

## **The Important Role of Civil Society in the Battle Against Corruption – The Indonesia Experience**

**Erry Riyana Hardjapamekas**

### **Introduction**

Esteemed Guests, Ladies and Gentlemen, thank you very much for giving me this opportunity to speak to you today in Mandaluyong City. I would like to thank the Honorable Ombudsman Conchita Carpio Morales for inviting me here.

It is indeed an honor and a pleasure to speak about an issue that is of very high relevance and urgency in Indonesia, as well as dear to my heart.

In Indonesia, the role of civil society in the battle against corruption is a direct reflection of the understanding that corruption in Indonesia had become extraordinarily systemized and deeply rooted within virtually all layers of the Indonesian government.

This understanding became publicly utterable, and thus open for public debate and onward action, shortly after the fall of the Suharto regime after the severe economic meltdown, which then deeply affected the 'Asian Tigers', including Indonesia, in 1998.

Growing public realization, that the severe mismanagement of Indonesia's economy and resources by Suharto's kleptocratic regime was a substantial cause of the economic crisis, seemed to immediately wash away any weak rationalizations that Indonesians had long since become used to, to avoid having to address how deeply Suharto's corrupt regime had embedded itself into all layers of our country's systems, and how flagrantly he and his cronies illegally profited from Indonesia's resources.

Simply put, public opinion and perception finally became fully aligned with what our then beleaguered civil society community had been saying all along: radical reforms were necessary to free our government system from the deeply corrupt bureaucratic created over the decades.

Recognizing deep-rooted corruption in Indonesia's governance system as an extraordinary crime, due to its wide spread negative impacts on society, especially the poor, the post-Suharto civil society of Indonesia rode the reform wave, the *reformasi*, to immediately set to work together with the post-crisis Indonesian government to design the law that would eventually allow the Indonesian Corruption Eradication Commission to be established.

The Corruption Eradication Commission, the KPK as it is widely known in Indonesia, was at once a victory for the civil society community in Indonesia, and

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the first real hope for eradicating corruption in a government system where it is so deeply entrenched, to the extent that society had come to accept it as normal.

I was personally involved in the Civil Society Organization *Masyarakat Transparansi Indonesia*, MTI, which translates to the Indonesian Society for Transparency, which in 1998 and 1999 rigorously campaigned for and worked with other civil society organizations and the Indonesian Government to push for the formation of a special anti-corruption agency in Indonesia.

Without this campaign, the KPK would probably not have been formed, or perhaps it would have been formed with lesser powers. It was during this time that I began to experience the value of a robust civil society network, working in concert in fighting corruption. Such effective and cohesive coordination between diverse civil society actors would happen only rarely ever since this era, as I will elaborate below.

Although some compromises were made at later stages in this campaign when dealing with the more established law enforcement institutions, an important Achilles heel as I will revisit later, the KPK was designed to be a powerful institution against corruption.

Indeed, the powers bestowed to the KPK by law are unprecedented. It was imbued with both the investigative and prosecution mandates of both the Indonesian National Police and the Attorney General's Office, albeit limited to corruption cases. I would like to note that there will not be a shortage of corruption cases in the immediate future.

Perhaps central to the KPK's authority and necessary autonomy in fighting corruption is that by law it answers only to the Indonesian people.

The wording of this article is admittedly ambiguous, and although it has served to protect the KPK in asserting its authority when targeting high-profile corrupt public figures, which I will discuss later, this ambiguity needs to be addressed before it truly becomes a chink in the KPK's armor.

In its investigative mandate, the KPK has been granted under the law with powerful wiretapping and surveillance abilities. This ability has been key in ensuring that KPK prosecutions are very strong. Indeed, the KPK's cases at the South Jakarta Court of Corruption Crime have had a 100% conviction rate.

It is also notable that the KPK internal case management process by law requires that the KPK cannot stop an investigation process once it is initiated. This aspect of the KPK law is a direct policy criticism of previous laws that allow the Police and the Prosecutor's Office to cease investigations after they have been initiated. In a corrupt environment, this mechanism was and still is abused and commoditized.

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The KPK's limitation of not being able to stop an investigation once started forces it to revolutionize its investigative methods. This innovation would not have occurred if the KPK law was designed only by the Government. The reform era civil society's insight into the methodology of corrupt practices in law enforcement agencies has informed this policy adjustment, among others.

Another important feature inserted by civil society was the KPK's supervision mandate of the anti-corruption activities of other law enforcement agencies.

This mandate was another manifestation of the civil society insight into the justice mafia modus operandi. In the long term, the KPK's supervision mandate was also intended to disseminate modern investigation and prosecution methods and strategies that will further diminish opportunities for abuse and commodification of official processes.

So we see that the Indonesian civil society has had a prime role in pushing for the formation of Indonesia's most effective weapon against corruption to date, the KPK.

I wish I could tell you that this story has a happy ending, that the KPK has completed the fight against corruption in Indonesia. However, we are still only in the beginning of my lecture today, and I am afraid there is more excitement to follow.

I will talk about how the fight against corruption in Indonesia has changed since the formation, and initial success of the KPK. Specifically, I want to cover some important aspects of certain case studies that highlight the importance of a robust civil society that works alongside strong anti-corruption enforcement institutions.

Still later, I will talk more about how the KPK's initial success has forced corruption collaborators to change their strategies and modus operandi. In short, corruption has fought back in Indonesia.

Corruption fights back through traditional, as well as novel and sometimes unexpected, channels. In order for the KPK and the Indonesian civil society to successfully rout out this modus operandi, there will need to be thorough studies of such methods.

This brings me to the third point that I would like to focus on later in my talk. The most important aspect in ensuring the success of routing out corruption is for those who fight it to coordinate with one another in reaction, and most importantly, in anticipation of the actions of corruption collaborators.

I would like to explore with you some of the important areas that will most likely require formal and informal coordination between the Indonesian civil society and government institutions.

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Further, given the extremely important role of the private sector, it makes no sense that it remains estranged in our national fight against corruption. And yet, there is undeniably unresolved tension between the private sector, civil society and the government. Resolving the tensions and forming tentative coordination between these primary actors will be the new frontier in fighting corruption in Indonesia.

### **Case Studies**

I would like now to discuss some of the prominent case studies of the Indonesian civil society's role in the fight against corruption since the formation of the KPK. I would like to first of all note that because of the KPK's modern investigation methods and powerful abilities under law, there is as of yet no role for civil society to assist the KPK in the execution of its mandates, except perhaps the minor role of civil society to provide anonymity and shelter for whistleblowers.

Instead, the main role taken up by the Indonesian civil society ever since the KPK's formation is to protect the KPK from corruption collaborators who use entrenched corruption networks from the Suharto era as well as new corruption networks to attack the KPK due to its initial success.

Perhaps the somewhat related cases involving KPK Commissioners during the KPK period of 2008 to 2011 provides the best case study of the interesting dynamic of the role of civil society in providing necessary support for the KPK in times of need.

### **Case Study – Antasari Case**

The first case I would like to talk about involves former KPK Chairman Antasari Azhar, who served as chairman from 2008 until 2009, when he was terminated by the President for his part in a criminal case.

Even prior to the 2009 criminal case, Antasari's appointment as KPK Commissioner drew strong criticism from the Indonesian civil society. Antasari was the prosecutor in charge for a number of high profile cases, including one involving the son of former President Suharto, Tommy Suharto, and a number of allegedly corrupt regents, and he was criticized by the civil society community for sabotaging those prosecutions.

When Antasari was included in the selection process for the 2008 to 2011 KPK Commissioner position, the Indonesian civil society alleged that this was the Parliament's attempt to control the KPK, more specifically, to prevent the progress of certain cases. Despite wide condemnation by the civil society community, the Parliament voted to appoint Antasari as Chairman of the KPK.

Within two years of his tenure, Antasari was declared to be a suspect in a murder case. The civil society community argued that Antasari's legal problems proved that the KPK Commissioner selection process needed to be protected against

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parliamentary intervention, which they further argue have been against the interests of the anti-corruption movement. I will discuss further the importance of the role of our Parliament in the lay of the land of the fight against corruption later in this talk.

The case of Antasari, in my opinion, proves that civil society still has a role even after major victories in the Indonesian reformation process are won. The case highlights the fact that every aspect of governance always needs to be monitored, and civil society can effectively play this oversight role. In this particular example, the process that needs to be continually monitored is the selection process for the KPK's Commissioners.

I would like to mention that since the selection process of KPK Commissioners for the first period of the KPK's operations, MTI, Indonesia Corruption Watch, ICW, alongside other civil society organizations, have closely scrutinized candidates and have been instrumental in their role of informing the public of the candidates' backgrounds.

Antasari's progress through the selection process happened despite such close scrutiny and continuous criticism of the Parliament's fast tracking of its favored candidates. For the latest batch of Commissioners, ICW had prepared a ranked list of all the candidates.

When the Parliament appointed the Commissioners for the KPK's third period of operations, ICW immediately pointed out that the Parliament had selected, for the four available seats, 3 of the lowest ranking candidates according to ICW's assessment, with only 1 with a decent ranking.

It is notable also that the Parliament appointed one of those lowest ranking candidates as the Chief Commissioner.

Further, many other processes that involve the Parliament, such as the KPK's regular meetings with Commission III of the Parliament to justify its budget, would benefit from close oversight of how the Parliament handles its responsibilities to the people of Indonesia, especially in this case its own commitments to fighting corruption.

Again, I will soon address with you the issue of this apparent gap between the people's anti-corruption aspirations and the Commission III's handling of the KPK.

The court found Antasari guilty of murder. There was some speculation that the murder case was engineered against him because he did not stem the KPK's success in prosecuting big-name corruption cases. There were even rumors that Antasari began to understand how powerful the KPK could be and started to enjoy this position of power.

### **Case Study – KPK Commissioners Bibit and Chandra Case**

Another important case I would like to focus on involving the KPK Commissioners was the 2009 to 2010 case fabrication made against KPK Commissioners Bibit Samad Rianto and Chandra Marta Hamzah.

In late 2009, not long after the Antasari case rocked Indonesia, and whilst Antasari was under custody, corrupted elements of the Indonesian Police and Prosecutor's Office in league with corrupt businessmen used the public sentiment against Antasari to fabricate criminal conduct by the two KPK Commissioners. These corrupt officers forged documents and took falsified statements from corruption collaborators to build a case of bribe taking and abuse of power by the two Commissioners.

Immediately, the civil society community formed a strong circle to protect the KPK. At the time, public opinion still sided strongly with the KPK, and the fabricated case crumbled at every step, despite a headstrong insistence of the Police and the Prosecutors, at the institutional level, to go forward with the case, despite its clearly corrupted origins.

The height of the case came when Bibit and Chandra brought their case to the Indonesian Constitutional Court. In a landmark hearing, the Constitutional Court decided to allow the media to remain in chambers as KPK wiretaps of the corrupt Police and Prosecution officers talking with corrupt businessmen were played. The media instantly exploded with pictures of ordinary Indonesians listening to the wiretaps at train stations, cafes and schools, enraptured by the cold conspiracy being discussed in the wiretaps. It even surfaced during the wiretaps that there were plans to kill Chandra Hamzah while in custody.

To this day, the Police and Prosecution refused to admit that they were part of a conspiracy to frame the two KPK Commissioners.

Although the case was dropped, this was done in a way that did not admit that mistakes were made at any level by Police and Prosecution officials, let alone a conspiracy to defraud the Indonesian public and criminalize the highest officers of the KPK.

This inability to accept responsibility in the face of overwhelming evidence is a continual reminder that civil society efforts to bring reforms to the Police and Prosecution institutions has long been necessary.

The Bibit-Chandra case left Indonesia with a number of iconic images of the fight against corruption and the Indonesian justice mafia. A popular quote of a police officer, comparing the KPK to a small lizard, *cicak*, or gecko is attempting to fight a crocodile. Today, *cicak* is synonymous with corruption fighters, thanks to a very successful media campaign by the civil society community. CICAk was also popularized as an acronym for "Love Indonesia, Love Anti Corruption" in the Indonesian language.

### **Case Study – KPK Investigator Novel Baswedan**

In a similar case to the Bibit-Chandra case, in October 2012 a KPK investigator, Novel Baswedan, was wrongfully declared a suspect of an old shooting incident in Bengkulu, Southwest Sumatra by the Police. At the time, in 2004, Novel had been a Police officer in Bengkulu, and the shooting incident happened in the course of duty and had been dealt with at the time.

The case was dropped, but in December 2012 the Police announced that Novel was recalled along with other Police officers, set to be replaced by new investigators. It was revealed that Novel was working on a Police corruption case, namely the Driving License Simulator Case, and in fact he was a leading investigator. The civil society community learned that the case would have collapsed without him, and mounted a campaign supporting the KPK to keep Novel.

This was not the first time that threats of recalling officers were made to the KPK. Previously, the BPKP, a State auditing agency, which seconded a number of officers to the KPK, also threatened that it would recall them.

In the case of Police officers and prosecutors, the KPK is required by law to obtain investigators and prosecutors from these law enforcement institutions. This facet of the KPK law, which is seen as a compromise to preserve the investigation and prosecution powers of the Police and Prosecutor's office by the civil society community, has been criticized as a major weakness – that it allows those other law enforcement institutions an unhealthy influence over the operations of the KPK, especially when there is a conflict of interest, as there clearly was in the Driving License Simulator Case.

Novel Baswedan was ultimately allowed to continue to work at the KPK, however there is as of yet no satisfying solution to this substantial chink in the KPK's armor.

The abovementioned cases cement the necessity of a support network for an instrument of reform, the KPK, which has been targeted for destruction because it was being too successful at its job. This is a pattern that is repeated time and again across jurisdictions. In South Africa, the corruption-fighting Special Investigating Unit, better known as the Scorpions, was dismantled likely because the anti-corruption civil society community there failed to provide effective support when the Scorpions began to attract attempts to shut it down. In Hong Kong, the first years of the Independent Commission Against Corruption was marked with clashes with the Hong Kong Police that were often violent.

Without the existence of a robust and well-connected civil society to support it, effective formal anti-corruption institutions tend to be targeted by frequently better established and well-resourced corruption collaborators. As I would like to cover more in depth in the last part of this talk, the real work of anti-

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corruption civil society communities is to build long-lasting institutional networks with effective coordination between government, civil society and the private sector.

### **Case Study – Ethical Sanctions for Abraham Samad**

I would also like to mention one case where the civil society community's consensus was critical of the KPK. In early 2013, a KPK Order Letter to investigate a high profile politician, Anas Urbaningrum, was leaked to the Press. The leak was traced to the current KPK Chief Commissioner, Abraham Samad.

By all accounts, this was the first time since the KPK started its operations in 2004 that information was leaked from a Commissioner's office. The KPK quickly held an ethical hearing and disciplined Abraham Samad and his Secretary, who was ultimately fired for the leak.

The importance of the KPK ethical committee case is that the civil society community held the KPK to the highest standards of procedural and ethical rigor. It is well understood by the civil society community that it is these characteristics that supported the KPK's success in law enforcement, compared the lack of those characteristics in other institutions mandated to fight corruption in Indonesia. Indonesian civil society understands that it is vital that these standards must be enforced constructively across the board with no exemption.

Next I would like to speak more specifically about the challenges that civil society must overcome in order to continue to progress the fight against corruption in Indonesia.

### **Challenges: Struggles with the Indonesian Parliament**

Previously, I spoke about the tension between the Indonesian Parliament and the KPK. Now I would like to give some context to that tension. In fact, there are a number of layers of reasons for this tension. On the most obvious layer, the Parliament's tensions with the KPK have to do with the high number of Parliament Members who have been investigated and prosecuted by the KPK.

The KPK is and has acted within its mandate to process these corrupt Parliament Members. However, and here I am discussing about deeper layers, it is clear that these corrupt Parliament Members are linked to other corrupt members of Indonesian society, in other parts of Government and in the private sector. In fact, it is the corrupt link between the Indonesian Government and the private sector that has formed such a strong foundation, that the KPK has found so very difficult to uproot.

Even during the height of the reform era, during the most conducive time in Indonesian history for the drafting and implementation of regulations that were created to implement a good governance culture across the board, corruption

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had already started fighting back. This is because of the corrupt foundation I mentioned had been formed earlier, during the Suharto years. In the 30-plus years of Suharto's presidency, the Indonesian economy was built on booming private sector investment that was channeled to benefit his family and his cronies. It is not surprising that during 30-plus years of this kleptocratic regime, infrastructural networks within and between government institutions and the private sector had also become corrupted.

For the private sector, it became normal that in doing business in Indonesia, you have to pay bribes, and for government institutions, it became normal that before you perform your function, you first take a bribe. As a result both the public and private sectors rotted during those 30-plus years: they became dependent on each other to perpetuate the corrupt system. To this corrupted complex, the KPK and the anti-corruption civil society community is an enemy. Both systems exist to supplant the other. It is important to recognize this fundamental truth before a society can plan an effective strategy to fight corruption.

The Parliament, central and regional, because of Indonesia's non-transparent election funding mechanism, has long been acknowledged to be a problematic institution because of its central role in facilitating state capture by corrupt private sector interests. The KPK, with its powerful anti-corruption mandate, effectively became the first entity that could reach Parliament members. In the absence of other incentives for reform of the Parliament, it makes sense that their first instinct is to attack and undermine the KPK, and effectively, the fight against corruption.

The Parliament's attack on the KPK is not limited to Commission III's regular arguments with KPK in sessions where the KPK is expected to justify its funding under unreasonable standards. In fact, recently both the anti-corruption law as well as the KPK law was reviewed by the Parliament, and the civil society community reported that early drafts effectively neutered the KPK.

In a similar vein, the law on mass organizations was recently passed by the Parliament. The Indonesian civil society community has been against this law because it sought to control what is meant to be a right to free association. It was theorized that this law was motivated by the success of multinational NGOs in Indonesia in detecting and focusing attention on corrupt activities involving companies in the palm oil and mining industries, especially environmental NGOs.

It is useful for me to note again the layers of interest involved here. In regards to the KPK, the Parliament's plan to revise the anti-corruption law and the KPK law, on the surface, was motivated by the KPK's success in processing corrupt Parliament Members. It is useful here to remember that those corrupt members were acting on the payroll of corrupt private sector elements. From the point of view of those corrupt private sector actors, the KPK was taking out their agents within the system, effectively annulling their investment, albeit a corrupt one.

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Thus, the attacks on the anti-corruption law and the KPK law, as well as the passing of the law on mass organization are likely symptoms of the same disease: a corrupt bureaucratic culture, having been in control for a third of a century, is attempting to excise the cure, the civil society, from its flesh. I truly believe that before this simple truth is recognized and a national strategy formed based on it, the fight against corruption in Indonesia will continue to be an uphill battle. It is a simple equation: corruption collaborators coordinate with each other, while justice collaborators have been having difficulty in doing so, mainly because some of their members are compromised by corruptors.

The latest example of a the KPK's history of investigating and prosecuting Parliament members has involved the Justice and Prosperity Party, PKS, which in the last general elections won a significant majority based on an anti-corruption and moderate Islamic platform, only to degrade to corrupt tendencies themselves within years. In this latest case, PKS President Luthfi Hasan Ishaq was declared a suspect in a corruption case involving beef imports, alongside businessman Ahmad Fathanah.

### **Challenges: Struggles with the Indonesian Judicial System**

On that note, I would like to return to a theme that I mentioned earlier, the justice mafia. Similarly to the way that corrupt interests have subverted the true representative function of the Indonesian Parliament, so too have our justice system been perverted by such interests.

Aside from the abovementioned case fabrication of Bibit and Chandra, Indonesian society is rife with stories of injustice: of commercial and family law disputes that are rigged from the beginning by the justice mafia, who do not serve justice, but instead the highest bidder. The Indonesian justice mafia is the source of a lot of suffering in Indonesia, and perhaps the main reason of the Indonesian public's strong and long-standing support of the KPK as the perceived antidote.

However, also in a similar way that the civil society community has failed to directly address the corruption of our Parliamentary system, the justice mafia has been highly resistant to reform, despite the donor funding that continues to support such efforts. I would posit that this is because in both areas, the civil society community has failed to recognize and address the fundamental give and take relationship that acts as a foundation beneath this reality: in Indonesia, there is a buyer of corrupted services, as well as a seller. It is, and always has been, ineffective to only address the seller. The relationship itself must be broken down before the corrupt system can be fought effectively.

I would also like to note that despite the justice mafia, the Indonesian legal system has continued to develop and certain of these developments, namely the Supreme Court, the Court of Corruption Crimes, and the Constitutional Court have robust judicial processes. However, ironically these robust judicial processes have had the effect of allowing corruption collaborators to use such

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judicial corridors to attack the fight against corruption. One clear example of this is a decision of the Constitutional Court in 2006 that the Indonesian Court of Corruption Crimes, known as the *Tipikor* court, was unconstitutional. I note that this is the only time, after many attempts, that a suit against the Court of Corruption Crimes was successful, but the effects, although not yet fully visible, will be devastating.

After the Constitutional Court decided that the KPK's Court of Corruption Crimes was unconstitutional, the Government was supposed to provide a solution. After many delays, a new law was passed that formed the basis for new Courts of Corruption Crimes that would be constitutional. Given the context of our compromised parliamentary system, it is no surprise that there are problems with this law.

Chief of this problem is the fact that unlike the original Court of Corruption Crimes, which was overseen by a panel of a majority of ad hoc judges and a minority of career judges, the new courts would form panels based on the discretion of the Head of that particular court. The ad hoc judge system was key in the anti-corruption formula. Since career judges typically do not have strong integrity and good reputations, ad hoc judges were grafted onto the panel. This original system no doubt played a major role in the KPK's 100% conviction rate. Within the new system, Heads of courts are existing officers of the court, and therefore quite likely to have been compromised, or could be compromised, by the justice mafia.

### **Developing Role of Civil Society in the Battle Against Corruption**

Given the above challenges I think it is clear what the Indonesian civil society community should focus on next to support the fight against corruption in Indonesia:

Too long has the underlying relationship between the demand and supply of corruption been untouched. Reform cannot be successful in Indonesia if the target of such reforms receives different incentives that are diametrically opposed to each other. It is not effective to focus reforms only on the private sector. The civil society community must also coordinate and work well with supporters in the private sector.

In Indonesia, the history and tradition of the robustness of the civil society community has unfortunately not included good relations with the private sector. In so many occasions, the interests of both sides have also seemed to be diametrically opposed. In commercial industrial relations, for instance, NGOs in the eyes of corporations have been inciters of labor strikes and demands for high, unreasonable wages.

There are many examples of disconnect between the Indonesian civil society community and the private sector that I will not list on this occasion. Suffice is to say that unless an effective collaboration is forged between civil society, the

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Government and the private sector, Indonesia's hopes of effectively addressing corruption will not be easily realized.

I think this is the next great homework for our civil society community. When I see the work of young civil activists, I am filled with hope that the next generation will be able to do what we were not. I believe that with proper education and a lot of exposure, our young people in government, civil society and the private sector will be able to work with each other and make true reform in Indonesia a reality.

Ladies and Gentlemen, I thank you again for the high honor of speaking with you today. I hope this has been informative. Please do not hesitate to contact me if you have any detailed questions.

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