Dogged Warriors: The Saga Of Indonesia’s Corruption Eradication Commission

By Erry R. Hardjapamekas & Adil W. Surowidjojo

One institution created during Indonesia’s transition to democracy after the fall of President Suharto’s authoritarian regime is promising to reshape a political landscape scarred by years of rampant corruption — the Corruption Eradication Commission. It has doggedly stuck to its mission to root out wrongdoing despite fierce resistance from entrenched interests, write Erry R. Hardjapamekas and Adil W. Surowidjojo.

THE CONCEPTION, GROWTH and success of Indonesia’s Corruption Eradication Commission, known as the KPK, are all part of the country’s battle for reform. The KPK owes its existence to the frustration and outrage of the Indonesian people over the severe corruption, inequality and injustice of Suharto’s New Order era; the KPK’s story goes hand in hand with Indonesia’s development as a democratic nation.

From the first days of reformasi, the reform era brought about as the Asian Economic Crisis of 1997-1998 led to the fall of the Suharto regime, it was clear to civil society organizations (CSOs) that the many problems left by the Suharto regime were deeply rooted in corrupt practices. People in both the public and private spheres, including many foreign investors, had long been willing actors in Suharto’s kleptocracy. Thus, the most basic functions of government and daily life were steeped in corrupt incentives and practices. After more than three decades, it was a massive challenge to address this ossified system, which unfortunately had also compromised Indonesia’s law enforcement institutions and judicial system.

Supporters of the CSOs, including a number of public and private sector actors of high integrity (including certain foreign investors and foreign-based “Indonesianists”), understood that in order to reform Indonesia and pull it out of the economic crisis, the issue of corruption had to be addressed in an appropriate way. In a severely corrupted system, the proper way to address corruption is to treat it as an extraordinary crime.

The concept of treating corruption as an extraordinary crime led naturally to the idea that the solution could be found in forming an agency, by law, with extraordinary abilities. Thus Law No.30/2002 on the Corruption Eradication Commission was passed in 2002, giving the legal basis for the KPK, which began operations in 2004.

THE KPK’S ACHIEVEMENTS

Today, we can look at several of the KPK’s extraordinary capabilities that have led to its success. However, it is important to consider the context of the Indonesian situation. For instance, much previous analysis has focused on some of the KPK’s sensational powers, especially its license to wiretap without a court warrant. In modern jurisdictions, this would be considered unjust and unaccountable. In the context of the KPK’s role in reformasi, however, it was necessary.

The KPK’s special powers, including wiretaps and, formerly, its power to adjudicate the cases it investigated in one court specifically created under the KPK law — the Court of Corruption Crimes — were designed to help it address systemic corruption while avoiding corruption itself. Creating a new anti-corruption system through the KPK and the Court of Corruption Crimes, meant that old, compromised systems were circumvented, and the KPK began to produce results.

The KPK’s track record in addressing corruption cases in Indonesia is unprecedented. According to its own reports, it has, from 2004 to date, initiated pre-investigations of 73 members of the legislature, nine minister-level officials, four ambassadors, nine governors, 35 regents or vice governors or vice regents, and nine judges. Of the 391 cases it has initiated thus far, 228 have ended in successful convictions.

In addition to bypassing a corrupted system, the KPK’s success has relied on solid procedural methods for its investigations. This is important because corruption cases are more complex than many other crimes. Except for Indonesia’s foreign-aided anti-terrorism unit, the KPK may be the most modern law enforcement entity in the country in terms of its investigative procedures.

On that note, the KPK used Hong Kong’s lauded Independent Commission Against Corruption (ICAC) as its model institution. It is notable that Hong Kong’s ICAC, which was formed in the 1970s, also did not succeed by advancing a business-as-usual strategy. Most importantly, it did not become successful without strong opposition, especially from corrupt elements in the Hong Kong police force. It is well understood by observers of the KPK’s activities that it is constantly under attack by the system it is trying to reform, in what might be called the phenomenon of “Corruption Fights Back.”

FIGHTING BACK

In order to understand the KPK’s true impact, the severity of the Corruption Fights Back phenomenon must be considered. This has taken many forms, but perhaps the best known were the fabrication of a case against former KPK Commissioners Chandra M. Hamzah and Bibit S. Rianto, the 2006 Constitutional Court decision declaring the Court of Corruption Crimes unconstitutional and ongoing tensions between the KPK and the House of Representatives (DPR), the police and the Attorney General’s Office.

In 2009, a corrupt businessman, Anggodo...
Widjojo, with the help of elements in the police and the Attorney General’s Office, tried to fabricate a criminal case against the KPK’s Chandra and Bibit. In the normal course of events, the trumped-up case might have succeeded and the KPK could have been crippled by the loss of two commissioners. However, thanks to a massive and well co-ordinated campaign by Indonesian CSOs and the media, this effort was ultimately thwarted. The tide turned when, during a constitutional court hearing, the KPK provided a series of recordings of communications between Anggodo and corrupt elements of the police and the Attorney General’s office.

In this landmark case, the Constitutional Court allowed the recordings to be broadcast nationwide, and for weeks afterwards Indonesians heard first-hand the planning conducted by Anggodo and the cronies with whom he colluded within the police and the Attorney General’s Office, including a plan by Anggodo to murder Chandra once he was in custody. The former commissioners were acquitted.

Earlier, in 2006, one of the many cases filed with the Constitutional Court arguing that the Court of Corruption Crimes was unconstitutional was finally successful. The court decided that it was unconstitutional to have a special corruption court with a conviction rate of 100 percent, when the normal court system would produce a much lower conviction rate for corruption cases. Thus, it was argued that people who are convicted of the same crimes would face totally different outcomes depending on whether their cases were heard by the Court of Corruption Crimes or the normal system. Although the decision in itself was disheartening and clearly flawed, the bigger negative impact has been the creation of new corruption courts across the country under a new law that does not adhere to the original ratio of ad hoc-to-career judges of 3:2 (under the law creating the original Court of Corruption Crimes, it was assumed that ad hoc judges would be selected for their higher integrity and greater experience on issues relevant to corruption cases). Since the creation of these new courts, there have already been several acquittals that are difficult to justify. Further, several of the new judges are themselves now the target of corruption investigations.

From the start of the KPK’s operations, there were tensions between the KPK and the police and Attorney General’s Office, as well as with the DPR. The tensions with the police and the Attorney General’s Office stem from the KPK’s authority under the law to supervise and coordinate the handling of corruption cases by the other two law enforcement institutions. By and large, relations between the law enforcement institutions in the area of managing corruption cases remain cool and methodical, if not always optimal and productive, even though during the start of the KPK’s operations, the KPK commissioners made a strong effort to cultivate good
relations with these institutions. These early efforts showed that on the operational level, officers of Indonesia’s law enforcement agencies can work well together. However, there have been instances where corrupt elements within the police and Attorney General’s Office have heightened tensions. The Bibit and Chandra case was a prime example.

More recently, the routine duties of Novel Baswedan, a KPK investigator who originally hailed from the police (KPK investigators and prosecutors are required by law to be seconded from the police and the Attorney General’s Office, respectively), incited new tensions when it was revealed that he was investigating a high-level police officer. The case also produced massive public support for the KPK, especially when the police threatened to raid the KPK offices and return Novel physically to the police.

The KPK’s tensions with the DPR can be attributed to the substantial number of lawmakers who have been investigated and subsequently convicted by the KPK. At the same time, Commission III of the DPR, which oversees legal matters, is mandated to scrutinize the KPK’s budget. Thus, there is an inherent conflict of interest between the proper implementation of Commission III’s duties to review the KPK’s budget and the fact that members of Commission III belong to political parties whose members may be targets of KPK cases. Although media coverage of this tension is quite commonplace, there has been no real effort to seriously solve the problem of political corruption.

The level of tension between the KPK and other institutions indicate that corruption in both law enforcement and lawmaking is important to other types of corruption. Although there have been various efforts to reform law enforcement institutions and the judiciary, locally and even with foreign aid, the results of such efforts have been insignificant. Perhaps more alarmingly, Indonesia’s lawmakers are not subject to the same level of monitoring and scrutiny as its law enforcement and judiciary.

The Corruption Fights Back phenomenon can be traced to collusion between corrupt elements of these public offices and corrupt private interests. As such, it is a corrupt system with built-in redundancy — it can survive with one or more of its heads cut off, and can apparently be eradicated only if the system is attacked as a whole. This is the real challenge for the KPK going forward.

How Does The KPK Compare?

The impact of the KPK in Indonesia, compared with similar efforts in global terms, seems to be that it has been able to produce good results after only a short time. This was only possible by investing the KPK with special anti-corruption powers and by circumventing the traditional court system, at least in the beginning. As stated above, the Corruption Fights Back phenomenon is arguably neutralizing this advantage. The main difficulty in replicating this success in other jurisdictions is that the granting of superpowers to the KPK, especially the establishment of the Court of Corruption Crimes, since ruled unconstitutional, were likely only possible because Indonesia was still reeling from the Asian Financial Crisis at the time the KPK law was passed.

The lesson of the South African Directorate of Special Operations, better known as the Scorpions, shows us that reliance on the productivity of one maverick institution may not be a long-term solution, as evidenced by the disbanding of the Scorpions in 2009. In South Korea, the Korean Independent Commission Against Corruption (KICAC) was merged in 2008 with the Korean Ombudsman Administrative Appeals Commission into the Anti-Corruption and Civil Rights Commission (ACRC). KICAC and subsequently ACRC does great work in the area of corruption prevention, but the fact that its mandate does not include investigation and/or prosecution powers is indicative of the widespread resistance to giving greater powers to anti-corruption agencies, the reluctance, in short, to grant them law enforcement capabilities. This phenomenon is perhaps analogous to the reluctance of several highly developed nations with good reputation in anti-corruption from ratifying to the United Nations Conference Against Corruption, or UNCAC.

There have been many attempts to dissolve the KPK, and the Indonesian experience suggests that if the KPK continues to be productive, such attempts will very likely continue. The threat of the KPK being dissolved, or rendered unproductive, by those opposed to its work remains real.

However, we have also learned from the Indonesian experience that the Corruption Fights Back phenomenon can be traced to specific interests. In parallel with efforts to reform the institutions that have been compromised by these interests, it is in the KPK’s own interests to target them with law enforcement actions as well. Over the past decade, the KPK has shown itself to be both resilient and capable of solving complex corruption cases. In order to survive and support Indonesia’s fight against corruption, the KPK must continually test itself against Indonesia’s entrenched corrupt interests.

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