

# **Of Gecko's and Crocodiles:**

## **Evaluating Indonesia's Corruption Eradication Efforts**

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# Anti-Corruption Measures, 1998-2009

<b>Clean Government Law No 28/1999</b>	<ul style="list-style-type: none"> <li>• Mandatory wealth declaration for public officials</li> <li>• Periodic audits</li> <li>• Commission to Audit the Wealth of State Officials</li> </ul>
<b>Law on the Eradication of Criminal Acts of Corruption No 31/1999</b>	<ul style="list-style-type: none"> <li>• Outlines charges and procedures for prosecution</li> <li>• Amendment (Law 20/2001) broadens and clarifies definition of corruption and increases penalties</li> <li>• Defines criminal corruption</li> </ul>
<b>Presidential Decree (KEPPRES) No 44/2000</b>	<ul style="list-style-type: none"> <li>• National Ombudsman Commission (KON)</li> <li>• Joint Team for the Eradication of the Criminal Act of Corruption (TGPTPK)</li> </ul>
<b>Presidential Decree No 18/2000 Presidential Decree No 80/2003</b>	<ul style="list-style-type: none"> <li>• Improvement of procurement procedures</li> <li>• Establishes National Procurement Office (NPO)</li> </ul>
<b>Anti-Money Laundering Laws No 15/2002 and No 25/2003</b>	<ul style="list-style-type: none"> <li>• Center for Financial Transaction Reporting and Analysis (PPATK)</li> </ul>
<b>Law Regarding Criminal Acts of Corruption No 30/2002</b>	<ul style="list-style-type: none"> <li>• Corruption Eradication Commission (KPK)</li> <li>• Corruption Crimes Court (TIPIKOR)</li> </ul>
<b>Judicial Commission Law No 22/ 2004</b>	<ul style="list-style-type: none"> <li>• Judicial Commission</li> </ul>

# Independent Corruption Eradication Agencies

<b>Indonesian Financial Transaction Reports and Analysis Center (PPATK)</b>	<ul style="list-style-type: none"><li>• Financial service providers required to report suspicious financial transactions under Law 15/2002 and Law 25/2003</li></ul>
<b>National Ombudsman Commission (KON)</b>	<ul style="list-style-type: none"><li>• Authorized to monitor and examine public complaints</li><li>• Authority to investigate irregularities</li></ul>
<b>Business Supervisory Commission (KPPU)</b>	<ul style="list-style-type: none"><li>• Responsible to ensure unrestrained business competition</li></ul>
<b>Judicial Commission</b>	<ul style="list-style-type: none"><li>• Authorized to nominate to the national parliament a list of possible appointees to the Supreme Court</li><li>• Review conduct of judges and recommend sanctions to the Supreme Court</li></ul>
<b>Corruption Eradication Commission Corruption Crimes Court (TIPIKOR)</b>	<ul style="list-style-type: none"><li>• Perform investigations, indictments and prosecutions of corruption cases</li></ul>

# Broad Corruption Eradication Programs

- **Inpres 5/2004**
  - Set of instructions on anti-corruption measures for all state institutions
  - 11 special assignments to various ministries
- **National Action Plan for the Eradication of Corruption (RAN-PK)**
  - **Prevention**
    - Redesign public services
    - Strengthen transparency, supervision and sanctions
    - Empower people in context of corruption prevention
  - **Repression**
    - Emphasize the application of sanctions
    - Prosecution of high-level corruption cases, ‘Frying the big fish’
    - Retrieval of money stolen from the state

# Independent Corruption Eradication Agencies

	Shortcomings
<b>Indonesian Financial Transaction Reports and Analysis Center (PPATK)</b>	<ul style="list-style-type: none"><li>• Limited to analyzing reports</li><li>• No investigative powers</li></ul>
<b>National Ombudsman Commission (KON)</b>	<ul style="list-style-type: none"><li>• No authority to compel government agencies to follow up on its reports</li><li>• No political support</li></ul>
<b>Business Supervisory Commission (KPPU)</b>	<ul style="list-style-type: none"><li>• Limited capacity</li></ul>
<b>Judicial Commission</b>	<ul style="list-style-type: none"><li>• Stripped of oversight power in 2006</li><li>• Responsible only for pre-selection of candidates</li></ul>
<b>Corruption Eradication Commission Corruption Crimes Court (TIPIKOR)</b>	<ul style="list-style-type: none"><li>• Composition of judicial panels changed in favor of career judges</li></ul>

# **Weaknesses of broad corruption eradication programs**

- **Inpres does not address corruption in the judiciary, financial sector or legislature**
- **Poorly socialized within the government**
- **BAPPENAS not very active any longer in enforcing RAN-PK**
- **MenPAN is a weak ministry with limited capacity**
- **No priorities**
- **No time frames**
- **No incentives or sanctions for non-compliance**

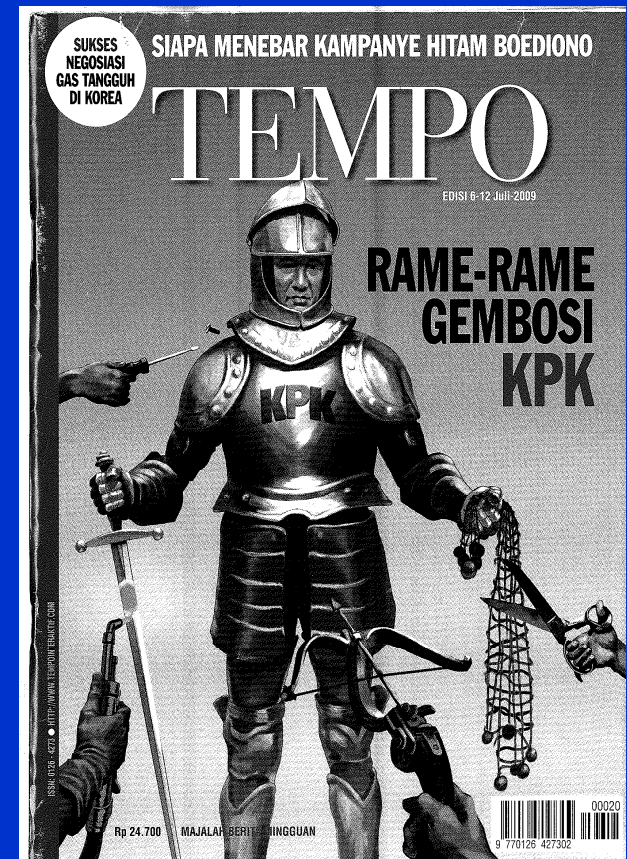
# Corruption Eradication Commission

- Commissioners selected by national parliament from a pool offered by the president
- Investigators and prosecutors seconded from the AGO and Police
- Corruption cases initiated or handled by the Corruption Eradication Commission to be tried by Corruption Crimes Court
- Cases were tried by a team of 2 district court judges and 3 'ad hoc' judges
- Handles around 30% of Indonesia's corruption cases
- Conviction rate of Corruption Crimes Court is 100%



# Attacks on the Corruption Eradication Commission

- Arrest of Antasari Azhar on murder charges in May 2009
- Submission of two controversial bills by President
- National parliament deliberately delays the passage of a stand-alone law to legitimize Corruption Crimes Court
- President criticizes Corruption Eradication Commission's work
- Arrest of Corruption Eradication Commissioners Hamzah and Rianto
- Public attacks by members of the Police force





# Geckos vs Crocodiles

“If there is a comparison, the metaphor is a crocodile on one hand and a gecko on the other. The gecko is going up against a crocodile. Does the crocodile become angry? No, he simply regrets. The gecko is being stupid...”

(Com Gen Susno Duadji, 11 September 2009)



# Corruption Crimes Court Law 2009

- Law does not change the Corruption Eradication Commission's power to prosecute or impose wire taps
- Extending Corruption Crimes Court to all 33 provinces
- Law authorizes heads of district courts to alter the composition of judicial panels on the Corruption Crimes Court.
- Career judges may comprise majorities of these panels
- Previous law ensured that panels consisted predominately of *ad hoc* judges recruited from outside the judiciary

## **Environment to protect against corruption**

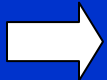
- **Credit information management has become more transparent**
- **Number of days to open a business has been reduced**
- **Reform of tax system under way**
- **Corruption Court Crimes Law adopted in 2009**
- **Various high-level prosecutions for corruption**
- **Perception of government effectiveness in combating corruption has improved**

# **Procedures to enforce anti-corruption laws**

- **Large bulk of corruption crimes goes unpunished**
- **Abuse of power by members of the political establishment not addressed**
- **Civil service structures remain largely unchanged**
- **Judiciary remains unreformed**
- **Atmosphere of uncertainty and perceived risk for state-decision makers**
- **CEC ability to push for institutional reform is limited**

# The ICAC and the CPIB

- **Independent Commission Against Corruption (ICAC)**
  - Investigative
  - Preventative
  - Communicative
  - 1200 officers, USD 90 Budget in 2001
- **Corrupt Practices Investigation Bureau (CPIB)**
  - Small, centralized investigative commission
  - 75 law enforcement officers



**Political leadership is crucial**

# SBY: A reformer?

**“Our historic mission is none other than undertaking *reformasi* in a second wave”**

**( SBY, State of the Nation Address to Parliament, 14 August 2009)**

**“...the development of good governance and the combating of corruption must be increased. We are committed to establishing a government that protects the people, serves the people, and increases the standard of the people’s living in an effective manner...In the future, an Integrity Pact will become the best practice standard in all lines of development. The Indonesian government will in the future, God willing, be increasingly clean from all forms of corruption”**

**(SBY, Indonesia Vision 2025, 21 August 2009)**

# SBY and the Corruption Eradication Commission

## Contradictory Signals

<b>Early 2009</b>	Submits two bills that sought to curb the powers of the CEC	Bills sought to end the powers to prosecute; Corruption Crimes bill sought to <i>dilute</i> ad hoc judges	negative
<b>June 2009</b>	"The KPK holds extraordinary power, responsible only to God. Beware!"	First public sign that SBY no longer backs CEC	negative
<b>August 2009</b>	Stood by while police attacked CEC members	Police clearly faced conflicts of interest, lacked evidence, and violated procedures	negative
<b>September 2009</b>	Instructed Partai Demokrat to change its stance bills on the CEC	Only the Corruption Crimes Bill passed	positive

# SBY and the Corruption Eradication Commission

## Contradictory Signals

<b>September 2009</b>	Allowed police to name two CEC members as suspects	Automatically rendered the pair non-active	negative
<b>September 2009</b>	Named 3 new credible figures to fill CEC vacancies	Temporarily restored the KPK's strength	positive
<b>September 2009</b>	Initiated selection of three definitive CEC members	Upholds the letter and spirit of CEC Law	positive
<b>October 2009</b>	Allowed police to arrest Hamzah and Rianto	Exacerbated public dismay	negative
<b>October 2009</b>	"In combating corruption, what matters most to me is prevention, not entrapment"	Suggests that he disagrees with CEC arrests	negative



# SBY and the Corruption Eradication Commission

## Contradictory Signals

<b>October 2009</b>	"I may not, and will not, make interventions like that [referring to halting the Hamzah and Rianto cases]"	Suggests that he supports the police case against Hamzah and Rianto	negative
<b>November 2009</b>	Announced that 'combating legal mafias' has top priority	Showed awareness of problems and generated hope for action	positive
<b>November 2009</b>	Formed Team Eight	Appointed eight highly esteemed and capable members	positive
<b>November 2009</b>	Cautioned against "being forced to act beyond my authority"	Suggests reluctance to halt cases against Hamzah and Rianto	negative

Source: Reformasi.info 2009

# Future Challenges

- **Comprehensive civil service, judiciary, police reform**
- **Political and bureaucratic constraints**
  - Coalition governments
  - Party cartels
- **Decentralization**
  - Curbing local corruption
- **Democratization**
  - Costs of 'business of politics' much higher since introduction of elections
  - New forms and patterns of corruption