

Independent Report

Corruption Assessment and Compliance United Nation Convention Against
Corruption (UNCAC)-2003 in Indonesian Law

By:
Indonesia Corruption Watch (ICW)

On behalf of:

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Anti-corruption Public Forum of UNCAC
24th – 26th January 2008
and
2nd Confrence of State Party (CoSP) Nusa Dua-Bali,
28th January – 1st February 2008

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Chapter I

Introduction

"Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid"
Kofi Annan¹

A. Background

By means of Resolution 58/4 on 31 October 2003, The UN General Assembly finally accepted the *United Nation Convention Against Corruption* (UNCAC), enacted through a summit meeting from 9 through 11 December 2003 in Merida, Mexico based on Resolution no. 57/169. *United Nation Office on Drugs and Crime* (UNODC) recorded 140 states had ratified the convention, and 103 had ratified the convention within the effective positive law in the respective countries².

The birth of UNCAC is inseparable from the global concern on the effect and negative impact of corruption. As expressed by the former UN Secretary-general, Kofi Annan, corruption hurts and molests the poor through disproportionately diverting budget funds allocation, undermining government's ability to provide basic services for the citizen, creating injustice and inequality and discouraging foreign investment and aid.

¹ United Nations Secretary-General in his statement on the adoption by the General Assembly of the United Nations Convention against Corruption.

(<http://www.unodc.org/unodc/en/corruption.html>)

² http://www.unodc.org/unodc/crime_signatures_corruption.html, accessed at 13:45, 02 November 2007.

Based on Article 68 point (1) of the convention, UNCAC assumed to be effective on the 90th day after the date of the recording of 30th instrument of the ratification, acceptance, accord, precisely on 14 December 2005.

In the global perspective, corruption, apart from discouraging investment, is the biggest hindrance to the accomplishment of revenue equality, welfare, access towards education, even eradication of poverty in general. One of the most important factors is when the flow of fund and corruption patterns penetrate the barrier of state sovereignty. This will be a crucial issue if in the standard of positive law differs in the respective country, and even worse, contradictory in terms of fighting corruption. It is not impossible if a conduct in one country is considered as an act of corruption whereas in another considered otherwise.

Given the condition that Indonesia's is a party state, it is inevitable that Indonesia is bound by the convention, ever since 19 September 2006 to be precise, when Indonesia ratified UNCAC through the Law No. 7/2006 on the Enactment of United Nations Convention Against Corruption, 2003. Though Article 66 point (2)³ was reserved perspicuously, the signing and the ratification at the same time are assertion that Indonesia is part of the international cooperation to fight corruption.

Such cooperation implemented by party states through organizing a conference; CoSP, Conference of States Party). In accordance to Article 63 point (1), the conference was aimed at improving the capacity and cooperation of participating countries for the fulfillment of UNCAC objective and targets. The [first conference](#) was conducted in Jordan – Dead Sea, 10 to 14 December 2006.

The conference finally resulted eight resolution and one conclusion that Indonesia will be the host of the 2nd CoSP. Resolution are about (1) Review of implementation; (2)

³ Article 66 point (2) regulates inter-national dispute resolution between party states that can not be settled through negotiation. The article declares inter-national disputes between party states. According to this regulation, disputes of party states on the interpretation or application of conventions is to be submitted to the International Court of Justice with a submission note according to the court statute.

Read: Article 66 point (2) United nation Convention Against Corruption, 2003.

Information-gathering mechanism on the implementation of the United Nations Convention against Corruption, (3) Appeal to States parties and invitation to signatories to the United Nations Convention against Corruption to adapt their legislation and regulations; (4) Establishment of an intergovernmental working group on asset recovery; (5) Technical assistance; (6) International cooperation workshop on technical assistance for the implementation of the United Nations Convention Against Corruption; (7) Consideration of bribery of officials of public international organizations; and, (8) Best practices in the fight against corruption⁴.

On such basis, each participating country must carry out each resolution and conclusion to the greatest extent. One of the imperative parts of Indonesian responsibility as a participating country is the review of implementation and continuity of synchronization of positive laws referred to the general standard of UNCAC. With a condition, that Indonesia shall not neglect 7 other resolutions.

B. Standings of Civil Society Independent Report

Basically, the role of participating countries/states in the fight of corruption in the world is inseparable from the role of civil society particularly in the form of participation of Non-Governance Organizations/Civil Society Organizations (*CSOs/NGOs*). The synergy of the two elements is expected to be capable of maximizing common endeavor to wipe corruption out of the world.

The legal basis of community participation is Article 13 UNCAC.

CSOs/NGOs in Indonesia routinely watch and escort the eradication of corruption.

⁴ Please refer to: http://www.unodc.org/unodc/caccosp_2006_resolutions_1.html

Even to strengthen the anti-corruption movement coordination in the international extent, the term of 'interagency coordination' was adopted and was clearly mentioned as the concept of *International Group for Anti-Corruption Coordination (IGAC)*⁵.

Being unique compared to other conferences, the active involvement of CSOs/NGOs is asserted in Article 13 UNCAC. The article states that participation will be implemented in the improvement of transparency and public contribution towards decision-making process; effective information access; internalization of values to school educational curriculum; recognition and protection of the freedom to search, obtain, publish and disseminate information on corruption⁶.

One of tangible role of *CSOs/NGOs* participation is the coordination in the national level in accordance to each specification to conduct investigation, monitoring and policy analysis related to the fight against corruption in Indonesia. Furthermore, CSOs/NGOs constantly keeping eye on law enforcement agencies with the output related to corruption. The coordination is to be implemented through independent report.

C. Method of Writings

This independent report was compiled through active participation of civil society, particularly in the form of anti-corruption *CSOs/NGOs* participation throughout Indonesia. The compilation process was conducted through data gathering and information from various sources, both directly and through literature studies. The initial result was discussed in the national forum of CSOs/NGOs. The report was then criticized and socialized to four designated regions to obtain additional inputs and rewritten by the compilation team with the editors. This report was written by the team from Indonesia

⁵ http://www.unodc.org/unodc/en/corruption_Interagency.html

⁶ Article 13 point (1), United Nation Convention Against Corruption, 2003.

Corruption Watch (ICW) with full support from CSOs/NGOs in Indonesia with the Partnership for Governance Reform (PGR).

D. Limitation and Report Order

This report basically evaluates the development of corruption standings, chooses analysis on ill-treated major corruption cases, and critically studies governmental policies in the eradication of corruption. Those points are generally written with certain emphasis. More detailed data are listed in the annexes attached in this independent report.

This report is the combination of perspective of all CSOs throughout Indonesia which independently compiled evaluational report. The substance of the report is emphasized on the law enforcement aspect and corruption eradication as regulated by chapter III UNCAC. In this extent, it will be critically viewed; whether the regulation, policy and political will of the government are effective in diminishment of corruption and the extent of corruption in Indonesia. And finally it will be comprehensible the extent of national anti-corruption policies and programs (NACPs) were created and implemented to eradicate corruption. This is related to the concern that corruption eradication movement in Indonesia is somewhat non-extensive, for the sake of publicity and political images.

Furthermore, this report will analyze the extent of compliance of Indonesian Law with articles in Chapter III UNCAC. The basic data used is the Gap Analysis compiled by KPK. Through a critical review on UNCAC and Gap Analysis recommendation, relevance of UNCAC with Indonesian legal system will be comprehensible. Whenever relevant, governmental effort in synchronizing legislation with substances and mandates of UNCAC will be discussed.

Two substances of study as mentioned earlier are of the essence positioned as alternative perspective for party states of the convention to perform assessment and reach realistic comprehension on the corruption eradication situation in Indonesia.

In other words, the focus of corruption eradication as independent report to be delivered in 2nd CoSP in Nusa Dua-Bali, 28 January through 1 February 2008 is expected to be a valuable contribution in the fight of corruption framework in a global extent. International cooperation in fighting corruption will be effectively accomplished if national anti-corruption internal system runs well.

* * *

Chapter II

Indonesian Corruption Assessment

During the past decade, the government and the community with the assistance of foreign donor agents have been trying hard to fight corruption. However, the progress is sluggish. Bribery is still a common menu in daily activities of bureaucracy, judiciary and parliament. The freedom of press and of speech since the democratic era has helped in revealing such misconduct. Not to mention if corruption success is measured through community economic and social welfare improvement. Foreign investment, as admitted by government, still somehow looked hesitant to come.

A. Indonesian Corruption Level

In the past five years, Indonesia is still on the top of the list of corrupt countries in the world. The score of Corruption Perception Index (CPI) during the period increased only 0.5 from 1.9 (2001) to 2.4 (2006) and declined again 0,1 point to 2.3 (2007)⁷.

Indonesian CPI Trend 2004-2007

Year	Indonesia's Rank	CPI	Gap of trusts
2005	137 of 158	2.2	2.1 – 2.5
2006	130 of 163	2.4	2.2 – 2.6
2007	143 of 179	2.3	2.1 – 2.4

Sumber: excerpted from *CPI-Transparency International*

DEFINITION OF CORRUPTION:

Law No. 31/1999 juncto Law No. 20/2001 on Indonesian Corruption Eradication classify corruption into 7 major elements (30 forms):

1. State Financial Loss,
2. Bribery,
3. Embezzlement in incumbency,
4. Blackmail,
5. Deception,
6. Conflict of interest on procurement,
7. Gratification.

⁷ Complete and in-depth table are accessible through:

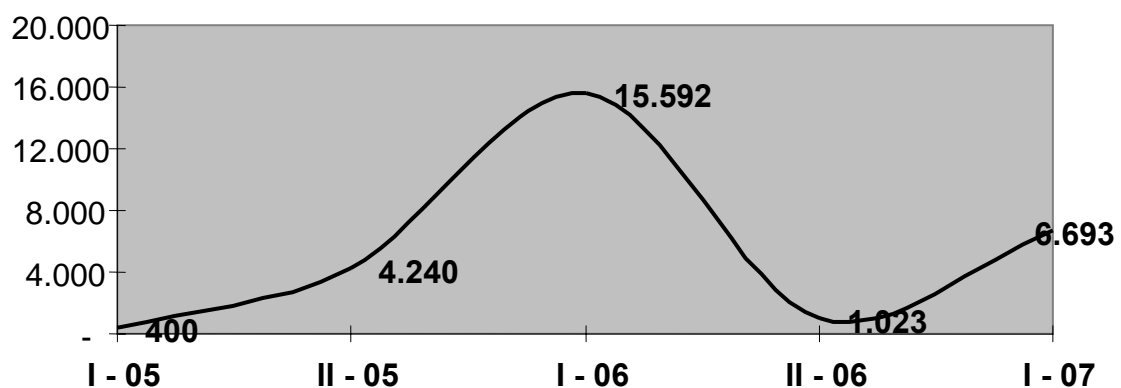
http://www.transparency.org/news_room/in_focus/2007/cpi2007/cpi_2007_table

Meanwhile, Governance Assessment Survey (2007) PSKK Gadjah Mada University dan the Partnership for Governance Reform (PGR) in 10 province and 10 regencies, came to a conclusion that “PUNGLI” is still common and corruption eradication hindered by the seriousness of government and non-government institutions⁸.

Audit result of General Accounting Office (*Badan Pemeriksa Keuangan*; BPK) also indicated more or less similar situation. The annual revealed cases over the years somehow depicts misconduct of budget and administration that tend to increase. This indicates the lack of commitment of the government to reform itself. As of 2007, BPK’s audit result showed 36,009 findings with a total loss of Rp. 3,657.71 trillion. 77,56% of the findings up to mid 2007 have not been follow-up by the respective problematic institutions⁹.

Most of the findings had created loss in terms of state finance. From the graph below, it is visible that in 2007 there is an increase of state loss after a significant decline in the second semester of 2006.

**Fluctuation of State Loss Indication according to BPK Audit,
Semester I - 2005 s/d I - 2007 (in billions of rupiah)**



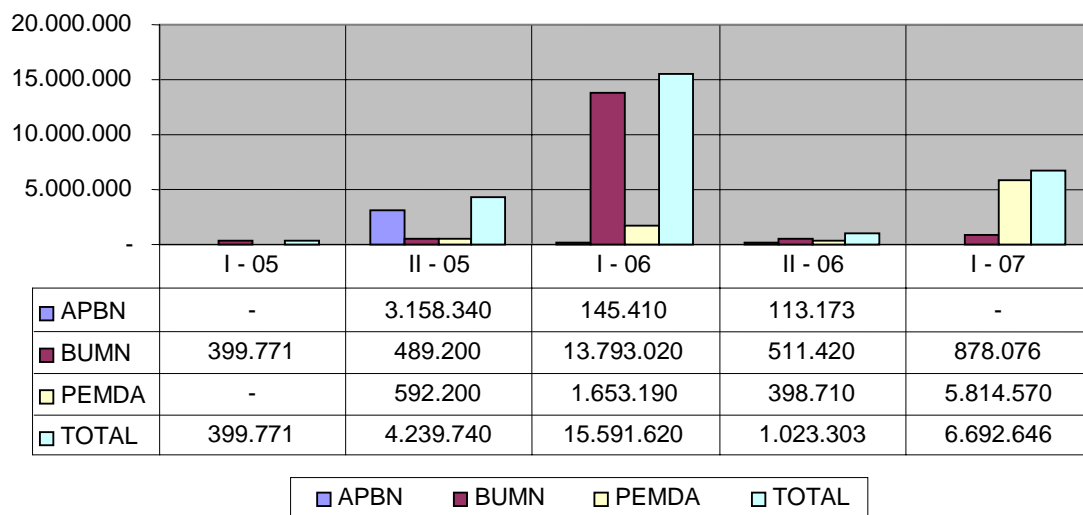
Source: Document of ICW, excerpted from BPK Auditing of 2005- semester I 2007

⁸ <http://www.kemitraan.or.id/governance-center/governance-report/launching-governance-assesment-2006/>

⁹ Badan Pemeriksa Keuangan RI, Ikhtisar Hasil Pemeriksaan Semester (IHPS) I Tahun 2007. Hal. 287.

In detail, based on the state loss classification on State Budget of Revenue and Spending; a.k.a State Budget (*Anggaran Pendapatan dan Belanja Negara*; APBN, State Owned Enterprises (*Badan Usaha Milik Negara*; BUMN) and Local Government (*Pemerintahan Daerah*; PEMDA), the greatest loss ever to occur during 2005 up to the 1st semester was in the post of BUMN.

Indication of State Loss Based on BPK Audit per Semester of Audit (in millions of rupiah)



Sumber: Document of ICW, excerpted from BPK findings 2005- semester I 2007

B. Typology of Corruption

There has been a transformation of corruption ever since the democratic era, turning from the centralized corruption from the palace to a more fragmented corruption. The governance decentralization since the year of 2000 has also pushed the dissemination of corruption to the local level. Furthermore, corruption has also spread to the law enforcement agencies.

A research conducted by Global Corruption Barometer (GCB) TII 2005-2007 has placed police, parliament, political party, and court institution onto the top list of most corrupt institutions.

Rank of Corrupt Institution in Indonesia

Rank	2005		2006		2007	
	Institution	Score	Institution	Score	Institution	Score
I	Political Parties	4,2	Parliament	4,2	Police	4,2
II	Parliament	4,0	Police	4,2	Parliament	4,1
III	Police	4,0	Court	4,2	Court	4,1
IV	Court	3,8	Political Parties	4,1	Political Parties	4,0

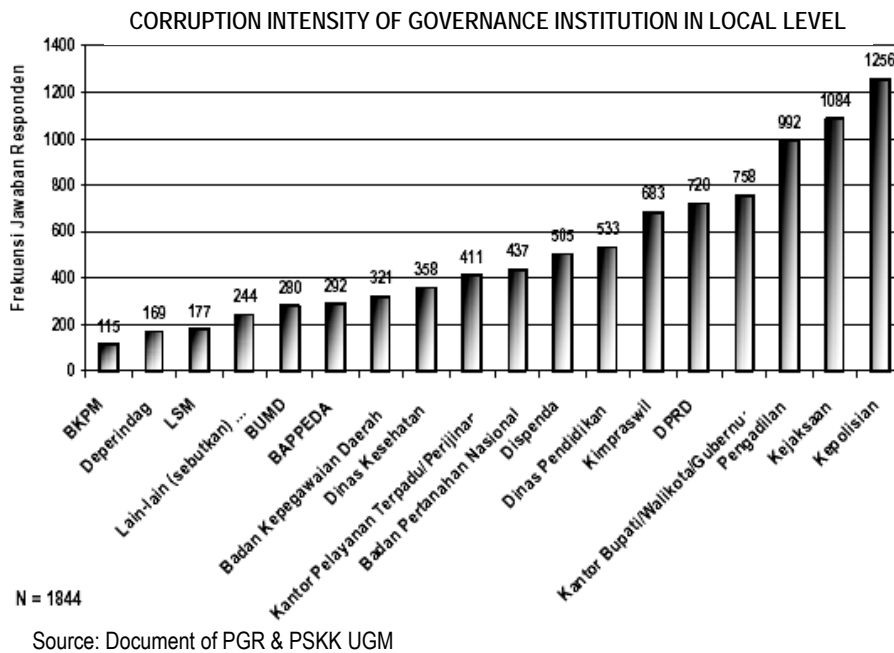
Source: Excerpted from *Global Corruption Barometer (GCB)-TI Indonesia*

Four institutions which ideally took part in anti-corruption agenda show poor records.

Three years consecutively, four most corrupt institutions are these institutions; Police Department, Parliament, Political Party and Court.

The corruptive nature of parliament and political party as two most corrupt institutions is clearly visible through the legislation process of Law on General Election and on Political Party which may lead to anti accountability and anti transparency. The Law on Political Party that is being compiled up to 6 December 2007 asserted that parties have no obligation to perform public financial responsibility.

Partnership for Governance Reform (PGR) with Gadjah Mada University (UGM) also noted similar case. Survey towards public officials, entrepreneurs, and other community groups resulted that police department, attorney and court are top three institution with the highest corruption intensity.



BPK findings on four primary law enforcement agencies show a critical result. Police Department remain as the most corrupt institution with 303 findings followed by Office of the Attorney General and the Supreme Court.

BPK Findings 2007

No.	Institution	Findings		Unresolved	
		Qty	Value	Qty	Value
1.	Office of the Attorney General	108	8.759,851	84	8.377,849
2.	Indonesian Police (POLRI)	303	533,970	303	533,970
			US\$ 1.349,34		US\$ 1.349,34
			€927,69		€927,69
3.	Supreme Court	24	5,815	15	5,815
4.	Corruption Eradication Commission	9	0.00	1	0.00

Source: Resume of BPK-RI Findings, Semester I 2007. page 286

All above findings correlate with the characters of cases handled by the law enforcement agencies. Indonesia Corruption Watch (ICW) noted that cases handled from 2004 through 2007 were only within the category of conventional corruption, i.e. procurement of goods/services sector. Table below explains modus trends in the last 4 years. At least in

2006 and 2007, mark-up of funds is the dominating modus found by law enforcement agencies.

Modus of Corruption Cases Revealed 2004-2007

No.	Modus	Revealed Year			
		2004	2005	2006	2007
1	<i>Mark up</i>	22	36	60	27
2	Budget misuse	91	64	31	23
3	Misuse of funds	23	8	30	4
4	Manipulation	2	4	12	1
5	<i>Mark down</i>	1	2	9	4
6	Bribery	8	5	8	3
7	Fictitious project/activity	3	2	7	8
8	Blackmail	3	-	5	8
9	Misuse of credit/bad debt facility	-	2	4	1
10	Misuse of authority	-	2	-	3
	Total Cases Revealed	153	125	166	82
	State Loss (In trillions of Rupiah)	4,273	5,305	14,360	1,413

Source: Indonesia Corruption Watch (ICW)

Actors of Corruption

Based on the data from Study Centre of Anti-corruption (Pusat Studi Anti (PuKAt) Korupsi), Faculty of Law, Gadjah Mada University, most actors in 2007 are regents/mayors. According to PuKAt, this is a strong indication of governance decentralization to the increase of potencies and opportunities in corruption.

Contradicting, ICW attempts to classify more detail. Out of 175 fugitives revealed in 2007 only 1,14 % are on the top level. Most of eradication attempts only touched the lower level (60,6 %).

Classification of Actors, suspects of Corruption in 2007

Classification of Actor	Rank	Number of Suspects	Percentage of disclosure
Top	Minister (former)	2	1,14 %
Middle	Governor, mayor, Regent,	67	38,3 %

	Local parliament members, Local commissioners, Directors of State Locally Owned Enterprises, Director Generals, Director of Police Department, Chair of District Court, Manager of Provincial Projects.		
Bottom	Head of Agency, Branch manager of Locally Owned Enterprises, Staff/employees of Local government, Local parliament staff, mass organization officials, procurement agency	108	60,6 %
TOTAL		175	100 %

Source: Document of Indonesia Corruption Watch (ICW), 2008

Table above clearly depicts disorientation of corruption eradication within the government of Indonesia and thus the daunt effect is much more difficult to expect from the culprit.

From sector perspective, the highest loss of state revenue is caused by corruption in energy and electricity sector (Rp. 566 billion) and farming and defense sector are on the second position.

10 Most Corrupt Sector Revealed in 2007

No.	Sector	Number of Cases	State loss (Rp billion)
a.	Energy & Electricity	5	566.00
b.	Farming/Agriculture/Animal husbandry	6	217.60
c.	Local finance	7	155.04
d.	Telecommunication	4	99.27
e.	Banking	3	77.96
f.	Operational of Central and Local government	7	73.36
g.	Social community	8	65.12
h.	Trade	2	32.45
i.	Tourism	2	20.25
j.	Operational of Parliament (& local)	5	19.40

	Secretariat		
k.	Etc	33	86,84
	Total	82	1.413,29

Sourcer: Document of Indonesia Corruption Watch (ICW), Trend of Corruption cases disclosure in 2007

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Chapter III

Indonesian National Anti-corruption Policies and Programs (NaCPs)

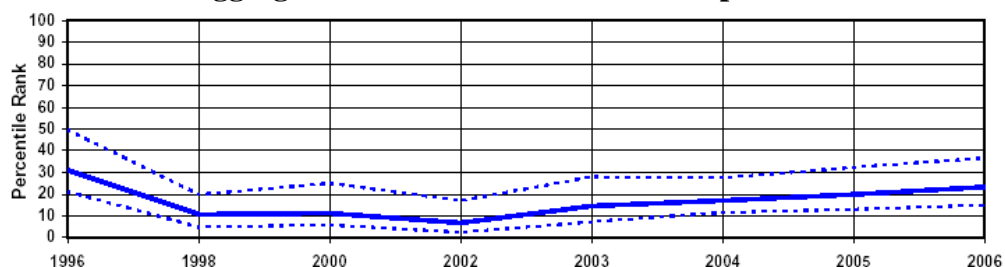
“The eradication of corruption has created a side effect in the form of officials’ fear to make decision and thus the growth of economy is hindered”

Jusuf Kalla, Vice President of Indonesia
(*Tempo Interaktif*, 5 December 2006)

Why corruptions occur and tend to increase year by year? In the past five years, many policies, programs, and global anti-corruption instruments transplanted to Indonesian positive law system. Programs spending millions of US dollars foreign grants, and thus a study regarding policy and institutions of anti-corruption in Indonesia needs to be performed.

Based on the record of World Bank, Worldwide Governance Indicators (WGI) indicated a tendency of control towards corruption in Indonesia from 2002 through 2006. In one side this reading is an achievement for anti-corruption movement agenda.

Aggregate Indicator: Control of Corruption¹⁰



Source: Governance Matters 2007-World Bank

¹⁰ <http://info.worldbank.org/governance/wgi2007/pdf/c102.pdf>

However, though WGI keep indicating inclination, this is more due to the freedom of press thus public could be more tight to guard the corruption eradication process. In other words, the aspect indicates that the government position is not playing a dominant role in the anti-corruption agenda in Indonesia.

A. Evaluation on NACPs Framework in Indonesia

One of principal National Anticorruption Policies and Programs (NACPs) compiled by the government of Indonesia is formulated through the Presidential Instruction no. 5/2004 (Inpres 5/2004) on the Acceleration of Corruption Eradication and the Draft of National Action Plan on Eradication of Corruption 2004-2007 (RAN-PK). The document consists of three elements, as visible in the table below.

Elements of National Action Plan on Eradication of Corruption

A. PREVENTION	1. Betterment of Public Services System
	2. Improvement of Governance Services Quality
	3. Improvement of Public Services Institutions Quality
	4. Improvement of Control on Governance Services Quality
	5. Betterment of State Finance Management System
	6. Betterment of Goods and Services Procurement for Governmental Purposes System.
	7. Betterment of Human Resources Management System and State Apparatus' Development
	8. Improvement of Community Awareness and Participation.
B. REPRESSION	1. Accelerate the Handling and Execution of Corruption Cases
	a. Determine priority sector of corruption eradication and apply performance indicator on the existing corruption cases in order to accelerate the process of accomplishment.
	a. Reinforce the number of ad hoc judges for Corruption Court.
	b. Betterment of Coordination between Internal & External Auditing Body with law enforcement agencies.
	2. Capacity improvement of Law Enforcement Apparatus
	a. Providing property investigation, legal audit, accounting training, forensic audit and community liaison.
	b. Improving the management of law enforcement agency monitoring system.

		c. Maintaining the acceleration for the establishment of Attorney Commission, and Police Commission, as external monitoring bodies.
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C. MONITORING AND EVALUATION	1. Establishment of monitoring system
	2. Gathering information on trial related to corruption.
	3. Conducting survey on corruption
	4. Conducting a monitoring on the implementation of RAN-PK related to the betterment of existing regulation.

Referring to the vision of Vinay Bhartgava and Emil Bolongaita (2004), there are two chief factors for the application of global anti-corruption instruments in NaCPs in each country, i.e. typology of corruption, (political & bureaucratic) and the quality of governance.

Governance Assessment PGR-UGM (2007) and Global Corruption Barometer TII (2007) indicated poor to fair governance quality. In this extent, the effective anti-corruption reform must be performed outside the government body. The civil society and private sectors ought to be mobilized in order to increase the external requirements to push for the reform, (in politics and economy). The reason is simple; there will be no interest in reforming itself from within, voluntarily.

From a study of NaCPs in four countries, anti-corruption programs in this kind of country will be Economic Policy Reform, *Reducing public sector size, rule of law and empowering citizen participation and freedom of the press*, and the self-dependent judicial agency.

The research published by Centre for Strategic and International Studies (CSIS) and The United States-Indonesia Society (USINDO) reveals that RAN-PK is not a strategy as it has no principal elements. This design is valued as weak in terms of priority scale, ambiguous

in terms of deadline and no significant explanation on incentives and sanctions¹¹. Even if studied further, RAN-PK actually does not cope with several public sectors prone to corruption, such as court, monitoring towards financial sector, political party and parliament, and also monitoring towards procurement of services and goods in the military and businesses owned by the military.

Moreover, the paradigm of RAN PK is also not in line with the new paradigm of corruption eradication consisted in UNCAC as comprehended widely by many states around the globe.

B. Performance of Law Enforcement

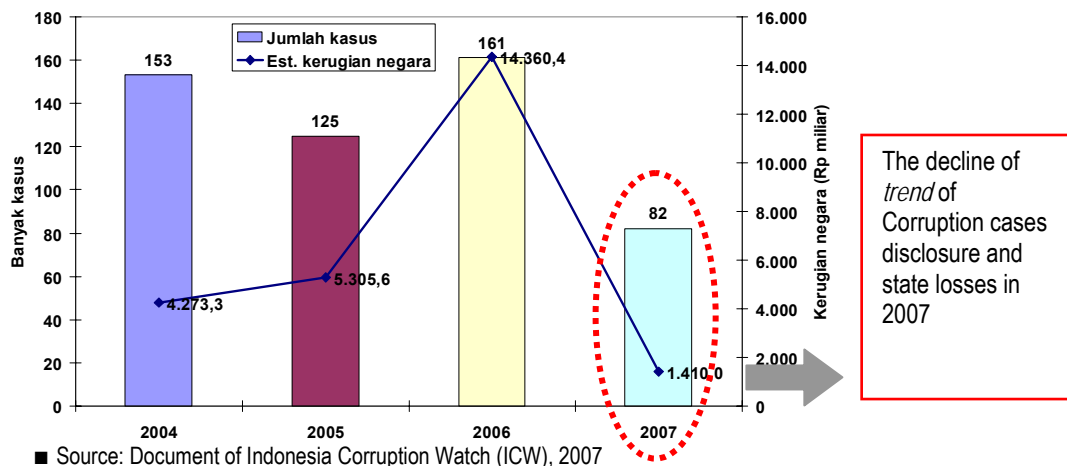
The research on Corruption Trend Analysis (CTA) conducted by ICW found an inclination trend in the disclosure of corruption cases during the period of 2004-2007. During 2004-2006, the average number of disclosed cases is 148 p.a. whereas in 2007 the number of revealed cases is only 82. Based on ICW record, only 5 out of 82 cases that actually occurred in 2007, meanwhile, the rest are cases which occurred before 2007 but disclosed in the year.

This actual number reflects the decline in quality, capability, even commitment of law enforcement officers to disclose corruption cases. The disclosure of corruption cases in 2007 did not reach the average number of cases revealed in the previous years. Or, visually, decline in the handling of corruption cases can be viewed from the graph below:

Sofyan Djalil, formerly Minister of Communication and Information 2004-2007 and currently State Minister of State Owned Enterprises: Refuses State Owned Enterprises to be categorized as Public Institutions accessible by public in the Bill of Free dom of Public Information (8 May 2007)

¹¹ Soren Davidsen, Et. All, 2006, Halting Corruption in Indonesia 2004-2006; A survey on various policies and approaches in the national level, USINDO and CSIS. Jakarta. page 5 and 51

Trend of Corruption Cases Disclosure from 2004 through 2007



The decline of trend of Corruption cases disclosure and state losses in 2007

Apart from the decline in the number of cases, tables and graph above also indicated the decline in the state loss rescue. Out of 161 cases revealed in 2006, the state loss is estimated to have reached Rp 14.36 trillion and declined compared to that of 2007 which reached 1.41 trillion or decreased by 90%.

The decrease of state loss potential to be saved in accordance with the decrease of law enforcement officers performance; i.e. From 2006 to 2007 decreased more than 90%.

If the [BPK Audit](#)¹² untuk semester I of 2007 is thoroughly scanned, state loss reached a number of Rp. 14 trillion. Not to mention the losses resulted from the standard of 30% leak of state budget believed by many including economists around the globe and the World Bank. Though not all of BPK reports are indication of corruption, the detailed report on the state losses in each institution, BUMN/BUMD and third parties should have been an initial stepping stone for a full-scale investigation of corruption. This also reflects the lack-of-seriousness of law enforcement officers to make further enquiries on the report.

¹² Review: Annex, Accomplishment of State Loss Finding up to semester I of Budget Year 2007

As also asserted by BPK, the stumpy number of responses to its report is related to the lack-of-seriousness of institution, BUMN/BUMD leaders and the absence of compelling rule of law. In other words, the government has committed negligence and been not serious in solving the misuse of state budget issue.

The tendency of modus repetition shows the paralysis in the mechanism of prevention and internal reform in each institution. Moreover, the symptoms indicated unproductive law enforcement officers

However, 10 corrupt sectors based on the number of state loss revealed, law enforcement agent did not manage to grab the sectors directly related with ideal targets of corruption eradication. In other words, sensitive sectors such as the court, capital investment, health, education, immigration, election (including local election) and political party, forestry and man power tends to be untouchable.

In the attorney institution, instead of eradicating corruption, some major cases indicate a nature of abnormality and also contradictory to law. ICW noted at

least 10 biggest cases were [halted in the procedure](#) by the attorney institution, including the case involving the daughter of former president Suharto¹³.

Indonesian President, Susilo Bambang Yudhoyono tends to carry out a customary dispute resolution.

"At least 3 cases were resolved in a customary manner; the conflict between Taufiqurrahman Ruki (Chair of KPK) with the former State Secretary, Yusril Ihza Mahendra, conflict between SBY and Amien Rais and the conflict between the Supreme Court and General Accounting Office, related to audit of costs in the supreme judiciary body."

(Source: Pusat Studi Anti Korupsi (PuKAt) FH UGM)

¹³ Annex, List of Several Corruption Cases halted by the Office of the Attorney General.

There are many facts and analysis which can be explained related to the performance reality of police department and attorney's office in a framework of anti-corruption in Indonesia.

First, many cases were left untouched/intentionally floated. Based on the record of 15 corruption monitoring institutions, during the period of 2004-2006, 246 cases seemed to be floated/left untouched. Even community at large may find an impression that the police and the attorney seemed to have done this intentionally, particularly those related to public officials in the local level.

Second, the treatment for corruption cases is scarred by corruption. Complaints from ex-members of local parliament during defendantship in local budget corruption stated that they had been blackmailed by attorney and police department officials. The culture and character of law enforcement agents who try to play dirty and take personal advantage from the disclosure of a corruption cases are proofs that legal reforms have not touched the policy to conduct a serious internal cleansing of law enforcement agencies officials.

Fourth, the lack of community access towards information regarding the progress of a case treatment conducted by the police and attorney. *Fifth*, poor coordination among attorney, police, and KPK. Many cases had to go to-and-fro from the police department, then attorney and vice versa indicate the poor coordination between the investigating bodies.

KPK as an institution equipped with extraordinary power is ineffective to perform its coordination and supervision role towards the police department and the office of attorney. Many cases in local level are left untouched by KPK

1. Corruption Eradication Commission (*Komisi Pemberantasan Korupsi ; KPK*)

The presence of KPK and Corruption Court brought a shred of hope to the eradication of corruption ever since 2005. Up to June 2007, KPK managed to accomplish 59 cases (2%) of all 6,213 corruption cases and 19,901 cases reported by the community. All defendants were found guilty, none freed from charges.

Indonesian Vice President, Jusuf Kalla summoned one of top officials of KPK to the Office of Golkar Party in which he also chairs related to the rough investigation on Golkar members by KPK.
(Tempo Magazine, 28 June 2007)

However, many criticism delivered by community to KPK. *First*, the treatment of cases are only of small-scales, related to procurement of goods/services. *Second*, choices upon cases are not based on the strategic value to create deterrence effect, but on the easiness to accomplishment. *Third*, KPK has not conducted effective approach required to examine the properties of officials in order to be able to drag corrupt officials into court. Two tables below illustrates types of cases handled by KPK and tabulation on corruption cases based on actor classification from 2002 up to June 2007.

**Types of cases
handled by KPK
(2002 through June 2007)**

Types	Amount	Percentage
Procurement of Goods/Services	33	56%
Bribery	20	34%
Budget misuse	6	10%
TOTAL	59	100%

Sources: ICW document

**Corruption Cases handled by KPK
based on actors
(2002 through June 2007)**

Rank	Jumlah Perkara
Ex-minister/Ministerial leve;	2
Head of Administrative territory	5
Commission member and officials in Secretariat General	12
Lawyers	2
Supreme Court Officials	25
Law Enforcement agents	1
Echelon Officials & Project director	22
Private individuals	10
TOTAL	59

2. Attorney General (Kejaksaan)

The attorney as the tip point of corruption eradication during SBY-Kalla administration did not show an exciting progress in 2007. In general, a conclusion can be drawn that it has failed. Though admitted that during 2007 to have handled 1,335 cases throughout Indonesia, qualitatively not many major cases can be accomplished to the level of trial. The case so-called 'BLBI gate' worths around Rp. 150 trillion is still far from accomplishment. The case was exposed in 1998, but up to 2007 it has been left untouched. Similar thing happens to corruption cases related to national politician and ex-military top officers.

The attorney seemed to have compromised to the political interest. The attorney are tough to those having no political handicap. Meanwhile to those who are politically strong, the attorney choose to be dull. This is visible in the case of 33 corruptors in West Sumatra. They have been sentenced by a legally binding court verdict but still unexecuted. Similar thing also happened to the

Human Rights, **Hamid Awaludin** admitted that Tommy Soeharto's fund amounted US\$ 10 million was transferred by **BNP Paribas**, England, through his department's bank account. But he claimed that the disbursement process, commenced since the department was led by **Yusril Ihza Mahendra**.

(Source: detik.com (3 May 2007))

accomplishment of the case related to former president Suharto which had finally been halted from a health issue despite the nature that Indonesian legal instrument actually enables Suharto to be tried *in absentia* (without the presence of the defendant).

Similar failure was also experienced during the restitution of asset (restitution).

The attorney should have received a restitution worths Rp 11.034 trillion and US\$

301,45 million. Meanwhile reinstated fund up to now is just Rp 4.153 trillion and USD 189 ribu (40 %). The rest of the fund is still left more than half worths Rp 6.9 trillion and USD 111,9 million.

Eradication of corruption chanted by the government is not followed with modification of system or reform within the attorney institution. The President had so far not omitted the warrant required for the investigation of head of local government alleged to have committed corruption, despite many parties consider the issue would be prudent to hinder the enforcement of corruption law. Reforms in the attorney body has not been accomplished despite the fact that it has been commenced since 2005. From 6 points of Attonery Institutional Reform (Attorney recruitment, career management, training and education, Minimal Requirements of Attorney, Attorney Code of Conduct, and Attorney monitoring system), only the last point (attorney monitoring system) bearing result.

This prosecutor institution is still having problem with [restitution](#)¹⁴. Based on BPK record, restitution reported to have been left totaled up to Rp. 6.9 trillion and US\$ 111,9. The amount had increased to Rp. 8 trillion, based on ICW monitoring activity. This is a black mark to the anti-corruption movement as it is the very foundation of the accomplishment of corruption cases, related to the poor performance and internal performance of internal system in the law enforcement agencies. (Prosecutor, Police and Court).

¹⁴ Annex, List of arrears, Stare Loss Restitution in Jakarta.

The management of restitution obtain from the convicts requires special attention. Attorney often claims to have saved a great number of fund to state treasury. But the data obtained from the Department of Finance indicated a smaller deposit than the amount claimed to have been collected.

Management of confiscated assets also required serious attention as there has been no transparency. This prosecutor institution claimed to have confiscated assets worth US \$ 11.000,- and Rp 2 trillion. Considering such great asset, the management of assets should have been midified to comply with accountability and transparency principle. A sample of misuse would be the release of confiscates from the convict Lee Darmawan, ex-director of Bank Asia. Poor asset management is visible from the case of the management of assets confiscated from the convict Edy Tansil who fled several years ago whose assets worth hundreds of billions of Rupiah.

Related to [fugitive](#)¹⁵ defendants and convicts, series of problems in the prosecutor institution support the initial argument on the poor performance of attorney institution. Several detaining postponement even attorney officials cooperating with corruptors often backgrounded the problem. In 2006 alone, based on the record from ICW, at least 4 major cases worth more than Rp. 100 billion are finally inexecutable by the attorney institution.

¹⁵ Annex, List of Corruption Suspects/Defendants/Convicts Remain Fugitive in the Aftermath of UNCAC Ratification.

Moreover, the Suharto and Indonesian National Army (TNI) corruption case is a nearly untouchable territory in the anti-corruption movement. Two cases exist in the military (The procurement of Mi-17 helicopter by the Department of Defense; DoD and the Indonesian Army and the compulsory savings of Army personnels).

Top ranking officials of GOLKAR and Suharto's cronies declared Suharto to be pardoned and the legal procedures against him to halt.

However, the corruption committed by Suharto during his 32-year reign is totally untouchable despite on 17 September 2007 the United Nations and the World Bank released Stolen Asset Recovery (StAR) Initiative in the UN headquarter New York. StAR revealed that Suharto stole and committed corruption worths US\$ 15-35 billion, or equals Rp. 300 trillion.

The treatment of Suharto's case is assumed to be suspended intentionally. A slight of hope appeared in 2006 when Attorney General Abdul Rahman Saleh sustained the investigation and finally proceeded the case to the court. Unfortunately, in an instant the Office of the Attorney General froze the case through Case Termination Decree No. TAP.01/O.1.14/Ft.1/05/2006. The reason of this termination was due to Suharto's permanent illness. The termination of this case vividly indicates discrimination in law enforcement.

3. The Center for Reporting and Analysis of Financial Transaction (*Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK)*)

PPATK revealed 2,604 reports of suspicious financial transaction from 2003 through the end of August 2007 in four state owned banks. In average, 651 occurred in each bank¹⁶.

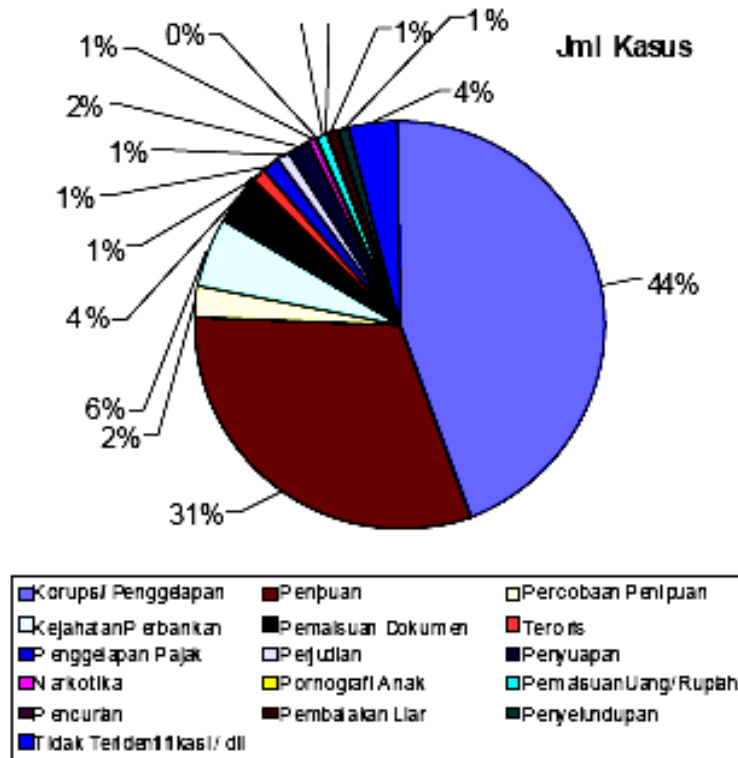
Meanwhile, according to year end reflection document, PPATK reported classification of financial deviation suspected to have been distributed to various kinds of crimes.

The Report on Result Analysis (*Laporan Hasil Analisis (LHA)*) submitted by PPATK to law enforcement agencies (Police and Attorney) listed 522 cases analyzed out of 895 LTKM. During 2007, some prominent Modus Operandi (MO) are corruption/misuse (231cases), fraud(162 cases), banking crime (29 cases), and document falsification (21cases). Up to now, 11 verdicts were reached on the basis of the Ordinance on the Money Laundering.¹⁷

¹⁶ <http://www.ppatk.go.id/berita.php?nid=2047>

¹⁷ http://www.ppatk.go.id/pdf/ppatk_refleksi_akhir_tahun_2007.pdf

Distribution of Financial Misuse MO



Source: The Report on Result Analysis PPAK 2007

4. Verdicts Clearing all Charges

In general, public court plays a vital role in the dimness of corruption eradication attempts in Indonesia. The Supreme Court and courts underneath (High Court and District Court) still act as warm shelter for corruption. This can be concluded from the corruption cases accomplished during 2007.

Related to trial process towards corruption, in 2007 there was an increase in cases sentenced 'free' compared to previous years. Based on ICW monitoring in 2007, of 161 cases with 373 defendants tried in public court, 86 cases with 212 defendants were cleared from all charges (56.84%). Only 75 cases with 161 defendants were found guilty. The number of corruption defendants cleared of all charges is quite significant compared to previous years; 54 defendants in 2005 and

117 defendants were “freed” in 2006. Hence, in 3 years at least 383 corruption case defendants were freed by public court.

The condition in the public court is totally contradictory to the treatment of corruption cases in the corruption ad hoc court. In the last 3 years, 43 cases were tried. All defendants were found guilty and none were freed.

Regarding this phenomena, the case were cleared due to innocence, weak (both

intentionally and unintentionally) prosecution, judges try to find advantage for the defendants, or combination of feeble prosecution and judges finding advantages for the defendants). The last three causes are dominant. This was worsened by the feeble internal monitoring (from the Supreme Court) and external monitoring (from the Judiciary Commission) towards all judges.

C. Delegitimacy of Corruption Eradication Institution

The most crucial focus in the feebleness of anti-corruption movement up to 2007 is the delegitimacy attempt. The Judiciary Commission (*Komisi Yudisial* (KY)) and Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* (KPK)) are two most frequently assaulted objects.

There was a dawn of hope in the middle of distrust towards law enforcement agencies when these two commissions. Were established. Maneuvers of these

Controversial Statement from the Chair of Supreme Court, Bagir Mannan:

I. “Corruption eradication should not emphasize on the efforts to search for suspects but on to the restitution of state loss”

(*Suara Merdeka*, 6 August 2006)

According to Law No. UU 31/1999 juncto Law No. 20/2001,

“Restitution of state loss does not nullify the criminal responsibility”

II. Refusing the existence of Ad Hoc Corruption Court in several areas in Indonesia

(*Suara Pembaruan*, 10 April 2007)

>> 100 % corruption cases tried in corruption ad hoc court are all sentenced guilty and sentenced in average 4,4 years. None has been freed.

commission were assumed as endangering for corrupt agencies and individuals. Consequently attempts to delegitimize the commissions were commenced.

Routine monitoring conducted by anti-corruption NGOs/CSOs revealed three approaches in delegitimizing corruption eradication institutions: *First*, Reduce the authority of each institution by means of proposing Judicial Review to the Constitutional Court; *Second*, Disregard summons, or any other attempts of those two institutions to carry out their duties despite the duties are warranted by the law and, *Third*, commandeer the process of election of public officials/leaders.

1. Delegitimacy of Judiciary Commission

On the previous part on policy, actions, and contradictory statements hindering eradication of corruption, attempts to delegitimize corruption eradication institution has been discussed. Through Judicial Review in the Constitutional Court, 31 supreme justices managed to significantly castrate the authority of KY. Accordingly, KY possess no authority to monitor constitutional and supreme justices.

The circumstance was worsened by the verdict of Constitutional Court in the case No. 005/PUU-IV/2006 which excised the authority of KY significantly and even reached an *ultra petita* (more than appealed by petitioners) verdict. In various scientific forums, examinations, and researches conducted by academics and civil society, the verdict of the Constitutional Court acts as an imperative instrument to further cultivate corruption in Indonesia.

The point of Constitutional Court harshly asserted a conflict of interest and tendency of anti-monitoring and anti-accountability. The method to reduce the authority through judicial review mechanism was considered successful and share greater advantage to corruption mobsters in Indonesia. The fading KY will contribute to the feebleness of monitoring function and enforcement of judges ethics. In the middle of public distrust, bribery which penetrates to the body of court and build a trend of bribery in winning lawsuit, the attempts to eradicate corruption shall be weakened a great deal.

The Chair of Supreme Court, Bagir Manan was a noted official to contradict with KY. This can be concluded from his controversial statement. Manan even prohibited judges to receive award from the KY¹⁸ and in a high tone strongly opposed the action taken by KY to investigate problematic judges¹⁹. The syndrome of power of Manan to decline the existence of Judiciary Commission has somehow dishonored the mandate of the Constitution as KY itself exists as a directive from the constitution to carry out monitoring and enforce ethics, moral and attitude of judges.

2. Deligitimacy of Corruption Eradication Comission (KPK)

¹⁸ Tempointeraktif, 11 August 2007

¹⁹ Seputar Indonesia Daily Newspaper, 11 August 2007

KPK is one of eight independent, anti-corruption bodies ever to be instituted in Indonesia. Seven previous bodies were slain before managed to act²⁰. Similar measure is being undertaken to obliterate KPK.

Different from Judiciary Commission, the attempt to slay KPK is assumed to be more systematic. Up to the moment this report is delivered, seven attempts of [judicial review](#)²¹ on the Law no. 30/2002 on the existence of KPK has been filed to the Constitutional Court.

Based on the petition filed by Bram H.D. Manoppo, the Constitutional Court in its verdict no. 069/PUU-II/2004 stated that KPK is not eligible to cope with cases occurred before the Ordinance on the existence of KPK was enacted; 27 Desember 2002. This greatly impacted on cases in the past which created state loss a great deal. The very point opposed by academics and anti-corruption NGOs/CSOs is the application of legality principle inappropriately by the Constitutional Court. The authority of KPK actually stands in the formal law, whereas legality principle regulates material law elements. Furthermore, KPK was also equipped with the authority to take over cases treated by the attorney on certain consideration. The Constitutional Court's verdict eliminated the very philosophical foundation of the establishment of KPK.

²⁰ First, through Presidential Decree (Keppres No. 228/1967) Team of Corruption Eradication was established; Second, 3 years later, 31 January 1970 through Keppres 12/1970 a Four-Committee Team was instituted; Third, in the same year, a new name was proposed; Anti Corruption Commission; Fourth, in 1977 with Inpres 9/1977 the so-called OPSTIB team; Fifth, in 1982 the Team of Corruption Eradication was reinstated though legal instrument to accommodate the institution was never issued; Sixth, through Keppres No. 127/1999 a Committee for the Investigation of State Administrator's Property; *Komisi Pemeriksaan Kekayaan Penyelenggara Negara* (KPKPN) was established and Seventh, based on PP 19/2000 a Joint Team for the Eradication of Corruption; *Tim Gabungan Pemberantasan Tindak Pidana Korupsi* (TGTPK) was established.

²¹ Annex, *Judicial Review* on Law No. 31/1999 juncto Law No. 20/2001 and Law No. 30/2002 on KPK.

Judicial Review petitioned by Mulyana W Kusumah, a former member of the Election Commission (KPU) who were found guilty for corruption was also controversial. The verdict pronounced on 19 December 2006 stated that article 53 of Ordinance on KPK violates the 1945 Constitution, about the legal basis of corruption court. The Constitutional Court did not directly declare article 53 of Ordinance on KPK as non-legally binding. However, the verdict will be the assignment and also the stake to witness the commitment of the government and the House of Representative to formulate a new law on corruption.

Up to 2008, the development of drafting the package of anti-corruption laws has in turn endangered the anti-corruption movement. Prof. Andi Hamzah, a legal academic and the chairperson of the drafting team from the government side attempted to abolish the existence of corruption court and wanted to return all corruption cases to public court. This attempt is inseparable from the attempt to slay anti-corruption institutions.

Negligence was committed when KPK carried out its duties. The Chair of Supreme Court, Bagir Manan, was one of individuals to disregard the summons on him. In his statements, Manan claimed that his institution, the Supreme Court, is a perpetual body, meanwhile KPK is a momentarily instituted body and it would be totally inappropriate for the Chair of Supreme Court to comply with the KPK summons.

The next demolition attempt is done by commandeering the election process of KPK top officials. The method is using democratization excuse. During the fit and

proper test in parliament (Commission III of the House of Representative) the attempt to place problematic candidates was undertaken in a vicious manner.

Viewing the intensity and quality of questions asked by Commission III members, favoritism was clearly visible. Candidates having good achievement and track records in corruption eradication were given inhospitable questions and the examiners inclined to torment and corner the candidates. Meanwhile, favored candidates were only given nothing more than pleasantries.

The selection of KPK top officials finally placed controversial individuals. Exploration on the track record of the two newly elected leader of KPK, including the chair of the KPK indicated that he is a person with a bad, black track record during the service in the Office of the Attorney General and Police Department.

D. Anti-corruption Donor Agency

Anti-corruption policy programs in Indonesia are inseparable from the participation and role of donor agents. But programs commenced the donor agents are still limited to capacity building, competence, and governance procedures of the executive body.

Several prominent samples viewable in the tabulation and [anti-corruption donor matrix](#)²² compiled by ICW. Donor from USAID, GTZ, BMZ, ADB, NORAD, Europa Union (EU), DANIDA, World Bank (WB), IOM-OIM had allocated vast budfet to promote reform in several institutions, such as the Supreme Court, KPK, Indonesian Attorney, Indonesian Police Corps, Reconstruction and Rehab

²² Annex, matriculation of anti-corruption donor to Indonesian state institution.

Agency, National Development Planning Board (Bappenas) Ministry of State Apparatus, Directorate of Law and Legislation, Department of Finance and other departments.

The absence of significant change and decrease of corruption level both in long term projection and short term should become a critical note on the effectivity of donation to governance institution in Indonesia.

* * *

Chapter IV

Compliance of UNCAC in Indonesian Law

Indonesia is one of 103 states to ratify the UNCAC on 19 September 2006, as formulated in the Law no. 7 of 2006 on the Ratification of United Nations Convention Against Corruption, 2003. As a party state, Indonesia has the interest and duty to perform law compliance, regulation and and eradication corruption strategy in international level.

In other words, global movement on corruption eradication should be built based on similar general standard in the respective country. In this point a domestic legal framework which is realized in the form of legislation, that includes criminal law book is a chief requirement. Signified legislation significant to build legal framework in fight of corruption should at least include:

1. Law no. 28/1999 on the Clean Governance without Corruption, Collusion and Nepotism;
2. Law no. 31/1999 with Law no. 20/2001 On the Eradication Corruption;
3. Law no. 30/2002 on The Commission for the Eradication of Corruption;
4. Law no.15/2002 and Law no. 25/2003 on Money Laundering; and
5. Law no.13/2006 on the Witness and Victim Protection Institution.

In general, Indonesia legal observers note that the framework above have been able to become basic capital strong enough in anti-corruption movement in Indonesia. But legislations framework above should be more strengthened by the drafting, revision and harmonization of several other laws:

1. Ordinance on Corruption Court;
2. Ordinance on the Procurement of Goods and Services;
3. Revision on the Ordinance on the Corruption Crime and KPK
4. Initiation for the establishment of ombudsman institution through legislation.
5. Synchronization of judiciary legislations (Law on The Supreme Court, Law on the Constitutional Court and the Law on the Judiciary Commission)

Apart from these measures, other steps are also necessary: *first* to eliminate the government and some parliamentary members' resistance which may lead to hindering the enactment of the Ordinance on Freedom of Public Information; *Kebebasan Informasi Publik (KIP)*; *second* to consolidate civil society movement to fight attempts to delegitimize the KPK by means of reducing KPK authority up to the investigation level through of revision Ordinances on KPK whereas this anti-corruption institution is categorized by UNCAC as a must-have permanent institution and ought to be self-dependent even up to the process of recruiting investigators and prosecutors (in other words, KPK should not be using attorney

and police manpower as still applied by the end of 2007); *third* to conduct a study on the taxation legislation and state finance management.

Gap Analysis on Indonesian law to UNCAC previously arranged by KPK is viewed as an initial effort to build such *domestic legal framework*. By means of determining general standard of corruption eradication regulation in inter-nation level, KPK tried to analyse dan formulated it in to the form of tabulation with comparison to UNCAC and legislations in Indonesian legal system, analysis, and other aspects requiring extra concern and also recommendation point.

This independen report is trying to observe recommendation contained within the *KPK Gap Analysis*, to critically analyse in level of recommendation accuracy and appropriateness, to assess the advantages of the adoption of UNCAC parts²³, and then to monitor the realization of recommendation to Indonesian legal system as of December 2007. as explain above, the object of this report analysis is focused to aspect of eradicating corruption, i.e. some crucial article in chapter III UNCAC. Generally, initial analysis can be observed from table contained in the annex of this independen report.

As an effort to formulate regulation in national level in compliance with international standard on corruption eradication, this report will try to explain gap phenomena between Indonesian law and UNCAC mandate. By combining *check list* technique, compliance of article by article in chapter III of UNCAC with

²³ Review on the compliance of UNCAC within Indonesian law system by placing *KPK Gap Analysis* as the chief basis is the result of common analysis between Indonesia Corruption Watch (ICW) dan Arsil, LeIP (The Study and Advocacy Center for the Independence of Court; *Lembaga Kajian dan Advokasi untuk Independensi Peradilan*) researcher.

regulation that have been regulated in Indonesian law and *content analysis* each of regulations, so parts of legislation assessed as principle will be explained further.

Article 15

Bribery of National Public Officials

Referring to legislative guide issued by the United Nation Office and Crime (UNODC), it is explained that state members must rule the act of "bribery" as a crime. This article is then classified into two; active bribery and passive bribery²⁴. Besides, the principal firmly asserted, the nature of this article is "shall adopt" which means legislation related to bribery in party states at least comply with article 15 UNCAC. In an *a-contrario* manner, article 65 poin (2) UNCAC states that each party state may adopt more strict measures than instituted in the convention to prevent and fight corruption.

Other principal thing, article 15 is inseparable from the definition of Public Official as regulated by article 2 point (a), even UNODC asserted that article 2 point (a) is minimum substance to be regulated by national law²⁵. Whenever observed further, the rule of Indonesian law is too limited compared to definition given by article 2 section (a). Besides limited, the terminology chosen is relatively different in each legislations. i.e. civil servant (article 1 point (1) of Law No. 8/1974 juncto Law No. 43/1999 and article 1 point (2) Law No. 31/1999

²⁴ United Nation Office on Drugs and Crime Division for Treaty Affairs, 2006, Legislative Guide for The Implementation of The United Nation Convention Against Corruption, New York. Page 80-81

²⁵ Ibid. Page 10 dan Page 83.

"Article 2 defines several important terms recurring through the Convention. National legislation may include broader defeniton but should, as a minimun, cover what is required as according to the Convention". (P. 10).

juncto Law No. 20/2001); State Officials (article 1 point (4) and article 11 point (1) Law No. 8/1974 juncto Law No. 43/1999); and, State Administrator (article 1 number (1) Law No. 28/1999). This is not mentioned at all in the *KPK Gap Analysis*.

A relatively progressing development was formulated on the Bill of Corruption Eradication of community initiative²⁶. Based on the 5th draft as of 11 August 2007, the definition of public official has been regulated in a more detailed way compared to the previously mentioned legislations. Definition on article 1 point (4) gives an emphasis whether one is receiving salary, facility, or financial support related to state/local budget. Even directors, trustee board members and ranking officials in BUMN and BUMD and also notary are classified as public official. Based on UNCAC, a principal thing forgotten by drafters is the definition of Public Official definition, should also be emphasized to functional aspect. i.e. every people performing public fuction or providing public service (article 2 section (a) number (ii and iii).

The government version Bill on Corruption Eradication formulated by a team from the Ministry of Law and Human Rights is assumed inconsistent incompliant to the Public Official terminology. As assessed by many observers, this Bill tends to relapse and is feeble if viewed from the perspective of corruption fight.

²⁶ The Bill was drafted as the community initiative in cooperation with Koalisi Pemantau Peradilan (KPP) consisting Indonesia Corruption Watch (ICW), Lembaga Kajian dan Advokasi untuk Independensi Peradilan (LeIP), Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia (MaPPI), Konsorsium reformasi Hukum Nasional (KRHN), Legal Aid; *Lembaga Bantuan Hukum* (LBH) Jakarta, and *Pusat Studi Hukum dan Kebijakan* (PSHK), with Kemitraan-The Partnership for Governance Reform.

Back to the idea of article 15 on bribery, the element not implicated in Indonesian law is the element of “offer” for active bribery and “solicitation” element for passive bribery. This can be viewed from the formulation of Article 5 point (1), (2), Article 6 point (1), (2), Article 11, 12, and 13 of Law No. 31/1999 jo 20/2001 on the Eradication of Corruption. Meanwhile the Community Initiative corruption bill only adopted the “offer” element, and has not included the “solicitation” for passive bribery.

Article 17

Embezzlement, Misappropriation, or Other Diversion of Property by Public Official

Some substances of the this article has been regulated on article 8, 9, 10 in the Law No. 31/1999, juncto Law No. 20/2001. Those articles were only about the embezzlement, falsification of administrative documents, losing, demolishing, damaging, and/or activities defecting properties at hand for the cause of one’s position as a public official.

The Laws have not regulated the activity of “handover of property in whatsoever forms entrusted to a public official based on his rank” as a crime. Besides, Indonesian law needs to assert the definition of “Property” and “property result” in the revision of Corruption Legislations. The existing Corruption Legislations still based its perspective from the Cantianism with retributive approach which emphasizes only to the aspect of state loss. The term “property” as regulated in Article 2 point (d) of the convention includes broader sense. In the draft of

community initiative bill of Corruption Law, such issue was adopted in Article 1 point (8).

Article 18

Trading in Influence

KPK Gap Analysis valued the substance of this article to be relatively adopted by Article 3 in Law No. 31/1999 juncto Law No. 20/2001. However, considering the explication of the article's element, it can be concluded that Article 18 of the Convention is having different intention and objective compared to Article 3 of Corruption Law.

Article 3 speaks more of the aspect "misuse of authority which cause state loss or state economy", whereas Article 18 wished that "parties offering, promising or presenting something with an intention to influence public authority or administration of an official from which benefit is obtained" could fall into corruption charges. The core point taken from Article 18 lies on the "causality relations" or at least "may be assumed related to" between the attempt of the actor to influence by means of policy, regulations or things in line issued based on the authority of a public official.

Such relations may benefit other party(ies) either individuals or corporates. In the extremity, this condition tends to lead to "State Capture Corruption" as the state is so influenced/commandeered through policies issued by public officials, though sometimes do not impact to state loss that the substance of Article 18 is strongly advised to be regulated in detail in the revision of Corruption Law.

Article 19

Abuse of Function

The element of this article is considered related to the substances of Article 5 point (2) of the Convention. In its relations to the objective of the Convention, the Loss element or Damage of state property is not principal. In Indonesian law, the Gap Analysis recommendation which says that the substances of Article 19 had been accommodated in Article 2 of Corruption Law is not appropriate. Article 2 stated firmly the terminology “state financial loss”.

Though the nature of this article is categorized as “shall consider adopting”, in the remembrance of the intention to minimize the state loss, this substance should be adopted seriously by Indonesian National Law. As expressed by Prof. Dr. Romly Atmasasmita, such issue is a paradigm of corruption eradication revised by UNCAC.

Pasal 20

Illicit Enrichment

The nature of this article’s recommendation is “shall consider adopting”. But the substance is considered interesting in seizing the illegally obtained assets and property of corruptors, unexplicable or does not make sense if compared to the official income value. Hence the assumption of KPK Gap Analysis that Article 20 of the Convention is in harmony with Article 2 Law No. 31/1999 juncto Law No. 20/2001 is inappropriate. The elements of Article 2 tend to be emphasized in the aspect of actor enriching himself unlawfully. Consequently, the requirement that

someone is subject to violation of Article 2 is at least committed unlawful actions as prohibited by Positive Law. Meanwhile, the substance of Article 20 of the Convention tends to compel explication of defendants about his assets/property whenever assumed as unfounded. In words, if a defendant can not explain then the National Law should regulate the mechanism of confiscation, or even the seizure of the assets.

Besides, Article 37A point (1) and (2) of Law No. 31/1999 juncto Law No. 20/2001 regulated some substances of Article 20 of UNCAC. However, the formulation of “findings of unbalanced property” in the Corruption Law tend to be positioned as an information to support exhibits, not as one crime as regulated by Article 20 of the UNCAC. In short, Indonesian law has not got the regulation perfectly in line with Article 20 UNCAC.

Article 21

Bribery in Private Sectors

The substance of this rule is not regulated in Indonesian Law. Considering the interest to fight corruption is not only limited to state loss alone, but also its entirety in the crime of economy, the effort to ensnare bribery in private sector must be adopted. Private sectors commonly utilize facilities, loans and other fundings from the government. Bribery and bad corporate governance shall lead to endangering the society, particularly creating national economic hit.

It is strongly advised that the revision of Corruption Law should regulate this issue thoroughly.

Article 23

Laundering of Proceeds of Crime

This issue is regulated in Article 2 point (1) and (2), Article 3 point (1) section b, g, and point (2), Article 6 point (1) Law No. 15/2002 and Law No. 25/2003 on Money Laundering.

The nature of this article is “shall adopt”. But it is imperative to remember the mandate contained in UNCAC particularly Article 23 is not limited to accommodation in one corruption law only. KPK Gap Analysis recommending several articles in Money Laundering Law to be adopted in the revision of Corruption Law is assumed as unnecessary. Basically, UNCAC wished for the creation of general standard and points related to corruption eradication.

This article is inseparable from the term “predicate offence” as regulated in Article 2 section (h). Article 23 actually provides clue on list and forms of predicate offence possessed should comply with UNCAC²⁷. In a sense that the regulation of the issue can also be accommodated in several different Law.

Article 25

Obstruction of Justice

The substance of article 25 section a is related to the concept of witness protection categorized obstruction of trial procedure. This point is regulated in Article 21 and 21 of Law No. 31/1999 and Law No. 20/2001 on the Eradication of Corruption

²⁷ UNODC Division for Treaty Affairs, Op. Cit. Page 89.

and Article 5 point (1) section a and Article 10 of Law No. 13/2006 on the Protection of Witness and Victims.

Article 25 section b is emphasized on the threat or intimidation to judges and law enforcement agents. The purpose of this point to be regulated specifically can not be declared as “complied” with the existence of Article 21 of the Corruption Law, as the article only mentions “suspect, defendant, or witness in trial”.

In line with the “shall adopt” nature of recommendation of Article 25, the revision of Corruption Law should verify regulation which positions judge and law enforcement agents as protected subjects. This does not only apply during the trial, but includes during the process of a case.

Article 28

Knowledge, Intent and Purpose as element of Offence

Not regulated in Indonesian Law.

Article 29

Satute of Limitation

Whenever not specifically regulated, the expiration comply with Chapter VIII of Criminal Code on the Termination of Authority for Criminal Legal Standing and Execution (Article 76-85).

From the KPK Gap Analysis recommendation, it is best that the regulation of expiration be specified in the Corruption Law. It is even best if there is no expiration of allegation for Corruption cases..

Article 31

Freezing, Seizure, and Confiscation

KPK Gap Analysis asserted that the substance of this article is adopted by Law No. 31/1999 juncto Law No. 30/2001 on the Eradication of Corruption and Law No. 8/1981 on Due Processes of Criminal Law, and assumed that extra regulation would not be necessary.

Essentially, the important substance to consider related to the difficulty in reaching suspicious fund flow (related to Corruption) through banking services as the process occurs in an instant and complicated. This is actually the place in which PPATK authority as the state financial intelligence agency be maximized. For instance to halt suspicious financial transaction (Article 2 Law no. 15/2002 juncto Law No. 25/2003 on Money Laundering), especially suspected to have happened as corruption media.

PPATK authority is relatively poor as regulated by Article 27 of Money Laundering Law. It is best if there is reinforcement in its authority in compliance with Article 31 UNCAC.

Besides, it is imperative to formulate a legal basis for the establishment of a special institution to administer confiscated assets. In-depth explication of other articles are attached with this report.

As an alternative report delivered in the 2nd CoSP, Conference of States Party in Bali, 28 January – 01 February 2008, the exposition above holds a crucial meaning to counterbalance the government report which oftentimes expose the

success of fighting corruption. For the greater interest in the future, particularly in the aftermath of UNCAC ratification, and harmonization of legislations with UNCAC, the government's consistency will be one most important foundation to the success of the fight against corruption.

* * *

Chapter V

Recommendation

Programs and instruments of global anticorruption transplanted to Indonesia 1998, by spending tens of millions of US dollars in the form of foreign donation, and yet have not indicated strong power to exterminate corruption in Indonesia. Attempts to hinder new anticorruption institutions such as KPK and Corruption Court are ceaseless. Judiciary Commission, Attorney Commission and Police Commission face real-life obstacles to exercise their monitoring function as their presence were not sincerely accepted as vital institutions to restore law enforcement, despite their performance have not shown exhilarating results.

The problem may not be situated in the global anticorruption instruments, as other countries are quite successful in fighting corruption. The problem may be in the absence of strong political will to conduct reform for the welfare of people. In a country where the political and bureaucratic corruption are similarly strong, it will be difficult to expect political will to exterminate the activity which support the political and bureaucratic funding in the topmost level.

After the ratification of UNCAC, Indonesia is compelled to conduct real legislation to reform all legal instrument related to the eradication of corruption to comply with paradigm, approaches and measures to universally fight corruption. Such attempts are still undertaken by the government of Indonesia.

However the emerging fear is that most of the anticorruption programs are redirected to the reinforcement of governance institution, from the establishment of new bodies and improvement of existing institutions, and neglecting the reinforcement of social institution and extension of participatory political corridor. In this extent, corruption seemed to be considered as a result of poor management and failure of governance (judiciary, bureaucracy, fiscal, parliament, etc) rather than as the outcome of unbalanced relation between the state, community and business despite such relations seemed to have been of non-permanence and fragmented since the 1999 election. It is seemingly difficult to solve such problem by just modernizing government through capacity building, reinforcement, and procedural governance.

Democratization in the aftermath of the Suharto authoritarian regime just depict competitions among the elites in the frame of electoral politics, and poor participation and public representation. Hence social redistribution fails to occur. Occupation of public economic and financial resources by the elites is a daily menu in the governance, both in central and local extent. Consequently the fortification of community groups should become a primary agenda to counter pure electoral politics in order to create public spaces in which citizen' ideas and identity can compete in determining public policy.

Propositions for the extension of community participatory corridor in the supervision of governance seemed to be neglected by the government and parliament. Ideally, anticorruption reform must be pushed extra-governance. Civil society and private sectors must be given broader space in order to reinforce

themselves to push for reforms (political and economic). The idea of corruption eradication from outside the government tend to be neglected as social anticorruption movement is growing and disseminate throughout the country. But unfortunately the movement is still having no strong foundation. Regrettably, donor agents and international community assisting Indonesia are more interested in cementing government to government relations and assistance for civil society are more directed to fund short-term programs and issue-based rather than helping to strengthen human resources and community institutional capacity.

* * *

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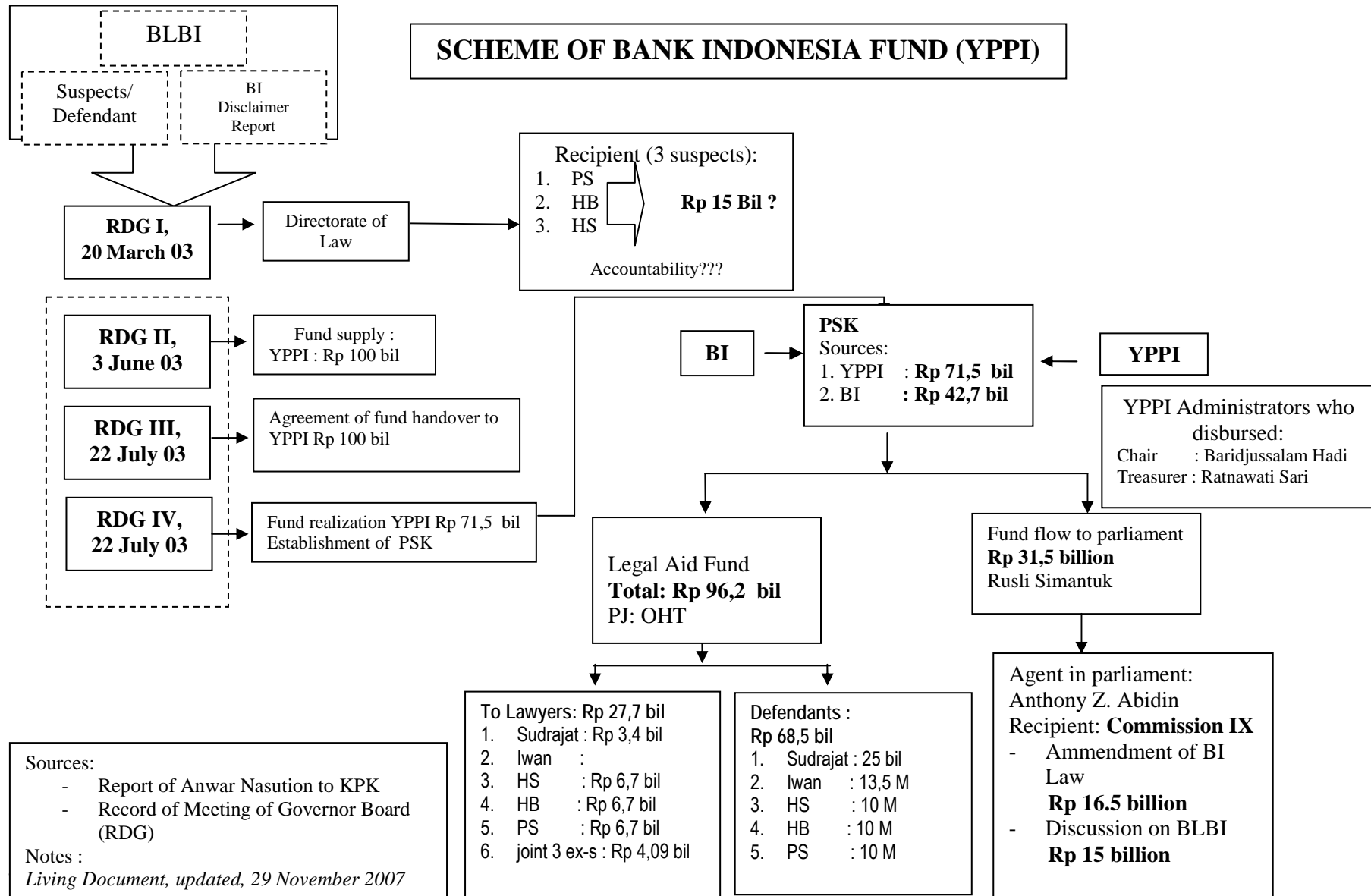
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Annex I
**Accomplishment of findings of State Loss up to 1st semester of budget year
2007**

Classification	Cases	Currency	Value of State Loss		State Loss Resolved (in billions of Rupiah)	Percentage of Resolution
			In various currencies	In billions of Rupiah		
Treasury	424	Rp.	134,13 billion	134,130	1,59	1,18%
		US\$	960,09 thousand	9,229	--	--
Civil Servants non treasurer	3.750	Rp.	545,94 billion	545,940	95,92	17,60%
		US\$	4,34 million	41,725	--	--
		¥	629,68 million	5.286,189	--	--
		FFR	37,164 million	306,586	--	--
		C\$	94,96 thousand	0,956	--	--
		NLG	2,97 million	12,400	--	--
		DM	1,83 million	5,518	--	--
		AUS\$	576,78 thousand	5,095	--	--
		EURO	32,52 thousand	0,450	--	--
Receivable from Third Party	1.543	Rp.	7,69 trillion	7690	879,12	11,40%
		US\$	1,56 million	14,998	--	--
TOTAL	5.717			14.053,216	976,63	6,95%

Source: ICW Document (Excerpted from BPK audit Semester I 2007)

Annex 2: Scheme of Bribery Flow of Bank Indonesia Fund



Meeting of Governor Board BI (RDG)	Conclusion of RDG	Governor Board of BI who approved
RDG I (20 March 2003)	<ul style="list-style-type: none"> - Approved the plea from 3 defendants to provide Rp 15 billion, - Each received Rp 5 billion 	<ol style="list-style-type: none"> 1. Sahril Sabirin 2. Anwar Nasution 3. Miranda Gultom 4. Maulana Ibrahim 5. Bunbunan Hutapea 6. Maman Sumantri 7. Oey Hoey Tiong
RDG II (3 June 2003)	<ul style="list-style-type: none"> - Requested the LPPI Trustees to provide Rp 100 billion - Phase I : Rp 50 billion - Appointed AP and BBH to execute the conclusion of RDG to the administrators of YPPI 	<ol style="list-style-type: none"> 1. Burhanuddin Abdullah 2. Aulia Pohan 3. Bunbunan Hutapea 4. Aslim Tadjudin 5. Roswita Roza (Directorate of Law)
RDG III (22 July 2003)	Approval that BI shall provide capital assistance to YPPI as much as Rp 100 billion	<ol style="list-style-type: none"> 1. Burhanudin Abdullah 2. Anwar Nasution 3. Aulia Pohan 4. Maulana Ibrahim 5. Bunbunan Hutapea 6. Maman Soemantri 7. Aslim Tadjuddin 8. Roswita Rosa (Directorate of Law) 9. Rusli Simanjuntak 10. Purwantari Budiman
RDG IV (22 Jult 2003)	<p>Approval for realization Rp 71,5 billion (Rp 100 billion subtracted by the amount approved by trustee of YPPI to be withdrawn, Rp 28,5 billion)</p> <p>Establish <i>Panitia Pengembangan Sosial Kemasyarakatan</i> to exercise:</p> <ol style="list-style-type: none"> 1. Withdrawal 2. Spending 3. Administration of fund 	<ol style="list-style-type: none"> 1. Burhanuddin Abdullah 2. Anwar Nasution 3. Maulana Ibrahim 4. Bunbunan Hutapea 5. Aslim Tadjuddin 6. Maman Soemantri

		7. Aulia Pohan 8. Roswita Rosa 9. Rusli Simanjuntak 10. Purwantari Budiman
--	--	-------------------------------------------------------------------------------------

T/O and duties of PSK	
Kordinator	Aulia Pohan (ex-officio)
	Maman H. Somantri (ex-officio)
Chairman	Rusli Simanjuntak (ex-officio)
Deputy chairman	Oey Hoey Tiong (ex-officio)
Administrator	Officers GV appointed and inaugurated by PSK administrators
Official Term	1 year after the RDG IV
Objective of PSK	<ol style="list-style-type: none"> 1. Exercise study for the activities related to socio-communal development 2. Conduct research and book publishing. 3. Develop and disseminate the monetary and banking policy. 4. Develop and conduct community development. 5. Other attempts in the nature of socio-communal development as assigned by PSK coordinator.

Source: Investigation by Indonesia Corruption Watch (ICW)

Annex 3
Recapitulation of 680 Noncompliant Identifiable Accounts

No.	Ministry/Insitution	Current Account		Deposit Account	
		Quantity	Value (in millions of rupiah)	Quantity	Value (in millions of rupiah)
1.	Bappenas	9	4.889,27		
2.	Batan	2	169,33		
3.	BP Migas	4	116.416,04		
4.	BPPT	24	6.961,06		
5.	BPS	2	53,74		
6.	BRR Aceh dan Nias	3	50.202,60		
7.	Department of Religious Affairs	75	2.890.807,79	17	929.012,89
8.	Ministry of Culture and Tourism	3	11,89	88	217,58
9.	Department of Trade	2	481,61		
10.	Department of Home Affairs	10	25.257,69	5	250,00
11.	Department of National Education	15	4.150,48		
12.	Department of Defense	96	1.832.713,75	40	14.594,06
13.	Department of Transportation	7	1.042,77		
14.	Department of Law and Human Rights	36	29.568,65	46	19.913,00
15.	Department of Forestry	34	311.570,48	6	8.012,59
16.	Department of Health	49	93.561,02	4	289,00
17.	Department of Settlement and Area Infrastructure	7	443,94		
18.	Department of Communication and Information	3	42,49		
19.	Department of Finance	88		172	

			1.062.265,74		64.627,29
20.	Department of Foreign Affairs	23	349.456,83	2	200,00
21.	Department of Manpower	13	15.636,57	24	120.509,20
22.	Department of Industry	5	2.730,95		
23.	Department of Social Affairs	9	11.780,96		
24.	Department of Agriculture	6	1.162,20		
25.	Department of Marine and Fishery	7	547,84		
26.	Department of Energy and Mineral Resources	19	30.686,40	198	36.637,45
27.	Attorney	6	258.141,87	1	1.329,00
28.	Ministry of Environment	2	74,12		
29.	LIPI	1	98,75		
30.	Supreme Court	4	4.877,63	5	2.581,00
31.	State Ministry of Cooperatives and Small-medium enterprises	3	5.715,07		
32.	State Ministry of Youth and Sports	3	84,91		
33.	Ministry of Research and Technology	1	1.705,71		
34.	Batam Authority	1	273,85		
35.	Indonesian Police Corps	108	105.679,74	15	119.299,00
	Total	680	7.219.263,74	623	1.317.472,06

Source: Document of Indonesia Corruption Watch (ICW)

Annex 4

List of Debt; 8 debtors of BLBI (*Bantuan Likuiditas Bank Indonesia*)

List of Debt of 8 BLBI Debtors

No	Debtor	Bank Receiving BLBI	Amount (in billions of Rp.)
1.	Marimutu Sinivasan	Bank Putra Multikarsa	1,130.00
2.	Ulung Bursa	Bank Lautan Berlian	615.44
3.	Atang Latief	Bank Indonesia Raya	325.45
4.	Lidia Muchtar	Bank Tamara	202.80
5.	Omar Putirai	Bank Tamara	190.17
6.	Adisaputra Januarydy	Bank Namura Yasonta	123.04
7.	James Januarydy	Bank Namura Yasonta	123.04
8.	Agus Anwar	Bank Pelita	1,900.00

Source: Koran Tempo, 15 April 2007 dan Kompas, 1 Mei 2007

Annex 5
List of Corruption Cases halted by the Attorney General

No	Suspects	Case	State Loss Estimation
1	Ginanjar Kartasasmita, Praptano Honggopati	Technical Assistance Contract (TAC) Pertamina with PT Ustraird.	US\$ 24,8 million
2	Sjamsul Nursalim	BLBI	Rp. 10 trillion
3	Prajogo Pangestu	Reforestation Project by PT. MHP	Rp. 331 billion
4	Bustanil Arifin	Bulog	Rp. 14,8 billion
5	Johanes Kotjo, Robby Djohan Tjahjadi	Credit of Bapindo – Kanindotex	Rp 300 billion
6	Marimutu Sinivasan	Credit of PT Texmaco	Rp 1,8 trillion
7	Djoko Ramiadji	Issuance of Commercial Paper by PT. Hutama Karya for JORR project	US\$105 million and Rp181,35 billion
8	Tanri Abeng	JITC/ Pelindo II	Rp 12,9 billion
9	Ir Bambang Pujianto	Lemigas	Rp 7,1 billion
10	Siti Hardijanti Rukmana, Faisal Ab'daoe, Rosano Barack	Piping project in Java	US\$ 20,4 million

Source: Republika, 14 Januari 2005

Annex 6

List of Restitution of State Losses in Jakarta

(based on legally binding verdict)

No	Convict	Case	Arrears In billions of Rp.
1	Hendra Rahardja	Corruption of BLBI in Bank BHS	1,300.00
2	Bob Hasan	Corruption of Cartography of Wildlife Reserve	1,930.00
3	Samadikun Hartono	Corruption of BLBI in Bank Modern	179,00
4	Sudjiono Timan	Corruption in BPUI	369,00
5	David Nusa Widjaja	Corruption of BLBI in Bank Servitia	1.300,00
6	Eddy Tansil	BAPINDO Corruption	1.800,00
7	Adrian Waworuntu	Corruption in Bank BNI	301,00
8	Thamrin Tanjung	--	20,00
9	Lee Darmawan	--	5,26
10	Dicky Iskandar Dinata	Corruption in Bank Duta	800,00
11	Hartono Tjahjajaja	Corruption in BRI	55,23
	TOTAL		Rp 8.059

Source: Koran Tempo (22 Maret 2002, 22 Juli 2005), Sinar Harapan (21 Februari 2004, 3 September 2007), Kompas (5 Desember 2004, 1 Februari 2005), Hukumonline (6 Februari 2006), Pikiran Rakyat (14 Januari 2007)

Lampiran 7

List of Suspects/Defendants/Convicts of Corruption Cases Remain Fugitive in the aftermath of UNCAC Ratification

No	Name	Case/ State loss	Remarks
1	Marimutu Sinivasan	Bad debt of Bank Muamalat Rp 20 billion	Alleged to have fled to India on 15 March 2006
2	Tabrani Ismail	Export Oriented Refinery (Exor) I - Pertamina Project USD 189,58 million	Alleged to have fled in April 2006 Detained in early 2007
3	Nadher Taher	Corruption in Bank Mandiri as much Rp 24 billion	Allegedly May 2006
4	Initial:HH, IH, GS, and TWW	Corruption of Asset Leasing from BPPN exercised by PT Mitra worths Rp 60 billion	Alleged to have fled to Singapore in August 2006 to Singapore

Source: Jawa Pos (7 Juni 2007), Bali Pos (27 April 2007, 19 November 2007) , Koran Tempo (5 Oktober 2007)

Annex 8

2 halaman

Annex 9

4 halaman

Annex 10

List of Corruption Cases Investigated and Tried by Court in 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
1.	Corruption of Padang City Budget 2001/2002; Rp 8,4 billion	Ex-Mayor of Padang, Zuiyen Rais	District Court of Padang	Freed of all Charges	8 August 2005
2.	Corruption of Budget of Singkawang 2003	12 ex- DPRD members of Singkawang: Soemardji (ex-chair of DPRD Singkawang), Hermanus (vice chair), and Adrianto Alio (vice chair). Budget commission members, i.e. Tambok Pardede (chair); members: Hadi Surya, Tavip Putra Purba, Aminuddin Mahyan, H Zainal Abidin HZ, JM Papilaya, Irene Kadem, Ridha Wahyudi, and Iis Sumiati	District Court of Singkawang	Freed of all Charges	31 May 2005
3.	Corruption of DPRD Budget post of Manado in 2003 from Rp 11 billion to more than Rp 20 billion	Ex-chair of DPRD Johannes E. Tampi and two vice chair of DPRD Manado, Jeremia Amongilala and Dja'far Alkatiri	District Court of Manado	Freed of all Charges	30 May 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
4.	Corruption on the Budget of South Sumatra Prov; Rp 7,5 billion	Abdul Shobur, ex-secretary of DPRD South Sumatra	District Court of Palembang	Freed of all Charges	14 February 2005
5.	Corruption on the fund of PT Jamsostek, worths Rp 1,8 billion	Chair of Democratic Social Labor Party, Mochtar Pakpahan	District Court of South Jakarta	Freed of all Charges	15 February 2005
6.	Corruption on DPRD Activity Fund, chair of DPRD 1999-2004	Vice Mayor of Bogor, Moch. Sahid	District Court of Bogor	Freed of all Charges	24 January 2005
7.	Corruption of Regency Budget Rp 2,8 billion by members of DPRD Kabupaten Pontianak	Moses Alep (chair of DPRD Pontianak 1999-2004) , Efendi Cingkong (vice chair of DPRD Pontianak 1999-2004), H. Soetodjo (Vice chair of DPRD Pontianak 1999-2004),	District Court of Pontianak	Freed of all Charges	12 April 2005
8.	Corruption on Regency Budget Rp 2,8 billion by members of DPRD Pontianak	2 ex-members of DPRD Pontianak 1999-2004, M Makmur Abdullah and Adrean Felix	District Court of Pontianak	Freed of all Charges	21 April 2005
9.	Corruption on Local Budget of Parigi	Five members of DPRD Parigi Moutong, Central	District Court of Palu	Freed of all Charges	22 June 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
	Moutong Rp 2,9 billion	Sulawesi 2003-2004, i.e. M Awalunyah Passau, Salam Kamu Tanjema, Nico Rantung, Andi Tjimbung Tagunu, and Hafid Yahya			
10.	Misuse of Bulog fund worths Rp 169 billion (earnings from cooking oil sale)	Nurdin Halid, Chair of Distribution Cooperative of Indonesia	Pengadilan Negeri South Jakarta	Freed of all Charges	16 June 2005
11.	Corruption on the smuggling of 73 thousand tons of illicit sugar	Chief of General Trade Division of INKUD, Abdul Waris Halid	District Court of North Jakarta	Freed of all Charges	5 Juli 2005
12.	Corruption in direct appointment of 19 projects of Bengkulu city worths Rp 7,6 billion	Mayor of Bengkulu, Chalik Effendi	District Court of Bengkulu	Freed of all Charges	14 Juli 2005
13.	Corruption on the smuggling of 56 thousand tons of illicit sugar	Nurdin Halid, Chair of Distribution Cooperative of Indonesia	District Court of North Jakarta	Freed of all Charges	15 Desember 2005
14.	Corruption of Rp 46,6 billion in DPRD East Kutai	Ex-chair of DPRD East Kutai Abdal Nanang and House Secretary Darli Yusuf	District Court of Sangata	Freed of all Charges	16 Desember 2005
15.	Corruption of PT	Director of PT Avicom	District Court	Freed of all	April

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
	Perhutani Rp1,9 billion	Promo Media Deden Akbar Karsawijaya	of Central Jakarta	Charges	2005
16.	Bribery for accepting the progress report of Mandailing Natal Regent in 2001	Ir Raja Sahlan Nasution and Drs HM Suandi Hasibuan (DPRD members)	District Court of Padang Sidempuan	Freed of all Charges	28 March 2005
17.	Corruption of election fund Rp 199,5 million	Chair of KPU Lumajang Misbahul Munir Anshari	District Court of Lumajang	Freed of all Charges	30 June 2005
18.	Corruption of Budget of Konawe 2004 Rp 2 billion	Regent of Kabupaten Konawe, Southeast Sulawesi, Lukman Abunawas	District Court of Kendari	Freed of all Charges	23 June 2005
19.	Corruption on mark-up of fund for the procurement of heavy duty equipment Rp 539 million	Budiono, Chief of Irrigation and Road maintenance Division of Public Works Agency of Kabupaten Jember	District Court of Jember	Freed of all Charges	24 August 2005
20.	Corruption on Budget of Tanjungpinang 2003	Drs Asep Nana Suryana . Chair of Faction DPRD Tanjungpinang	District Court of Tanjung Pinang	Freed of all Charges	19 Desember 2005
21.	Corruption on procurement of Natuna Bahari I ship Rp1,9 billion	Chair of Tourism Board of Natuna, Yusrizal.	District Court of Tanjung Pinang	Freed of all Charges	2005
22.	Bribery for accepting the progress report of	Amru Helmi Daulay, Regent of Madailing Natal	District Court of	Freed of all Charges	14 January

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
	Mandailing Natal Regent in 2001		Padang Sidempuan		2005
23.	Bribery for accepting the progress report of Mandailing Natal Regent in 2001	Amru Helmi Daulay, Regent of Madailing Natal	MA	Freed of all Charges	14 June 2005
24.	Allegation of corruption in Dakab Foundation, Rp 2 billion	Amelia Yani, Glinding and Ir Sayuti Rustam	District Court of Sleman	Freed of all Charges	27 Agustus 2005
25.	Corruption in Industry and Trade Agency of Cirebon	Expert Staff of Cirebon Regent, Nunung Sumarsana	District Court of Cirebon	Freed of all Charges	3 May 2005
26.	Corruption on Double Salary Rp 70 million	Drs H. Maman Setiawan, member of DPRD Bandung from PAN	District Court of Bandung	Freed of all Charges	12 May 2005
27.	Corruption of Issuance of fictitious L/C Bank Negara Indonesia	Honorius	District Court of Pontianak	Freed of all Charges	20 Juli 2005
28.	Corruption on the fund of OPT project conducted in 1995- 2001, with a total amount: Rp. 111.808.200.000,-	Azam Azman Natawijana, Chief of Optimalisasi Pabrik Terak (OPT) II Project, PT Semen Baturaja (SB) currently member of DPR- RI from Partai Demokrat representing East Java.	District Court of Palembang	Freed of all Charges	2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
29.	Corruption on freeing estate formerly public cemetery in Kecamatan Gandus, Palembang, Rp 415 juta.	Yusuf Sumo, ex-member of DPRD Palembang from PDI Perjuangan and Guruh Agung Putra Jaya, Secretary of Camat Gandus.	District Court of Palembang	Freed of all Charges	2005
30.	Corruption in the cartography process in Badan Pertanahan Nasional (BPN) South Sumatra, Rp 1,5 billion.	Bahrunsyah, defendant of Head of Estate Organization Division BPN Sumsel	District Court of Palembang	Freed of all Charges	2005
31.	Corruption of fictitious official trip to Malaysia, Rp 25 juta	M Natsir Djakfar, ex-vice chair of DPRD Sumsel	District Court of Palembang	Freed of all Charges	2005
32.	Corruption on BLBI of Bank Umum Nasional Rp 6,738 trillion	Leonard Tanubrata, ex-President Director of Bank Umum Nasional (BUN) and Kaharuddin Ongko ex-Vice President of Trustee of BUN	Supreme Court	Freed of all Charges	17 March 2005
33.	Corruption on West Sumatran Local Budget 2002, worths Rp 5,9 billion.	43 ex-top officials and ex-members of DPRD West Sumatra 1999-2004	Supreme Court	3 ex-leaders of DPRD West Sumatera 5 years imprisonment each. 40 ex-members of	3 August 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
				DPRD West Sumatra, 4 years imprisonment	
34.	Corruption on Reforestation fund of Industrial planted Forest Hutan Tanaman Industri (HTI) worths Rp.100,931 billion	Probosutedjo	Supreme Court	4 years imprisonment	28 November 2005
35.	Misuse of Loan from Bank Mandiri, state loss worths Rp 35,9 billion	Nader Taher	District Court of Pekanbaru	14 year(s) imprisonment	21 December 2005
36.	Corruption on Adam Malik Public Hospital since January to October 2002 worths Rp 1.8 billion	Ex-Head of Essential Service Practice Team, Adam Malik Public Hospital, Medan, dr. Daniel Ginting	District Court of Medan	2 year(s) imprisonment	1 August 2005
37.	Corruption of Estate & Property Tax (PBB) approx. Rp 50 juta	Sarjono, Head of Dokoro Village, Kecamatan Wirosari	District Court of Purwodadi	1 year(s) imprisonment	12 January 2005
38.	Corruption on Banggai Local Budget of 2004, worths hundreds of million of Rupiah	H Burhanuddin Dg Matorang, Onesmus Djaka, dan H Frans Delangen (ex- members of DPRD), Moh Rifai Dg Matorang, and	District Court of Luwuk	Burhanuddin Dg Matorang and Frans Delangen (2,3 years), Nasrun Hipan and	13 January 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
		Nasrun Hipan SH (incumbent members of Banggai House)		Onesmus Djaka (2,6 years), Moh Rifai Dg Matorang 2 years.	
39.	Corruption on South Sumatra Local Budget, worths Rp 7,5 billion	Adjis Saip, ex-Chair of DPRD South Sumatra	District Court of Palembang	2 years imprisonment	14 February 2005
40.	Corruption on Illegal imported rice.	Nurdin Halid , Achmad Soebadio Lamo, Khairuddin Nur	District Court of North Jakarta	Nurdin Halid dan Soebadio (2,5 years of imprisonment) Khairuddin Nur (1,5 years)	10 August 2005
41.	Corruption on Bandar Lampung City Budget of 2002, worths Rp 3,7 billion	Three ex-members of Bandar Lampung House of Representative 1999-2004, i.e. Palgunadi, Gusti Rachmat Kartolo, and Muchzan Zain	District Court of Tanjung Karang	Each convicted 18 months imprisonment	8 March 2005
42.	Corruption on Ciamis Local Budget of 2001/2002 worths Rp 5,2 billion,	Vice Regent of Ciamis, Dede Sobandi, Dede Heru and Vice Secretary of the Budget Commission, Nasuha Riza Garniwa	District Court of Ciamis	2,5 years imprisonment	31 May 2005
43.	Corruption on Local Budget of 2001 and	10 ex-members of Budget Commission of DPRD	District Court of Ciamis	Each convicted 2 years	31 August 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
	2002 approx. Rp 5,3 billion	Ciamis (Basuki Suparno, Adang Badrul Zaman, Edi Susanto, Mochamad Taufik, Ndang Hidayat, Moch. Ismail Ilyas, Purnama Rizal, Mamat Rahmat, H R. Abdul Gofar, and Toyo Wijayakusuma)		imprisonment	
44.	Corruption on the Fund for Procurement of Civil Security uniform in 2004 election, Rp 310 juta	R. Suhud Achyadi, ex-Head of Kantor Kesatuan Bangsa (Kesbang) City of Bogor	District Court of Bogor	2 years imprisonment	20 June 2005
45.	Corruption on Solo Local Budget of 2003, worths Rp 4,2 billion	Ten ex-members of DPRD Solo 1999-2004.	District Court of Solo	Two DPRD ex-leader served 5 years, the other eight served 2,6 years imprisonment	22 August 2005
46.	Corruption on Banten Local Budget of 2003, worths Rp.14 billion	Ex-chair of DPRD Banten Dharmono K Lawi, with two the vices; Muslim Djamaludin and Mufrodi Muchsin.	District Court of Serang	Each 4 years & 6 months imprisonment.	16 June 2005
47.	Corruption on Local Budget of Padang, Rp.	27 members of DPRD Padang of 1999-2004	District Court of Padang	4 years imprisonment	14 June 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
	10,4 billion				
48.	Corruption on Local Budget of Banten Province of 2003.	Ex-Secretary of Budget Commission, Tuti Sutiah Indra.	District Court of Serang	1,5 years imprisonment	7 July 2005
49.	Suspicion on the misuse of task force operational fund for 2003, worths Rp1,4 billion	West Jakarta Beautification Bureau official, Sri Budi Setiati and her predecessor, Harun Al Rasyid	District Court of West Jakarta	4 years imprisonment each	4 August 2005
50.	Suspicion on mark -up of Donggala Regency Local Budget, worths at least Rp.5,2 billion	Chair and 6 members of DPRD Donggala; i.e. Ridwan Yalidjama, Anwar Muthaher, Ventje Sumakul, Awaluddin Husen Arif, Sutomo Burma (Chair of DPRD Donggala 1999-2004), Ketut Mardika	District Court of Palu	1 year imprisonment.	10 October 2005
51.	Corruption on Routine Fund of 2003 and 2004, Rp. 5,9 billion	20 members of DPRD Kendari, Southeast Sulawesi, 1999-2004. There were 26 defendants. Two of whom passed away.	District Court of Kendari	17 convicted 1,6 year imprisonment, 3 convicted 1 year, 2 leaders of DPRD Kendari convicted 1,6 year	11 October 2005
52.	Corruption on Stand-	Ex-DPRD Secretary of	District Court	1	26

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
	by Fund of Local Budget 2003 worths Rp 14 billion	DPRD Banten, 2002-2004, Tardian	of Serang	yearimprisonment	October 2005
53.	Corruption on Local Budget 2002-2004 worths Rp 97 billion	Regent (suspended) of Blitar Imam Muhadi.	District Court of Blitar	15 years imprisonment	31 October 2005
54.	Corruption on Local Budget worths Rp 14,8 billion	11 ex-members of DPRD Semarang 1999 - 2004	District Court of Semarang	1 year imprisonment with two years of probation.	15 September 2005
55.	Corruption on Local Budget worths Rp 14,8 billion	Mardijo, Chair of DPRD Central Java 1999-2004	District Court of Semarang	1 year imprisonment with 2 years of probation.	23 December 2005
56.	Corruption on Local Budget worths Rp 14,8 billion	Ex-committee member of DPRD Central Java 1999- 2004, Asrofie, Soejatno and Wahono Ilyas	District Court of Semarang	10 months imprisonment with 20 months probation	23 December 2005
57.	Corruption on Blitar Local Budget, worths 2004 Rp 97 billion	Head of Blitar Treasury, Krisanto and Head of Accounting, Bangun Suharsono	District Court of Blitar	Krisanto 13 years; Bangun Suharsono 5 years	7 September 2005
58.	Corruption on Donggala Local Budget	Vice Chair of DPRD Donggala Burhan Lamangkona and Andi	District Court of Palu	1 year imprisonment	17 November 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
	2001-2004, worths Rp 5,2 billion.	Malik Mappiasse			
59.	Corruption on Tabalong Local Budget 2002.	Vice Regent of Tabalong, South Kalimantan, Murhan Effendie bin Ahmad Hasyim Tamin, who previously was a chair of DPRD Tabalong 1999-2004, and ex-Vice Chair of DPRD Tabalong, Taufiq Amin and Soegiono	District Court of Tanjung, South Kalimantan	1 year imprisonment	28 November 2005
60.	Corruption on Nganjuk Local Budget, 2001-2003 Rp 5,3 billion	Chair of DPRD Nganjuk 1999-2004, Marmun	District Court of Nganjuk	2 years imprisonment	29 November 2005
61.	Corruption on Banyumas Local Budget	11 ex-member of DPRD Banyumas, Central Java for term 1999-2004 i.e. Untung Sarwono Hadi, Sri Supangat, Sunarto Arief, Moethia Hardjatmo, Sarjono, Wiyono, Mussadad Bikry Nur, Muke M. Saleh, Hussen al-Kaff, Guno Purtopo, and Haris Subyakto. On previous trials, there were 12 defendants. But one of them,	District Court of Purwokerto	1 year imprisonment	28 November 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
		Supadi Tjitra Wijaya, 69, died of heart attack during detention.			
62.	Corruption on Local Budget of 2003 worths Rp14 billion	Governor of Banten (suspended), Djoko Munandar	District Court of Serang, Banten	2 year imprisonment	21 December 2005
63.	Fictitious procurement of firefighting equipments, Rp 184,3 juta	Ex-Chief of Fire Brigade of West Jakarta, Fuad Said and chief of Operational Division of the same office, Mingan Suyono	District Court of West Jakarta	Fuad, 3 years, Mingan 2,5 years	8 December 2005
64.	Suspected corruption on the purchase of fishing boat, Rp 705 juta	Ex-Regent of Gunung Kidul, Yoetikno	District Court of Wonosari	2 years 8 months imprisonment	12 December 2005
65.	Corruption on Banyumas Local Budget of 2002 and 2003, Rp 1,917 billion.	Tri Waluyo Basuki (TWB), ex-chair of DPRD Central Banyumas term 1999-2004	District Court of Purwokerto	1 year 4 months imprisonment	12 December 2005
66.	Corruption on Madiun Local Budget of 2002- 2004 worths Rp 8,495 billion	Chair of DPRD Madiun term 1999-2004, Lilik Indarto Gunawan	District Court of Madiun	4 years	21 December 2005
67.	Embezzlement of Aerial photography and forest cartography,	Chairman of Indonesian Forest Entrepreneur Association (APHI)	District Court of Central Jakarta	6 years imprisonment	12 October 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
	worths Rp 18,4 billion	Adiwarsita Adinegoro			
68.	Fund embezzlement of Aerial photography and forest cartography, worths Rp 18,4 billion.	Ex-Treasurer of APHI, Yusran Syarief, Ex-Vice Chairman of APHI, Zain Mansyur, Ex-Deputy Treasurer of APHI, HA Fattah	District Court of Central Jakarta	4 years	12 November 2005
69.	Corruption on Plotting Fund, state loss worths Rp 24,9 billion.	Koerdi Mukri, ex-Vice Chair of Ketua DPRD West Java tem 1999-2004	District Court of Bandung	4 years imprisonment.	26 August 2005
70.	Corruption on 2004 Election operational fund, Rp 520 juta	Regent of Temanggung, Toto Ary Prabowo	District Court of Temanggung	4 years imprisonment	27 October 2005
71.	Corruption in Branch Kebayoran Baru of BNI 46 worths Rp1.214 trillion	Adrian Herling Waworuntu	District Court of South Jakarta	Life Sentence	31 March 2005
72.	Corruption in Branch Kebayoran Baru of BNI 46 worths Rp1.214 trillion	Adrian Herling Waworuntu	Appellate	Life Sentence	September 2005
73.	Corruption on Local Budget of 2001, approx. Rp 1 billion	3 ex-Leaders of DPRD Cirebon, H Suryana (incumbent member of DPR RI), H Sunaryo HW (incumbent chair of DPRD	Appellate	1 year	October 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
		Cirebon), and H Haries Sutamin.			
74.	Corruption on Local Budget of 2001, approx. Rp 1 billion	Tujuh mantan anggota DPRD Kota Cirebon periode 1999-2004. Ketujuh mantan anggota DPRD itu adalah Jarot Adi Sutarto (PDI-P), Enang Iman Gana (PKPI), Setiawan (PAN), Agus Sompi (Partai Golkar), Suyatno AH Saman (PKB), M Safari Wartoyo (PPP), serta Achmad Djuanedi (PBB).	Appellate	1 year	October 2005
75.	Corruption in Bank Dagang Bali, Rp 1,2 trillion	Oka Budiana	District Court of South Jakarta	4 years imprisonment	7 December 2005
76.	Corruption on insurance policy for DPRD members Rp 3,2 billion	Ex-Mayor of Banjarmasin Midfai Yabani	District Court of Banjarmasin	2 years imprisonment	29 December 2005
77.	Corruption on BLBI Bank Aspac Rp 583 billion	Hendrawan Haryono	Case Reviewed in the Supreme Court	1 year(s) imprisonment	May 2005
78.	Corruption on the distribution of BLBI	Paul Sutopo, Heru Suprptomo and Hendro	Kasasi	1 years 6 months imprisonment	May 2005

NO	CASE	DEFENDANT	COURT	VERDICT	TIME
	fund worths Rp 2 trillion	Budiyanto			

C. CASE STATISTICS

1. Cases n Defendants

Case : 78
Defendants : 253

2. Conviction

Found innocent : **32 (54 defendants)**

Found guilty :

- Sentenced under 2 years
27
- Sentenced 2 to 5 years
13
- Sentenced more than 5 year(s)
6

Total
46

3. Actor

Executives : **21**
Legislatives (mantan, anggota DPR/D dan MPR) : **40**
Private sector (StateOwned Enterprises;
BUMN/BUMD) : **17**

Total : **78**

Annex 11

**List of Supreme Court Justices Appealing for Judicial Review on the Law on
Judiciary Commission**

- I. Name : **PROF. DR. PAULUS EFFENDI LOTULUNG, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- II. Name : **DRS.H. ANDI SYAMSU ALAM, SH.MH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- III. Name : **DRS.H. AHMAD KAMIL, SH.M.HUM.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- IV. Name : **H. ABDUL KADIR MAPPING, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- V. Name : **ISKANDAR KAMIL, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- VI. Name : **HARIFIN A. TUMPA, SH.MH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia

Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.

VII. Name : **PROF.DR. H. MUCHSIN, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.

VIII. Name : **PROF.DR. VALERINE J.L.K., SH.MA.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.

IX. Name : **H. DIRWOTO, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.

X. Name : **DR.H. ABDURRAHMAN, SH.MH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.

XI. Name : **PROF.DR. H. KAIMUDDIN SALLE, SH.MH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.

XII. Name : **MANSUR KARTAYASA, SH.MH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13

Central Jakarta.

- XIII. Name : **PROF. REHGENA PURBA, SH.MS.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XIV. Name : **PROF.DR. H.M. HAKIM NYAK PHA, SH.DEA.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XV. Name : **DRS.H. HAMDAN, SH.MH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XVI. Name : **H.M. IMRON ANWARI, SH.SpN.MH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
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Central Jakarta.
- XVII. Name : **TITI NURMALA SIAHAAN SIAGIAN, SH.MH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XVIII. Name : **WIDAYATNO SASTRO HARDJONO, SH.MSc.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.

- XIX. Name : **MOEGIHARDJO, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XX. Name : **H. MUHAMMAD TAUFIQ, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XXI. Name : **H.R. IMAM HARJADI, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XXII. Name : **ABBAS SAID, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XXIII. Name : **ANDAR PURBA, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XXIV. Name : **DJOKO SARWOKO, SH.MH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.

- XXV. Name : **I MADE TARA, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XXVI. Name : **ATJA SONDJAJA, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XXVII. Name : **H. IMAM SOEBECHI, SH.MH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XXVIII. Name : **MARINA SIDABUTAR, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XXIX. Name : **H. USMAN KARIM, SH.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XXX. Name : **DRS. H. HABIBURRAHMAN, M.HUM.**
Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.
- XXXI. Name : **M. BAHAUDIN QUADRY, SH.**

Position : Supreme Court Justice in the Supreme Court of Indonesia
Address : Jl. Medan Merdeka Utara Kav.9-13
Central Jakarta.

* * *

Source: Document of Constitutional Court Republic of Indonesia

Annex 13

Compliance of Chapter III UNCAC within Indonesian Law

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
1	Article 15		√				Element Addition "offering" in the revision of Corruption Law	<ul style="list-style-type: none"> ▪ Totally connected with terminology "Public Officials" as regulated in Article 2 section (a) UNCAC. ▪ Existing Indonesian Law do not comply with elements of public officials as required by UNCAC. ▪ The nature of "shall adopt" in article 15 asserts that the regulation of the term "public officials" di party state's law complied with the requirement of article 2 section (a) UNCAC. ▪ Article 15 section 	<ul style="list-style-type: none"> ▪ Regulated in Article 5 point (1), (2); Article 6 point (1), (2); article 11, 12, 13 of Corruption Law. ▪ Definition of "Public Officials" Regulated in: Article 1 section (1), Law No. 8/1974 as ammended by the Law 43/1999 on the Principles of Civil Service. ▪ Community Initiative's Draft of Bill on Corruption is considered more advanced though it does not adopt the element of "public and public services function" as reuquired by Article 2 section (a) number (ii) & (iii)

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
								(b) also added the element of "request" performed by national public officials.	<p>UNCAC.</p> <ul style="list-style-type: none"> ▪ Community Initiative's Draft of Bill on Corruption does not adopt the element of request as required article 15 section (b) UNCAC. ▪ RECOMMENDATION: IMPERATIVE FOR ADOPTION
2	Article 16	1	√				To be regulated in Corruption Law	Related to the definition of "Foreign Public Officials" if to be regulated in Indonesian Law.	Not regulated in Indonesian Law. Community Initiative Corruption Bill adopted Duch clause in Article 1 section (5), Article 6 and 11
	Bribery of Foreign public officials and official of Public International Organization	2			√				
3	Article 17		√				Maintaining the existing regulation stated in Corruption Law, (Article 8, 9, 10)	<ul style="list-style-type: none"> ▪ From the perspective of object, Indonesian legislation possesses broader formulation. ▪ It is important to observe "handover of property benefiting oneself 	<ul style="list-style-type: none"> ▪ Corruption law has not regulated "handover of property benefiting oneself or other" as a crime ▪ Indonesian Law must regulate the "handover of property" as a crime. ▪ As for the definition of "property", Community
	Embezzlement, misappropriation or other Diversion of property by of public officials.								

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
								<ul style="list-style-type: none"> or other” element”. ▪ In the Convention, “handover of property” is categorized as embezzlement and must be adopted by the state as a crime. ▪ The definition of “property” is not regulated in Corruption Law. 	Initiative Corruption Bill adopt it in Article 1 section (8).
4	Article 18				√		<ul style="list-style-type: none"> ▪ It is difficult to find the match for the term “Trading influence” ▪ This Article is assumed similar to the intention in Article 3 of Corruption Law. ▪ The term “an inappropriate benefit” to be included in the revision of Corruption Law. 	<ul style="list-style-type: none"> ▪ Similar to Article 15, Article 18 also classifies the conduct as “active” dan “passive”. Section (a) attempts to confine actors who promised, offer to provide to public officials. Section (b) attempts to confine public officials. ▪ The element “inappropriate 	<ul style="list-style-type: none"> ▪ Article 3 of Corruption Law emphasizes only to the aspect of “misuse of authority” which contributes to “state loss”. ▪ Needs to be regulated in Corruption Law Revision that “an act of promising, offering, or providing something intended to influence policy/officials authority to obtain inappropriate benefit” should be classified as an act of
	Trading influence								

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
								<p>benefit” needs extra attention, so public officials may exercise real influence.</p> <ul style="list-style-type: none"> ▪ The influence is intended that the actor may obtain benefit from public/administrative authority of the official. ▪ This article does not touch state loss at all. 	<p>crime.</p> <ul style="list-style-type: none"> ▪ This Article should not require state loss occurrence. ▪ The article needs thorough composition as it is related to the classification of <i>State Capture Corruption</i>. Public authority or state administrative officials try to be influenced with an intention to obtain certain benefit.
5	Article 19				√		Maintaining Article 2 of Corruption Law	Element of Article 19 emphasizes on: intentional, misuse of function sengaja & intention to obtain inappropriate benefit. DOES NOT REQUIRE STATE LOSS OCCURRENCE as regulated by Article 2	Formulation of Article 2 may be maintained in the revision of Corruption Law, but it is imperative to consider that the crime of “misuse of function” should cause/related to element “State Financial Loss”.
	Abuse of function								
6	Article 20				√		<ul style="list-style-type: none"> ▪ In line with 	<ul style="list-style-type: none"> ▪ The article is also 	<ul style="list-style-type: none"> ▪ Formulation of Article 2

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
	Illicit Enrichment						<p>Article 2 Corruption Law.</p> <ul style="list-style-type: none"> ▪ Required as the continuation of Public Officials property statement. 	<p>related to the obligation of “inversion burden of proof” by officials who experience unreasonable increase of asset compared to lawful income.</p> <ul style="list-style-type: none"> ▪ It means that Article 20 of the Convention is more emphasized on the “state of asset”, no the illicit manner of obtaining asset as regulated in Article 2 of Corruption Law. ▪ Article 37A of Corruption Law regulates the obligation of the defendant to proof property not in line with his/her income. ▪ However, Article 	<p>can not be considere as in harmony with the substance required by Article 20 of the Convention.</p> <ul style="list-style-type: none"> ▪ Article 37A of Corruption Law regulates some of the substance. ▪ Recommended to perform total regulation of Article 20 of the Convention to revise Article 2 and 37A of Corruption Law.

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
								37A tends to become as information supporting exhibits not as a certain crime as regulated by Article 20 UNCAC.	
7	Article 21				√		Not found in Corruption Law. Requires regulation.	Not Regulated in Indonesian Law	Recommended to be regulated in Indonesian Law
	Bribery in Private sector								
8	Article 22				√		Not found in Corruption Law. Requires regulation.	Not Regulated in Indonesian Law	Recommended to be regulated in Indonesian Law
	Embezzlement of property in the private sector.								
9	Article 23		√				<ul style="list-style-type: none"> ▪ Regulated in Law no. 15/2002 juncto Law no. 25/2003 on Money Laundering ▪ Several Articles (Article 2 point (1), (2); Article 3 point (1), (2) And Article 6 	If regulated in Money Laundering Law, it should not be regulated in Corruption Law as well. UNCAC Recommendation, esp. Article 23 does not intend that all clauses mentioned be regulated in one Corruption Law as	<ul style="list-style-type: none"> ▪ Not regulated in the Money Laundering Law. ▪ Regulated on Law no. 15/2002 juncto Law no. 25/2003 on Money Laundering
	Laundering of Proceeds of Crime								

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
							point (1) included in the revision of Corruption Law	they can be regulated in other Law.	
10	Pasal 24 Concealment				√		Some Articles in the Money Laundering Law to be included in Corruption Law revision.	If regulated in Money Laundering Law it shouldn't be regulated in Corruption Law UNCAC recommendation, especially article 23 has no intention that all clauses be regulated in one Corruption Law as it may be regulated in other Laws.	The substance is regulated in Article 6 point (1) Law no. 15/2002 juncto Law no. 25/2003 on Money Laundering.
11	Article 25 Obstruction of Justice		√				Maintained in Corruption Law. Also related to the Law on the Protection of Witness and Victim.	<ul style="list-style-type: none"> ▪ Related to the concept of witness protection. ▪ Article 21 of Corruption Law is considered exclude the regulation related to threat and intimidation to judge and law 	<ul style="list-style-type: none"> ▪ Regulated in Article 21 of Corruption Law. ▪ Regulated in Article 5 point (1) section and Article 10 of Law no. 13/2006 on the Protection of Witness and Victim. ▪ Substance of Article 25 section (b) not plainly

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
								enforcement agents in corruption cases.	regulated in Indonesian Law.
12	Article 26		√				Related to the corporate accountability. Regulation must be set plainly and firmly.	NOT CHOSEN AS A PART SPECIFICALLY INVESTIGATED IN THE COMPILATION OF INDEPENDENT REPORT	
	Liability of Legal Persons								
13	Article 27	1	√				<ul style="list-style-type: none"> ▪ Comply with Article 55 & 56 Criminal Code (KUHP), but can specifically be regulated based on Article 103 KUHP. ▪ Maintained in Corruption Law 	In corruption offence, attempts, supports, or vile agreements are treated similar to those mentioned in Article 2,3,5 through 14 of Corruption Law.	Regulated in Article 15 esp crimes regulated in Article 2,3,5 through 14 of Corruption Law.
	Participation and Attempts	2, 3			√				
14	Article 28						Regulation required in the revision of Corruption Law		Not Regulated in Indonesian Law.
	Knowledge, Intent and Purpose as elements an Offence								
15	Article 29					√	<ul style="list-style-type: none"> ▪ Comply with Article 78 & 79 Criminal Code. ▪ It is best to 	As not specifically regulated, the expiration shall then comply with	Regulated in Chapter VIII of Criminal Code but recommended that the revision of Corruption
	Statute of Limitation								

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
							assert that "No expiration in the charging and case execution for corruption cases TPK"	Chapter VIII of Criminal Code on the Negation of Charging Authority and to Exercise Case Execution. (Article 76-85 Criminal Code). <ul style="list-style-type: none"> ▪ Meaning, most corruption cases expiration comply with <i>lex generalis</i>. Meanwhile, being extraordinary crime, corruption cases expiration should be regulated more. 	Law asserts "No expiration in the charging and case execution for corruption cases".
16	Article 30	1, 2, 4, 5	√				Regulated and should be maintained in the Corruption Law		Regulated and should be maintained in the Corruption Law
	Prosecution, Adjudication and Sanction	3		√					
		6,7			√				
17	Article 31	1, 2, 3, 7	√				<ul style="list-style-type: none"> ▪ Regulated in the Code of 	<ul style="list-style-type: none"> ▪ Regulation of Article 39 point (1) 	<ul style="list-style-type: none"> ▪ Corruption Law regulates in article 29

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
	Freezing, Seizure and Confiscation	4,5,6				√	<p>Criminal Procedure</p> <ul style="list-style-type: none"> Independent regulation is not necessary as long as no basis with different reasons Law no. 8/1981 (Code of Criminal Procedure). 	<p>and Article 46 of Code of Criminal Procedure is considered too general, especially as it is difficult to reach fund flow through banking service which is complicated and instant. Institutions like PPATK should be more empowered.</p> <ul style="list-style-type: none"> The article must be viewed related to Article 20 UNCAC, esp. about the recommendation to criminalize illicit self-enrichment with an indicator; unreasonable increase of property compared to lawful income. Since the property is subject to halt, confiscation even 	<p>point (4), (5), article 30, 37, 37A, and 38b.</p> <ul style="list-style-type: none"> Related to Article 20 UNCAC, in the case of asset seizure by the state, the gap in defendants' properties that can not be proved to have been obtained from lawful income. Mechanism & authority of special institution (ex: PPATK) needs to be regulated to impede accounts suspected to be involved in the corruption. Formulated in Article 15 of Community Initiative Bill of Corruption.
		8				√			

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
								seizure by the state if the defendant cannot prove the lawful origin of his property. ▪ Mechanism is required to manage property of suspects or defendants related to corruption	
18	Article 32		√				Special regulation required for the Protection of witness and victim	--	Indonesian Law has been equipped with Law no. 13/2006 on the Protection of Witness and Victim enacted on 11 August 2006.
	Protection of Witness, Expert witness and victim								
19	Article 33				√		Corruption Law only protects the identity of petitioner.	Law on the Protection of Witness and Victim did not comprise petitioner as protected subject.	Regulation to the protection of petitioner is recommended.
	Protection for Reporting Persons								
20	Article 34		√				Not regulated in	May be one of	Recommended to be

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
	Consequences of Acts of Corruption						Corruption Law. Needs regulation.	reasons for the termination of contract/agreement contained in the contract draft. However the termination should view the equal interest between the parties.	more specific on the reasons and mechanism related to corruption.
21	Article 35 Compensation for Damages		√				Assumed to have been regulated in Criminal Procedure, Article 98-101. It is an expansion for the meaning of "loss" which is not only based on "state loss"	Rights of institution/party claiming to experience loss must be guaranteed to stand for trial no only in terms of "Combination of compensation lawsuit" as regulated by Criminal Procedure, but the possibility to file separated civil lawsuit must also be considered	It is suggested to regulate the substance of this Article in Corruption Law. Community Initiative Draft of Corruption Law regulates some of the substances of this Article.
22	Article 36		√				KPK exists, but		

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
	Special Authorities						the sentence "must be given necessary self-determination..." should further be observed in order to know if the KPK authority complied with the regulation.		
23	Article 37	1	√				Related to the legal basis of "prime witness". Needs to be regulated in the Corruption Law.	The regulation is emphasized on the possibilities of "compensation" even "immunity from being charged" towards the actor cooperating with law enforcement in substantive law. Also related to the regulation of the Law on the Protection of Witness and Victim.	The issue needs to be firmly regulated, the rules to provide compensation or immunity from being charged to cooperating actor in the corruption eradication.
	Cooperation with Law Enforcement Authorities	2, 3			√				
		5				√			
24	Pasal 38		√				Police and Attorney are inseparable in	Specifically in Corruption, KPK is positioned as the	KPK needs to be strengthened and legalized in its function
	Cooperation between								

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
	National Authorities and Privater Sector						discussing a case (as regulated by HIR)	central institution to conduct investigation, and charging. The handling of corruption is in extraordinary track, that would include the court; which exercise the speciality; the Corruption Court	as the central institution to conduct investigation, and charging of corruption cases.
25	Article 39	1	√				Regulated in Chapter V of Corruption Law	Specifically on the cooperation of financial institution, eradication of corruption is hindered by the limitation of the authority of especially in impeding an account alleged to be involved in the act of corruption.	The authority of PPATK needs to be extended not only up to the level of investigation, but also up to <i>lanilla</i> authority that includes: impediment of account alleged to be involved in the act of corruption.
	Cooperation between national authorities with private sectors	2			√				
26	Article 40		√				Regulated by Article 29 of Corruption Law.		
	Bank Secrecy								

No.	UNCAC		Nature of Clause				Recommendation of KPK GAP Analysis	Additional Analysis	Realization & Recommendation for Indonesian Law
	Article	Point	Shall Adopt	Shall endeavour to ensure	Shall consider adopting	Shall adopt whenever appropriate			
27	Article 41					√	Not Regulated in Indonesian Law	This criminal record is useful as one of the basis to impede the suspect/defendant's account overseas alleged to be related to a sentenced criminal record in a country, e.g. BNP Paribas and Tommy Suharto's criminal record.	Not Regulated in Indonesian Law. Regulation related to criminal record would be prudent.
	Criminal records								
28	Article 42	1,3,5	√				Regulated by Article 2-9 Criminal code (territorial principle, active nationalism, passive nationalism and universal principle)	As not regulated in the Corruption Law, Book I of Criminal Code applies as the general rule. It requires no re-regulation.	
	Jurisdiction	2,4				√			

Sumber: Dokumen Indonesia Corruption Watch (ICW)

Annex 14

List of Document Sources

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