

INDEPENDENT OBSERVER

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The world will not be destroyed by those who do evil, but by those who watch them without doing anything.

— Albert Einstein

Albert Einstein, 1879-1955, was a German-born theoretical physicist, widely acknowledged to be one of the greatest physicists of all time. Einstein is known widely for developing the theory of relativity, but he also made important contributions to the development of the theory of quantum mechanics.

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Has corruption won? The Sjamsul Nursalim's case



By Adnan Topan Husodo

The hitherto chaotic corruption eradication effort turned into an embarrassment when the 2020 Corruption Perception Index (CPI) published by Transparency International (TI) showed that Indonesia has experienced a dramatic setback in this regard. In 2020, Indonesia's CPI score slid to 37, from 40th place the previous year. The country's global ranking also dropped significantly, to 102nd place, from 85th in 2019.

Many parties have predicted a deterioration in the performance of corruption eradication, especially thanks to the government's policies, which often run contrary to anticorruption commitment, particularly with regard to the performance of the Corruption Eradication Commission (KPK). In fact, looking at the trend since the outset of *Reformasi*, Indonesia's CPI has continued to improve, especially after the independent anticorruption agency was established in 2004. Although the CPI stagnated during the Susilo Bambang Yudhoyono administration, and similarly during Jokowi's first term, the 2020 CPI score marked a new low.

Policy decisions that are against the spirit of anticorruption, especially those that characterized the woes of KPK so far, can be traced back to the KPK Law revision. The latest analysis to explain this revision offered two perspectives, namely, oligarchic consolidation in Indonesia, a concept introduced by Jeffrey Winters, a renowned US-based political scientist and expert on Indonesia, and the neo-developmental perspective by Eve Warburton, an Australian-based academic and political researcher who specializes in Jokowi's two-term administration.

In the first approach, it is imperative that we pay attention to the political and economic actors. "Oligarchs" refer to those who control large capital resources, enabling them to mobilize and direct government policies to suit their own vested interests, while generating enormous financial benefits for themselves and their cronies.

These are politicians and

businessmen who control the vast natural resource sector, mass media, palm oil industry, property, and so on. Their business tentacles have been constricted since KPK came into existence – and carried out many of its signature "red-handed" ("caught in the act" or "flagrante delicto") operations. In short, the consolidation of the elite oligarchy has become more entrenched, especially when compared to its position during Jokowi's first term. As a result, they have a stronger bargaining position to push for new policies that are quite unpopular and contrary to the interests of the populace, yet still acceded to by the President.

Meanwhile, the neo-developmental perspective looks more at Jokowi's development paradigm, which focuses on boosting economic growth. Jokowi, according to this theory, was most obsessed with what Suharto had done during the New Order era, and wanted to emulate his policies and apply them in a context of the current democratic environment. Jokowi's economic

development paradigm requires a conducive investment climate and policies that make it easier for investors to enter, along with political stability to maintain market confidence. In this perspective, the KPK is a "disruptive factor", because its law enforcement operations often generated much "noise" in national politics, so it is feared that investors might feel uneasy and intimidated.

The above logic contradicts the commonly accepted paradigm, that a good investment climate always requires a clean government, committed to a dedicated anticorruption drive. According to several nationwide surveys conducted by SMRC and LSI in 2020, the general public is of the view that the government has not been able to reign in corruption properly. This is also in line with the views of expatriates or foreign experts, who underscore the problem of corruption as a crucial issue facing the business sector. Various World Bank studies have also affirmed the importance of corruption eradication, by creating a good, accountable and transparent business environment to

ensure healthy and fair competition and just treatment by the government in business matters.

Undisputable proof that can explain the failure of the government's paradigm in prioritizing a conducive business environment for investors over any firm anti-corruption stance can be seen in the stagnation of Indonesia's *Ease of Doing Business* (EoDB) score, periodically published and updated by the World Bank. Although various economic packages, including deregulation, acceleration of business permit processing, tax incentives and the development of strategic infrastructure to support industrial expansion have been pursued by the government, Indonesia's EoDB ranking has not budged, at least in the last three years.

It must be admitted that Jokowi's economic policy package in its various iterations had previously boosted Indonesia's EoDB ranking. The significant increase took place from 2015 to 2018, but then it slowed sharply, in 2019 and 2020. Many people, including economists, believe this is due to structural problems in the economic sector, chief among them neglect in diligent corruption eradication.

(FIGURE-1)

A cloud hanging over the new KPK

A more lenient corruption eradication policy on the outset of Jokowi's second term, as epitomized by KPK Law revision into Law No. 19/2019, has directly changed the image of KPK, and is seen as a blow to its independence. This has severely curtailed KPK's power in carrying out its corruption eradication mandate, and without its independence it can be said that KPK has now lost its "soul". It is no longer special, no different from any other law enforcement agency.

After the KPK Law revision, we now see controversial policies more clearly, something that has been warned about before. One of the direct implications of the new KPK Law is the authority to issue a Release and Discharge Letter (SP3). And alas, the first high-profile embezzlement case to be terminated using this letter was that involving Bank Indonesia Liquidity Support Funds (BLBI) suspects Sjamsul Nursalim and his wife Itjih, who were alleged to have incurred Rp4.58 trillion in state losses during the tenure of former KPK head Agus Rahardjo. Previously, KPK arrested former head of Indonesian Bank Restructuring Agency (IBRA) Syafrudin Arsyad



Tumenggung (known by his acronym "SAT") taking him to the Jakarta Corruption Court (Tipikor) because he was alleged to have been the culprit behind the issuance of an improper debt settlement letter (SKL) for Sjamsul Nursalim.

After going through several stages of legal proceedings – appeal and cassation – SAT was acquitted by the Supreme Court. Many believed this verdict to be “fishy” because prior to the verdict, one of the judges in charge of the case met with the defendant’s lawyer. The public examination conducted by ICW itself concluded that SAT’s acquittal was full of contradictions and structural weakness on the trial process, fueling further controversy.

One of the interesting arguments from the examiner team was that SAT was aware of a discrepancy in the debt guarantee data submitted by Sjamsul Nursalim, but Sjamsul was nevertheless still granted the SKL. The issuance of SKL, as long as it is done in accordance with proper procedures and conditions as stipulated by the law, can exempt an official from a lawsuit. But not when it is done deliberately with fraudulent intention by providing false data

with the knowledge of SAT at that time. Thus, SAT should not have been acquitted by the Supreme Court judges.

The leadership of KPK after revision of its law has also become increasingly erratic. In issuing its SP3 letter for Sjamsul Nursalim, there was a strong impression that the body’s leadership did not have a genuine intention to uncover the mega-scandal. Many accused it to simply use the acquittal of SAT as a pretext to expeditiously issue SP3 letter for Sjamsul Nursalim and his wife. The fact is, there is no emergency justification for the case to be handled as hurriedly as possible by the KPK leadership through SP3 issuance, considering that there are still other avenues that were worth trying first.

For example, apart from SAT, there are still several public officials who have been questioned by the KPK in connection with the Sjamsul Nursalim affair. They could serve as an entry point for the KPK to follow up the case, without having to rely on the Supreme Court’s verdict on SAT. If the justification for this case is the involvement of other public officials, it actually still has time to carry out further

investigation on those who have been questioned.

KPK could also investigate Sjamsul Nursalim and his wife to collect new evidence. Even though they have become Singaporean citizens and reside there, the Indonesian public did not get sufficient explanation from KPK for its investigative attempt. The KPK, in its press release, only justified its decision based on two arguments. First, the acquittal of SAT at the cassation level; and secondly, the SP3 authority it possesses under Law No. 19/2019.

Another effort that the KPK can make is to push for a civil lawsuit against Sjamsul Nursalim to force him to repay state losses. This can be based on two important facts. First, Sjamsul Nursalim was proven to have submitted false and misleading data on his personal debt guarantee, causing the state to suffer Rp4.58 trillion in losses. Second, the Supreme Court’s cassation verdict in acquitting SAT still mentioned that SAT had committed unlawful action but was not regarded as a violation of the Law on Corruption Crimes (UU Tipikor). Thus, the KPK should not have rushed in granting SP3 letter to Sjamsul Nursalim and his wife.

The gloomy future of corruption eradication

The worsening state of corruption eradication, including the spirit to eradicate corruption as indicated by the SP3 policy on the BLBI mega scandal, has sent a signal to the public that the revision of KPK Law was indeed a major setback for Indonesia to rid of corruption in the country. Even though KPK still makes arrest occasionally by detaining several active ministers, such as the former Social Affairs Minister Juliar Batubara in the Covid-19 social assistance case and former Fisheries and Marine Affairs Minister Edhy Prabowo in the lobster larvae export case, the public no longer see it as KPK’s indiscriminate law enforcement action.

On the other hand, there is an indication that the KPK is adopting a double standard, where they continue to try to arrest corruptors, but at the same time, seems powerless to take action against certain actors under the protection of ruling party. Take, for example, Harun Masiku, a fugitive PDIP politician whose whereabouts is yet a mystery to date.

If we look deeper, the “difficulties” faced by KPK in dragging several high-profile figures are

always related to corruption cases that implicated elites of ruling parties. On the other, if the cases handled don’t have political reverberation, KPK can act swiftly and decisively.

In short, seeing the new development that happened with KPK, it can be said that the spirit of corruption eradication within KPK has faded, even vanished. Perhaps the public can still see that KPK exists, with its magnificent building, and various kinds of corruption cases it continues to handle. However, if we are to pin our hope that KPK will act firmly with impartiality without being hampered by internal hurdles and political interference, it may as well be wishful thinking.

This crisis of public confidence seems to be growing, which basically started when KPK’s authority was stifled, its independence compromised, and currently, the KPK is facing its existential threat especially due to the change in the status of KPK employees, from KPK employees to the State Civil Apparatus (ASN). When all KPK employees have become ASN, the public will see a new bureaucratic culture emerging within KPK and lose confidence in the anticorruption super body.

Perhaps, this is a political scenario of ruling elites, to drive a wedge between KPK and the public. The unique characteristic of KPK, which other countries’ anticorruption agencies do not have, is why it received such strong public support. Therefore, the various threats, pressures and efforts to finish off KPK that have started since 2010 until before Jokowi took office had been successfully thwarted by the civil society force in Indonesia.

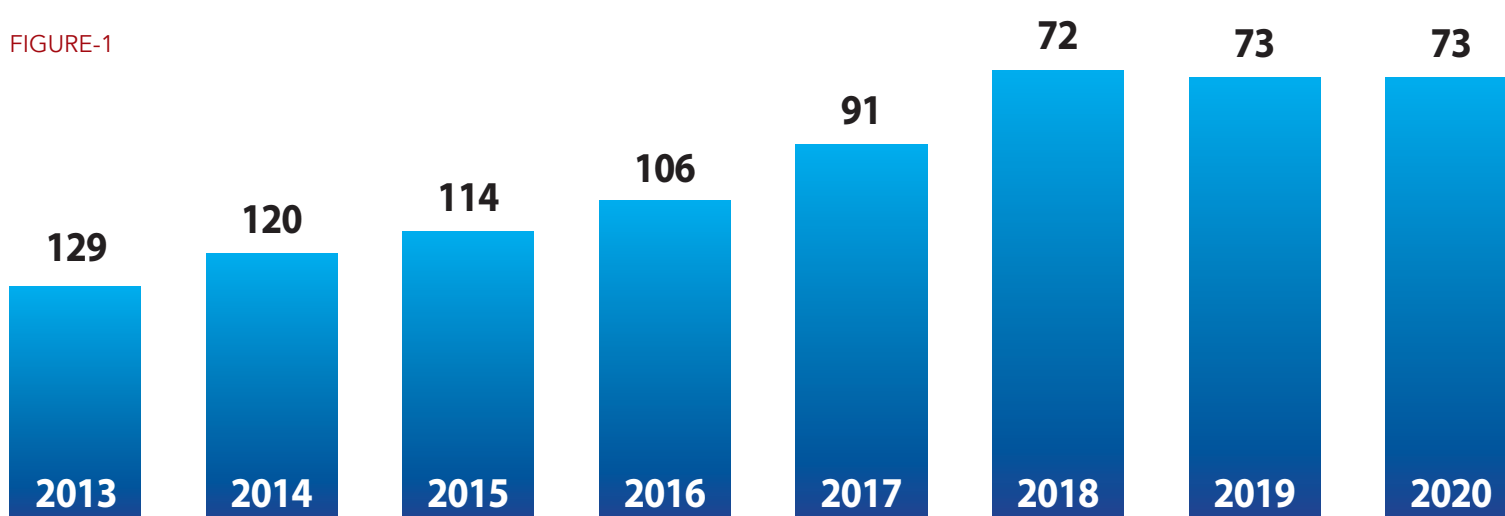
However, as this force was in disarray since the heated presidential election in 2014, public support for KPK has weakened, culminating in the success of Jokowi, with some level of pub-

lic support, in revising the KPK Law. Maybe in the past, the Indonesian public dreamed of a corruption-free Indonesia with the creation of KPK. However, with the change in the political headwinds and the congregation of economic and political forces under one common vested interest, the Indonesian people will instead witness, slowly but surely, the demise of KPK as a once all-powerful and victorious anticorruption body. **10**



Adnan Topan Husodo is an alumnus of the Faculty of Economic Education from the University of Muhammadiyah Dr. Hamka, Jakarta. He joined ICW in 2001 and started his work as a volunteer. His main interest is in investigating corruption cases, as he succeeded in disclosing and reporting several corruption cases to law enforcers, including the KPK while in ICW. In addition, various studies on corruption issues have been carried out, ranging from military business in Indonesia, corruption mapping in the procurement of goods and services, corruption issues and governance of housing policies for the people, and so on. During his time in ICW, Adnan was Head of the Investigation Division, Head of the Political Corruption Division, and Head of the Public Information Division, later he was trusted to be the Deputy Coordinator of ICW. In 2012, he continued his education at the University of Melbourne, Australia, taking a Master’s program majoring in Development Studies. Throughout his work at ICW, Adnan has written extensively on corruption issues in various mass media, has been a facilitator and speaker in various training, seminars, and discussions, both domestically and abroad. Currently, he is the ICW Coordinator as well as a permanent lecturer for the Anti-Corruption Education course at PKN STAN. He is also one of the founders of PT Visi Integritas, a startup company that dedicates its role to encouraging improvements in organizational governance, both in the public and private sectors.

FIGURE-1



SOURCE: [HTTPS://WWW.INVESTINDONESIA.GO.ID/EN/WHY-INVEST/EASE-OF-DOING-BUSINESS](https://www.investindonesia.go.id/en/why-invest/ease-of-doing-business)