Challenging Corruption: A Violation Of Human Rights In Indonesia

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Abstract

Corruption in the public sector can have a severe negative impact upon human dignity, however in the context of corruption as a violation of human rights is relatively new. Corruption is now recognized as the most challenging governance problem afflicting many countries. The crisis focused people’s attention on the staggering impact of corruption in Asia particularly in Indonesia. This paper examined how corruption can threaten human rights; how weak human rights promotion and protection can create conditions increasing corruption. The important and timely work adopts a new approach for analysing corruption as a violation of human rights. Highlighting the inherent deficiencies in the existing institutions, mechanism, laws and law enforcement. The conceptual approach is used to study the views and doctrines that develop within the jurisprudence, to determine the challenge of controlling corruption in both public and private sectors remains formidable. The paper proposes the adoption of a multi-strategy for eliminating corruption in Indonesia as one of Asean’s most repressive, centralized and democratic nation.

Keywords: Challenging, Corruption, A Violation of Human Rights, Indonesia

Introduction

C. Raj Kumar wrote, “corruption is a problem that has serious implications for both protecting the rule of law and ensuring access to justice, corruption also promotes misgovernance as it affects the integrity of the legal, judicial, and administrative apparatus.” In the context of the human rights implications of corruption, the right to access to justice and its linkages with corruption, the rights of an individual to have access, and the obligations of the government to provide it. The present paper intends to examine the human rights implications of corruption in Indonesia. It will discuss the existing legal and institutional frameworks for controlling corruption in Indonesia and in particular the implication of corruption for protecting and promoting human rights. While preparing this paper, the author is mindful of the inherent weaknesses of legislative reforms in Indonesia, as well as the crises of law enforcement.

There have been many challenges for the judiciary in dealing with corruption since a number of governance indicators reveal that corruption remains a significant obstacle to development in Indonesia. A challenge faced in all sectors of administration in this country. Indonesia has transformed from one of Southeast Asia’s most repressive and centralized political system to its most decentralized and democratic. Post Soeharto 1998 until present, Civil liberties are central to the Indonesian criminal justice process. Comprehensive human rights instruments make a massive contribution to understanding the essential dynamics of the process. Yet, while not entirely hidden, human rights have rarely been centre state in Indonesia legal system. This paper is the product of ideas by the lives of Indonesian People who have been locked away for decades to access justice as
fairness due to the new reforms and institutions have fostered corruption instead of corruption control.

The purpose of the study is to provide a new framework of law, to apply the rule to the facts based on the morality Government political commitment for legislative and institutional reforms to fight corruption without violates human rights. This paper focused to ensure access to justice to Indonesian people, in this context that corruption and its elimination becomes critical for ensuring access to justice. In other words access to justices cannot be achieved in Indonesia without eliminating abuse of power, abuse of process and ending discrimination due to the obstruction of justice in criminal process by the politic influence and its law enforcement in corruption case. As Francesco Francioni is Professor at the European University Institute, Florence wrote ‘As in any domestic legal system, respect and protection of human rights can be guaranteed only by the availability of effective judicial remedies. When a right is violated, access to justice is of fundamental importance for the injured individual and it is an essential component of the system of protection and enforcement of human rights’. By introducing a rights into the analysis of corruption case, for that purpose it is interesting to note that the law has either been misapplied or misunderstood in a decision which it has previously given, and that on the strength of that decision, an accused person has been sentenced and imprisoned, it is bounded duty of the law enforcement to reconsider the earlier decision with a view to seeing whether that person has been properly convicted. As Oliver Wendell Holmes (1841-1935) was one of the founders of the school of thought known as American Realism says, we can begin to understand “the central tenet of which is that what actually happens in the courts is what really matters. Placing the emphasis on ‘law in action’ rather than ‘law in books’, ‘the prophecies of what courts will do in fact, and nothing more pretentious, are what I mean by the law”.

Method of this paper based on normative juridical research, as Mc Leod wrote, “One of the major concerns of legal method is to identify ‘the scope of the courts’ power to develop the law. It follows from this that, although the study of constitutional law is a substantial exercise in it s own right, the study of legal method must include at least an overview of the legal basis of the constitution as the foundation of any real understanding”. This paper, therefore consider the legal frame work of International and National law and consider various aspects of Indonesian community context and deals with the growing importance of an awareness of the place of human rights within legal method. The present paper analysis that the challenge of establishing a rule of law to fight corruption remains unachieved. The existing governmental machinery across the State and Central Governments has not been able to inspire confidence among the people of Indonesia as far as eliminating corruption is concerned.

According to the Human Rights Watch observed in 2017 President Joko “Jokowi” Widodo’s rhetorical support for human rights has yet to translate into meaningful policy initiatives to address the country’s serious rights problems. The Jokowi government is proving to be all talk and no positive action in terms of meaningfully addressing Indonesia’s serious human rights problems. Indonesia has come a long way since the Suharto dictatorship and the government has made a lot of progress with regards to human rights. Government have signed up to numerous international human rights treaties, they have undertaken legal reforms, but over the last four to five years we've seen this reforms stagnate as well as an increase in some human rights violations happening in the country.

Despite that we are seeing a lack of implementation of their commitments on human rights. However on the corruption prevention Corruption prevention and eradication (CPE) have become two of the main focuses of the government of Indonesia following the reform era. The determination to carry out CPE began with the establishment of new
implementing agencies and the consolidation of government policies and through community awareness. The administration of President Joko Widodo (Jokowi), elected in 2014, has reinforced Indonesia’s commitment to CPE by issuing Presidential Instruction no. 10 of 2016 on the Prevention and Eradication of Corruption 2016–2017. The people of Indonesia had strong hopes that President Joko Widodo would tackle Indonesia’s corruption problem. Nevertheless over a year into his presidency, a Transparency International report suggests that little progress has been made in the crucial defence sector – casting doubts on the success of the anti-corruption push as a whole.

In the face of corruption challenge, this paper research poses the questions, why are so many high level public official, senator or politicians are being convicted of corruption in Indonesia? What is the State action? and whether it even makes sense to speak of human rights violations in corruption case?. To answers all of those questions, we have to examine in generally corruption and its consequences for good governance as a key item on the Indonesian agenda since post reform Soeharto’s era in 1998. Moreover, we broadly examine how corruption debases human rights and its relationship with Human rights values, norms, and standards. Finally this paper makes a compelling case that battling corruption in Indonesia is much more than a criminal justice issue, it is fundamental to the empowerment of the Indonesian people and the establishment of the rule of law in the one of Asean’s most repressive, centralized and democratic nation.

**Corruption and Good Governance**

How people understand corruption? Pippidi A. Mungiu wrote, ‘the majority of citizens do not believe the enjoy corruption control, hence the growing frustration we see on the streets’. More specific typologies of corrupt behavior, posed by Kaushik Basu, differentiates between ‘harassment’ bribes, those ‘that people often have to give to get what they are legally entitled to’, and ‘non-harassment’ bribes, which are those ‘that are believed to occur when government gives out big development contracts. A mutual arrangement between a donor and a recipient, actively pursued by, and to the mutual advantage of both parties, whereas the latter entails some form of compulsion, usually to avoid some form or harm being inflicted on the donor or those close to him/her. Corruption in Indonesia is systemic and has a long history, even longer than the history of the Unitary State of the Republic of Indonesia itself. In the post-independence period, the new order era to the post-reform era, corruption remained rampant. Corruption is a phenomenon that is widely prevalent in the administrative system of Indonesia and is one of Indonesia’s most nagging problems, impeding growth and development. Indonesia has a long way to go in the fight against corruption.

Based on the Corruption Perceptions Index (CPI) measures in 2014 the perceived levels of public sector corruption in Indonesia among other Asia Pacific Countries, it pain an alarming picture. Indonesia score indicates the perceived level of public sector corruption on a scale of 34 (highly corrupt) to 100 (very clean) index includes 175 countries. According to José Ugaz, Chairman of Transparency International Organization “Corruption is a problem for all countries. A poor score is likely a sign of widespread bribery, lack of punishment for corruption and public institutions that don’t respond to citizens needs”. The question then becomes, What do we do about it? Due to the real impact of corruption crises, What can we do to transform Indonesia government to ‘good governance’?.

The term of good governance a popular topic for discussion is Asia particularly in Indonesia. The term ‘good governance’ has been popularized in Indonesia mainly due to the strong push by the World Bank and other international organization, particularly those active in the areas of development assistance and finance. According to Wolfensohn a
President of World Bank (1995-2015) in his speech at the parliamentary network of the World Bank conference, Athens, March 9, 2003, said ‘we cannot do the most effective work in countries on corruption by indicating how it should be health with or by setting forth reform mechanism. Of course, we do this, but corruption can only be addressed from the inside, in our experience. It is only when the citizens themselves decide they want to rid the country of corruption that it really happens’.

Discussion of the term ‘good governance’ is part of a new discourse in Indonesia. The Post Soeharto’s Era in 1998 marked the beginning of governance reform process. Since then Indonesia has undertaken several efforts to improve the commitment to governance. The reform era has seen Indonesia's criminal justice institutions re-establish their independence, upgrade their capabilities and improve their responsiveness to human rights. In 2003 the Supreme Court adopted a comprehensive Blueprint for Reform. As a result, the Indonesian judiciary has transformed into an independent branch of Government. Other Government of Indonesia entities, such as the Attorney General's Office and Indonesian National Police as well as Commission Eradication Corruption (KPK) adopted their own reform plans. Despite further strengthening of their operational and managerial competency to effectively perform their mandates is required, but in practice salaries for many justice sector officials barely cover basic needs, negatively impacting enforcement. Coordination and cooperation amongst key institutional actors is also weak, hindering reform efforts. These are huge challenges in relation to reform the criminal process in cases relating to corruption. The criminal justice system is marred by such a degree of uncertainty and inefficiency coupled with corruption that the judicial process of corruption cases ending in a conviction seems to be a distant dream.

Ackerman wrote ‘despite the reforms and the many institutions and laws to improve governance, however the result seems ineffective at best. Indonesia has severe weaknesses in politics, finance, public procurement, court and security hidden behind its image of a modern democratic state. The country is still dependent on development and lending. Therefore, those who seek corrupt revenue need to hide their illegal transactions behind some kind of façade, typically a cosmetic reform that is too good to be true. Given the harm it is said to cause, the administration of President Joko Widodo (Jokowi), has reinforced Indonesia’s commitment in eliminating corruption by issuing Presidential Instruction no. 10 of 2016 on the Prevention and Eradication of Corruption 2016–2017. The regulation includes 31 action plans within seven high-priority areas according to the president’s programs, namely: (1) public procurement; (2) extractive industry; (3) infrastructure; (4) the private sector; (5) state revenue; (6) commerce; and (7) state-owned companies. How Jokowi mobilize and reform to control corruption have made Indonesia’s score in the 2015 global Corruption Perceptions Index (CPI) improved from 34 to 36 points moving to 88th place in the ranking, from 107th the previous year. Moreover in 2016 and 2017 slightly improved score to 37 points, however in the ranking place moving to 96th from 90th the previous year. This is an encouraging development, although the nation is still quite low in the ranking. Judging by the latest string of corruption cases in Indonesia, it will be hard for the country to improve its lowly 2016 ranking of No 90 out of 176 countries on Transparency International’s Corruption Index.
The losses suffered by the state in Indonesia’s due to many biggest corruption cases from the level of Nation crime to the level of a diseases that permeates society. And it is felt by the poorest levels of society. For example the first one of Indonesia’s biggest scandals the collapse of PT Bank Century TBK in 2008 and its subsequent US$710 million bailout – are playing out in a Singapore courtroom, where a Mauritius-based hedge fund is trying to find out what became of more than US$115 million that the fund claims as its own. The Indonesian Commission Eradication Corruption (KPK) has just named the former Deputy Governor of Bank Indonesia (BI) Budi Mulya as a convict in the Century case. Budi has been named a suspect since 2013. The panel of judges at the Corruption Court sentenced Budi to 10 years in prison. At the cassation level, the Supreme Court escalated Budi's sentence to 15 years. At that time, the judge of Supreme Court declared that Budi was guilty of misusing his authority in the provision of short-term funding facilities (FPJP) and the determination of Bank Century as a failed bank created the systemic impact. The Century case is said to cause a state loss of up to trillions of rupiah involves Boediono the former Governor of Bank Indonesia and the Vice President of Republic Indonesia (2009-2014) and his colleagues were mentioned in Budi Mulya’s prosecution document. Despite Budi has been subjected to a final legal verdict, however Boediono do not automatically become suspects since investigation into the Bank Century affair has been riddled with controversy and subjected to political pressure.

The Second biggest case involves electronic identity cards with the main suspect of the case is the House of Representative (DPR) speaker and Golkar chairman Setya Novanto. While other suspects are now on trial, finally Novanto’s sentenced 15 years imprison. A fall from grace for Novanto as the Speaker of Indonesian Parliament became paramount in relation to coalitions of politico bureaucratic and business interest, state power and policy. Both cases are painful reminders that corruption is still a crippling problem in Indonesia, despite President Joko Widodo’s ability in maintaining a clean personal image. To be sure, Mr Widodo faces a daunting task in tackling corruption.
Corruption Debases Human Rights

The concept of corruption has changed over the centuries and varies somewhat across cultures. Growing evidence of climate change along with continuing threat of global corruption and memories of the meltdown of financial markets in 2008, has brought home to people around the world the complex problems we face today. Corruption impacts upon individuals, groups and organizations (including the state) in numerous ways, while many of its negative effects are obvious, other are less so. The many aspect of the relationship between corruption and human rights are, if anything more apparent in the relationship between human rights and criminal procedural. Kumar Raj C. wrote, the human rights framework has challenged the traditional understanding of sovereignty in the context of globalization. The goal of every sovereign state is to ensure national security for its people so that peace and stability prevail in society. Corruption has the potential to threaten this achievement of national security. A sovereign state ought to ensure that laws are enforced in a nondiscriminatory manner. Corruption does not allow this to happen. Hence, the criminalization of politics and politicization of crimes has become a common practice in South Asian Countries.

Corruption debases human rights, in practice corruption hurts the poor most of all, while the rich bribe for speed, the poor have to bribe for access, even to basic services. The poor pay a higher proportion of their income in bribes than any other income group, they find it harder to get jobs or start business, their property rights are more insecure and they suffer from poor services or no services at all. Such as lack of access to get National Electronic Identification Card due to the numerous high-profile bureaucrats being tied to the corruption scandal. According to Indonesia’s Commission Eradication Corruption (KPK), of the IDR 6 trillion (US$450m) that was budgeted by Government for the roll-out of the project, some IDR 2.3 trillion (US$172m) had been misappropriated. Corruption involving the procurement of electronic identification cards (e-KTP) is alleged to have affected the good public perception of a single identification system that the Indonesian government is trying to establish. The Paper aims to demystify certain misconceptions surrounding a complex phenomenon aspects of corruption that are less well known and hence tend to be ignored. Sometimes behind closed doors, sometimes openly on the floors of parliaments, laws are passed, which allow corruption to be legal. Meanwhile, misleadingly termed ‘petty corruption’ can be just as, if not more, crushing as ‘grand corruption’, violates the rights of the poor people.

Conclusion

Indonesian Government need designing a coherent anticorruption strategy focus on prevention. Given a fair governance environment to pursue reforms in all of areas at the same time (law enforcement, judiciary, politic and economy). One of the establishment the rule of law for fighting corruption is the Anti-Corruption Commission (KPK) and the Anti-Corruption Court (ACC), established in 2003. The team were designed to take particular types of corruption cases. In the Indonesian criminal justice system The KPK is one of the components to the systems beside the Police, the Attorney General and the Court. However KPK’s authority to initiate and to take over corruption cases. Other power aimed at making KPK investigations and prosecutions easier and convictions more likely in the ACC. KPK appoints and dismisses its own criminal investigators and prosecutors. All of the enforcers are working under one roof called KPK. Despite all extra ordinary powers KPK has, in the criminal process the KPK is as a general principle subject to the Indonesian Code of Criminal Procedure Law No.8/1981 (KUHAP).

A rights based on analysis of criminal justice procedure in corruption cases is a complex task. This is because in Indonesia, rights reasoning and the application of human
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Rights principles are largely not structured around and established and identifiable human rights enactment or framework. The relationships of corruption and potential human rights debases are obvious. Every crime is a form of human rights violation, since every crime is bound to disturb people’s lives.

Establishing the new performance of political rule. An assessment of the political culture is needed to reveal the level of trust that people have, trust is an effective determinant of social capital and the capacity of community to coordinate their efforts.

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