

Exploring Indonesian Legal Structure To
Reduce Corruption Do Judge's Verdicts
Really Fight Against Corruption?,
Presented on the Corruption Seminar,
held by Indonesian Islamic Society of
South Australia (MIIAS)

By M. Syamsudin



Indonesian Islamic Society of South Australia

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Number: 08/sec./external/ 12/2008

To Mr. M.Syamsudin
(Lecturer at Faculty of Law UII Jogjakarta)
At School of Law Flinders University
Adelaide, SA

Assalamu'alaikum Wr.Wb.

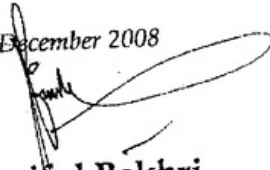
To celebrate The World Anti-Corruption Day on December 9th, 2008 Indonesian Islamic Society of South Australia (MIIAS) would like to hold the Seminar About Corruption on December 14th, 2008 at Aula of Faculty of Social Sciences, Flinders University, SA.

The theme of Seminar is "EXPLORING INDONESIAN LEGAL AND POLITICAL STRUCTURES TO REDUCE CORRUPTION". I hope you fully to attend that Seminar as one of a speaker with the title: Exploring Indonesian Legal Structure to Reduce Corruption.

Thank you so much for your willingness and cooperation. I hope your confirmation by phone or email.

Wassalamu'alaikum Wr.Wb.

~~14~~ December 2008



Syaiful Bakhri

The President of Indonesian Islamic Society of South Australia



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Bismillahirrahmanirrahiim

Dengan ini Pimpinan Fakultas Hukum Universitas Islam Indonesia Yogyakarta menugaskan Saudara yang namanya tersebut dibawah ini sebagai Pembicara dalam Seminar tentang Korupsi yang diselenggarakan oleh Masyarakat Islam Indonesia Australia Selatan, pada tanggal 14 Desember 2008 :

Nama : M. Syamsudin, SH., MH
Jabatan/Gol : Lektor
Pekerjaan : Dosen tetap Fakultas Hukum UII Yogyakarta

Surat tugas ini disampaikan kepada yang bersangkutan, untuk diketahui dan dipergunakan sebagaimana mestinya.



EXPLORING INDONESIAN LEGAL STRUCTURE TO REDUCE CORRUPTION *

Do Judge's Verdicts Really Fight Against Corruption?

by
M.Syamsudin**

Description of Corruption In Indonesia

There is opinion from one part of community that corruption in Indonesia is like a epidemic disease that is difficult to be recovered. Because of that corruption have been happened in almost of community element. Viruses of corruption have been contaminated deeply on mentality of people in society. Corruption occur at every level of bureaucracy from the lowest level, like matter of KTP, akte kelahiran, marriage etc. to the top level, like tender to goods supply at the governmental institution, abuse of APBD/APBN, etc. Even, that corruption has been entered the civil servant of law enforcement with the existence of judicial corruption (mafia peradilan).

Kwik Kian Gie (2003) ever calculated that the power/riches of state that was corrupted more than APBN 2003. Fishes, sands, and logging that were stolen by corruptor moreless 90 triliun rupias. The taxes were not be paid by Fiscus that didnot enter the state cash about 240 triliun rupias. Subsidy to bankings that didnot healthy about 40 triliun rupias. Divergence of APBN 2003 about 20 % of 370 triliun rupias, that was 74 triliun rupias. So that, total of corruption moreless 444 triliun rupias on 2003. This number was more than APBN 2003, those are 370 triliun rupias.¹

The high of corruption of indicative level in Indonesia was noted by *Political Economy and Risk Consultancy Ltd. (PERC)*, on 1998 to 2000, Indonesia was the first

* Presented on the Corruption Seminar about EXPLORING INDONESIAN LEGAL AND POLITICAL STRUCTURES TO REDUCE CORRUPTION, held by Indonesian Islamic Society of South Australia (MIAS) at Flinders University, Adelaide, SA, December 14th, 2008.

** Participant of Sandwich Program at School of Law Flinders University, Lecturer at Faculty of Law Islamic University of Indonesia Jogjakarta.

¹ *Kompas*, Fokus, "Memerangi Korupsi, Hanya Satu Kata: Lawan," 25 Oktober 2003.

level of corrupted state in Asia, and on 2001 was the second level after Vietnam and on 2004, 2005, 2006, was on the first level and on 2007 was on the second level.² For the modus of corruption in Indonesia can be read on the following table.

Table:
Various kinds of Project and The Modus of Corruption

No	Various Kinds of Project	Modus of Corruption
1.	Tender of Goods	✓ Pengelembungan (<i>mark-up</i>) nilai barang dan jasa dari harga pasar. ✓ Kolusi dengan kontraktor dalam proses tender
2.	Erasing state Asset	✓ Mengambil inventaris kantor untuk kepentingan pribadi
3.	Arranging of degree and retire for government officer.	✓ Memungut biaya tambahan di luar ketentuan resmi
4.	Social support and Subsidy	✓ Pemotongan dana bantuan sosial, yang biasanya dilakukan secara bertingkat (setiap meja)
5.	Fictive Supporting	✓ Membuat surat permohonan fiktif seolah-olah ada bantuan pemerintah kepada pihak luar.
6.	Abusing the project fund	✓ Mengambil dana proyek pemerintah di luar ketentuan resmi. ✓ Memotong dana proyek tanpa sepengetahuan orang lain.
7.	Fictive Project	✓ Dana dialokasikan dalam laporan resmi padahal nihil.
8.	Manipulating of sales and Retribution Result	✓ Jumlah riil penjualan dan pajak tidak dilaporkan. ✓ Penetapan target penerimaan pajak lebih rendah dari penerimaan riil.
9.	Manipulating of projects	✓ <i>Mark-up</i> nilai proyek. ✓ Pungutan komisi tidak resmi terhadap kontraktor.
10.	List of fictive salary	✓ Pembuatan pekerjaan fiktif
11.	Manipulating of Renovational Data	✓ Pemotongan dana pemeliharaan. ✓ <i>Mark-up</i> dana renovasi fisik
12.	Cuting of Supporting Fund	✓ Pemotongan langsung atau tidak langsung oleh pegawai atau pejabat berwenang.
13.	Project of Fictive HRD	✓ Tidak ada proyek/tidak ada laporan (kegiatan dua hari dilaporkan empat hari)
14.	Illegal cost in act of giving permit	✓ Memungut biaya tak resmi kepada masyarakat. ✓ <i>Mark up</i> biaya pengurusan izin.
15.	Illegal cost in residence and Immigration	✓ Memungut biaya tidak resmi kepada masyarakat. ✓ <i>Mark-up</i> biaya pengurusan izin.

Source : The Habibie Center³

² www.asiarisk.com, assessed July 20th, 2007.

³ Rustamadj, "Habis Otonomi, Terbitlah Korupsi" dalam *Jurnal Demokrasi: Jurnal Forum LSM DIY*, Vol.II, No.7, (Yogyakarta: Forum LSM DIY, Januari 2005), Hlm. 37-38.

From the law enforcement perspective, the adjudication of corruption cases in Indonesia still disappoint for people in society. The general court generally still liberate some defendants of corruption. For example, there were 22 members of DPR Bali who were liberated by the judicial verdict in the case of corruption of APBD Rp57.1 million; there were 16 former members of DPRD Garut 1999-2004 who were liberated by court verdict; the case of stuck credit of Bank Mandiri Rp 160 million that the former Dirut E.C.W. Nelo and 2 former directors were liberated by judicial verdict; the case of Nordin Khalid's corruption in abusing and using Buloq fund about 169 million; Liberating of Muchtar Pakpahan's corruption case in Jamsostek about 1,8 million, etc.⁴

Exploring The Judicial Verdict Of Corruption

There are two kinds of court to hold corruption, those are the special court (TIPIKOR) and general court (PN). The Tipikor Court holds corruption cases that have following qualifications:

- a. Involving the apparatus of law enforcement, government officer, and others who is involved with criminal act of corruption that is done by apparatus or government officer.
- b. There is serious attention from society and that corruption cause to become restless.
- c. Cause to lose for state finance minimal 1 million rupias.⁵

From 2004 to 2007 Tipikor Court decided some corruption cases about 60 cases and all of them were be guilty with on the average verdict about 4,4 years in the jail. While the general court along 2005 to 2007 decided some corruption cases like the following table.

⁴ Jawa Pos, Laporan Khusus, 8 Januari 2007.

⁵ Baca Pasal 11 UU No. 30 Tahun 2002 tentang Komisi Pemberantasan Korupsi.

Table 2
Number of Corruption cases that were decided by the general court during 2005-2007 Based on guilty and unguilty categories

Year	Ungulty (%)	Guilty (%)	Total of Cases (%)
2005	32 (41,02)	46 (58,98)	78 (100)
2006	40 (32,00)	85 (68,00)	125 (100)
2007	95 (57,23)	71 (42,77)	166 (100)
Total	167 (45,26)	202 (54,74)	369 (100)

(Source: Secunder Data ICW, 2007)

That table show that number of corruption cases that were decided by General Court during 2005-2007 were 369 cases, consist of unguilty verdict 45,26% and guilty verdict 54,74%. Based on table, there is tendency that unguilty verdict increas every years, but guilty verdict decline every years. The most surprising became on 2007, the unguilty verdict was 57,23% but the guilty verdict was only 42,77%.

Then, if we show the classification of sanction that were given by judges, we can see on the following table.

Table
The clasification of imprisonment for the corruption wrengdoer during 2005-2007

Periode	< 2 years	2-5 years	6-9 years	10-12 years	> 12 years	Total
2005	21	29	1	0	5	46
2006	31	40	11	0	3	85
2007	31	30	6	2	2	71
Total	83	99	28	2	10	202

(Source: Secunder data , ICW)

That table shown that during 2005-2007, the general court generally gave the imprisonment for the defendant of corruption on the avarage 2 years in the jail. This condition was very contrast with the Special Court of Corruption (Tipikor) in the holding of corruption. During 2004-2007 the Tipikor Court held moreless 60 corruption cases and all of them were solved by the guilty decision with the avarage of vonis was 4,4 year in the jail.

Those data saw the tendency that the court of corruption gave the light penal sanction for defendant as a minimal penal sanction that was determined by Corruption

Act in Indonesia.⁶ The judge's verdict saw that judges who tried the corruption cases have a tendency to give the minimal limitation that was determined by the Corruption Act. If the Act of Corruption did not regulate the minimal imprisonment, maybe there were many judges who would like to try some corruption cases under the minimal penal sanction for defendants.

Why were many unguilty corruption verdicts?

According to the *Indonesia Corruption Watch* (ICW), for many unguilty verdicts of corruption in the general court, were caused by many factors:

1. Defendants were the real proved unguilty in the trial process,
2. The accusations were weak or the prosecutor weaken intentionally the accusation,
3. Judges intentionally made a conspiracy that can fortune to defendant,
4. Combination between the weak accusation and judges intentionally made a conspiracy that can fortune to the defendant.

According to ICW, factors of the no.2, 3 and 4 above were mostly become unguilty of judicial verdict for defendant. It was caused by the weak internal inspection from the Supreme Court for judges in the general court. In the other hand, the Yudicial Commision as a external inspection is not effective yet to control judges behaviour in the general court, because of the Judicial Commision power was redacted by the Constitutional Court Verdict.⁷

Actually, there are many factors that determined the unsucesfull general court in adjuducating to the corruption cases. Those are: (1) less proffesional aparatus of law enforcement, (2) Abuse of power (penyalahgunaan penerbitan SP3); (3) Composition and kualification of judges, and (4) Supporting of evidences that were collected by investigators. Because of the minimal opportunity and time, those factors will not be delivered here.

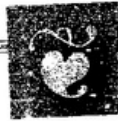
⁶ According to the Indonesia Coorruption Act, the limit of minimal penal sanction is 1 year imprisonment and the maximal is the death sentence.

⁷ Annual Report of ICW, 2007. www.antikorupsi.org. Downloaded, June 20 th, 2008.

Conclusion

Based on that analysis can be concluded that many judicial verdicts of corruption, specifically in the general court, were not became yet *ultimum remedium* (senjata pamungkas) in fighting agaist corruption in Indonesia. There were some Judicial verdicts that have a tendency to protect defendent of corruption and also ignore the social interests that were unfortunated by wrongdoer of corruption. So that, we ussually criticize the trial process of corruption cases in the court. We have to watch judges in the court in order to work credibelely, lawfully and honestly.

Adelaide, December 12th, 2008



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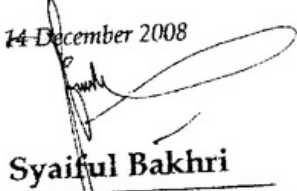
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In appreciation and recognition of His outstanding presentation on

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**EXPLORING INDONESIAN LEGAL AND POLITICAL
STRUCTURES TO REDUCE CORRUPTION**

14 December 2008


Syaiful Bakhri

The President of Indonesian Islamic Society of South Australia

Exploring Indonesian Legal Structure To Reduce Corruption Do Judge's Verdicts Really Fight Against Corruption?, Presented on the Corruption Seminar, held by Indonesian Islamic Society of South Australia (MIIAS)

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