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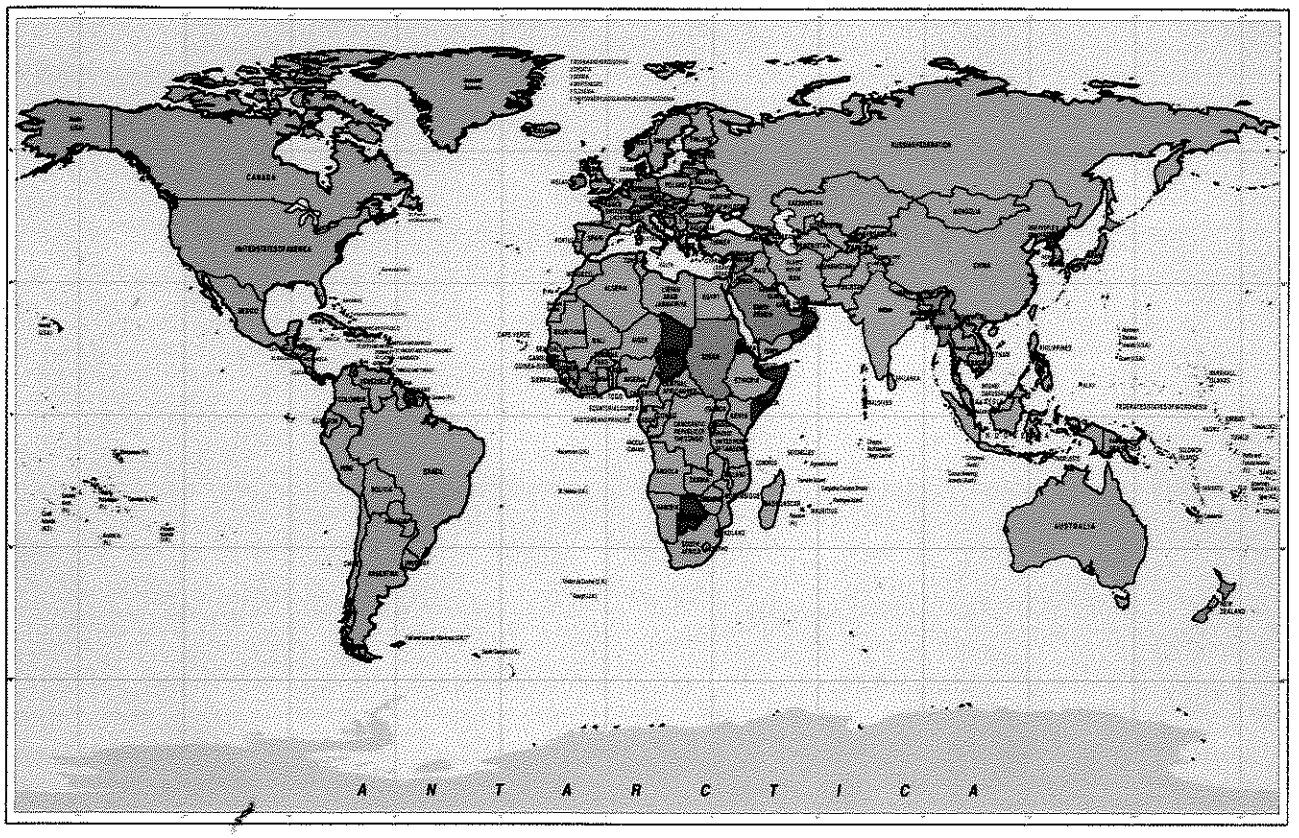

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Independent Report
Implementation UNCAC in Indonesia

Compiled by Indonesia Corruption Watch &
Coalition of Civil Society Anti-Corruption
Supported by The Partnership for Governance Reform/ Kemitraan

Jakarta , October 2011

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Contents

Preface
Corruption and Democracy: Indonesia Version

Is it true that there is a clear reciprocal relation between democracy and corruption? Experts say corruption is one of the causes of a country's failure in democracy. On the contrary in a democratic country –where public's political participation has been running effectively- there is a bigger chance for the creation of cleaner governance and more effective corruption eradication efforts.

Let us reflect on Indonesia. Indonesia has proudly claimed itself as an advanced democratic country especially compared to its neighbouring countries such as Singapore, Malaysia, Thailand and Brunei Darussalam. However international community also recognizes Indonesia as a country with deep-rooted corruption problems. Even in domestic level, public have experienced how corruption practices become a serious threat for the realization of welfare and social justice for all Indonesian citizens.

Comparison between Corruption Perception Index and Freedom in some ASEAN Countries (Tahun 2010)[1]

COUNTRIES	CORRUPTION PERCEPTION INDEX – TI (2010)	FREEDOM LEVEL – FREEDOM HOUSE (2010)
Indonesia	2,8	Free
Thailand	3,5	Partly Free
Malaysia	4,4	Partly Free
Singapore	9,3	Partly Free
Brunei	5,5	Not Free

The above chart makes us wonder whether democracy that has been developed since 1998 in Indonesia has given an important contribution for the effective corruption eradication. Or at least it makes us wonder why democracy in Indonesia has yet to improve corruption eradication efforts?

Data in the chart can give us a wrong conclusion about democracy and corruption. First possible conclusion is that countries with low level of freedom tend to have a higher corruption perception index. However such possibility will be arguable if we see many countries with high level of freedom also show high level of corruption perception index. Second possible conclusion is there is something wrong with the 13 years of democracy in Indonesia.

1 Excerpted and processed based on CPI Transparency International report http://www.transparency.org/policy_research/surveys_indices/cpi/2011) and Freedom in the World published by Freedom House (http://www.freedomhouse.org)

If we believe that democracy has an important contribution in corruption eradication, Indonesia can actually has a higher or at least similar corruption perception index score with Singapore, Thailand, Malaysia and Brunei Darussalam.

This report represents civilian perspective seeing the dynamics of law enforcement as a way to fight against corruption in Indonesia especially related to institutional development aspect, norms and procedural aspect as mandated in the second chapter of UNCAC. All data and analysis in this report have strengthened our assumption that democracy in Indonesia faces some serious problems. We cannot fully rely on immature democracy to maintain efforts to develop clean governance. High resistance toward corruption eradication agenda shown by politicians, ineffective implementation of national corruption eradication strategy, ineffective leadership from the executive, weak political support and intense political pressure toward anti corruption institution have confirmed the assumption. Instead of giving political support for corruption eradication efforts, many politicians and public official are part of the corruption problems itself.

In regard to UNCAC implementation especially from law enforcement aspect, effective corruption eradication is not solely depend on law enforcer institutions. Political factors related to law enforcement proved to have a significant influence because: i) parliament's and the government's roles are crucial in determining legislation politic in the development of corruption eradication's legal frame, ii) parliament and the government determining budget allocation for anti corruption institutions and other law enforcer institutions and iii) parliament and the government have big authorities in supervising anti corruption and law enforcer institutions.

Indonesia's experience gives important lessons on how crucial and urgent political reformation is. Political reformation must be included as a national agenda that must be done to pave the way for effective corruption eradication as well as improving the quality of democracy. In regard to Indonesia, such attempt is like cutting a vicious circle. In an effort to improve the effectiveness of UNCAC implementation by member countries, this report recommends urgent need to find a better approach to involve political parties, politicians and parliaments.

Indonesia still has a chance and big momentum to develop its democracy and realize clean governance.

Dadang Trisasongko

National Anti Corruption Advisor

Partnership for Governance Reforms/ Kemitraan

Chapter I
The Effort to Fight Corruption in Crisis

A. The State of Play of Corruption Eradication in Indonesia

The effort to fight corruption in Indonesia, although not optimal, has seen improvements since 2004 until now. If we use Indonesia's ranking in Transparency International's Corruption Perception Index ("CPI") as an indicator of the corruption condition in Indonesia, then we can observe that from 2001 until 2003, Indonesia's CPI remained stagnant at 1.9, then crept up in 2004 and continued to climb slowly to a total of 0.8 points from 2004 until 2010.

Table: Indonesia's CPI 2001-2010

Year	Indonesia	
	CPI	Rangking
2001	1.9	88
2002	1.9	96
2003	1.9	122
2004	2.0	133
2005	2.2	137
2006	2.4	130
2007	2.3	143
2008	2.6	126
2009	2.8	111
2010	2.8	110

Source: transparency.org

This CPI score can be viewed in a positive light, however the slight increase in ranking does not show a maximized effort to eradicate corruption.

As an extraordinary crime, corruption eradication in Indonesia is still investigated and prosecuted by conventional means, which are ineffective due to various weaknesses. Corruption is endemic, rife in executive, judicative and legislative institutions in Indonesia, including at core law enforcement agencies such as the Attorney General's Office ("AGO") and the Indonesian National Police ("INP").

One example of how corruption has become a systemic part of Indonesian law enforcement is the relatively recent case of suspiciously large bank accounts under the name of several high ranking officials of the INP. A number of generals were

suspected of owning irregular accounts involving immense funds, and they never satisfactorily explained the source of such funds to the public.

Aside from the Police, several judges and prosecutors have also been caught red-handed in corruption cases. The public is fully aware that law enforcement officers who are implicated in corruption cases who are not subsequently processed according to the law number in the majority compared to such officers who have been processed.

Presently, the KPK's operations serve as a clear example of how corruption could be effectively fought in Indonesia. This observation fully takes into account the cultural, hierarchical and operational conditions at the AGO and the INP.

Perhaps because of the KPK's successes, the "corruptors fight back" phenomenon has substantially disrupted the KPK's agenda to fight corruption. Resistance of the KPK's anti-corruption efforts are no longer limited to individual aggrieved parties; it very often now involves a network of powerful actors who do not want the "business as usual" status quo to be disturbed. Perhaps a most alarming aspect of this resistance is that there are indications that such resistance involves elements within the Indonesian Parliament (*Dewan Perwakilan Rakyat* – "DPR").

The motivations for the involvement of members of DPR in disrupting the KPK are numerous. Political corruption is becoming more and more visible, especially in recent corruption cases involving members of DPR such as the budget mafia case and other discovered modus operandi involving members of DPR. It is our observation and analysis that the State Budget and other public resources have been stolen and embezzled via an oligarchic conspiracy of corruptors.

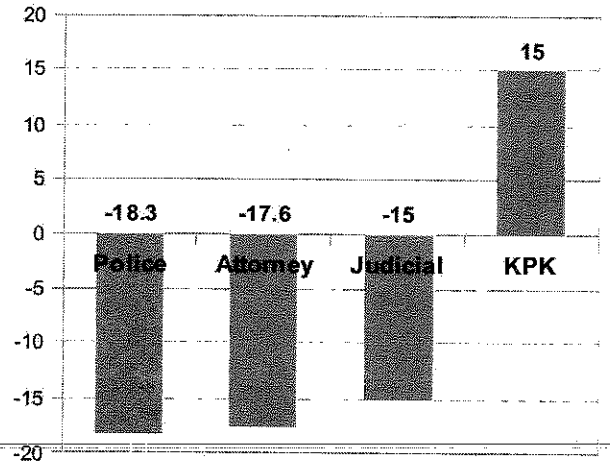
Since 2003, based on Transparency International's Indonesian Global Corruption Barometer ("GCB"), we have found that four of the most corrupt sectors have remained constant: political parties, DPR, the Judiciary, and the INP. In 2005 there was a slight variation wherein the Custom and Excise Office was included in the four most corrupt institutions in Indonesia. In general we can observe that from 2003 until 2010, the usual suspects are largely the same, as can be seen in the below table:

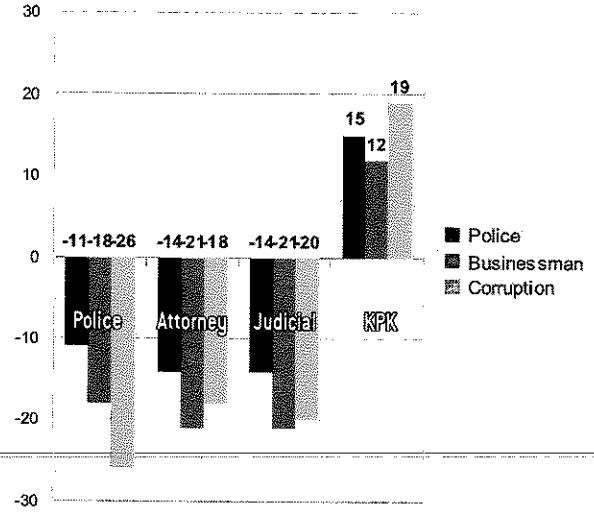
Table: Global Corruption Barometer (GCB) Indonesia 2003-2010

Year	I	II	III	IV
2003	Judiciary	Political Parties	Utilities	Indonesian National Police
2004	Political Parties	Parliament	Custom & Excise	Judiciary
2005	Political Parties	Parliament	Indonesian National Police	Custom & Excise
2006	Parliament	Indonesian National Police	Judiciary	Political Parties
2007	Indonesian National Police	Parliament	Judiciary	Political Parties
2009	Parliament	Judiciary	Public Services	Political Parties
2010	Parliament	Political Parties	Indonesian National Police	Judiciary

Source: Transparency.org

From the 4 most corrupt sectors identified in the above survey data provided by Transparency International, we can generally categorize the actors into two camps: the political sector and the law enforcement sector. A survey conducted by the Indonesian Survey Agency (*Lembaga Survey Indonesia* – "LSI") in 2010, reveals an interesting result that tends to confirm the GCB produced by Transparency International.





Legend: "Survey Integritas Penegak Hukum" – Law Enforcers' Integrity Survey; "Independensi dari Politik, Pengusaha dan Korupsi" – Independence from Politics, Businesses and Corruption; "Kepolisian" – INP; "Kejaksaan" – AGO; "Pengadilan" – Judiciary; "KPK" – Corruption Eradication Commission; Source: Public Opinion Survey by LSI, 2010

The first approach is the perception of internal corruption prevention. The results were: The INP: (-18,3); The AGO: (-17,6); The Judiciary: (-15), and the KPK +15. The second approach is perceived independence from political influences, with the following results: The INP: (-11); The AGO (-14), The Judiciary (-14), and the KPK +15. The third approach is perceived independence from businesses, with the following results: The INP (-18); The AGO (-21); The Judiciary (-21), and the KPK *+12*. The fourth approach is perceived independence from corruption, with the following results: The INP: (-26), The AGO (-18), The Judiciary (-20), and the KPK +19.

At the same time, the handling of corruption cases by each law enforcement agency cannot be said to have been done optimally, both in terms of quantity and in terms of quality.

LSI measured the public's level of satisfaction of the effort to fight corruption under the leadership of President Susilo Bambang Yudhoyono (President "SBY"),offset with a depiction of the integrity of various law enforcement agencies, based on four approaches:

Table: Handling of Corruption Cases in the Second Quarter of 2010

Law Enforcement Agency	Number of Cases	Losses to the State (in billions of Rupiah)
The AGO	226	1,212.7
The INP	37	262.9
The KPK	9	71.0
Total	272	1,546.6

Source: ICW Documentation

The above data indicates the level of severe weakness of the anti-corruption effort in Indonesia at the moment. Each law enforcement agency is not yet empowered to process the core actors of corruption cases, let alone to recover stolen State assets related to those cases in a significant manner. There is still a chronic silo mentality at each law enforcement that hampers effective anti-corruption efforts. Even worse is the fact that Indonesian law enforcement institutions are involved in fighting against one another in the anti-corruption arena, such as seen in the Gecko and Crocodile case during which the INP and the

AGO were involved in a case fabrication against KPK Commissioners lawfully conducting their duties, which amounted to a criminalization of the operation of the KPK Commissioners' lawful duty to fight corruption.

B. Coordination Between Law Enforcement Agencies

The rational choice is for the abovementioned institutions to cover one another's weaknesses by strengthening coordinative efforts in running corruption cases.

Law No. 30 of 2002 on the KPK provides a mandate to the KPK to coordinate and supervise corruption eradication, which explicitly includes the running of corruption cases by the AGO and the INP. The KPK's coordination and supervision function is a very important part of the collective effort of all three law enforcement agencies to fight corruption. It is impossible to rely on only one institution in a war on corruption where corruptors are using all their resources and networks, in Indonesia and abroad. Critically, the KPK has not been optimally carrying out its coordination and supervision functions as mandated by law.

Amongst the five core mandates of the KPK, it is most successful in carrying out its law enforcement mandate, that is to run preliminary investigations, investigations and prosecutions against the corruption cases that it handles. The KPK's performance in carrying out its other mandates is not at all adequate.

The KPK in its relationship with the INP and the AGO has suffered a number of serious frictions with those institutions. In a number of incidents including the Antasari Azhar case and the case fabrication matter involving KPK Commissioners and businessmen Anggoro Widjojo and Anggodo Widjojo, the public observed a naked struggle between the abovementioned institutions. The KPK as mandated coordinator and supervisor of the running of corruption cases in Indonesia cannot take control of the agencies it is mandated to control. It is clear that this control is being fought for amongst these institutions, resulting in chronic disharmony in the KPK's relationship with the INP and the AGO.

In the context of the above line of argument, there are at least three factors contributing to the KPK's inability to carry out its coordination and supervision mandate over the INP and the AGO:

1. There is no formalized agency for the KPK to carry out its coordination and supervision mandate over the INP and the AGO;
2. Norms provided in Law No. 30 of 2002 on the KPK are not synchronized;
3. Technical issues in the field including: the chain of command of investigators across the three agencies, silo mentality of the three agencies, and interference by actors within the Indonesian so-called legal mafia.

Chapter II
Politics and its Threat Against Corruption Law Enforcement

Recently, a number of DPR members have actively developed a campaign to disband the KPK, with the reasoning that the KPK sees itself as a "superbody" and that it is too focused on its law enforcement operations. The House Speaker Marzuki Alie, who belongs to President SBY's Democrat Party, has gone so far as to publicly state that the KPK should be disbanded and corruptors be pardoned.[2]

Aside from Marzuki Alie, Justice and Prosperity Party (*Partai Keadilan Sejahtera* – "PKS"), member Fahri Hamzah has also expressed his desire for the KPK to be disbanded on numerous occassions. These desires were expressed in official forums including consultative meetings between the DPR and law enforcement institutions including the KPK.[3]

This friction between the DPR and the KPK obviously arose out of the frustration of certain elements within DPR in not being able to control KPK according to their business as usual mentality. Up to date, 41 members of DPR have been processed by the KPK in corruption cases in the past four years. This number will only rise as cases being processed by the KPK right now involving the DPR budget mafia develop into investigations, arrests and further developments. We surmise that the desire of certain elements within DPR to disband the KPK arose out of fear that they will be caught red-handed by the KPK.

The Indonesian public have seen various attempts of naked intimidation by DPR. Various efforts to baselessly discredit the KPK have been launched in formal and informal fora. Observing this behaviour, how can the Indonesian public do otherwise than to conclude that the DPR has been hijacked by corrupted political expedience and influence? It is clear that what we are seeing now is abuse of power by the aforementioned elements within DPR.

Observing the developing context in DPR for the last year, we now understand that revisions to Law No. 30 of 2002 on the KPK being considered by DPR has a high potential of being backed by a strong desire to weaken the KPK. Legislative processes at DPR are prone to political manipulations that ignore the public interest.

2 .http://nasional.kompas.com/read/2011/08/02/15225558/Is.Marzuki.Alie.Aware.of.His.Controversial.Statements

3 http://www.thejakartapost.com/news/2011/10/06/editorial-another-ploy-against-kpk.html

The picture we have painted here in no way is in line with the UNCAC spirit wherein independent anti-corruption agencies should be empowered and strengthened by the government. Once more, the KPK and the coruption eradication agenda is under threat of sabotage.

3. Politics Versus the War on Corruption

D. Politicians implicated in corruption cases

If we are observing political parties and politicians fighting tooth and nail to disband the KPK, this is only because a nexus of corruption has congealed within DPR of late. Statistics produced in 2009 and 2010 show that 41 members of DPR have been declared suspects in corruption cases by the KPK.[4]

Aside from DPR members, regional politicians have also been implicated in corruption cases. At least 125 regional heads including governors, mayor and regents have been declared suspects, been convicted of corruption and/or have received a sentence.[5]

E. Unaccountable Party Finance

The high correlation between corrupt politicians and severely low level of accountability of political parties is very disturbing. Political parties are production lines producing politicans through a chain of political processes, internally as political parties or between political parties in General Elections.

Table: DPR Members processed by the KPK

No	DPR Members suspected/convicted/ sentenced of and for corruption	Party	No	DPR Members suspected/convicted/sentenced of and for corruption	Party
1.	Noor Adenan Razak	PAN	2.	Ahmad Hafiz Zawawi	Golkar
3.	Hamka Yamdu	Golkar	4.	Marthin Bria Seran	Golkar
5.	Anthony Zeidra Abidin	Golkar	6.	Bobby Suhadirman	Golkar
7.	Al Amin Nur Nasution	PPP	8.	Rusman Lumbantoruan	PDIP
9.	Sarjan Taher	Demokrat	10.	Teuku Muhammad Nurlif	Golkar
11.	Yusuf Erwin Faisal	PKB	12.	Asep Ruchimat Sudjana	PDIP
13.	Azwar Chesputra	Golkar	14.	Reza Kamarullah	Golkar
15.	Hilman Indra	PBB	16.	Baharuddin Aritonang	Golkar
17.	Fahri Andi Leluasa	Golkar	18.	Henky Baramuli	Golkar
19.	Bulyan Royan	PBR	20.	Sofyan Usman	PPP
21.	Abdul Hadi Jamal	PAN	22.	Engelina Patiasina	PDIP
23.	Udju Djuhaeri	TNI/POLRI	24.	M Iqbal	PPP
25.	Dudhie Makmun Murod	PDIP	26.	Budiningsih	PDIP
27.	Endin Ahmad Jalaludin Soefihara	PPP	28.	Jeffrey Tongas Lumbanbatu	PDIP
29.	Max Moein	PDIP	30.	Ni Luh Mariani T	PDIP
31.	Agus Condro Prayitno	PDIP	32.	Sutanti Pranoto	PDIP
33.	Daniel Tandjung	PPP	34.	Soewarno	PDIP
35.	Panda Nababan	PDIP	36.	Matheos Pormes	PDIP
37.	Pazkah Susetta	Golkar	38.	Amrun Daulay	Demokrat
39.	Poltak Sitorus	PDIP	40.	Nazaruddin	Demokrat
41.	Willem Tutuarima	PDIP			

** Data diatas belum termasuk dua anggota DPR yang ditetapkan KPK dalam kasus yang berbeda*

4 ICW Documentation, 2011
5 ICW, 2011, from various sources

In terms of the accountability and transparency of political funding, not one Indonesian political party has fulfilled even the lowest criteria. Untransparent party funding[6] strengthens suspicions that the source of party funding often come from illegal conduct, including corruption or even other crimes.[7]

Indonesia Corruption Watch ("ICW") conducted a public access to information experiment on nine political parties with representatives in DPR based on the funding they received from the State Budget – this experiment was not met by a positive response: only three political parties provided information, the remaining six parties did not provide any information nor reasons for not providing such information.[8]

Indonesian political parties have not yet installed any sort of democratic internal mechanism in selecting their roster. Internal processes to determine political positions and public offices are rife with indications of corruption, collusion and nepotism. Political parties infected with corrupt practices have lead to a severe discrediting of political parties as democratic instruments of the people. "Candidacy buying" within political parties continue to threaten the maturity of the Indonesian democratic process.[9]

Even though political parties have been identified as a major arena for graft, Indonesian legislation, including the Law on Political Parties and the Law on Corruption Crimes are not equipped to reach graft activities happening internally within political parties. This reflects a major chink in the armor of Indonesia's Law on Corruption Crimes, which does not yet provide for political corruption, which has become a very substantial problem.

General Elections have also become major arenas for corrupt activities. Money politics in the form of vote buying is very often detected by General Election monitoring officers. Aside from money politics, other breaches such as abuse of power by incumbents (e.g. using State Budget coverlty to fund campaign needs) also occur.

ICW has just finished a report on a suspicion of misuse of grant funding and social aid funds in the Banten province amounting to Rp. 350 billion (equivalent to about USD 35 million), which was allegedly used to covertly fund the campaign of the incumbent Governor of Banten who was running for the same office. The Banten case can be seen across the archipelago in cases where incumbent officials have been alleged to misuse their regional budgets for the purpose of funding their re-election campaigns.

6 "Untransparent" here is to reflect the fact that the public has no access to confirm the source of party funding, despite efforts to actively request such information or from the party itself, from its website or other publications and information sources.

7 Monitoring of campaign funds conducted by ICW during the 2004 and 2009 General Elections reveal that neither the source of campaign funding nor its spending by political parties and candidates were recorded properly, there were fictitious donors, fictitious donor addresses, and published reports were found not to reflect actual received and expended funding.

8 The three political parties that have provided their reports of receipt and expenditure of State Budget donation are *Partai Kebangkitan Bangsa* ("PKB"), *Partai Persatuan Pembangunan* ("PPP") and *Partai Keadilan Sejahtera* ("PKS"). However, their reports were not detailed and does not reflect actual activities. ICW considers the reports need to be further detailed with accurate data.

9 Nazarudin, a suspect in a bribery case involving the SEA Games in 2011, who is a former Treasurer of the Democrat Party, which is President SBY's political platform, testified that in the Democrat Party conress to select a Party Speaker, the appointed Speaker, Anas Urbaningrum, received money from him from the Hambalang Project – such money was used to pay congress attendants to vote for Mr. Urbaningrum.

Compilation of Money Politics based on Modus Operandi 2009 National General Elections

NO	MODUS OPERANDI	INCIDENCES
1	Direct payment of money	113
2	Direct gifts of food and fuel	16
3	Direct gifts of SIM cards	5
4	Conducting bazaar sales	3
5	Gifts of electronic items	8
6	Fixing roads	5
	Total	150

Source: ICW observations of the 2009 General Elections

Compilation of Money Politics based on Actors

Actors	Incidences
Party-affiliated actors	9
Legislative Candidate-affiliated Actors	8
Legislative Candidates themselves	91
State apparatus	2
Vote brokers	1
Total	111

Source: ICW observations of the 2009 General Elections

Table: Abuse of Office and Power Modus Operandi

NO	Modus Operandi	Incidences	Notes
1	Abuse of official vehicle (automobile)	13	
2	Abuse of official vehicle (motorcycle)	3	
3	Abuse of official residences	1	
4	Abuse of religious places of worship	6	
5	Mobilization of civil servants	26	
6	Mobilization of regional officers	3	Vice Governor of West Nusa Tenggara, Vice Regents of Sidoarjo Regency and Grobogan Regency
7	Mobilization of Regional General Elections Committee official	1	
8	Abuse of State Programs	1	Distribution of rice for the poor
	Total	54	

Source: ICW observations of the 2009 General Elections

F. Lack of Ethics in Political Officers

Corrupt practices are rife in political parties and have become business as usual for politicians in Jakarta and in the regions. This horrible state of play is the result of a lack of legislation providing for the ethical conduct and codes of conduct for political officers.The level of debasement of the ethical values of Indonesian public officials can be observed on many levels: for example, when a public official is declared a corruption suspect, he or she still enjoys the benefits of office including position and pay, as well as other amenities as per usual. Corruption suspects are not temporarily non-activated, and they can still run for office, including heads of regions. The official suspected in some corruption cases did not lose their power and have the chance to run in the selection of public officials as well as local election.

Table 1: Some corruption suspects re-elected 2010 Local Election

Public official candidate	Regency	Position	Alleged corruption cases	Explanation
MOCH SALIM (Elected regent 2010-2014)	Rembang Regency	Rembang Regent	allegedly involved in the corruption of equity fund of PT Rembang Bangkit Sejahtera Jaya (RBSJ) from the 2006-2007 local budget of IDR 35 billion	Determined as a suspect by the Police of Central Java
THEDDY TENGKO (Elected regent 2010-2014)	Kepulauan Aru Regency	Kepulauan Aru Regent	Corruption of Kepulauan Aru 2005-2007 Local Budget of IDR 30 billion	Determined as a suspect by the Maluku State Attorney
SATONO (Elected regent 2010-2014)	East Lampung Regency	East Lampung Regent	Corruption of Lampung 2009 local budget of IDR 107 billion	Determined as a suspect by the Police of Lampung
JAMRO. H. JALIL (Elected regent 2010-2014)	South Bangka Regency	South Bangka Vice-Regent	Corruption of the Credit for farm Enterprises (KUT) amounting to IDR 338.118 which is saved for seven years since 1999	Determined as a suspect by the Sungailiat Distric Attorney at 2007
AGUSRIN (elected governor 2010-2014)	Bengkulu Province	Bengkulu Governor	Corruption of distribution and use of the funds from the Land and Building Tax (PBB) and the Duty on the Acquisition of Land and Building Rights (BPHTB) in Bengkulu 2006 amounting to IDR 27.607 billion	Determined as a suspect by the Bengkulu State Attorney
SAMANHUDI ANWAR (Elected Mayor)	Blitar City	Blitar Mayor	Blitar local budget	Determined as a suspect by the Blitar District Command

Source: ICW, compiled from the 2010 election monitoring

The lack of ethical code provides some loopholes for illegal negotiations in the process of public policy making. There are chances for the politicians and businessmen to do some bargaining, due to the weak rules on the code of conduct. The most powerful ethical code is now ruled in the Eradication Corruption Commission (KPK).

The patronage between politicians and businessmen is now open wide since 44.6 percent of the 2009-2014 Parliament members come from business background. Some corruption cases disclosed by the law enforcement agencies mainly by the KPK show the trend that the uppermost modus of corruption is bribery from the businessmen to politicians.

The absence of rules on conflict of interest give chance for business and politic to be mingled. Moreover, someone can run as a politician as well as a businessman right at the same time. Although conflict of interest is not regulated in the act, yet the matter has become a criminal offense in the Anti-corruption Act. Unfortunately, there is no single law enforcement agencies including the KPK use a chapter on conflict of interest to penalize the culprit.

The Wealth Reporting for Public Officials (LHKPN) system as an instrument of corruption prevention was not optimally improve the integrity and ethics of public ofiicials. those who did not report their wealth or not honestly give the information can not subjected to any sanction by the Act. Violations on the KPK obligation for public officials to report their wealth periodically can not be snared by the Law.

4. Half Hearted Political Will on Combating Corruption

E. Revision on the Anti-corruption Law

In order to harmonize the Anticorruption Act to the UNCAC principles, since 2007 the government has set a new Anti-corruption Bill. But the fact shows that the draft has not completed yet.

In the recent Anti-corruption Act, most of the forms of crimes outlined in the Chapter III of the UNCAC has been adopted in Indonesia's legal system. The crimes listed in the report are regarded as a crime, although some of them are not set as a corruption crime, such as embezzlement in the private sector, which has been set up as as a crime in the Criminal Code and bribery in the private sector in the Law no. 11 Year 1980 on the Crime of Bribery.

Of the 11 types of crimes set forth in Chapter III of UNCAC, there are two forms of crime which is not regarded as a crime, namely *Trading in Influence* and the *Illicit Enrichment.*

Apart from the above problems, the recent Anti-corruption Law has some major drawbacks. Some of the limitations are the dualism of passive bribery arrangement with a different penalty, embezzlement, unclear arrangements on gratification report system, lack of regulations on corporate accountability and many more.

Rather than build a stronger Anti-corruption Bill draft, the new concept presented by the Government was in fact worse than the recent applied Law. The draft revised by the Government does not seem to learn from the constraints and weaknesses of the previous one.

The problems in the new concept are the lack of clear formulation on the elements of criminal acts that may lead to multiple interpretations. The reduced threat of imprisonment provided for some form of crime compared with the recent Anti-corruption Act, and even some penalty is lower than the Criminal Code (KUHP). In fact, one of the fundamental weaknesses of the Anti-corruption law is the lack sanctions for the perpetrators, yet in the new revised version, the sanctions are increasingly debased.

Due to the poor substances of the Anti-corruption Bill presented by the Government, the rejection of the draft cannot be avoided. The public balked at the draft.

	9 Weaknesses of the Anti-corruption Bill
1	The absence of "minimum penalty" in some chapters. Whereas the provisions on minimum penalty is one of the characteristics of the extraordinary nature of corruption in Indonesia. ICW found 7 (seven) article on Anti-Corruption Bill which does not include minimum punishments, such as: natural disasters embezzlement, procurement of goods and services without tendering, conflicts of interest, the giver of gratification and incorrect reporting of property.
2	The absensce of Article 2, the most widely used Article to ensnare corruptors. based on KPK report in 2010, there were 42 suspects ensnared using such article.
3	The decrease on "minimum penalty" to only 1 year.
4	There are articles that potentially criminalizes the people reported corruption cases.
5	The weakening of sanctions for "Legal Mafia", such as bribes for the law enforcement officials. In conjunction with Law 31/1999 Law 20/2001, bribes to law enforcement such as judges are threated at least 4 years and a maximum of 20 years. While the threat of the new Anti-corruption Bill provides only a minimum 1 year and a maximum of 7 years (plus 1 / 3) or 9 years.
6	Corruption with a state loss below IDR 25 million can be released from legal prosecution (Article 52). It is considered to be a form of a "compromise" against corruptors. Moreover, corruption can not be judged only from the value of money, but must be seen from the element of evil and rotten deeds.
7	The KPK authority to prosecute is not mentioned clearly in the bill (Article 32), whereas in the previous article, KPK position as an investigator is explicitly stated. It has the potential to be a loophole to undermine the authority of KPK prosecution.
8	It is not found in the Anti-corruption Bill draft some rules such as the Article 18 of Law 31/1999 and Law 20/2001 which regulates the Criminal Procedure Supplement: State indemnity payment, seizure of items used and the results for corruption, as well as the closure of company related corruption.
9	The lack of regulation on corporate accountability

It is clearly seen on the revised draft of Anti-Corruption Law, that it has the potential to weaken the anti-corruption agenda. Thus, the Government of Indonesia does not use the convention UNCAC as a guide in making an adjustment to the recent applied law.

B. The Neglecting of the Corruption Eradication Agency

The government support to institutions that have the authority to eradicate corruption and other institutions seems minimal.

For example, the budget for investigating cases of corruption in The Police only 37 million dollars. The factor makes the police face difficulties in dealing with cases of corruption with a high level of complexity, because it requires a lot of information from experts. This certainly results in lower performance of the Police. But this does not become a serious concern with the House because the government's budget proposal was never realized increases proportionally.

KPK also got the problem that is not much different. Currently, they lack the number of investigators. Just imagine. Such extraordinary institution KPK investigators just have 77 people to cover 33 provinces throughout Indonesia. Compare with the Hong Kong ICAC has more than 900 investigators. To realize an increase in the number of investigators at the KPK, would need funding support from the Government and Parliament. But until now, it is also still not been met.

The lack of government support to institutions related to efforts to combat corruption also occurs in other institutions, such as the Information Commission and Corruption Court. For example, up to 2 (two) years standing both the Commissioners and Commission staff are not clear information about remuneration. Even last Ombusdman not get the budget allocation at all.

It is also common on the Corruption Court after nearly a year in which the Judges Ad Hoc works, they do not go to receive remuneration until finally some ad hoc judge filed a protest to the Government and the Supreme Court. Even in certain areas such

as Semarang, Corruption judges there do not get salary for 3 months at the beginning of its term.

At the same time, politicians were actually occupied by comparative study activities abroad and their ambition to build a new building for 1.6 trillion.

C. Legal enforcement: Trapped Between Bureaucracy and Corruptors' Command

C.1. President's consent to question regional leaders

Requirement to get the president's consent to question regional leaders, who allegedly involve in graft cases has always been a stumbling block for law enforcers, especially the police and the Attorney General's Office (AGO), to handle corruption cases. That makes the handling of corruption cases in both institutions go on for too long since they have to wait for the permit to be issued. Most of the time they do not get answer whether or not they are allowed to question the regional leaders, making the cases left unfinished.

Such policy has a potency to be used by the authority to intervene in the handling of the cases by law enforcers. The intervention can be done by delaying the issuance of the permit or not issuing the permit at all if the suspect is someone from his or her party. On the contrary the permit issuance can be accelerated just because the suspect is someone from his of her political opponent.

The requirement can be considered as a special treatment received by regional leaders and their deputies, who allegedly involve in corruption cases, and it conflicting with the Presidential Decree on Corruption Eradication Acceleration.

Requirement to get written approval from the president to question regional leaders or their deputies has slowed down the law enforcement efforts and has the opposite effect with the government's agenda to accelerate corruption eradication.

Such policy can even be classified as a threat and obstacle of legal enforcement especially towards corruption, since it conflicting with legal principals including equality before the law and independent of judiciary as well as non-discriminative principal.

ICW recorded in 2004-2010, investigation against at least 38 regional leaders cannot be continued because the president has yet to issue permit for them to be questioned.

No	CLASSIFICATION	NUMBER
1	Permit issued	82
2	Permit not issued	38
3	No permit needed (signed by the KPK)	27
Total		147

Source: Dok ICW

C.2. Punishment for corruption suspects and sentence remission for corruption convicts

Corruption punishment

The existing Anti Corruption Law is still relevant considering its punishment aspects can give deterrent effects. Unfortunately in the new draft prepared by the government, most of the prison term sentence and fine stipulated in it are significantly decreasing showing the tendency that corruption is no longer considered as extra ordinary crime.

Table 9 that has been featured in the previous section shows loopholes in the new anti corruption draft. It shows how weak the government's commitment in eradicating corruption. The long jail term faced by corruption suspects supposedly preserved as an attempt to give deterrent effects to corruptors.

Aside from the sentence, the government supposes to put into account the fact that most prosecutors never demand maximum sentence for graft defendants.

Location	Prosecutors demand	Court ruling	Supreme Court's ruling
Jawa	62 months	39 months	37 months
Jabodetabek	91 months	61 months	48 months
Luar Jawa	51 months	23 months	31 months

Source: Korupsi mengkorupsi Indonesia page 183

On the other hands many judges acquitted corruption defendants. ICW noted in the first semester of 2010, at least 54.82 percent of corruption defendants are acquitted at district courts. This has made corruption eradication efforts in Indonesia become even gloomier.

Sentence remission for corruption convicts

Sentence remission for corruption convicts has not only reduced their prison term but also gives no deterrent effect. Government has always reasoned that the sentence remission is the law's order. If the government was really serious in eradicating corruption, it could have revised all legal products that give lighter sentence for corruption convicts including the sentence remission policy.

The sentence remission policy allegedly becomes new source of collusion since no supervision mechanism in the sentence remission distribution. It's very likely the sentence remission distribution loaded with bribe. Needless to say many sentence remission distributions draw protests from the public.

Sentence remission for President Susilo Bambang Yudhoyono's in law Aulia Pohan for example. He had received sentence remission even though he had yet to qualify as sentence cut recipient. According to the 2006 government regulation number 28 on inmates' rights, prisoners can have their sentence cut after they undergo one third of their prison term.

One of the most controversial sentence remissions is the case of suspended senior attorney Urip Tri Gunawan, who was sentenced in 2009 to 20 years jail term for receiving bribe. If it is according to the government regulation he supposes to be qualified as sentence remission recipient in 2014, however the government has granted him with jail term reduction twice in 2010 and 2011. According to the calculation of Gadjah Mada University's Center for Anti Corruption Study (PUKat UGM), Urip will only undergo nine years of his prison term after receiving the regular sentence remission from the government.

Those are only two of many examples of sentence remission. Public can imagine if the sentence cut granted to 660 corruption convicts in 2010.

Remission	330 people
Free	11 people
On parole	318 people
TOTAL	659 people

Rapid increase of sentence remission granted to graft convicts is allegedly caused by symbiosis mutualism between convicts, who want to be free without finishing their sentence and wardens, who have minimum welfare. Hence sentence remission trade is a common thing in the "dark market" of law enforcement.

Such condition unfortunately causes stagnancy in corruption eradication efforts in this country.

In the upstream level the effort is also hampered by lack of seriousness of the police and the Attorney General's Office in eradicating corruption. The two institutions even entangled with corruption within, while in the downstream level, penitentiaries failed to carry out its correctional services to the corruptors. Instead we often hear executive cells' being rent out inside the penitentiary. It's like a market where people can throw their money at stuff they want to have, if they have the money they can get the facility.

D. Asset Recovery: Collided with Regulation and Political Authority

Corruption eradication can only be a success if legal enforcers can guarantee two important aspects in law enforcement; physical punishment and asset recovery. It aims at creating deterrent effects for the corruptors and so that they cannot enjoy the assets they collected from corruption practices. Therefore asset recovery becomes an important issue in corruption eradication agenda, which unfortunately put behind all law enforcement discourse in Indonesia.

Legal-Formal Problems

The 1999 Law number 31 about Anti Corruption regulates asset recovery in two major concepts; fine and substitute. Fine is a main criminal punishment aside from prison term while substitution is an additional punishment. In this concept we can see that end goal of corruption eradication efforts in Indonesia is discouragement, not substitution of state loses from the corruption practices.

It is strengthening by the article 18 (3) of the anti corruption law that make a loophole for corruptors to avoid paying the substitute money by giving additional sentence for the convicts. If the corruption convicts unable to pay for the substitute money, they can undergo additional prison term which period does not exceed the maximum sentence.

Asset recovery regulations are actually stipulated in the law, unfortunately it does not have a strong effect since asset recovery can only be imposed against corruption convicts not the suspects of defendants. The asset recovery cannot be imposed against the convict's family members hence the regulation is not sufficient to become "weapon" for asset recovery programs especially considering the fact that many corruptors hide their assets collected from graft practices on behalf of their family members.

The Anti Corruption Law also has basic weakness, because it draws a line of asset recovery term limited only to money gained from corruption practices. Whereas we are facing with the long-term law enforcement dimension, where one case can take years to be submitted to court, while value of money keeps decreasing from time to time.

In short, if a corruption worth Rp 1 billion took place in 2000, and the case can only be submitted to court in 2010, value of the graft money has been decreasing.

The regulation that limited the asset recovery term to money from graft practices has left no space for the state to demand a bigger amount of substitute, considering the fact that impact of corruption is not only limited to the loses of assets but also wide economy and social impact to the whole society.

D.1 Asset Recovery

Indonesia is slow in its efforts to trace and seize the assets of corruptors, including the late former President Soeharto and his family. After more than 12 years since the beginning of the Reform Era, which was marked by the fall of Soeharto, there has been no strong political attempts to comprehensively dig into all the corruption allegations of the late President. A report published by Time magazine issued on Mei 14, 1999, estimated that about US$ 15 billion of assets belonging to Soeharto had come from corruption. The allegedly illicit wealth was deposited in numerous bank accounts in many countries including Switzerland.

Unlike Nigeria which was able to charge its former President Sani Abacha with corruption, Indonesian authorities has been lacking strong political will to bring Soeharto to court. The absence of court ruling has hampered the attempts to seize Soeharto's international assets. A mutual legal assistance (MLA) would require the Indonesian government to present court ruling that proves Soeharto guilty for corruption.

What about the efforts to recover domestic assets that related with cases under investigation of law enforcement bodies, namely the Corruption Eradication Commission (KPK), the Attorney General's Office (AGO), and the National Police?

Official information concerning the issue, however, was not much since such documents could not be easily accessed by the public. Among the three law enforcement bodies, the KPK could be considered the best in term of providing regular reports. KPK annual reports explain its prevention and enforcement efforts within the respective years, including the details of assets that are confiscated. The AGO and National Police, meanwhile, only provide general data in their annual reports. This sometimes make it difficult to verify the information.

Table 1 Assets Recovery by KPK, AGO, and National Police

No	Institution	Year	Amount (Indonesian Rupiah)	Source
1	KPK	2007	119.976 billion	KPK year-end report
		2008	407.891 billion	KPK year-end report
		2009	142.291 billion	KPK year-end report
		2010	500 billion	KPK year-end report
2	Kejaksaan Agung	2007	No data available	
		2008	2,3 trillion	Press release
		2009	4,8 trillion	Press release
		2010	4,5 trillion	Press release
3	Kepolisian	2007 - 2010	1.81 trillion	Press release

B. Domestic Issues in International Partnership

Since the Indonesian government ratified UNCAC in 2003, there has been no official statement that the government uses the convention as the basis in dealing with international partnership to trace and recover corruption assets which have been deposited overseas.

The government, through the Law and Human Rights Ministry as the central authority in such international efforts, has made some steps to recover international assets. Many international agreements, however, faced domestic obstacles, such as:

First, the death penalty which is still adopted by Indonesian penal codes. This has become a major issue since many countries have excluded death penalty in their criminal codes. International human rights groups have also repeatedly voiced objection against death penalty since it is considered a violation against human rights.

Second, the differences of criminal legal system adopted by Indonesia and its partnering nations. This has also prevented many agreements, such as MLAs, extradition, or other kind of international treaties, from being implemented smoothly. Therefore, it is necessary for Indonesia to do whatever it takes to explain and convince its partnering countries, at the same time, enhance domestic legal system to comply with global norms.

Third, international cooperation always benefit both sides. This means there will always be the "take and give" principle. Partnering governments which Indonesia seeks for an international treaty will always take into account how the treaty will benefit them or what contribution Indonesia can give in helping them eradicate corruption in their home countries. If Indonesia, for example, has no record of having cooperated with a certain country, it would face significant difficulties in making agreement with that particular country.

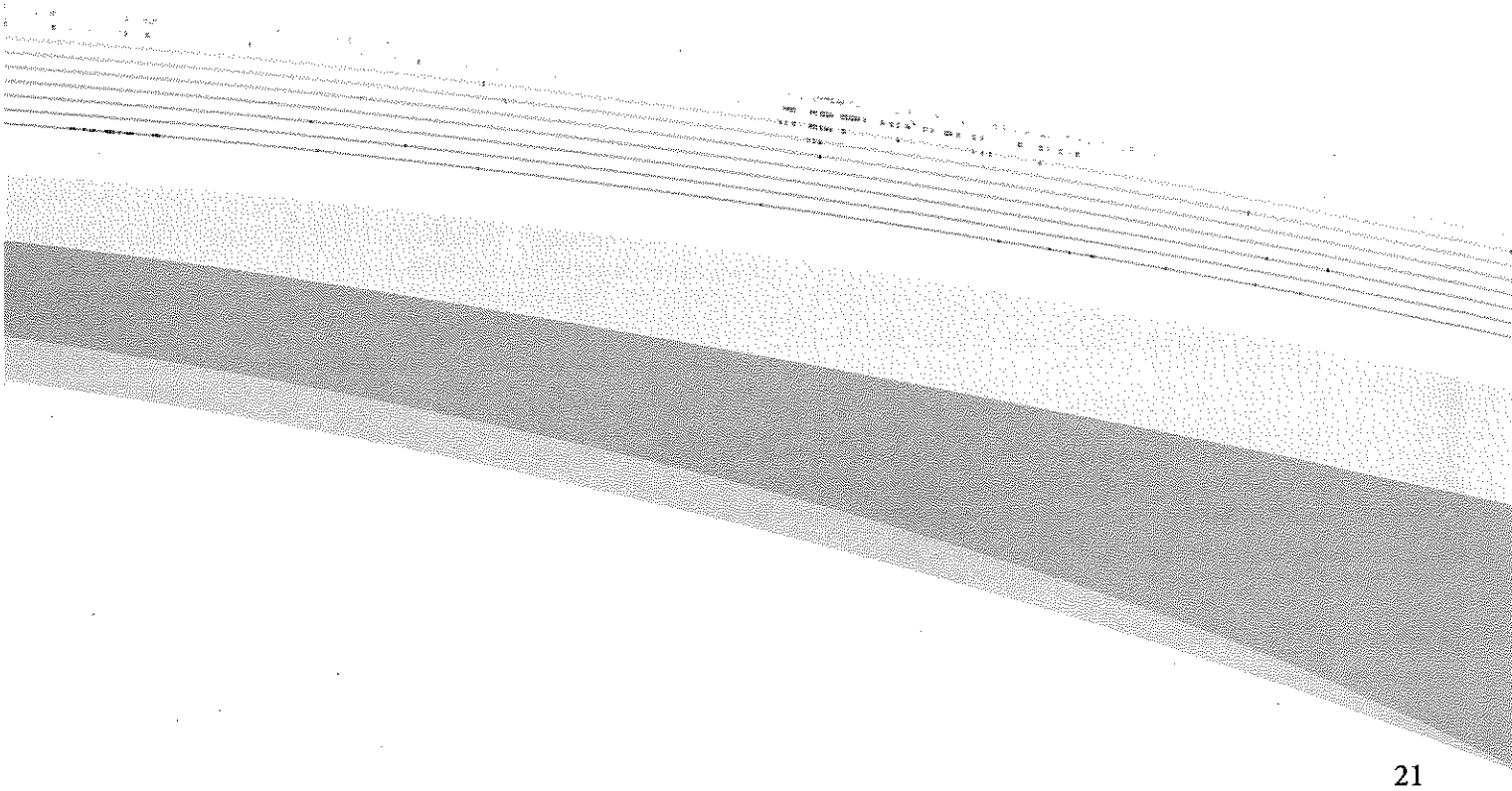
Fourth, Indonesia's law enforcement officials seem to having lack of seriousness to deal with international matters. This has become an important factor to determine the success rate of international agreements. In its efforts to recover Rp 450 billion of assets belonging to Tommy Soeharto (Soeharto' son) in Guernsey, England, which was claimed to come from corruption, Indonesia seemed to having difficulties to convince the British court although the UK's FIS had frozen the bank accounts. One of the statements included in the judges' ruling was *"The alleged massive claims for corruption had never materialized"* and *"There are no extant criminal investigations into Mr. Putra's activities in Indonesia"*.

C. Asset Recovery: House of Representatives as an obstacle

Many countries have shifted corruption eradication focus to asset recovery and it has become political policies by many governments. Non-conviction base as a new approach provides bigger chance for governments to seize and confiscate assets coming from criminal conducts without having to go through a complete criminal process.

This has been a solution given that prolonged and tiring legal processes sometimes fail in terms of asset recovery. Not negating criminal legal procedures, the government will have more powerful authority to recover assets.

Unfortunately, the Asset Seizure bill, which has been discussed since 2007, has yet to be endorsed by the House of Representatives until today. The public have left uninformed over the reason behind the series of postponements. The bill has been promoted as part of the efforts to reform anti-corruption regulations. The absence of strong will to pass the bill has been deemed as a signal that the government has been lacking of political will in combating corruption.



Chapter III
Summary and Suggestion

Summary

Firstly, government and House of Representatives give minimum attention toward corruption eradication agenda. Defective anti corruption law that does not inline with the UNCAC principals and disparaging anti corruption institution that was established by the government itself by not giving adequate budget for it to realize its anticorruption programs has shown how the state lacks of commitment in eradicating corruption.

Secondly, corrupt national politic becomes the biggest challenge in the efforts to eradicate corruption in Indonesia. Attempts to weaken the Corruption Eradication Commission (KPK) are example of domestic politic step contradictory to UNCAC principals that encouraging the establishment of a strong and independent anticorruption institution.

Thirdly, the existence of anticorruption legal products that are not in line with UNCAC principals but maintained in the current Indonesian legal context, such as death penalty, requirement to get permit to question public officials, remission and low prison term sentence and many others.

Fourthly, the overlooked asset recovery program in the corruption eradication context. Criminal punishment and asset recovery are two inseparable things. Asset recovery bill that can be a strong legal umbrella for the asset recovery program is yet to be endorsed by the parliament.

Fifthly, international cooperation in corruption eradication effort is still hampered by domestic problems related to death punishment, the absence of reciprocal treatment, low commitment from law enforcers and different laws imposed in Indonesia and other countries.

Recommendation

1. There should be serious effort to improve domestic politic system, be it general election system or party system so that it can support a more serious corruption eradication agenda. Improvement of political parties, accountability and financial transparency of the parties, ethic reforms of public officials and sustainable war against money politics is a necessary step so Indonesia can have a strong political commitment in anticorruption agenda.

2. Improving national commitment to synchronize with the implementation of UNCAC principals in domestic legal products. Some problems that need to be settled are eliminating the requirement to get permit before questioning public officials, improving jail sentence and administration punishment for corruption suspects, defendants and convicts and eliminating policy to give remission to corruptors. Government should also adopt criminalization of the trading in influence, illicit enrichment and criminalization of foreign officials who do corruption in Indonesia.

3. In corruption enforcement aspect there should be real and thorough evaluation to the law enforcers' performance especially toward the use of law, which adopted the UNCAC principals. ICW noted the Anticorruption Law consisting of 22 articles only give minimum effects toward law enforcement. Oftentimes the police and the Attorney General's Office (AGO) only charge corruption suspects with article 2 and article 3 of the law and rarely charge them with other articles in the law. Therefore it is really important to improve competency of the legal enforcers and improve affectivity of internal supervision in the law enforcer institutions including KPK.

4. UNCAC is a legal umbrella to develop international cooperation in eradicating corruption, thus the government supposes to maximize the convention to send corruption suspects, who escape abroad back to Indonesia and recovering state assets that have been kept aboard. However Indonesian government should first improve its national commitment to revise the death penalty policy, and giving equal assistance for other countries to eradicate the crime in reciprocal frame, encouraging the integrity improvement of the law enforcers so they can have strong commitment in enforcing the law and improving flaws in the national law so that it can be in line with universal laws.

5. Encouraging asset recovery agenda as a main scheme in corruption eradication efforts through the endorsement of Asset Recover Bill, improvement of criminal asset management and improving law enforcers' tracing asset skill and maximizing anti money laundering regulations to activate the asset recovery agenda.