

STATE INSTITUTIONS

Watchdogs at work

AN ATTEMPTED BRIBERY OF A STATE AUDITOR IN 2005 OCCURS.

The unsettling case of Khairi Salman hit the headlines throughout 2005 before sinking again without a trace. As a 36-year-old auditor at Indonesia's Supreme Audit Board, his job of investigating the accounts of all state institutions had brought him to the door of the General Election Commission (KPU). When it became clear that there were problems in the accounts, Khairi was offered Rp 150 million by a senior commission figure to cover up the irregularities.

A WHISTLE-BLOWER REPORTS THE CASE.

What made the case special was that Khairi, who joined the agency in 1998, did not accept the bribe. Instead, he reported it to the then newly established Corruption Eradication Commission, which set a trap to catch the bribe. The KPU official was arrested while Khairi won Transparency International's Integrity Award for his actions. The bad guy was caught, and the good guy was rewarded, serving as a beacon to all would-be whistleblowers in Indonesia.

THE WHISTLE-BLOWER COMES UNDER INVESTIGATION FOR A PREVIOUS CORRUPTION CHARGE.

The story does not end there, however. That rare example of clear progress in the country's anti-corruption crusade took a final twist when evidence surfaced that Khairi had himself accepted an illegal payment from a previous audit. Along with 19 other colleagues, he returned the payment in July 2005. The rather embarrassing situation drove him to give back the award in November 2005, just days after receiving it, and his case now sits buried at the Attorney General's Office (AGO). The lesson drawn by many commentators was that Indonesia is as steeped in corruption today as at any time before, with honest officials being a rare if not dead breed.

NGOs CLAIM THAT HE WAS DELIBERATELY TARGETED TO UNDERMINE THE ANTI-CORRUPTION CAMPAIGN.

But political analyst Faisal Basri suggests otherwise, telling the *Report*, "The Khairi case represents not just how endemic corruption is in Indonesia, but also the preparedness of established politico-economic interests to group together and defend each other." Agung Hendarto, the Executive Director of the anti-corruption NGO *Masyarakat Transparansi Indonesia* (MTI), has also supported Khairi, maintaining that the move against him was part of a "grand scenario" to stifle the anti-corruption movement.

If the initial hope had been that Khairi's example would show how a whistleblower could survive and even prosper after reporting a bribery case, the one lesson to come from the episode was the exact opposite: Potential whistleblowers beware, your own past will be scrutinised and used against you.

INSTITUTIONAL REGULATORY REFORM ENCOUNTERS STRONG RESISTENCE.

Reform of the institutions overseeing the flows of money in Indonesia has proceeded at a breakneck pace since the fall of Soeharto, gaining its own momentum and scoring many remarkable victories. But at the same time, there is clearly a strong resistance to reform at all state levels. Within most institutions today, there is a raging battle between reformist and status quo elements, and as the case of Khairi shows, it is a complex and sometimes baffling affair.

The *Report* takes an in-depth look at three watchdog institutions operating in Indonesia that are crucial components of regulatory reform: the Corruption Eradication Commission (KPK), the Anti-Monopoly Commission (KPPU), and the Supreme Audit Board (BPK) (See Box One). Each represents a different stage of the anti-corruption drive, works on different terrains, and was formed under very different conditions.

Box One: Basic Data on Three State Watchdogs

| Name | Date Formed | Staff | Funding | Authority | Scope of Authority |
|---|-------------|----------|---|---|---|
| Corruption Eradication Commission (<i>Komisi Pengawasan Korupsi: KPK</i>) | 2003 | 340 | <u>Government:</u> 2004: Rp109 billion 2005: Rp170 billion <u>International donors:</u> Rp28.5 billion (2004 – 2005) | Investigates with the force of law, prepares cases to bring to the anti-corruption court. Coordinates other anti-corruption bodies and runs public campaigns. | Misconduct by state officials involving possible losses to the state of Rp 1 billion or more. |
| Anti-Monopoly Commission (<i>Komisi Pengawas Persaingan Usaha: KPPU</i>) | 2000 | App. 100 | <u>Government:</u> 2004: Rp23 billion 2005: Rp42 billion 2006: Rp80 billion <u>International donors:</u> Contributions in kind | Investigates, prepares cases and administers judgements on unfair business practices. | Private businesses. |
| Supreme Audit Board (<i>Badan Pemeriksaan Keuangan: BPK</i>) | 1945 | 3,500 | <u>Government:</u> 2004: Rp202 billion 2005: Rp329 billion 2006: Rp614 billion <u>International donors:</u> ADB: US\$ 9.5 million (2005-2009) | Access to accounts of all state institutions, reports to DPR. | National and regional state institutions, State Budget and Ministries. |

New kid on the block

While ineffective anti-corruption institutions have historically been the norm in Indonesia, the KPK is different. It was created by a 2002 law that relied on input from anti-corruption NGOs, ensuring a wide range of investigative powers for it. The commission can summon anyone, including high-ranking officials, without the president's consent and impose travel bans on suspects. It can ask the president to suspend officials to facilitate prosecution and is able to gain access to a suspect's bank accounts and tax records. As well as preparing cases for prosecution, the KPK is also tasked with coordinating and supervising other institutions that are engaged in corruption cases, including the AGO.

THE KPK IS GIVEN UNPRECEDENTED POWERS.

The question at this point is whether those powers have been used optimally. According to Arif Hidayat, the Anti-Corruption Coordinator at MTI, initial indications of the KPK's progress are considered good, albeit below the high expectations placed on it by many Indonesians.

ARE THESE POWERS USED WISELY?

“Since its inception, the KPK has received something like 10,000 reports

NGOs say the KPK's performance is good but not optimal.

The KPK has dealt with a few previously untouchable high-ranking figures.

from the public on suspected cases of corruption. Until now, only about 20 cases have been brought forward to prosecution. But from the cases taken up by the KPK, the results are always good," Arif told the *Report*. "The successful prosecutions are not only due to the functioning of the KPK, but also the establishment of a new Corruption Court which only takes KPK cases. Compared to the other state courts, the Corruption Court works very well and has a majority of good, clean judges."

Public perceptions of the KPK's performance have been boosted by several high profile cases involving government officials who were previously seen as untouchable. The most well-known case was the conviction of former Aceh Governor Abdullah Puteh who was given a 10-year sentence for his part in the illegal procurement of a helicopter in 2001. Other high profile cases have involved Director Generals, several top KPU officials, and Supreme Court members (see Box Two).

Box Two: Cases in the Process of Prosecution at the KPK (2003-2005)

| Cases in Process of Prosecution | | |
|---|--|---|
| Defendant | Case Details | Result |
| Hamdani Amin (Head of Election Commission Finance Bureau) | Procurement of insurance services | In appeal |
| Nazaruddin Sjamsuddin (Chairman of General Election Commission) | Procurement of insurance services | In appeal |
| Teuku Syaifuddin (lawyer) | Bribing a public official | In appeal |
| Ramadhan Rizal and Moch. Soleh (Junior Clerk of Regional Court) | Receiving a bribe | In appeal |
| Raden Soedji Darmono (Director of Budget II) and Ishak Harahap (Head of Budget II) | Receiving a bribe | In appeal |
| Rusadi Kantaorawira (member of General Election Commission) | Procurement of Ink | On trial |
| Fahrani Suhaimi and H Suratno (Director of Finance and Administration Radio Republic Indonesia) | Procurement of radio base station | On trial |
| Bambang Budiharto and Safder Yussac (voting station officials) | Procurement of manuals | On trial |
| Kuntjoro Hendrartono (CEO Sandang Nusantara) | Disposal of state-owned Sandang Nusantara assets | On trial |
| Moch. Dentjik (General Election Commission staff) | Receiving a bribe | On trial |
| Lin Kian Yin (supplier) | Disposal of state-owned Sandang Nusantara assets | On trial |
| Achmad Rojadi (business partner of Rusadi Kantaorawira) | Ink supply | On trial |
| F.T.K. Harefa (business partner of Bambang Budiharto and Safder Yussac) | Procurement of manuals | On trial |
| Cases which have received final penalty | | |
| Abdullah Puteh (Governor of Aceh) | Procurement of helicopter | 10 years prison and Rp500 million fine |
| Muhammad Harun Let Let (DirGen Sea Transport) and Tarsisius Walla | Procurement of land | 11 years prison and Rp500 million fine; 8 years prison and Rp200 million fine |
| Bram Manopo (business partner of Abdullah Puteh) | Procurement of helicopter | 6 years prison and Rp200 million fine |
| Mulyana Wira Kusumah (General Election Commission member) | Bribery | 2 years and 7 months prison and Rp50 million fine |
| Sasongko Suhardjo (Vice of General Election Commission Secretariat) | Bribery of a BPK official | 2 years and 6 months prison and Rp50 million fine |

Source: KPK Annual Report (2005)

As the KPK's capacity to handle a heavy case load remains weak, it has been criticised for its selection criteria. Some corners have voiced concerns that anyone close to the president is seemingly free from investigation. Arif and others point in particular to the corruption cases at the KPU. "The corruption in the General Election Committee was widespread and has involved many officials. However, several Election Committee officials have remained untouched, including two who are very close to President Yudhoyono: Hamid Awaluddin, the current Minister of Law and Human Rights and Anas Urbaningrum, one of the heads of SBY's Democrat Party."

THE KPK'S SELECTION OF CASES IS CONSIDERED SUSPECT BY SOME.

In response to such criticisms, the head of the KPK, Taufiequrrahmah Ruki, maintains that the only reason these figures were not indicted was due to a lack of evidence. "I will prosecute anyone, no matter who they are, just as long as there is sufficient evidence against them," he told the *Report*.

THE KPK HEAD DENIES THE ALLEGATIONS.

One of the more controversial issues surrounding the KPK has been whether its powers are retroactive. When it was established there was a high expectation that finally a body had been created which had both the power and the mandate to investigate seriously both former President Soeharto and the Bank Indonesia Liquidity Support (BLBI) case, which saw some US\$70 billion in state funds injected into banks at the height of the economic crisis, with the majority never having been recovered.

The issue of its potential retroactive powers is a complex one that has still not been resolved. KPK Head Taufiequrrahmah told the *Report* that any cases occurring before its establishment were clearly outside its jurisdiction. But due to an unclear judgment on the issue at the Constitutional Court in 2005, many NGOs and commentators claim that the KPK has the authority to investigate these past abuses, if the KPK chooses to do so (see The trying case of Soeharto, p.16).

CONTROVERSY ARISES OVER THE KPK'S AUTHORITY TO TRY CASES THAT OCCURRED BEFORE IT WAS ESTABLISHED.

Apart from such controversies, the work of the KPK has been seriously hampered by a lack of government commitment on anti-corruption. Despite the fact that many initially condemned Taufiequrrahmah's elevation to the head position because of his long bureaucratic background, he is vocal in his criticism of the president. "In the past I worked closely with President Yudhoyono when he was Minister of Security, he is a good guy. He has the political will to tackle corruption, but the political commitment is just not there," he told the *Report* at the end of May.

THE KPK'S WORK IS HAMPERED BY A LACK OF GOVERNMENT COMMITMENT.

In particular, the KPK has advocated for additional legislative support, including a change to the current anti-corruption legislation so that the burden of proof falls on officials and not the state. That would mean officials would have to prove that any suspect payments in their personal accounts came from honest gains, rather than the KPK having to find proof that suspect payments came from corrupt acts.

LEGISLATIVE AMENDMENTS ARE NEEDED FOR THE KPK TO FUNCTION OPTIMALLY.

In addition, other laws on telecommunications, immigration, and tax still need to be streamlined with the KPK. That would avoid any possible court proceedings against the KPK when bugging telephones, preventing travel abroad, and looking into a suspect's tax receipts.

COORDINATION, REGIONAL REACH, AND STATE OFFICIALS' WEALTH MONITORING ARE WEAK.

While it has made some inroads toward tackling corruption, there is no doubt that after its first two years of operation the KPK has not reached its full potential. Coordination with other agencies is weak, and Taufiequrrahmah has slammed the AGO's performance to date, noting that the KPK has not received any cases from it. Furthermore, the database run under the auspices of the KPK is designed to monitor the wealth of all state officials but has so far only received information from half of the 93,000 individuals. And only two investigations have materialised from this data, which must be submitted by law. The KPK's limited geographic reach is also a serious obstacle. Although the 2002 law provides for regional branches to be established, funding has not been realised and Arif, from MTI, expects it to take several years before any regional presence exists.

Nevertheless, given those external problems and the massive task that the KPK faces, the consensus is that its performance to date has been underpinned by a distinct break from the past operations of Indonesia's anti-corruption bodies.

Growing pains

THE KPPU HAS LOST THE GOVERNMENT'S AND THE PUBLIC'S ATTENTION.

If the Corruption Eradication Commission has suffered from overly high expectations and heavy public scrutiny, the country's Anti-Monopoly Commission (KPPU) has had the opposite problem. Although that was not always the case, as it was one of the first new generation watchdogs established in the post-Soeharto era and initially gained the public's attention, partly because the monopolistic practices of Soeharto's cronies were still fresh in the minds of Indonesians. Over the years, however, the body has dropped off the public's, and to a degree the government's, radar screen despite its continual and sometimes significant efforts (see Box Three).

Box Three: Selected Decisions of the KPPU

| Year | Case | Decision | Sanction |
|------|--|--|---|
| 2002 | Tender for Sale of Indomobil Sukses shares by IBRA at below market rates. | Guilty | Rp270.5 billion fine shared between 8 companies. Two of the companies blacklisted from any transaction in IBRA for 2 years. |
| 2002 | Film import/ distribution for Cineplex 21. | Owner of Cineplex 21 found guilty of monopolizing distribution and hampering competitors. Distributors found not guilty. | Rp1 billion fine for owner of Cineplex 21 and ordered to reduce its shares in competitors. |
| 2003 | Garuda pressuring agents to use infrastructure provided by a Garuda subsidiary subsidiary | Guilty | Rp1 billion fine and ordered to stop unfair practices. |
| 2003 | Explanation of the US Audit Standard by Public Accountant Drs Hadi Susanto and Associates (member of Price Waterhouse Coopers) | Susanto was guilty of hampering competitors. | Rp20 billion fine. |
| 2004 | Tender of Security Service at Thames Pam Jaya | Guilty of conspiring in tender | Rp1 billion fine. |
| 2004 | Divestment of two oil tankers by Pertamina | Pertamina and businesses involved found guilty of conspiring. | Rp241.3 billion fine shared between 5 companies involved. |
| 2005 | Distribution Consortium of Semen Gresik | Consortium found guilty of conspiring with competitors to monopolize production and market. | Rp1 billion fine. |

KPPU commissioners say that it is very hard to prove unfair advantage in monopolies, but in its first year, it took on retail giant Indomaret in a bid to protect traditional *warungs* from Indomaret's dominant market share and aggressive expansion. But the political appetite for this sort of economic justice waned and it began to focus more on bid-rigging, where groups of businesses colluded with each other and state officials to produce a winner, usually with substantial losses to the state. Other sectors have also been investigated, including theatres, aviation, cement, and telecommunications.

THE KPPU DOES SOME WORK ON MONOPOLIES, BUT MOSTLY LOOKS INTO TENDERS.

In contrast to the KPK, which brings its cases to an outside court, the KPPU has the authority to monitor, investigate, prepare, and judge all of its cases. That said, its investigative powers still do not compare to those accorded to the KPK. For example, unlike the KPK, the KPPU cannot force compliance from its suspects.

THE KPPU INVESTIGATES, PREPARES, AND JUDGES UNFAIR BUSINESS PRACTICES.

“We do not have full rights as investigators,” KPPU member Faisal Basri told the *Report*. “We can't force a company to give us the information we require. There are financial sanctions against companies which don't comply, but they too are hard to implement. In one particular case, we have summonsed a suspect to our offices for an interview three times, and they have still not come. We asked the police for cooperation, but they have done nothing.”

IT SUFFERES FROM WEAK RIGHTS OF INVESTIGATION.

He says that when they try and involve law enforcement, police officers often just warn the companies in exchange for a bribe, and that after one year, a Memorandum of Understanding between the police and the KPPU remains in the preparatory stages. He added that despite these problems the vast majority of companies do comply with their instructions.

AND IT GETS LITTLE COOPERATION FROM THE POLICE.

As the KPPU has dealt mostly with bid rigging in the tender process, it often uncovers collusion between state officials and businesses. Before the establishment of the KPK, the KPPU forwarded any such cases to the AGO. Faisal, however, maintains that not one was ever followed up. Today, he says, the existence of the KPK has changed everything. “The KPK are very good, they really take an interest. We have already had several cases where we handed information on to the KPK and they have taken prosecutions forward. This happened on the Pertamina case, with the sugar sector, and with the General Election Commission.”

ITS COOPERATION WITH THE KPK DOES WORK WELL.

The biggest problem with the performance of the KPPU has been its inability to defend its decisions in the courts. Because the KPPU only imposes administrative sanctions such as fines or instructions, it does not come in contact with the courts. But those sanctioned do have a right to appeal through the courts and many of the KPPU's decisions have been overturned.

THE KPPU'S BIGGEST PROBLEM IS THE COURTS' INTERPRETATION OF THE ANTI-MONOPOLY LAW.

Didik Rachbini, an economist and former KPPU commissioner, explains that the anti-monopoly law is very complex and the general courts have been interpreting it differently from the KPPU. “There are 445 general courts throughout Indonesia and until now, it has been difficult to improve the knowledge of all of the judges there,” he told the *Report*. “However, in recent years the Supreme Court has made many decisions in our favour.”

*THE KPPU HAS HAD SUCCESSES WITH
ADVOCACY.*

He also says that the KPPU should not be judged solely on its record of sanctions, as it has been very active in advocating the government and private businesses themselves. It was the KPPU that brought down airfare costs in 2002, breaking a government sanctioned price-fixing cartel, and it is now tackling the telecommunications sector, particularly the cost of internet services.

*AND IT HAS REMAINED FREE FROM
CORRUPTION.*

When asked about any outside pressures felt by the KPPU, Faisal, with characteristic candour, says “Members of the government or the DPR have often approached me with opinions on certain cases. Some businessmen try to use politicians to influence us, but we don’t accept that. Our investigators have also received envelopes from businesses they are looking into, but they have told the commissioners and we have told the public about these businesses. Until now, there have never been any indications of corruption at our institution. That is something we are very proud of.”

Teaching an old dog new tricks

*THE BPK WAS SEEN SIMPLY AS A RUBBER
STAMP FOR THE SOEHARTO GOVERNMENT.*

While the previous two bodies were born in the *reformasi* era, the Supreme Audit Board (BPK) has been around since Indonesian independence. Its mandate is to audit all state finances and report them to the DPR each year; codified in the constitution, the body stands in a unique position in the state structure. In the past, the BPK was seen as little more than a rubber stamp for Soeharto and was usually headed by a military official.

*NEW LAWS HAVE WIDENED THE BPK’S
SCOPE OF AUTHORITY AND MADE AUDITS
PUBLIC.*

But over the past few years the BPK’s scope of authority was widened through a constitutional amendment and by a raft of state finance laws. The amendment allowed it to oversee regional finances, and now it officially audits over 8,000 state-owned companies, departments, agencies, and hospitals.

The 2004 law on auditing state finances requires the annual audit to be released to the public after being presented to the DPR, a move lauded by NGOs. It has also made provisions to try to address a major weakness in the BPK: a lack of follow-up. It declares that all state officials are responsible for implementing the recommendations of the BPK’s audits, and can be sanctioned with a maximum penalty of 18 months in jail and a Rp 500 million fine, although implementation is likely to prove difficult. Funding changes have also helped the institution become more independent, as it no longer receives money from the institutions it audits, but directly from the state budget.

*BUT MILITARY FOUNDATIONS ARE STILL
UNTOUCHED.*

One area, however, still remains off limits to a BPK audit: military foundations and businesses. Anwar Nasution, who has headed the BPK since 2004, is keen to have the law amended to enable the BPK to audit those foundations which contain state funds. “Government money from the New Order is in some of them, so we should have the right to audit them too,” he told the *Report*.

*DELINQUENT DEBTORS AT STATE-BANKS
COMPLAIN OF PUBLICATION OF THE BPK’S
AUDITS.*

Regarded as much more credible now than under the New Order, BPK audits regularly expose astonishing state losses through corruption and inefficiency. Recently, with audits of state-owned banks available on-line, state-owned banking sector officials are concerned that clients may turn to private banks rather than be exposed through audits. Anwar explains that the audits of state banks “effectively makes information on state banks’ delinquent debtors

publicly available,” adding that it only announces the debtors names, not the amounts involved.

As a previous Vice Chairmen of Bank Indonesia, who famously described it as a “den of thieves,” Anwar is particularly eager to put down any resistance to the move. “Everyone is complaining about this issue,” he says. “But only those who can’t pay back their loans are in the audit. Only the state-owned bankers are prepared to give them loans and maybe, I don’t know, because of possible bribes. In my judgment the debtors are not good clients.”

BPK audits have recently led to further investigations and some prosecutions in cases ranging from the KPU, the State Secretariat’s management of the Presidential Complex, the use of an old airfield in Kemayoran, and the management of the Senayan sports facilities in Jakarta.

THE BPK’S AUDITS HAVE LED TO CORRUPTION PROSECUTIONS IN SOME CASES.

But the BPK still has a long way to go. The biggest issue is with its personnel, representing some 3,500 employees, where corruption is known to be rife. Surachminm, an outspoken BPK employee, said in 2005, “The BPK is by its nature a closed institution, since auditors are not allowed to release detailed information on their auditees. But this has been misused by many in the BPK, and there is really a struggle within between ‘black,’ ‘grey,’ and ‘white’ auditors.”

Anwar Nasution recognises this problem but because BPK personnel are civil servants a major reorganisation of the BPK needs agreement from the Ministry for State Reform. One option on the horizon is the merger of the BPK with another audit institution, the BPKP. The latter has also been around for many years, historically providing audits on state finances for the executive. The BPKP has a much larger presence in the regions and its staff of 8,000 is widely considered to be more professionally trained.

ITS BIGGEST CHALLENGE IS ITS STRUCTURE OF PERSONNEL.

“I am in favour of such a merger,” says Anwar. “Under Soeharto we had many different auditing institutions, but look at the result, we collapsed because it was rotten from the inside; today we have to be very careful because we have many Thaksins and Berlusconi’s in the government.”

A MERGER WITH THE BPKP COULD BE THE ANSWER TO ITS PROBLEMS.

Conclusion

These three institutions have all in their different ways offered glimmers of hope for the progress of regulatory reform in Indonesia, and there is evidence that they are working together. The Khairi story involved investigations by all three bodies and an eventual prosecution through the KPK. Such cooperation is an optimistic sign for the future.

THERE IS CAUSE FOR OPTIMISM FROM THESE THREE INSTITUTIONS.

Another way of uniting the experiences of these institutions is an appreciation of the impact the context of an institution’s birth has on its performance and future reform. The long established Supreme Audit Board suffers most from its bureaucratic past and mindset. A complete restructuring of its personnel and its disentanglement from bureaucratic regulations and structure is most urgent.

BUT THE BPK MUST DISENTANGLE FROM ITS BUREAUCRATIC HERITAGE.

The Anti-Monopoly Commission was hastily rushed into existence when it became an IMF prerequisite for releasing liquidity funds. Although Faisal,

the KPPU commissioner, thinks that a constituency in support of anti-monopoly legislation already existed at that time within Indonesia, the nature of its birth may well have contributed to the loss of public attention. That in turn could ultimately prove its downfall, given that the process of selecting new commissioners at the KPPU is currently under way and there are concerns that the posts will be filled with political appointees.

*AND VIGILANCE IS NEEDED FOR THE
KPPU'S NEW COMMISSIONERS.*

Faisal, who is retiring from his post, encourages vigilance, warning that “businesses are prepared to pay a lot of money to stop a KPPU investigation. Many of the candidates for KPPU commissioners have unclear backgrounds and no real track record. The danger is that DPR members will position party faithfuls into the KPPU, which would be very handy at election time.”

*WHILE THE KPK RISKS A LOSS OF PUBLIC
CONFIDENCE IF IT DOES NOT TACKLE MAJOR
CASES LIKE SOEHARTO'S.*

In contrast, the Corruption Eradication Commission was established as part of a truly consultative process between elements of civil society, the government, and, to some degree, international donors. Born of such a public process, hopes and expectations are incredibly high and therefore vulnerable to a sharp loss of public confidence if it is suspected of avoiding highly symbolic cases such as Soeharto's. □