the framework of PLN's relationship with society, which allows for large-scale electricity theft by industrial consumers to power their factories or warehouses.

The main problem within PLN itself is that of private electricity. This problem started with the issuance of a government policy designed to anticipate an increase in demand resultant of an increase in investment within the manufacturing sector. It was clear that that PLN would be unable to meet the demand and private electricity became the solution. However, private electricity proved problematic in terms of planning, licensing, funding, production implementation, and the sale of power to PLN. These problems were the product of the many special facilities granted to the producers by the government - strongly suspected of KKN involving the family of then President Soeharto - which resulted in massive losses to the state.

During the planning process, PLN miscalculated projections under the pretext that it would only expand its network to an area if that area were approved as a site for an industrial estate. As such, many consumers often had to find alternative sources of electricity. Also during the planning process, demand estimates were manipulated. This provided an opportunity for malpractice and later just cause for the creation of private power producers to supply PLN. The bidding process to determine which private sector entities would be licensed to produce electricity was also manipulated and the President's cronies walked away with most of the contracts. In order to further justify the existence of this private power industry, the government issued several regulations to encourage private investment in electricity.

In the case of PLN what is evident is collaboration between the state and private investors that is detrimental to the public interest. To encourage investment in electricity (later proven unnecessary), the government issued regulations contradictory to the Law. The current relationship between PLN and the private sector is not balanced because regardless of the demand for electricity, PLN is bound to purchase electricity from the private sector. Since the economic crisis of 1997, the country's demand for electricity has remained in the sphere of PLN's ability, but the state electricity producer continues to purchase electricity from the private sector at a pre-determined rate.

Financial institutions such as IBRA, the ADB and others are no strangers to problems similar to those in PLN. These financial institutions provide the electric power industry with funding and in turn utilize the industry to power other development projects. The government has played an important role in complicating the problems of the industry to the detriment to state finances.

Corruption also occurs in small to medium scale power supply companies. In terms of quantity when viewed case by case, the losses to the state are relatively insignificant. However, if viewed as a whole, even though an accurate figure has yet to be determined, the state's losses due to corruption in the form of *mark ups* during the procurement of operational materials such as main relay stations, medium voltage networks and meters are quite substantial.

At this level, those involved are low to mid-level officers in collaboration with third party contractors. *Mark ups* are typically made during the planning process, with the knowledge and sanction of higher-ranking officials such as the managers of regional offices or the distribution division and planning bureau at HQ. Political nuances also factor into the planning stage, especially with regard to the establishment of networks in certain regions or villages. Such expansion often occurs ahead of the general election, resulting in losses to PLN.

The relationship between PLN and its consumers involves a great deal of external corruption. Besides involving the public, this pattern of corruption most certainly involves PLN insiders, particularly at low to mid-level management levels. Corruption in this case takes the form of the manipulation of tariff payments and direct electricity theft. Payments are usually manipulated by rigging meters to display incorrect consumption calculations. This practice commonly involves third party contractors acting with the knowledge of PLN personnel. Electricity theft

occurs as a result of collusion between PLN officers assigned to inspect the discrepancies between the maximum and minimum consumption settings and the consumers themselves.

Corruption Patterns In The Supply Of Electrical Power

No	Scope	Field of Activity	Management Level	Type of Corruption
1.	Internal	Procurement of strategic resources	High	a. Transactional - Institutional Patronage through the theft of assets b. Supportive
		Operational procurement	a. High b. Middle	Autogenic - Transactional through commission or bribery
2.	External	Installation	Lower/operational	Extortive - Autogenic through unofficial levies
		Theft of strategic resources	a. Middle b. Lower	Transactional through unofficial levies or bribery

Based on the above, and with reference to the theoretical framework constructed by Syed Hussein Alatas, I have charted the corruption patterns in the supply of electricity as follows:

With regard to the relationship between low-level PLN management and the public, two types of corruption are prevalent, namely transactional corruption in the form of bribery or theft, and extortive-autogenic corruption in the form of unofficial levies commonly paid during the installation process. Transactional corruption also occurs within the lower management level, and typically involves cases of large-scale electricity theft.

As for the internal workings of PLN itself, three types of corruption occur, namely 1) institutional patronage of a transactional nature through the theft of assets, 2) supportive corruption, which occurs high up the management structure and appears during the procurement of strategic resources, and 3) autogenic-transactional corruption by individuals who stand to gain from information they are privy to. This is indicative of a reciprocal agreement between the parties involved, and occurs at the low to middle management level during operational procurement.

PAM Jaya: Collusion Between The State And Investors

Also a state enterprise, there are many similarities between the corruption patterns in PAM Jaya and PLN, only the scope of corruption is wider in PLN because it is a national operator while PAM Jaya only services the greater Jakarta area.

Corruption inside the structure of PAM Jaya takes two forms, 1) corruption relative to the privatisation process, and 2) corruption outside the framework of privatisation. With regard to privatisation, intervention from powers representing the interests of capital investment is all too common. The involvement of Soeharto and his cronies is evident from the deposition made by the former President dated 12 June 1995 directing the expedition of the supply of water to metropolitan Jakarta in conjunction with the private sector.

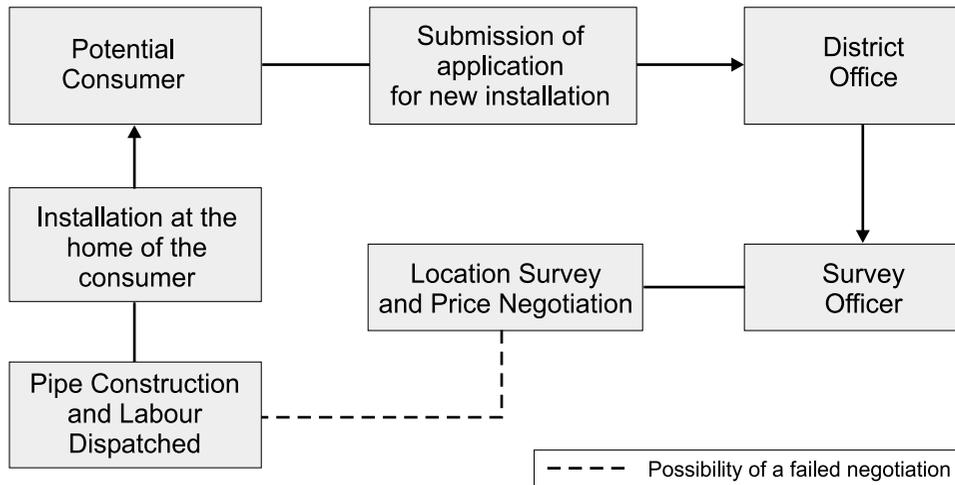
The privatisation policy was initiated based on the rationale that it represented the only solution to the problems facing PAM Jaya. The justification of technological benefit was also cited based on the findings of research conducted within the Indonesia *Urban Water Supply Sector Policy* framework.

Furthermore, the bidding process was not conducted transparently, but instead through direct appointment without testing the abilities of the tender participants to fulfil the requirements of the venture. During the implementation stage, the private sector not only came to control the water supply from the Jatiluhur dam to the water processing installation in Jakarta, but also nearly assumed complete operational control of PAM Jaya.

Meanwhile, corruption in matters outside the framework of privatisation involve the procurement of goods required for PAM Jaya's operation, and the transportation and installation of the required operational goods to facilitate the supply of clean water to consumers. During procurement, corruption occurs in the bidding process, where even though the announcement of tender is open, the supplier is usually in collusion with PAM Jaya logistics officials to offer the price sought by PAM Jaya.

During the transportation of goods, suppliers must pay Bribes of IDR 50.000 - 100.000 to several officers, such as the warehouse officer, the laboratory officer and the financial controller. During installation, the relevant PAM Jaya personnel require that consumers pay additional fees for a variety of reasons.

The Process Of Corruption In PAM Jaya



Note: This diagram illustrates the corruption process prior to privatisation. Post-privatisation changes were made to the Submission of Application for New Installation (PPIB). The Potential Consumer (CK) contacts the head office, not the district office as shown above, which in turn contacts the district office from where the installation officer is dispatched.

Once a survey officer is dispatched he measures the land based on the PBB (Land and Building Tax) and the building, and verifies the number of occupants. The officer further determines whether there is a main pipe in the area. Once the survey is completed, negotiations are conducted as follows: First, the officer will explain that the main pipes are too far away, requiring pipe crossing - an expensive installation process. Besides this, other geographical and technical explanations may be offered. Next, the officer presents the official installation fee (survey results, distance from main pipe, additional pipe required). The officer will then confirm that no additional fees need be paid but will usually add the following explanation;

...we must also pay for labourers. The work usually takes 3 days or more and costs IDR 50.000 per day with 2 workers. We can actually absorb the other costs, but we need help to pay the workers, that's of course if you want the work to be done quickly...

I suspect that this technique is used to make consumers sympathetic towards the officer and appreciative of his hard work, and ultimately to extract additional money from them beyond the official fee. This way, the bribe is masked as a voluntary contribution from the consumer.

Insufficient control is the foremost cause of corruption. The internal control held by the Inspectorate General and other supervisory agencies has proven to be ineffective due to the systemic character of the corruption. Because corruption is particularly acute within government agencies that are in essence public servants, society must be involved in the control mechanism.

No matter what form the internal control mechanism may take, the public is still the most powerful institution of control, and in order for it to be effective the public must be organized. Organization in this context does not refer exclusively to the establishment of agencies and supervisory bodies, but can be defined as the public's awareness of its rights and its united resolve to fight against the violation of such rights. Until society is educated and organized under clean leadership nothing will improve.

Corruption Patterns In The Supply Of Clean Water

No	Scope	Field of Activity	Management Level	Type of Corruption
1.	Internal	Procurement of strategic resources	High	a. Transactional - Institutional Patronage by stealing assets. b. Supportive
2.	External	Installation	Lower/operational	Extortive - Autogenic through unofficial levies

As illustrated in the above table, there are three types of corruption within the water supply process. The first is institutional patronage and the second supportive corruption, which together foster an atmosphere conducive to the protection and maintenance of corruption at high management levels. These forms of corruption occur inside PAM Jaya during the privatisation policymaking process, and as a result the said privatisation does not significantly benefit the consuming public. The third type is extortive-autogenic corruption and occurs in interactions between PAM Jaya officers and their customers and potential customers.

Corruption Patterns And Socio-economic Development Under The New Order: A Preliminary Analysis

Indonesia's economic development over the past two decades has integrated several aspects of society and the national economy with the global financial system. The inability of the principal institutions to support the system through crises has rendered the pathology of corruption uncontrollable due to contamination, a condition that the state has also contributed to. Based on the previous descriptions of the patterns of corruption it is evident that the state, comprising political institutions and groups, continues to dominate the public. Several general behavioural patterns of such are briefly described below.

- 1) Changes have been made to the general pattern of individual patronage (closely linked to political power and institutionalised patronage) further guaranteeing protection for the corruption perpetrated by those in power.
- 2) Concurrent with changes in industrialization strategy, the corruption environment has also changed from one limited to individuals close to the centre of power, to a wider environment through procurement regulations designed to facilitate institutionalised corruption. It is here that the role of the Team of Ten as the procurement authority in the said process cannot be considered as trifling. This team also functions as the economic control agency for political interests in building a support base, for instance through the DRM (List of Capable Partners) instrument that functions as a screening agency for pro-Golkar and non-Golkar entrepreneurs.
- 3) The segregation of opportunities for corruption between the lower and upper levels so that those at the middle and lower levels are unable to mobilize vertically, either through institution or through regulation. A common example is the existence of Presidential Edict no. 14/1979 that profits small and medium scale entrepreneurs, while the Team of Ten offers competitive advantage to conglomerates with high political affiliations.
- 4) This segregation is also controlled by mediation agencies that function as system supervisors, such as the regional and departmental Coordination Team - the arm of the Team of

Ten, the Sub-Division of vehicle licensing at the Regional Police HQ - the axis that regulates the allocation of profits from unofficial licensing fees, and the Internal Supervisory Unit of PAM Jaya.

- 5) The object of this segregation is to, among others, separate high-level corruption from low-level corruption, in order to preserve those in power.

In principle, the examples of corruption briefly described above form an expanded social network. In theory, the structure of the said institutions in the case of the bureaucracy of public service, form a chain that links one individual with another or one social position with another.

This pattern of corruption also shows that the individual act nurtured within and influenced by the constraints of society that bring the perpetrators together in a pattern of interaction, has reduced the individual to a passive participant based on the pressures of the social environment; an environment that restricts discretion to a degree.

The numerous laws and regulations with their elaborate and contradictory interpretations have proven that such regulations are only permissible so long as they are useful. Here the law is subordinate to the interests of various groups. In addition, individualism when confronted with institutional power reflects society's submission to the state as a result of the steady depoliticalization of the institution of social power over the years.

RECOMMENDATION

In order to provide a better understanding of the issues discussed in the preceding pages, I have divided my recommendations topically in the order in which they appeared in the text. Based on these recommendations, I conclude this report a general recommendation for the public service agencies concerned.

To eradicate corruption in the vehicle licensing process, the following must be implemented:

- 1) A new culture must be built within the police force completely independent of the military apparatus. This culture must prioritise the creation of an internal control mechanism, because the militaristic and bureaucratic chain of command structure is unfeasible.

- 2) The police force must begin a transition to transparent governance by providing accountability to the public concerning the allocation of its finances. The cost structure for the issuance of vehicle licenses must be re-evaluated and if necessary, cross-subsidized in order to combat extortion.
- 3) The police force must eliminate the scalping mechanism as it is rife with corruption, and produces instant drivers who are unable to safely operate vehicles and pose risks to public safety.
- 4) The police force must demand that the government increase the salaries of its officers. In this era of reform it is the responsibility of the national police force to improve the welfare of its members through legal means and not through extortion and corruption.
- 5) The level of competence required of individual drivers must be improved, regardless of public reaction, in order to avoid endangering the lives of the public through incompetence.
- 6) The licensing process must be streamlined and the relevant facilities, technology and infrastructure sufficiently improved. Any bidding conducted prior to establishing cooperation with the private sector must be objective and transparent.
- 7) The public must view the vehicle license as a responsibility and not something to be taken lightly.

To eradicate corruption in the tax sector, the following must be implemented:

- 1) Public education regarding tax matters should not only emphasize taxes as an obligation, but should provide taxpayers with the formulae for the technical calculation of tax payments.
- 2) The government must ensure that tax revenues be used to benefit the public in the form of public services by the reorganization of the public service sector.
- 3) The government must confirm the status of each of its citizens. If a person pays taxes, then that person's rights must be fully guaranteed by the state.
- 4) The authority to collect tax must be clarified, especially in the context of regional autonomy.

- 5) An internal control mechanism in the form of a code of ethics for tax officers must be established, and an independent body to supervise the implementation of said code of ethics must be formed.
- 6) Law no. 17/1997 regarding the Council for the Settlement of Tax Disputes (BPSP) must be immediately amended, so that a taxpayer submitting an appeal does not have to fully pay off his tax debts prior to arbitration.
- 7) The tax restitution system should be improved to expedite the process. This will minimize collusion between tax officers and taxpayers.
- 8) The tax system must be based on a more strategic calculation method. Amendments to implementing regulations due to the tactical needs of high-ranking tax officials must be avoided, because such actions only serve to preserve the already systemic pattern of corruption in the tax apparatus.
- 9) Implementing regulations regarding tax matters must be reviewed because many are overlapping. For instance, the revocation of the right that regulates taxpayers in theory utilizes the self-assessment system, but the official assessment system is still practiced.
- 10) The interactive relationship between tax officers and taxpayers must be tightly controlled. In order to achieve the required level of control, an on-line information network must be established linking tax offices across the country.
- 11) The taxpayer by proxy, in order to avoid any dubious transactions between the tax officer and the taxpayer, must confirm inspection results.
- 12) In order to guarantee public accountability, an independent party must audit all inspection results.
- 13) The public must be sufficiently educated in taxation issues, so that it may refuse invitations for collusion made by tax officers.
- 14) The directorate general of taxation must be immediately reshuffled in order to spearhead the fight against corruption.

As an agency that manages public necessities, PLN must be free of KKN. To achieve

this goal the following must be implemented:

- 1) In the case of private electric power producers, they must be made aware that previous negotiations were based on KKN and the abuse of power, and informed that the re-negotiation or even revocation of current agreements is inevitable because electric power is a public utility and should not be exclusively controlled by private companies let alone foreign investment (PMA) companies.
- 2) Financial institutions must be made to share the current liabilities of the electric power sector, because they have been involved since the planning stage.
- 3) Firm internal supervision must be put in place to combat the multi-level corruption within PLN.
- 4) The planning of the electricity supply program must be done in accordance with a more expansive strategy of industrialization and development. Any attempt to manipulate the planning process for personal gain must be met with swift and harsh punishment.
- 5) In order to effectively implement the above recommendation (point 4), society must be involved in the planning process.
- 6) Any BPKP audits that show signs of engineered planning must be investigated to prevent similar cases of over estimation from occurring in the future.

To eradicate corruption in PAM, the following must be implemented:

- 1) Corruption in PAM stems from the privatisation process. It therefore must be reviewed, and if any violations in the form of abuse of power are discovered, the related agreements must be re-negotiated or terminated, and the parties to the corruption must be held accountable in court.
- 2) After three years of privatisation a public evaluation must be conducted to determine its merits.
- 3) The bidding system for the procurement of operational goods must be made more stringent and transparent.

- 4) An supervisory system must be put in place that along with the existing workers union should be involved in the internal supervision of PAM.
- 5) The public should be educated with regard to administrative terms and application procedures, so that it fully understands the relevant mechanism.

In closing, we can safely conclude that lax control is the primary source of corruption in the public service sector. The internal control exerted by the Inspectorate General and other supervisory agencies has proven ineffective, because of the systemic nature of corruption. Whatever form the internal control mechanism takes, the public remains the most effective institution of control and must be organized in order to effect positive changes in the system, protect the rights of individuals and chastise the perpetrators of corruption.

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Biodata of the Authors

Riefqi Muna

Riefqi Muna is Executive Director of the Research Institute for Democracy and Peace in Jakarta. He is a researcher in international relations and defence policy with the Center for Politics and Area Studies Research and Development, of the Indonesian Sciences Institute (LIPI), and visiting lecturer at the Post-graduate Studies Program in International Relations, and the Program in Strategic Studies at the University of Indonesia.

Riefqi Muna received his undergraduate degree from the Muhammadiyah University. His Master of Defence Studies was from the Australian Defence Force Academy in Canberra. His continuing studies in the field of international relations, defence and security were conducted at the University of Tasmania, Australia, the Asia-Pacific Center for Security Studies, Hawaii, and the European Peace University in Austria.

Mardjono Reksodiputro

Mardjono Reksodiputro is Professor of Law, simultaneously Chairman of the Graduate Program in Police Sciences at the University of Indonesia.

As one of the most respected Indonesian jurists, Mardjono Reksodiputro holds the aforementioned positions in conjunction with several other positions, among others, Member of the National Accreditation Board, Department of National Education; Chairman of the Commission of Legal Sciences, Department of National Education; Secretary of the National Law Commission, and Partner cum co-founder of the law firm of Ali Budiardjo, Nugroho, Reksodiputro.

Lin Che Wei

Lin Che Wei is President Director of SG Securities Indonesia, Director of Research & Market Strategies - SG Global Equities - with specialization on Thailand, Indonesia, and the Philippines and, at the same time Regional Banking Analyst for SG Global Equities covering Asia,

including Thailand, Korea, Indonesia, Malaysia, Singapore and Hong Kong.

Mr. Lin graduated from Trisakti University, Jakarta, as an Industrial Engineer, but received his Master of Business Administration from the National University of Singapore on full scholarship from the Asian Development Bank_ Government of Japan Scholarship Program.

Lin Che Wei is a lecturer at the Institut Pengembangan Analisa Finansial (IPAF). He was rated Indonesia's Best Analyst in Asia Money Survey in 1997.

Donny Ardyanto

Donny Ardyanto is a researcher with , among others, the Indonesian Corruption Watch (ICW), the Foundation of the Indonesian Legal Aid Institute (YLBHI), and the Commission for Missing Persons and Victims of Violent Acts (KontraS).

He is also the coordinator of the research project on Corruption Pattern on Public Services in Indonesia, and founder of the Jakarta Socialist Youth organization. He has a degree in Criminology from the faculty of Social and Political Science, University of Indonesia.

Biodata of Editor

Richard J. V. Holloway is Programme Adviser on Civil Society/Anti-Corruption, Partnership for Governance Reform in Indonesia., a multilateral initiative started by an Indonesian Board, UNDP, World Bank, and ADB to work on issues of government reform.

Holloway graduated with an honours degree in English Language and Literature from Oxford University. He pursued his studies at the Department of Social Administration of the London School of Economics and Political Science where he received his Post Graduate Diploma in Social Administration (Overseas) with distinction.

During 33 years of his career Richard Holloway worked in cooperation with governments and NGOs in poverty alleviation and social development programs in Asia, Africa, the Caribbean, and the South Pacific. In his role as adviser to governments and civil society organizations he worked for British, American, Canadian, Swiss, UN organizations and the World Bank.

Richard Holloway is the author of a great many articles, papers, brochures, and books. Among the letter 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.