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Combating Corruption in Yudhoyono's Indonesia: An Insider's Perspective

Professor Denny Indrayana

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Front Cover Image: 'Anti-corruption! Because corrupt money = hot money.' Credit: ACCH (Anti-Corruption Clearing House)

PROFESSOR DENNY INDRAYANA

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ABSTRACT

Combating corruption in Indonesia is not an easy task, even for a president. Professor Denny Indrayana shares his own experience of just how complicated it was. He analyses the Yudhoyono government's efforts to protect the Indonesian Corruption Eradication Commission from attack by its many enemies, including corruptors. He argues that Yudhoyono tried hard to beat corruption and had some successes but many basic problems persist. In particular, the corrupt political landscape continues to make the war against corruption extraordinarily difficult.

COMBATING CORRUPTION IN YUDHOYONO'S INDONESIA: AN INSIDER'S PERSPECTIVE

To be an effective president, one should have constitutional powers and strong political support, and be subject to sufficient control. To put it in mathematical terms, my argument is:

$$EP = CP + PS + C$$

EP = Effective Presidency

CP = Constitutional Powers

PS = Political Support

C = Control (checks and balances)

By 'constitutional powers', I mean the authority that a president has, as outlined in the constitution. The more he or she has, the more effective a president becomes, and vice versa. It is not difficult to conclude that the four constitutional amendments made between 1999 and 2002 mean the post-*Reformasi*¹ Indonesian presidents are constitutionally weaker than the first two presidents, Soekarno and Soeharto.

The 1945 Constitution used to be called as an 'executive-heavy constitution', meaning it gave more powers to the president than to the other branches of government. The amendments mean it has become a more limited executive constitution, with more checks and balances. One example of the impact of the amendments is the limitation of presidential terms, previously unrestricted, to a maximum of two terms, or 10 years. This amendment is crucial to prevent Indonesia from experiencing another 'President for Life', like Soekarno, or one ruling for more than 30 years, as Soeharto did during the New Order era (1966-1998).

By 'political support' I mean mainly support from political parties, especially those with members in the national legislature, that is, the Dewan Perwakilan Rakyat or DPR. With more limited powers, the post-*Reformasi* presidents have serious problems with political support. In fact, none of the presidents since *Reformasi* began have led a party that enjoys a majority in the DPR. The situation is completely different to that which prevailed during the presidency of Soeharto, when the president's party, Golkar, enjoyed an average 68.5 per cent majority in the DPR. None of the parties since

1 *Reformasi*, or reformation, refers to the movement for reform that led to the resignation of President Soeharto in 1998. In general use, the term is often used to refer to the period of democratic reform that followed Soeharto's downfall, from 1999 to about 2004, although this boundary is subject to debate.

Reformasi have been able to win more than 30 per cent of the national vote, with the only exception being the Indonesian Democratic Party – Struggle (PDI-P), which won 33.7 per cent in the 1999 election. In the last national election, in 2014, PDI-P still won a plurality but of just 19.26 per cent. To be effective, a president needs at least majority support from the DPR to be able to easily pass laws, make policies and appoint people to strategic positions.

This lack of reliable majority political party support has directly contributed to the difficulties all post-*Reformasi* presidents have faced in leading the country. The president has no option other than to try to establish a solid coalition of parties, which is not always an effective solution. It is, in fact, very challenging. Instead of having a coalition that is solid, the president usually ends up with a coalition that is *sulit* (difficult).

The third element is sufficient control. A president with more constitutional power and enough political support may still not be a good president if checks and balances are absent, that is, there is not a sufficient system of control. These checks and balances should be exercised not only by the opposition in the DPR but also the public and the media. In any case, checks and balances are key. A president who is not controlled could be very effective but, at the same time, destructive. A president who is subject to too much control will be ineffective: he or she will not be able deliver on policies and will find it difficult to fulfill campaign promises.

It is clear that after *Reformasi*, control of the president now comes from many directions. These include a much stronger and critical DPR, a far more active civil society, and, of course, the media. By contrast, Soeharto was subject to limited control at best, and sometimes almost none.

So, compared to Soekarno and Soeharto, post-*Reformasi* presidents face far more challenges to being effective rulers. With limited powers, minority political support and weak coalitions, and more checks and balances constraining him or her, the president must somehow lead a country like Indonesia, which faces many extremely complex problems. These include, of course, corruption, a root cause of so many other problems.

PRESIDENT YUDHOYONO AND POLITICAL SUPPORT

I now discuss the degree of political support President Yudhoyono had. I focus on this because it is more dynamic than the other two factors in my equation (constitutional powers and control). Political support is also one of the key factors in combating corruption in Indonesia. In fact, the political landscape is crucial in determining whether a president can successfully implement his or her political agenda.

Although the numbers were not so different, the effectiveness of political support for Yudhoyono differed between the first and second terms of his presidency. The coalition from 2004 to 2009 consisted of eight parties, equivalent to 73.3 per cent of the DPR. The coalition from 2009 to 2014, meanwhile, consisted of six parties, equivalent to 75.5 per cent of the members of the DPR. Under Yudhoyono's rule, the Democrat Party vote increased almost three times, from 7.45 per cent in 2004 to 20.85 per cent in 2009. According to these numbers – and especially the Democrat Party's basic political capital, which increased almost threefold – Yudhoyono's capacity to combat corruption should have been much stronger. Unfortunately, this proved not to be the case. In fact, I would argue that, in the end, the increase in the Democrat vote made no significant difference to the struggle against corruption.

After winning the 2009 election, President Yudhoyono was optimistic about his second term. He told me that the large increase in the Democrat Party vote provided him with a strong mandate to run the government more effectively, including in anti-corruption efforts. One area where he and I miscalculated was in our assumption that the increase in his political mandate would result in increased support from his own coalition. That did not happen. In fact, political attacks in his second term were sometimes more frequent and intense than in his first term. Strangely, these attacks mainly did not come from the opposition, that is, the PDI-P, led by Megawati Soekarnoputri. The most dangerous attacks came, in fact, from within the ruling coalition.

It is clear that coalition support during President Yudhyono's first term was more solid than in his second term. There were many reasons for this. One was Golkar's position. Originally, Golkar had no history of supporting an elected president in the post-*Reformasi* period. Instead, it nominated its own candidate, and lost the electoral battle. This changed after the 2004 election, however, when Golkar finally decided to join the government. In 2004, not long after his inauguration as vice president, Jusuf Kalla was elected chair of Golkar and re-positioned the party as a supporter of government. Kalla and Golkar's significant political experience contributed to the government's political stability and reduced attacks on Yudhoyono during his first term.

The situation was markedly different in Yudhoyono's second term. Golkar again nominated its own candidate, and again lost. It also again eventually joined the cabinet and became part of the government coalition. This time, however, Golkar's support was not as strong. Unlike the first term, when the chair of Golkar was also the vice president, the chair of Golkar in the second term, Aburizal Bakrie, had no position in

the government. He was not even a member of cabinet. The resulting half-hearted support of Golkar had a significant impact on the solidity of the coalition. Moreover, the Prosperous Justice Party (PKS) took the same position as Golkar, that is, it only partially supported the president, despite being formally a member of the coalition.

In fact, only few months after being inaugurated as members of cabinet and coalition, Golkar and PKS aggressively initiated a special committee to investigate the Bank Century case,² something Yudhoyono did not want to happen. I recently accompanied a former senior minister who visited Melbourne. He told me that, at the time, he had advised Yudhoyono to expel both Golkar and PKS from the coalition. I shared his view, but I also understood the dilemma Yudhoyono faced.

I know that Yudhoyono was, on several occasions, incensed and seemed likely to turf out both parties. But, after making careful political calculations, he decided to keep Golkar and PKS 'inside the tent', rather than let them join the opposition, led by PDI-P. That would have made the opposition stronger and more effective, and created a dangerous political situation for his administration. I know, for sure, that this was not an easy decision for Yudhoyono—but he had limited options.

Having Boediono as vice president in his second term gave Yudhoyono a big opportunity to strengthen the national anticorruption agenda. An academic, not a politician, Boediono was appointed as a technocrat. He therefore had no conflicts of interest – political or business – that would have made it difficult for him to strengthen governance and wage war against corruptors. Unfortunately, however, having no formal position in a political party turned out to be a disadvantage for a person with such a strategic position. In fact, the Bank Century case saw Vice President Boediono and the reformist and technocratic Minister of Finance, Sri Mulyani, become political targets, attacked by politicians from Golkar, PDI-P and PKS.

The first six months of the second term of the Yudhoyono presidency were very tough. The Bank Century case was always headline news and hearings were broadcast live by almost all television stations, many of which were owned by the president's opponents. It was only after Yudhoyono finally allowed Sri Mulyani to resign as minister and leave Indonesia for the United States to become managing director of the World Bank that the attacks slowed. This showed that the Bank Century case was really more a personal attack than anything in the national interest.

2 Bank Century was the 13th largest bank in Indonesia when it collapsed during the 2008 financial crisis. Fearing a repeat of the 1997 financial crisis (when Bank Indonesia's closure of 16 small banks caused a run on larger banks), Finance Minister Sri Mulyani Indrawati and then Bank Indonesia Governor Boediono initially approved bailout funds of Rp 632 billion (A\$ 63.1 million) although more than Rp 6.7 trillion (A\$ 670 million) was eventually poured into the ailing bank. Much of the bailout funds remain unaccounted for. Former Bank Indonesia Deputy Budi Mulya and Bank Century owner Robert Tantular, among others, are now serving prison sentences for their involvement in the case.

During these troubled six months Yudhoyono tried to do more to combat corruption. Several times he made public statements calling for a fight against anybody who tried to avoid tax. I could only guess the identity of the people and companies against whom these statements were directed, but I think the Indonesian public knew perfectly well to whom the president was referring. Despite this, once he lost the vote in the DPR to stop the Bank Century case, President Yudhoyono had no option other than to make political compromises.

I remember that on the night of that loss we were in the State House (*Wisma Negara*) near the palace, monitoring the voting process. Yudhoyono asked a rhetorical question, 'What if the government coalition only consisted of three parties'. I assumed he was referring to the Democrat Party, the National Mandate Party (PAN) and the National Awakening Party (PKB), all of which had fully supported his position on the Bank Century case in the DPR. He paused and then added, 'It is not good to make a decision when you are full of anger'. Two weeks later, in a small meeting of just a few participants at his house in Cikeas, Yudhoyono explained that he had decided to step back a bit, so as to decrease political tensions and focus more on the economic agenda. It was after that meeting that the so-called Joint Secretariat of Coalition was established and Aburizal Bakrie, the chair of Golkar, became its head.

The six months of Bank Century battles constituted clear evidence that the war against corruption could not be successful without a clean political landscape. Even a president with a strong mandate will always have to make careful calculations if he or she wants to pursue an anticorruption agenda.

Another lesson from Yudhoyono's two terms was that the strength of his political support was related in complex ways to stability of the government and the progress of anticorruption efforts. As indicated above, I would argue that the first term of his presidency was more stable. Political support for Yudhoyono and Kalla was more solid than for Yudhoyono and Boediono. 'Stable', however, does not necessarily mean less corrupt. Soeharto's New Order is a clear example of a more stable administration that was actually very corrupt. In fact, if you seriously want to combat corruption in a corrupt political landscape, the political situation will certainly *not* be stable. The problem of maintaining political stability and, at the same time, combating corruption is the primary challenge of any leader of a corrupt country. The Indonesian president is not immune to this.

Moreover, in Indonesia, political support is not necessarily positive, particularly because political parties are still part of the corruption problem—and not the solution. To make the situation worse, the parties are usually closely linked to corrupt business people who support them financially. This financial support means the parties lack independence and are easily contaminated by corrupt practices and vested interests. Regrettably, the numbers of tycoons (or, as we say in Indonesian, *konglomerat*), who support political parties are few. Indonesian parties are therefore easily influenced by the small group of powerful oligarchs who have access to their top leaders.

In fact, according to a recent World Bank report, Indonesia has the world's third worst concentration of wealth, with only 10 per cent owning 77 per cent of the country's wealth, and 1 per cent owning 50.3 per cent (World Bank, 2016). Further, according to *The Economist*, Indonesia ranks as seventh worst in the crony-capitalism index, with about two-thirds of the richest Indonesians running their business with the support of the authorities, or in collusion with them. This situation makes fighting corruption even more difficult. One way to solve the problem is by reforming the financial systems of political parties so they can be more independent and not so easily contaminated by the interventions of corrupt businessmen.

PRESIDENT YUDHOYONO AND THE ANTI-CORRUPTION AGENDA

I joined the palace in late 2008, only one year before Yudhoyono finished his first term as president but I learned a lot about how he dealt with the challenges of combating corruption during his early years in office. One of the first instructions issued by Yudhoyono had been on corruption eradication acceleration. I understand why some of the anti-corruption NGOs criticised this instruction as ineffective but it was at least a clear and strong gesture by a president who wanted to firmly place anti-corruption high on his list of priorities.

'Ineffective' was also the term used by his critics to describe Yudhoyono's initiative to set up a Coordinating Team to combat corruption. A prominent and well-regarded NGO, Indonesia Corruption Watch (ICW), was suspicious that the team would be a rival – and a threat – to the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, KPK). I also criticised the Coordinating Team, arguing the president should instead support and strengthen the KPK. I now think that what the president was trying to do was actually the right idea – we need a better coordination system among the police and public prosecution service, especially in handling corruption cases.

Another important initiative in relation to anti-corruption was when Yudhoyono sought to implement Law No 34 of 2004 on the Indonesian Armed Forces (Tentara Nasional Indonesia TNI), prohibiting the TNI from conducting business activities. The president set up a team to prepare the transfer of TNI businesses to more legitimate formats. This initiative was not widely covered by the media but it was actually a worthy and very significant initiative.

Yudhoyono's approach of setting up ad hoc committees that were based on presidential orders rather than seeking to have statutes passed in the DPR to grant the power necessary to carry out his anticorruption agenda showed how complex the problems are. Yudhoyono is a highly disciplined person who tries hard to work according to the Constitution, laws and regulations. In fact, one of his habits is to always carry a copy of the Constitution, signed with his name, in his pocket. Asking him to make a decision that would not accord with written laws is futile. He did, however, accept my advice to set up ad hoc committees to deal with corruption issues, even if their legal basis was not always strong, simply because it would be so difficult to get support for these initiatives

from the DPR.

Two of the committees were the Task Force for the Eradication of the Judicial Mafia and the Independent Team to Investigate Chandra Hamzah and Bibid Samad Riyanto, two commissioners of the KPK. These ad hoc committees were direct responses to conflict between the KPK and corrupt policemen. There were three big conflicts of this kind - in 2009, 2012 and, most recently, in 2015. I will now discuss how Yudhoyono handled the conflicts of 2009 and 2012. I will not discuss the third conflict in 2015, because it did not take place under his administration.³

PRESIDENT YUDHOYONO AND SUPPORT FOR THE KPK

Almost every time Yudhoyono needed to communicate with the KPK, he would ask me to contact its leaders. The president well knew that the KPK was an independent body, and not under the control of his executive branch, but he also knew that informal but respectful communication is important. One principle that Yudhoyono continually mentioned was that such communication should not be an intervention that would prevent the KPK from doing its job of eradicating corruption independently. Indeed, the president never sought to prevent the KPK from investigating corruption cases, not even the case against Aulia Pohan, the father-in-law of his eldest son (Vaswani, 2009). Yudhoyono also never used his presidential powers to try to stop cases against leaders of his own Democrat Party, despite the damage these investigations did to his party (Cochrane, 2013).

Interventions in legal cases are clearly prohibited according to Yudhoyono's principles. I did, however, manage to ask the president to rescue the KPK from being attacked by corruptors. In late 2009, almost at the same time as the Bank Century case was initiated by the DPR, two KPK commissioners, Chandra Hamzah and Samad Riyanto, were named as suspects by the police. This case quickly turned into an open conflict between the KPK and corrupt police. Civil society launched a public campaign under the tag 'gecko versus crocodile' (*cicak vs buaya*), to show their support for the KPK, which was likened to a gecko facing off against a corrupt police crocodile. Ironically, the gecko and crocodile image was first suggested by Susno Duadji (a three-star police general who was eventually convicted of corruption) in an interview with *Tempo* magazine, in an effort to show that the KPK had no chance against the police.

I believed that the cases against the KPK commissioners were fabricated. Based on this, and with input from anti-corruption activist colleagues, I suggested Yudhoyono set up an independent team to investigate the cases against them. It was not easy to convince Yudhoyono but, surprisingly, one night he called me and asked me to draft a

3 I will also avoid it because it will inevitably involve my own subjective views. I was named a corruption suspect by the police mainly because I strongly and publicly supported the KPK in this third battle with the corrupt police.

presidential decree to establish the team. He even allowed me to propose members of the independent team.

Finally the independent team was established and named the Eight Team, because it consisted of eight people, led by the late Adnan Buyung Nasution (also previously a professor in the Melbourne Law School). I was the secretary of the team. After interviewing many people, the Eight Team concluded within two weeks that there was no evidence against Chandra and Bibit. The president then made a public statement that the case against the two commissioners should be settled 'out of the court', meaning they should not be subject to formal prosecution.

To follow up one of the recommendations of the Eight Team, Yudhoyono formed the Task Force for the Eradication of the Judicial Mafia. Judicial corruption was clear from our investigation of Chandra and Bibit's case. I therefore recommended the president establish an ad hoc task force under his direction to combat the 'judicial mafia' (*Mafia Peradilan*). I was not confident the president would accept my suggestion but one day he invited me to a meeting in Cikeas, where he told me that he wanted to make the battle against the judicial mafia his number one priority for the 100 Days Program with which he wished to start his second term. Then, at another meeting at the State House, he instructed me to draft the presidential decree to set up the task force. It existed for two years, from 2009 to 2011, and was led by a highly effective figure, Kuntoro Mangkusubroto. I was again the secretary of this ad hoc team.

Unfortunately, the authority of the team was limited, because to have power as a law enforcer, the team needed a statute as a legal basis, not just a presidential decree. The Task Force nonetheless managed to increase public awareness of the need to fight against the judicial mafia. One of the Task Force's cases widely covered by the media from this time was that of Gayus Tambunan. I found this corrupt tax official in Singapore, where he was a fugitive, and persuaded him to come back to Jakarta to face trial. The case turned out to be a very high profile one because it implicated national figures who were politically and commercially powerful. After returning from Singapore, I directly requested to meet the president in Cikeas and reported classified information that I learned from Gayus about the identity of companies with whom he worked to illegally reduce their tax bills.

I knew that the owner of one of the companies that had bribed Gayus was furious that the case had blown up in this way. On one occasion, he spoke directly to me and made his annoyance very clear. I believe this strong political and business figure managed to influence the decision-making process such that the Task Force for the Eradication of the Judicial Mafia was not extended beyond its original two years, as we had originally planned.

In 2012, when I was the deputy minister of law and human rights, another conflict took place between the KPK and corrupt policemen. This time it was in relation to a corruption case investigated by KPK against Djoko Susilo, a two-star general. None of

the commissioners of KPK were targeted but Novel Baswedan, a senior KPK investigator who had helped lead Djoko's case, was named a suspect in a torture case by the police. The case against Novel was widely seen as another attempt to 'criminalise' the KPK. Accordingly, it became the second 'gecko versus crocodile' conflict.

Although I was no longer his special legal advisor, Yudhoyono called me and asked my advice on the second conflict. He specifically asked me who had the jurisdiction to handle Djoko's case, because the police were arguing that they had the authority over the case, not the KPK. I explained to Yudhoyono that KPK clearly had jurisdiction over the police, according to the 2002 Law on the KPK itself. After carefully reading the law, Yudhoyono agreed with me and made a public speech, in which he stated that the KPK should continue to handle the case against Djoko. Yudhoyono also said that he had instructed the police to halt the case against Novel.

PRESIDENT YUDHOYONO AND PUBLIC PERCEPTIONS

The two 'gecko versus crocodile' conflicts clearly showed Yudhoyono's support for the KPK. I should mention, however, that his support might also have been influenced by public pressure. The two conflicts were widely covered by the media – print and electronic. This meant that they were monitored by Yudhoyono as important issues to which he needed to pay more attention.

In fact, Yudhoyono always monitored the media (including social media) and did so particularly in relation to the anti-corruption agenda. His decision would, therefore, be influenced not only by political considerations but also public perceptions.

In terms of public perception, the two 'gecko versus crocodile' conflicts were clear examples of how a strong public campaign could influence Yudhoyono's decision making. I know that, in making decisions, he tried to listen to as many people as possible. I understand that for the first 'gecko versus crocodile' conflict in 2009, Yudhoyono ordered an independent polling company to conduct a survey on popular opinions about the case against the two commissioners of KPK. The survey result was definitely a key source of information used by Yudhoyono to make his decision in favour of KPK.

It is important to understand that not all of Yudhoyono's decisions were so heavily influenced by public pressure. In relation to the death penalty, for example, although there was strong public support for the execution of drug dealers, Yudhoyono took great care in making decisions on clemency. In fact, at one meeting I attended, he clearly mentioned that he was not in favour of the death penalty. Yudhoyono could not publicly state this position, however, because the death penalty had been held to be constitutional by the Constitutional Court.⁴ Instead, despite strong support from the

4 Constitutional Court Decision No 2-3/PUU-V/2007, reviewing Law No 22 of 1997 on

public for executions, Yudhoyono simply postponed many of them.

CONCLUSION

My six years as Yudhoyono's special advisor and deputy minister was truly an invaluable experience. I was able to see firsthand how regulations are developed and applied in real politics, especially in relation to anti-corruption cases. My conclusion is not unique - the Indonesian experience is similar to that of other countries that face serious problems with corruption. No president has a magic spell that can easily make the corruption disappear. No president can effectively and fairly run the country without strong constitutional power, strong political support and the presence of effective checks and balances.

In Indonesia, all post-*Reformasi* presidents – including Yudhoyono – have faced major challenges in delivering anti-corruption reforms: constitutional reforms have limited presidential powers; political support of more than 50 per cent of the parliament cannot easily be won or be maintained; and the sources of control – that is, checks and balances – are very strong and come from many directions. Yudhoyono's anti-corruption agenda had some achievements but also plenty of failures. One of the reasons for this is that the political elites never fully supported the war against corruption, often because they were, themselves, involved directly or indirectly in corrupt activities. Many party leaders were even investigated and imprisoned by KPK, including the previous chair and treasurer of Democrat Party, the party of Yudhoyono himself.

Yudhoyono therefore tried very hard to balance a lack of political support against the necessity of combating corruption. This is why his fight against corruption achieved some success, but left many challenges unresolved. The chief dilemma of any president in the current political environment in Indonesia, including Yudhoyono, is how to combat corruption effectively and, at the same time, keep strong and stable political support in order to deliver significant economic growth for the people. Regrettably, to combat corruption is probably to point the gun at the very politicians or businessmen who politically or financially support the president himself – and sometimes the gun backfires!

Narcotics.

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