

Transparency International Anti-Corruption Helpdesk Answer

Indonesia

Overview of corruption and anti-corruption

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Date: 18 October 2018

Corruption is present in all three branches of government in Indonesia and is one of the major constraints on the political leadership's capacity to govern effectively. Political corruption is particularly pervasive, and parliament is widely considered the most corrupt institution. Similarly, bureaucratic corruption is rampant and a large part of the population reports paying bribes for services.

Yet, there have been some noticeable improvements in some areas, and the majority of the population has a positive view of the government's efforts to fight corruption. The stellar performance of the Anti-Corruption Commission and the reforms to the business environment have been credited for the country's optimism regarding anti-corruption reforms.



Query

Provide an overview of corruption and anti-corruption efforts in Indonesia.

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Overview of corruption in Indonesia

Background

Over the past two decades, Indonesia has undergone a successful transition from authoritarian rule to one of the largest democracies in the world. The authoritarian New Order regime under President Suharto (1965–1998) experienced sustained and rapid economic growth but also rampant corruption. Suharto was known to use a system of patronage to ensure the loyalty of his subordinates. Corruption under Suharto was therefore highly centralised, involving a small clique of capitalist cronies and their networks. Since the fall of Suharto, corruption in the country has become more dispersed, partly a result of the ambitious decentralisation programme that took place from 2001 onwards (Indonesia Investment 2017).

As part of the democratisation process, Indonesia has witnessed a wide range of political reforms. Under the presidency of Megawati Sukarnoputri (2001–2004), these included direct presidential elections, the establishment of a constitutional

Main points

- Anti-corruption reforms introduced as part of the democratisation process have enjoyed some successes, and the majority of citizens express satisfaction with the government's efforts.
- However, decentralisation has, in effect, shifted corruption to the local level, and political corruption is especially problematic.
- The Indonesian Anti-Corruption Commission has made some notable achievements, but its independence needs to be protected from external interference.
- Ongoing corruption in the judiciary, police and the bureaucracy reveals the need for further anti-corruption measures.

court and the anti-corruption commission, and decentralisation laws that ensured direct local elections for governors, mayors and district chiefs (Bertelsmann Stiftung 2018).

President Yudhoyono (2004–2014) put great emphasis on fighting corruption, which made him popular, especially during the 2009 elections. Yet, as political corruption persisted, and the country was shaken by several high-profile corruption

scandals implicating ministers and senior figures in Yudhoyono's ruling Democratic Party, including the party's treasurer Muhammad Nazaruddin and chairman Anas Urbaningrum, Yudhoyono's approval ratings plummeted (Allard 2011; Reuters 2014; Indonesia Investment 2017).

President Joko Widodo, widely referred to as Jokowi, was elected in 2014 on a platform pledging to tackle corruption. He currently runs the country. Until now, Jokowi's image is considered relatively free of corruption scandals (Indonesia Investment 2017).

Indonesia has a functioning system of checks and balances, and the separation of power is largely unaffected by the mismanagement and corruption in all three branches (Bertelsmann Stiftung 2018).

Elections in the country are in general considered to be free, competitive and fair, and there have been positive initiatives to further this development, such as attempts to limit campaign spending in local elections. Yet there has been a perceived decline in the quality of elections held since 2014, which is taken to be a result of greater corruption, sectarianism and media bias (Bertelsmann Stiftung 2018).

The Bertelsmann Stiftung (2018) identifies endemic corruption as one of the major constraints on the Indonesian leadership's governance capacity (along with poverty, low education levels, limited public infrastructure and geographic factors).

Extent of corruption

Corruption in Indonesia is still endemic in all three branches of government (Bertelsmann Stiftung 2018). In 2017, Indonesia ranked 96 out of 180 countries in Transparency International's Corruption Perception Index (CPI), with a score of

37 points out of 100 (Transparency International 2017a). Yet the level of corruption seems to be declining. Between 2012 and 2017, Indonesia's CPI score improved from 32 to 37. Similarly, the World Bank's Control of Corruption Indicator moved from -0.64 to -0.39 on a scale ranging between -2.5 (worst) and 2.5 (best).

These positive developments are also backed by citizens' perceptions. According to Transparency International's 2017 Global Corruption Barometer (GCB), 64 per cent of respondents in Indonesia view their government's efforts to fight corruption positively and the majority of respondents (78 per cent) agree that ordinary people can make a difference in the fight against corruption (Transparency International 2017b).

This wave of optimism is likely linked to two factors. First, the 2014 election of President Joko Widodo, whose campaign was based on a good governance platform and who, since his election, has committed to the simplification of the administrative requirements for investors, which were seen as unnecessarily complex and a breeding ground for corruption. However, President Jokowi also faces some criticism for the extent of his commitment to the anti-corruption agenda, after dismissing two commissioners from the anti-corruption agency in 2015 (Bertelsmann Stiftung 2018)

Second, the stellar performance of the Indonesian anti-corruption commission, the Komisi Pemberantasan Korupsi (KPK). The KPK continues to investigate and prosecute officials suspected of corruption at all levels of government, and has a solid reputation after achieving an almost 100 per cent conviction rate in its first 13 years of existence. Moreover, in 2015 alone, the agency recovered approximately US\$19.3 million in state assets (US Department of State 2016).

The **TRACE** International Bribery Index (2017) places Indonesia at 87 with a risk score of 45. TRACE finds that Indonesia has a high quality of anti-bribery laws but a medium quality of anti-bribery enforcement, medium governmental transparency and medium transparency of financial interests, a low degree of government interaction with businesses, a medium expectation of bribes when businesses interact with the government and a low regulatory burden.

Despite some positive developments and the arrests and convictions in many high-profile corruption cases (US Department of State 2017), corruption remains a problem in Indonesia. Around 65 per cent of respondents to the GCB thought that corruption had increased in the previous 12 months. More worryingly still, almost a third (32 per cent) of respondents admitted to having paid a bribe in the 12 months prior to the survey to get access to basic services (Transparency International 2017b).

Recent initiatives to roll back anti-corruption laws and limit the authority of the KPK further threaten to undermine anti-corruption efforts in the country (Bertelsmann Stiftung 2018).

Forms of corruption

Grand and political corruption

Corruption and favouritism are pervasive at the interface of business and politics (World Economic Forum 2016). Companies report frequent diversion of public funds as well as favouritism in the decisions of government officials (World Economic Forum 2016).

In December 2016, it was announced that “122 parliamentarians, 25 ministers, 17 governors, 51 regents and mayors, 130 high-ranking bureaucrats and 14 judges had been imprisoned for corruption

since the creation of the Anti-corruption Commission in 2004”. However, many senior officials suspected of corruption remain untouched. For example, in 2015, a former suspect in a corruption case was appointed the deputy head of the police and later the head of the intelligence service (Bertelsmann Stiftung 2018).

In several speeches, President Jokowi has indicated that the speedy disbursements of funds for infrastructure projects should not be hindered by anti-corruption policies (Bertelsmann Stiftung 2018). In addition, he stated that the heads of local governments should not be “criminalised” when they are implicated in “administrative violations” in the handling of development funds, which was understood by many as a clear instruction to tolerate corruption in the name of development (Bertelsmann Stiftung 2018).

Parliament is widely considered the most corrupt institution in Indonesia (Transparency International 2017b). This is in line with the data from the KPK, which reports having arrested at least 122 lawmakers and councillors for graft (Indonesia Investments 2017b). One example is the former parliamentary speaker, who was charged in a US\$170 million graft scandal by the KPK in 2017 (Beo da Costa 2017).

Bureaucratic corruption

Bureaucratic corruption is rampant in Indonesia, where one in seven citizens reports paying a bribe to access utility services, and one fourth of citizens report having paid a bribe for ID documents (World Economic Forum 2016).

Overall, the quality of service delivery in Indonesia is low, and corruption negatively impacts development at all levels, especially concerning infrastructure and the provision of clean water (Bertelsmann Stiftung 2018).

Civil servants are reportedly often not hired based on merit but rather as a result of personal connections, and once they are in office, vaguely worded laws and regulations give them ample opportunity for corruption (GNAT Integrity 2017). The majority of companies report that gifts are required to get construction permits and, particularly where land titles are often not clear, opportunity for corruption is rife (Bureau of Economic and Business Affairs 2018).

The country's tax administration provides further opportunities for corruption. One fifth of companies report that they expect to have to give gifts when meeting with tax officials (World Economic Forum 2016), and the majority of Indonesians consider public servants, including tax officials, to be corrupt (Gan Integrity 2017).

The scale of tax evasion can be estimated with the example of a tax amnesty programme launched in summer of 2016, in which 965,983 people had participated by March 2017. About US\$366 billion worth of assets were declared during this period (Indonesia Investments 2017c).

Main drivers of corruption

Factors such as a decentralised decision-making process, legal uncertainty, complex regulatory frameworks and powerful domestic vested interests create the ideal breeding ground for corruption.

Complex legal and regulatory frameworks

Laws in Indonesia were known to be difficult to decipher as they lack a unified vision and coherent long-term strategy. Moreover, they are often undermined by unclear, complex and frequently changing regulation. The complex regulatory framework allows public officials in charge of its

implementation to exploit loopholes and ambiguous legislation to extort informal payments and bribes from companies in the process of registering a business, filing tax reports or obtaining permits and licences. Yet the country has seen drastic changes over the last years.

In 2015, Indonesia still was considered the second-most complex place for multinationals to stay compliant with corporate regulation and legislation (TMF Group 2016), but, by 2018, the complexity had been decreased dramatically (TMF Group 2018). Under President Joko Widodo, the regulatory and legal framework of Indonesia had been widely cleaned up. Yet, while these reforms have been enforced at the national level, they still often needed to be translated to the local level (Innovation Norway and Norwegian Energy Partners 2017).

In 2018, Regulation 13 was introduced to simplify processes of obtaining investment licences and investment facilities procedures, which will change the two stage regime (a) obtaining initial permission from BKPM for an in-principle licence and (b) separate application for the applicable business permit with the relevant government ministry) to a one-stop service. As not all businesses are eligible, and this regulation only came into effect for the provincial/regional level in July 2018, the exact impacts need to be explored (Gorman, MacDonald, Kandola 2018).

The marked improvement in Indonesia's Ease of Doing Business score over the past years shows that the government is taking steps to address this issue, and the efforts seem to be paying off. There have been efforts to, for example, deregulate the energy sector and speed up investment licences (Jakarta Post 2018). Certain tax and land permits must typically be obtained from local government authorities. Though Indonesian companies only

require one approval at the local level, businesses report that foreign companies often must obtain both administrative and de facto legislative approval to establish a business.

The lack of coordination among ministries creates redundant and slow processes, such as for securing business licences and import permits, and, at times, conflicting regulations. Moreover, a variety of government regulations has made doing business in the natural resources sector difficult; as a result, Indonesia ranks among the 10 least attractive jurisdictions for investment of the world's mining countries in the Fraser Institute's Mining Policy Perception Index (Fraser Institute 2018).

Decentralisation

Many scholars and development practitioners consider decentralisation as an effective remedy to corruption and a constituent part of governance reforms. However, to be effective, decentralisation processes must not only empower local governments with increased resources and responsibilities but also ensure that local governments are held accountable for the delivery of public services and the use of public money. In this regard, if accountability is lacking or non-existent, decentralisation may in fact create powerful incentives for local elites to capture resources and influence policy in their own interests rather than of the society as a whole, offering more opportunities for corruption to flourish (Eckardt 2008).

In Indonesia, decentralisation has not shown the desired results, and many argue that it has not reduced corruption. While cities and villages do enjoy greater responsibilities, there is still a lack of strong institutions, accountability and transparency. Decentralisation has given local governments authority to legislate and enact

business regulations, but studies have shown that, in several districts, local officials make use of such discretion to create red tape and compensate for low salaries and/or for the lack of funds received by their jurisdictions (Martini 2012). In this context, the extent of corruption and the amount of illegal payments varies greatly across districts and provinces. For instance, corruption in some areas, such as Papua and Aceh, is much more pronounced than in other areas like Yogyakarta and East Java (Indonesia Governance Index 2012; Bertelsmann Stiftung 2018).

Moreover, inconsistencies between national and local regulations and a lack of enforcement also have a negative impact on regulatory quality (Martini 2012). An absence of any central authority to issue licences concerning natural resource development has led to a vast problem with overlapping licences; at times up to four licences for the same concession have been granted to palm oil, pulpwood, logging and coal mining companies. Officials, particularly close to election time, have been known to exchange land rights for financial contributions to their campaigns (Mathiesen 2016).

Moreover, decentralisation seems to have contributed to a rise in political corruption at district and provincial level. By September 2017, 343 regents/mayors and 18 governors had been investigated for corruption since decentralisation began (The Straits Times 2017). A survey conducted by the KPK of 270 candidates in regional elections found that one of the driving motives for corruption was the desire to recover the resources they had invested in the political campaigns and repay debts to parties that had sponsored their nomination (The Straits Times 2017).

Money in politics

The campaign financing system of Indonesia is highly dysfunctional and a major weakness that facilitates corruption. There is no enforcement of oversight regulations of parties and hardly any state subsidies (Bertelsmann Stiftung 2017). In fact, given the absence of a functioning party and campaign financing system, many politicians have become highly dependent on oligarchic sponsors. These donors and business groups exert considerable pressure on parties and politicians, both with respect to the executive and the legislature (Bertelsmann Stiftung 2017). Consequently, the interests of those who provide financial support to parties or candidates are often prioritised over those of the constituents, which has a negative impact on all policy areas. In 2015 and 2016, for example, the Indonesian parliament pushed for a bill on protecting tobacco interests that stood in sharp contrast to the country's declared healthcare targets. Big domestic tobacco companies remain some of the largest sponsors of parties and politicians in Indonesia (Bertelsmann Stiftung 2017). Without a major reform in party financing, the fight against corruption is unlikely to make much headway (Bertelsmann Stiftung 2017).

The 2018 elections have shown that politics in Indonesia is intimately connected with affluence; large amounts of capital are needed to become an elected representative. A recent article in *The Diplomat* estimates that the costs for becoming a village head are between 130–150 million rupiahs (around US\$8,600–US\$9,900) and a governor's seat ranges from 100 to 400 billion rupiahs (around US\$6.6 million–US\$26.4 million) (Beni Saputra 2018).

Troublingly, conflict of interest is not adequately regulated for parliamentarians. The Asian Development Bank (2007: 76-77) noted that there

is no standard definition or consistent understanding of conflict of interest across various laws, regulations and codes of conduct, while the World Bank assessment in 2012 found there to be no general restriction on conflict of interest for members of parliament in Indonesia (World Bank 2012).

Moreover, despite the fact that all members of parliament, at both central and regional level, are required to submit asset declarations to the KPK (World Bank 2015a), compliance is very low. KPK [statistics from 2018](#) reveal that the compliance rates among members of the House of Representatives is a mere 19 per cent (KPK 2018). A World Bank and UNODC (2013: 98) assessment noted that, while the law stipulates sanctions for the failure to submit a declaration or for submitting a false declaration, the nature of the sanctions is not specified. Moreover, as of 2013, no prosecutions had been brought for missing or false reporting (World Bank and UNODC 2013: 98). The World Bank views this absence of effective enforcement as having “undermined the system's credibility as a viable corruption deterrent” (World Bank and UNODC 2013: 98).

Weak judicial system

The legal system in the country is very complex, with a large number of different courts (military, public, religious, administrative, anti-corruption and so on) that form part of a complex hierarchy (Silitonga et al. 2018). The judiciary is formally independent from political influence, which is in stark contrast to authoritarian past where courts openly served the incumbent regime's interests. Nonetheless, the judiciary is plagued by corruption (Bertelsmann Stiftung 2018).

Moreover, dispute settlement mechanisms are inefficient, and many laws are open to

interpretation by judges; the commercial code in particular is inconsistently applied, due to corruption and training deficiencies of judges, prosecutors and defence lawyers (Bureau of Economic and Business Affairs 2018).

The widespread corruption within the judiciary in combination with a weak institutional framework also hinders the full implementation of corruption-related legislation in Indonesia (GAN Integrity 2017).

Corruption in key sectors

Private sector

Companies face a high corruption risk when dealing with the public administration, which can be a major financial burden on firms (World Economic Forum 2016). According to the World Bank's 2015 Enterprise Survey Report, one in five businesses reported that gifts are expected to secure government contracts and licences. Over 45 per cent of firms reported that a gift was expected to get an import licence or a construction permit, which is significantly higher than the East Asia and Pacific average of 16 per cent (World Bank 2015b).

A survey by the Center for Strategic and International Studies found that only 32 per cent of respondents trust the private sector, and 70 per cent of entrepreneurs believe that corruption has recently increased (OECD 2016b). The combination of the two is also a major obstacle for foreign investment, as many foreign companies need local partners for joint ventures. As corrupt behaviour by their local counterparts can often be prosecuted under home country legislation (such as the US Foreign Corrupt Practices Act) and lead to problems with multilateral financial institutions, an increasing number of foreign firms

are forced to conduct costly third party due diligence (OECD 2016b). In 2016-2017, corruption was the most frequently cited obstacle to doing business in Indonesia (World Economic Forum 2016: 204).

The OECD (2016b) identified the corruption risk to be especially high in the telecommunications, transportation, energy, and oil and gas sectors.

There are no restrictions on the employment of former officials in the private sector. Importantly, there is currently no law criminalising private sector corruption, and the prohibition of including bribes as tax-deductible expenses is not explicitly stipulated (UN 2018).

Indeed, the private sector is not only a victim of corruption but also an active player. This is particularly the case with regards to political corruption, as oligarchs and business groups actively pressure parties and politicians who depend on private donations due to the lack of a functioning party and campaign financing system. One example is the bill on protecting tobacco interests, which was pushed by the parliament even though it directly opposed the declared health improvement targets of the government (Bertelsmann Stiftung 2018).

Judiciary and police

Corruption in the judiciary is of serious concern. While political interference plays only a minor role in the judiciary, bribery influences judicial procedures at every level. High-ranking judges have frequently been arrested for corruption, and the secretary general of the supreme court had to resign after an investigation by the anti-corruption agency in 2016. The secretary general was found to have been "at the centre of a case brokerage system that mediated between plaintiffs, defendants and judges. The system offered

everything from lower sentences to delayed arrests and – the most expensive of all – acquittals” (Bertelsmann Stiftung 2018).

The National Ombudsman Commission between April 2016 and May 2017 “received 392 complaints related to litigation favours and maladministration in court decisions” and the Judicial Commission obtained “712 public complaints related to judicial authority misconduct and recommended 33 judges be subject to further investigation” (US Department of State 2017: 24).

Police officers are also reported to frequently demand bribes for everything from traffic violations to criminal investigations. According to the Global Corruption Barometer, 25 per cent of respondents who had been in touch with the police had reported to have paid a bribe (Transparency International 2017c). According to the US Department of State Human Rights Report, there have also been instances where migrants returning from abroad, especially women, were subject to “arbitrary strip searches, theft, and extortion” (2017: 24).

Public procurement

There is widespread corruption in public procurement. A third of companies reports having to pay bribes to get a government contract (World Bank 2015) and companies report that they commonly observe the diversion of public funds and favouritism in the awarding of public contracts (GAN Integrity 2017).

Formally, foreign companies compete with state-owned enterprises (SOEs) on the same terms, but in practice, the government shows a strong preference for SOEs (Bureau of Economic and Business Affairs 2018).

Indonesia is not a party to the WTO’s Government Procurement Agreement (GPA). The aim of the GPA is to open government procurement markets among its parties and to establish “open, fair and transparent conditions of competition” (WTO, n.d.). Indonesia being a signatory would therefore increase procurement transparency for foreign companies. Foreign investment is also restricted through a Negative Investment List, which details the sectors in which foreign investment is restricted or limited (Bureau of Economic and Business Affairs 2018).

Oil and gas sector

Indonesia’s vast natural resource wealth has attracted significant foreign investment over the last century and continues to offer significant prospects. The sector was severely affected by international developments, and the investment in the oil and gas industry in 2017 in Indonesia was the lowest in decades around US\$10.3 billion (PWC 2018).

A variety of government regulations have made doing business in the resources sector increasingly difficult, and Indonesia now ranks near the bottom, 84 of 91 jurisdictions, in the Fraser Institute’s Mining Policy Perception Index (Fraser Institute 2018). Both the difficult regulatory framework and the high level of corruption make the sector less interesting for foreign investment (Indonesia Investments 2016).

The energy sector keeps being shaken by corruption scandals, such as the recent corruption case around high-ranking officials of the state oil company Pertamina (Malik 2018). One argument for the high risk for corruption in the oil sector is that the Law Number 22 of 2001 concerning oil and gas which was issued to liberate the oil and gas sector in the country has opened more doors

to corruption because it lacks limits on cost recovery, and gives a lot of power to institutions, such as the SKK Migas, which, as a government institution, only falls under the audit of the government auditor (Malik 2018). While rehaults of the law have been discussed widely, there is no clear timeline for when such a change should occur (PWC 2018)

The need to improve governance of the extractive sector is highlighted by issues around

- overlapping licences
- complex bureaucratic procedures
- gaps in tax administration and in systems for corporate registration

For a detailed overview of current legislation on the oil and gas sector see PWC (2018).

Legal and institutional framework

The President of Indonesia recently signed Regulation No.54/2018 concerning the National Strategy of Corruption Eradication (Stranas PK). The new strategy has three priority areas: licensing and commerce, state finance, and law enforcement and bureaucratic reform. It is being coordinated by a national team, composed of the KPK, the President Staff Office, the national planning body (Bappenas), the Ministry of State Apparatus and Bureaucratic Reform (Kemenpan RB) and the Ministry of Home Affairs (Kemendagri) (Transparency International Indonesia 2018).

International conventions and initiatives

Indonesia ratified the United Nations Convention against Corruption (UNCAC) in 2006 (UNODC 2018). The last UNCAC review in 2018 (the first review was conducted in 2012) found that Indonesia has made progress in many areas but

still has shortcomings. The 2018 review provides multiple recommendations, including a further strengthening of the capacity of authorities to prevent and eradicate corruption, particularly at the provincial, district and local level, ensuring the independence of anti-corruption bodies and further strengthening of asset seizure mechanisms (UN 2018).

Indonesia has not ratified the OECD Convention on Combating Bribery (OECD 2017) but is a [member](#) of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (OECD. n.d.). The country is an observer to the Financial Action Task Force on Money Laundering (FATF) as of June 2018 (FATF. 2018). Further, Indonesia has been a member of the Asia/Pacific Group on Money Laundering (APG) since 1999. The last APG mutual evaluation was conducted in 2008. The evaluation found that, between 2004 and 2008, there were 176 money laundering investigations, 18 prosecutions and 11 convictions, which in large part were limited to the proceeds of corruption or fraud. The evaluation highlights several positive developments and room for improvement, for example, within the legal system and institutional measures, and preventive measures within the financial institutions (APG 2008).

Domestic legal framework

Anti-corruption legislation in Indonesia is mainly found in the criminal code.

Anti-corruption law

The primary anti-corruption statute which prescribes corruption as a substantive offence is Law No. 31 of 1999 on the Eradication of Crimes of Corruption, as amended by Law No. 20 of 2001 (Anti-Corruption Law).

Other relevant laws include Law No. 28 of 1999 on State Administrators Who Are Free from Corruption, Collusion, and Nepotism; Law No. 30 of 2002 on the Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK) (Law 30/2002); and Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering (AML Law).

The primary objective of the anti-corruption law is to regulate and prevent public officials from committing corrupt acts. Articles 2 and 3 make it an offence to bribe to obtain profit for oneself, another person or a corporation, or to abuse the authority, facilities or other means available as a result of one's rank or position in a manner which potentially results in losses to state finances or the national economy.

Articles 5, 11, 12 and 13 of the anti-corruption law cover bribery. These articles impose criminal liability on a government official who accepts, and on the party who provides, a gift or a promise that:

- is made to encourage government officials to do something or not to do something which contradicts their obligations, or a gift made because of or in relation to something in violation of obligations arising from their position, whether or not it is actually carried out
- is accepted with knowledge that it is given because of the power or authority vested in their position or, according to the giver, such gift or promise is connected with their position; or the gift is intended to persuade the government officials to act or to omit to act, in contravention of their duties

Article 16 of the anti-corruption law refers to the extraterritorial application of the law by providing that any Indonesian national or Indonesian

corporation located outside of the jurisdiction of the Republic of Indonesia that provides assistance, opportunities, facilities or information allowing an act of corruption to occur will be deemed to have committed corruption and will be sanctioned to the same degree as any person or corporation committing corruption within Indonesia.

Indonesia does not yet recognise a corporation's good faith commitment to the anti-corruption law. This means that corporations are liable for offences committed on their behalf, irrespective of whether they have implemented a mechanism to prevent corrupt acts. In terms of risk mitigation, the corporation may play a role as a whistleblower or cooperate with investigative bodies.

There are also some important shortcomings in the country's anti-corruption legislation. There are no provisions in the anti-corruption law specifically addressing facilitation payments. However, in light of its wide-ranging provisions, facilitation payments could arguably also be covered, and thus deemed as bribes to public officials.

In terms of gifts and entertainment, the anti-corruption law defines a gratification or gratuity as a reward in its broad sense, including any gift of money or goods, a discount, commission, interest-free loan, travel ticket, lodging, tour, free medication or other facilities, whether received in Indonesia or abroad, and by whatever means. However, not all gratifications and gratuities given to government officials are considered unlawful. A gratification will only be deemed unlawful if given in consideration of the official's position, power or authority and contrary to their obligations – in other words, if given with corrupt intent.

Public procurement

In March 2018, new public procurement regulation came into effect. It is now regulated by the

Presidential Regulation No 16 of 2018 on Public Procurement of Goods/Services. Among the changes in the regulation is also the implementation of an e-marketplace system, but exactly how this will operate is unclear. (For more information on all changes in the legislation see the summary by Conventus Law 2018).

Auditing

The Indonesian legal framework for auditing consists of The Limited Liability Company Law No. 40 of 2007, Article 43 of the Public Accountants Act No. 5 of 2011, Capital Market Law No. 8 of 1995 and the Banking Law (for an overview see IFAC 2016).

The [audit board](#) of Indonesia (Badan Pemeriksa Keuangan n.d.) is in charge of the evaluation of management of state finances and covers transactions by the government, local governments, state-owned enterprises the Bank of Indonesia, the public service board and other entities involved in state finances.

State-owned enterprises publish an annual report and are audited by the supreme audit agency (BPK), the Financial and Development Supervisory Agency (BPKP) and external and internal auditors (Bureau of Economic and Business Affairs 2018).

Asset disclosure

Asset disclosure is an essential element in any public sector integrity framework and is an important means to establish accountability among public officials and promote public confidence in government integrity (OECD 2016a). The following laws govern asset disclosure in Indonesia (World Bank n.d.):

- Law No. 28 of 1999 on Clean Governance and Free from Corruption, Collusion and

Nepotism provides the primary legal framework for asset disclosure.

- Law No. 43 of 1999 amending Law No. 8/1974 on Civil Service Ordinance provides the extent of the coverage of the asset disclosure requirement.
- Law No. 20 of 2001, Amendment to Law No. 31/1999 on Corruption Eradication, provides greater clarity on asset disclosure by incorporating texts from the relevant articles of the criminal code.
- Law No. 30 of 2002 on the Commission to Eradicate the Crime of Corruption sets out the mandate and functions of the corruption eradication commission (KPK), inter alia its responsibility for implementing the asset disclosure requirement.

Senior government officials as well as those working in certain agencies are required by law to file financial disclosure reports. These reports need to include all assets held by the official, dependent children and spouses. This includes properties (fixed assets, such as land and buildings, and movable assets, such as transportation vehicles, and other movable assets, such as household goods, and other business interests), investments and liabilities, income and cash assets, positions (official and non-official employment), gifts and funded travels, and additional information such as tax returns (World Bank n.d.). The filing of the report must be done when taking office, two months after leaving office and every two years while in office. The KPK can also request reports at any time, and is responsible for the verification and publication (State Gazette or [online](#)) of the reports.

As of 2016, senior police officials have also been mandated to disclose financial statements, however, only to police internal affairs and not the KPK (US State Department 2017, p.24f).

The asset declaration framework in Indonesia is considered a best practice example for other countries in the region (GIAT 2018). Yet, the OECD (2016a) has still identified avenues for improvement. For one, the system “does not stipulate clear-cut provisions on verification and on administrative and criminal penalties, which weakens the system”. Data security and privacy rights should also be considered more.

Additionally, the limited resources of the KPK combined with a lack of priority setting might make the detection of corruption cases less likely (OECD 2016a: 174).

Whistleblower protection

Indonesia has established legal and institutional provisions for whistleblower protection through the laws No. 13/2006 on the Protection of Witness and Victim and Law No. 31/1999 on Eradication of the Criminal Act of Corruption. According to Article 15 of Law no.30/2002, the KPK is responsible for the protection of witnesses in corruption investigations. The KPK therefore has established mechanisms to allow for anonymous reporting through an online platform and a hotline, an initiative that has been joined by several ministries (OECD 2016a: 172).

Yet, according to analysis by the OECD (2016a), the current legal framework does not clearly define the term whistleblower and does not clarify what is meant by threat or protection. Furthermore, the laws do not ensure protection against retaliatory and discriminatory actions in the workplace against whistleblowers.

Similarly, a study by TI Indonesia in 2017 found that weak coordination between responsible agencies and an unclear definition of protection denies potential whistleblowers the support they would need.

Corporate liability

The Indonesian supreme court recently issued Regulation No 13/2016 on Corporate Criminal Liability. While corporations were already subject to a number of criminal sanctions in various laws, including the Anti-Money Laundering Law and the Anti-Corruption Law, there had been few criminal cases in which a corporation was taken to court. The KPK stated after Regulation No 13/2016 was issued that it intends to use the new ruling to pursue corporations involved in corruption cases (Baker-McKenzie 2017).

Institutional framework

There are three main bodies tasked with combating corruption in Indonesia: the police, the corruption eradication commission and the attorney general's office.

Corruption eradication commission (KPK)

The corruption eradication commission (Komisi Pemberantasan Korupsi – KPK) was established in 2002 under Law No. 30, and is an independent entity. Actions to counter corruption in Indonesia are led mostly by the KPK, which was established to investigate, charge and prosecute corruption involving major financial losses to the state. A key feature of the agency that explains its success in bringing high-profile cases is its autonomy within the government apparatus. The KPK was established as an independent entity for mainly two reasons. For one, previous anti-corruption entities had been weak because they were controlled by the executive. For another, the previously anti-corruption investigations were handled by government prosecutors in the attorney general's office, and they were not properly trained for these kind of cases, had large caseloads and were often part of the corrupt system (Bolongaita 2010).

The KPK also has its own impressive array of law enforcement tools and prosecutorial power. It can intercept communications, examine bank and tax records, freeze assets, has powers of arrest, and can prosecute a suspect in a special corruption court where it has the power to appoint judges. While the agency recruits investigators from other law enforcement bodies, including the national police and the attorney general's office (AGO), it conducts rigorous background screening of applicants, including employing psychological tests. Moreover, the agency does not feature the nepotism that is rife in other government bodies. The KPK does not have jurisdiction to investigate the military or cases where state losses are below 1 billion Indonesian Rupiah (around €58,000) (US Department of State 2017).

The KPK has been very successful in its investigations, and has prosecuted officials at all levels of government. According to the KPK 2016 annual report, the commission had a 100 per cent conviction rate, and the investigations and prosecutions of the KPK recovered about 497.6 billion Indonesian Rupiah (around €28.6 million) in state assets.

While the KPK is very popular with the citizens, there have been attempts to undermine the authority of the commission by elements within the police, government and judiciary (US Department of State 2017). According to critics, the KPK is focused on tackling lower profile offenders, and many of those that were accused claim that the KPK itself is a corrupt agency (Indonesia Investment 2017a).

A recent article identifies several challenges the KPK has faced over the years, such as refusal by parliament to fund a new KPK building (2008), consultations between representatives of the parliament, police, the attorney general and KPK

to dissolve the commission (2011), delaying the selection process for leadership posts (2015) and protecting political elites (Claudia 2017).

National anti-corruption courts

The court for corruption crimes (Pengadilan Tindak Pidana Korupsi, commonly known as Pengadilan Tipikor or Tipikor court) was established simultaneously with the KPK in 2002 and has been operating since 2004. Like anti-corruption agencies, these specialised courts have been established to build specialised expertise and to insulate corruption cases from the existing corrupt system. The national anti-corruption court was given exclusive jurisdiction to hear the cases that the KPK had investigated and prosecuted (Schütte and Butt 2013).

The court is predominantly staffed with ad hoc, non-career judges, both at the first instance court and at the subsequent levels of appeal. The judges are usually recruited from outside the judiciary to ensure that they are not part of the institutionalised corruption or have loyalties to corrupt agents. The court also has to adhere to strict timelines for decisions (Schütte and Butt 2013).

The national anti-corruption courts are not the only courts hearing corruption cases. Cases brought forward by the public prosecution service go to the general courts, which has resulted in widely different outcomes in procedures and conviction rates. In 2006, this duality was found to be unconstitutional, and the mandate of the national anti-corruption court was expanded to hear all corruption cases, whether investigated by the KPK or the public prosecution service (Schütte 2016).

Schütte (2016) identifies several challenges that the court faces, particularly in terms of operational and human resource challenges. The qualification

and integrity of the ad hoc judges has frequently been questioned.

Corruption courts have produced convictions in numerous high-profile cases. For example, a case involving a major road project in Maluku province (Suparman 2016) led to the sentencing of three former national lawmakers to between four and nine years in prison for accepting bribes (US Department of State 2017).

Attorney general's office

While the attorney general's office and the national police also investigate and prosecute corruption cases, they do not have the same capacity or track record as the KPK (Bureau of Economic and Business Affairs 2018). Investigations by either can be taken over by the KPK, and the KPK can also transfer an investigation to these bodies (Global Legal Insights 2018).

The role of the attorney general's office in countering corruption is established in Law No. 16 of 2004. The attorney general has the duties and authorities to (Global Legal Insights 2018):

- conduct prosecutions
- implement the decisions of judges and courts that have legally binding force
- supervise the implementation of conditional criminal decisions, supervisory criminal decisions and parole decisions
- conduct investigations into certain criminal acts based on the law
- complete certain case dossiers and conduct additional investigations before transferring the case to the courts

A task force to eradicate illegal fines and petty graft was established in October 2016 via a presidential regulation. Until the summer of 2017, the task force confiscated about 17.6 billion

Indonesian Rupiah (around €1 million) in illegal fees and named 1,834 individuals from the police, attorney general's office and government as suspects (US Department of State 2017). If convicted of a crime, offenders will face a minimum four-year prison sentence (Dagur 2016). This initiative also included the launch of a [website](#) (Indonesian only) where citizens can report extortion attempts by government employees.

Other stakeholders

Media

Compared with other countries in the region, the media environment is relatively open and vibrant (GANT Integrity 2017). However, the media has become increasingly partisan, especially during elections, where "most TV stations blatantly back the nominee supported by their owner" (Bertelsmann Stiftung 2018: 8). The multiple legal and regulatory provisions that limit press freedom, as well as blasphemy and treason laws, are frequently used to silence government critics. It is not uncommon for journalists to be assaulted, threatened and obstructed in their work by the police (Freedom House 2018).

Social media users who criticised public officials or private enterprises have also been severely sanctioned. The penal code and the 2008 Electronic Information and Transactions (ITE) Law has been used frequently to silence these critics (Bertelsmann Stiftung 2018).

Nonetheless, the media is still considered an important voice in the fight against corruption that provides a platform to shed light on corruption scandals. As the population largely sees attempts to counter corruption as an essential issue, being perceived as non-corrupt is an important vote-gainer for (aspiring) politicians. Here, the media

can play an important role in uncovering malfeasance (Indonesia Investment 2017a).

Civil society

While civil society was largely suppressed under President Suharto, regime change led to a drastic change in the number of NGOs and other societal actors. Freedom of assembly and association is guaranteed in most parts of the country, and Indonesian civil society continues to be one of the most vibrant in Asia, also containing labour unions, grassroots advocacy groups and women's rights associations. However, this freedom does not include all groups. For example, supporters of Papuan independence, non-mainstream religious groups and radical leftist ideologies are not allowed to assemble freely. The limitations are enforced not only by the state but also by other societal groups (Bertelsmann Stiftung 2018).

Civil society is active in criticising government policies, protesting against corruption and demanding more participation in budget issues. Yet, there are also several active civil society groups that do not support principles of good governance and openly defend non-democratic goals, as well as groups that are under the direct control of politicians and merely support the interests of those that sponsor them (Bertelsmann Stiftung 2018).

While the constitution does provide protections of freedom of speech and the press, there are repeated attempts to limit those, notably through the use of blasphemy laws (US Department of State 2017).

The historical legacy of the restrictions of civil society during the authoritarian regime can still be seen today. While civil society plays an important role as a watchdog, some public officials still question their legitimacy. Furthermore, citizens are

often seen as “end users” of policies rather than actual stakeholders, and citizen engagement is still relatively low. A lack of participation in the national budgeting process also limits the possibilities for participation in the planning process for NGOs. Last but not least, civil society organisations face financial and operational issues due to a lack of quality in the education system, lack of mentorship, and capacity building and dependency on short-term funding and funding cycles (OECD 2016c).

Transparency International Indonesia is a prominent player in the national debate on corruption. TI Indonesia is currently contributing to the national strategy by:

1. providing background analysis on political corruption
2. facilitating dialogues between government, civil society and the private sector
3. stimulating community participation in the development and monitoring of the strategy (Transparency International Indonesia 2018).

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