

**FIGHTING CORRUPTION IN DECENTRALIZED  
INDONESIA**

**Case Studies on Handling Local Government Corruption  
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## GLOSSARY

AGO	: Attorney General's office
APBD	: Regional Budget ( <i>Anggaran Pendapatan dan Belanja Daerah</i> )
Bappenas	: National Development Planning Agency, ( <i>Badan Perencanaan Pembangunan Nasional</i> )
<i>Bawasda</i>	: Regional Internal Audit Body ( <i>Badan Pengawas Daerah</i> )
DAU	: General Budget Allocation ( <i>Dana Alokasi Umum</i> )
DPC	: Board of Directors at the branch level ( <i>Dewan Pengurus Cabang</i> )
DPR	: National House of Representatives ( <i>Dewan Perwakilan Rakyat</i> )
DPRD	: Legislative Council at the provincial or regional level, ( <i>Dewan Perwakilan Rakyat Daerah</i> )
DR	: Reforestation Fund ( <i>Dana Reboisasi</i> )
FKMD	: Donggala Community Communication Forum, ( <i>Forum Komunikasi Masyarakat Donggala</i> )
GeRAK Indonesia	: Indonesian Anti-Corruption Movement, ( <i>Gerakan Anti Korupsi Indonesia</i> )
ICW	: Indonesia Corruption Watch
JPU	: Public Prosecutor <i>Jaksa Penuntut Umum</i>
Kejari	: State Prosecutor <i>Kejaksaan Negeri</i>
Kejati	: Chief Public Prosecutor <i>Kejaksaan Tinggi</i>
KPK	: Corruption Eradication Commission, ( <i>Komisi Pemberantasan Korupsi</i> )
LBH	: <i>Lembaga Bantuan Hukum</i> (Legal Aid Institution)
LP3ES	: Institute for Research, Education, and Information on Social and Economic Affairs ( <i>Lembaga Penelitian, Pendidikan, dan Penerangan Ekonomi Sosial</i> )
MA	: Supreme Court ( <i>Mahkamah Agung</i> )
MTI	: Indonesian Society for Transparency ( <i>Masyarakat Transparansi Indonesia</i> )
NGO	: Non-Governmental Organization,
NU	: Nahdlatul Ulama a 30-million strong Muslim organization
PAD	: Regionally Generated Revenue ( <i>Pendapatan Asli Daerah</i> )
Panggar	: Budget Committee ( <i>Panitia Anggaran</i> )
Panja	: Working Committee ( <i>Panitia Kerja</i> )
Pemda	: Regional Government ( <i>Pemerintah Daerah</i> )
Pemkab	: District Government ( <i>Pemerintah Kabupaten</i> )
Perda	: Regional government regulation or by-law ( <i>Peraturan Daerah</i> )
Permendagri	: Ministry of Home Affairs Regulation ( <i>Peraturan Menteri Dalam Negeri</i> )
PN	: District Court ( <i>Pengadilan Negeri</i> )
PP	: Government Regulation ( <i>Peraturan Pemerintah</i> )
PSDH	: Forest Resource Rent Provision ( <i>Provisi Sumber Daya Hutan</i> )
PT	: Provincial High Court ( <i>Pengadilan Tinggi</i> )
RAN PK	: National Anti- Corruption Action Plan ( <i>Rencana Aksi Nasional Pemberantasan Korupsi</i> )
RAPBD	: Draft Regional Administrative Budget

	<i>(Rancangan Anggaran Pendapatan dan Belanja Daerah)</i>
SE	: Circular Letters ( <i>Surat Edaran</i> )
Sekda	: Regional Secretary ( <i>Sekretaris Daerah</i> )
TI	: Transparency International
UU	: National Laws ( <i>Undang-Undang</i> )
UUDP	: Money to be accounted for ( <i>Uang untuk Dipertanggungjawabkan</i> )

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## EXECUTIVE SUMMARY

**Decentralization and corruption in Indonesia.** A year after regional autonomy entered into force in 2001, a wave of corruption cases swept across Indonesia's newly empowered regional parliaments. Commencing with the most storied case in West Sumatra in 2002, other regions followed soon thereafter – South East Sulawesi, West Kalimantan, Lampung. Ultimately virtually all regions saw allegations of corruption emerge. And more recently still, the trend has spread from regional legislatures into the executive. In 2006, there were 265 corruption cases involving local legislative bodies with almost 1,000 suspects handled by prosecutorial offices across Indonesia. In the same year, the same offices had 46 corruption cases implicating 61 provincial Governors or District Heads.

**Local Government Corruption Study.** The disclosure of corruption cases on this scale is an unprecedented phenomenon in Indonesia. That corruption itself occurred was neither unusual nor unexpected. What has distinguished the landscape over the last five years is precisely that these cases came to light at all. Furthermore, many have gone to trial through the local courts. Some powerful figures have been convicted. It is important, therefore, for Indonesia to take the opportunity to learn some lessons from this phenomenon: what factors led to the cloak of secrecy over corruption at the local level being lifted? Who played an important role in bring the cases to light, and what strategies did they employ? What factors supported them in promoting anti-corruption? Those questions frame this Local Government Corruption study, which was launched with three major research objectives: i) to document the dynamics at the local level to both report and resolve corruption cases; ii) to identify the *modus operandi* of corruption, as well as the strategies developed by local actors to settle corruption cases, and iii) to identify success factors and ongoing weaknesses in the efforts of local actors to handle corruption cases at the local level.

**Qualitative research was conducted of ten corruption cases in 5 provinces in Indonesia:** West Sumatra, West Kalimantan, East Java, Central Sulawesi and West Nusa Tenggara. From the ten cases, 4 involve legislative councils at the district level; 4 concern government officials from the Executive at district level; and finally 1 case in each of the provincial level executive and legislative institutions. Perpetrators ranged from parliament members up to Provincial Governors. The amounts involved were large by local standards, from hundreds of thousands of dollars up to 73 billion Rupiah (approximately US\$8 million) in the Blitar case. All went to the formal legal system, with several still on appeal before the Supreme Court.

Field research was conducted from May to November 2006 through key informant interviews with more than 200 respondents and thirteen Focus Group Discussions involving approximately 150 participants comprising community members, law enforcers, corruption suspects and their legal advisors, local anti-corruption actors and media representatives. Findings were disseminated through a series of regional seminars in each research location through May and June 2007.

**Opportunity and *modus operandi* of local government corruption.** Decentralization has brought about shifts in power relations not only between the centre and the regions, but also between the branches of government at regional level. Some of these changes have given rise

to rampant ‘money politics’ – by District Heads seeking to gain and maintain support from the legislature; and legislators exploiting their newly acquired power over local budgets to secure financing for their political parties. But, most commonly, all sides have taken the chance to embezzle funds for self-enrichment. Opportunities for corruption have been opened up further by the enactment of inconsistent regulations governing local budgets by the national and regional parliaments, regular ‘cooperation’ between the legislative and executive bodies as well as low levels of public participation and control in local governance.

***Modus operandi* of corruption – the more things change, the more they stay the same.** Legislative corruption cases take three main forms: i) mark-up of budget lines; ii) channeling government budget to fictitious institutions; and iii) manipulating official trips for personal gain. In the executive, the main *modus operandi* is as follows: iv) utilizing unspent budget inconsistently with procedures; v) breaching regulations governing the submission and channeling of local budget; and vi) manipulation of procurement processes. On balance, the more things change, the more they stay the same – there has been nothing really new in the *modus operandi* of local government corruption.

### **Strategies and successes at the local level**

**NGOs as a pool of resistance.** The corruption cases studied were without exception reported not by oversight, audit or justice sector institutions, but community groups. Parties who discovered and reported the cases included ordinary villagers, NGOs and NGO coalitions and, prominently, the aggrieved and disaffected: companies that missed out on lucrative contracts, politicians overlooked for pre-selection and competition from rivals seeking political advantage. Regardless of where the initial reports originated, NGOs or NGO coalitions were the driving force for public disclosure and resolution of the cases studied. In the Pontianak case, for instance, a contractor who found indications of corruption in the local parliament preferred to report to a local NGO rather than the police or district prosecutors.

**Characteristics of success of local anti-corruption actors.** Local actors that were successfully able to identify, report and see cases through to resolution tended to be characterized by the following success factors: i) understanding of the law: they had studied and mastered national and local regulations related to budget management and corruption; ii) access to documentation: freedom of access to regional budgets, documentation related to procurement and government accountability reports was crucial; iii) informing the public: engaging the media to inform the public and generate community action was also important; and iv) engaging a broad-cross section of different elements of civil society in the case.

**Action and strategies of local anti-corruption actors.** Local anti-corruption actors consistently reported that they were inspired by examples from other provinces. Success in West Sumatra led NGOs in West Nusa Tenggara to take action in their own region. But the strategies employed remain largely undefined and undocumented and dissemination of these processes limited. What happened internally among local level actors was essentially a ‘learning by doing’ process. Actions taken were predominantly reactive – spontaneous reactions to the trajectory of legal proceedings through the police, prosecutors and courts. That said, the research was able to identify some consistent core elements of the strategies employed: i) utilizing a prominent case to build anti-corruption constituencies at the village

or community level; ii) establishing a ‘temporary coalition’ of various civil society elements around each case; iii) raising community awareness and demand for the formal legal process to be just and open; and iv) cooperating with reformers in the justice sector. Among the different strategies employed, engaging the mass media was a key success factor in pushing the legal system to function.

**What constitutes “success”?** Of the ten cases studied for this report, two resulted in acquittals, two indictments were rejected and six resulted in criminal convictions in the first instance courts. Where a criminal conviction was secured, sentences were often lightweight and usually less than demanded by the prosecutors. In only two of these (Blitar and Madiun) have the sentences been executed. While this highlights the need for greater and more intensive efforts to ensure execution of judicial verdicts, it does not signify that local anti-corruption movements have failed.

In the not too distant past, these cases would never have come to light at all. This process has begun to undermine the deeply entrenched culture of impunity which has long characterized governance in Indonesia. And although their capacity to review local budget documents and investigate corruption remains limited, complaints filed by anticorruption actors were in all instances the driving force behind the cases coming to public attention. They take new skills and experiences with them for the future. Hence, the success of local-level actors should better be seen from a longer-term perspective. So long as the anti-corruption movements are further developed and strengthened, these pioneering cases of the early regional autonomy era could have significant longer-term impacts to strengthen good governance at the regional level.

## **The Formal Legal Process**

### **Legal proceedings, the only option for settlement, begin to provide hope for change.**

Formal legal proceedings are the only option for the resolution of corruption cases. Despite the weaknesses noted above and the dire reputation of the Indonesian justice sector, these ten case studies demonstrate the emergence of several indications that law enforcement at the local level is improving. *First*, there were clear signs that the formal justice sector is responsive to strongly articulated public demand and scrutiny. There is likewise more willingness among reformers in the legal institutions to build partnerships with local civil society coalitions. *Second*, although not evident in all cases, in many cases the research revealed a direct correlation between the strength of public oversight and the pace and transparency of formal justice.

**One step forward, two steps back.** Despite the promising signs of progress, significant challenges remain to improve the performance of the formal justice sector: a lack of infrastructure, discrimination in legal proceedings and a propensity for bribery and political interference. In this study there were strong indications of bribery in at least two of the cases (Pontianak and Central Lombok). Furthermore, local anti-corruption coalitions were only able to exert effective oversight while the cases were being investigated or heard at district level. Once the corruptors appealed their convictions to the provincial High Court or the Supreme Court in Jakarta (which happened in all 6 cases that went through the district courts), district level actors were reliant on their networks at higher levels to maintain

oversight and social control. As public scrutiny weakened, the impact was clear – in some cases lighter sentences and/or non-existent execution of verdicts.

**Lengthy process tests staying power.** The duration of the legal proceedings also tested and at times defeated the tenacity and staying power of local anti-corruption coalitions. The table below summarizes the length of time, plus highs and lows, required for investigation and indictment by the District Prosecutors and for hearing in the District Courts.

Phase	Average Time	Fastest	Slowest
Investigation & Indictment by Prosecutors	12 months	3 ½ months (Donggala case)	28 months (Central Lombok case)
Trial at District Court	7 ½ months	1 month (Kapuas Hulu case)	12 months (West Sumatera case)

Appeals to the High Court varied between 21 days and 7 months to process. Requests for cassation to the Supreme Court have taken between 3 months and over two years to resolve, with some cases still in process. At the extreme, the District Prosecutors commenced investigation in the Central Lombok case in November 2002. Nearly five years later, the case remains before the Supreme Court on appeal. While social pressure was able in some cases to push the justice sector to move quickly, maintaining the necessary public scrutiny for a period of several years is a major challenge for anticorruption movements. Armed with this knowledge, corruptors know they can hang in for the long haul and outlast public attention as their cases wind their way through the lengthy appeals process. In conclusion, local level anti-corruption actors can at times push the *initial* legal process to be more responsive and fast, but they cannot yet guarantee a just outcome.

### Recommendations

The report recommends a number of practical actions to both prevent corruption and address high profile cases once they emerge. Investigation and resolution of these cases can begin to break down impunity and mobilize public action for social accountability, ultimately leading to improved local governance.

The recommendations build on the success factors identified in the study and relate to (i) improving legal frameworks to institute public participation in local governance; (ii) improving state-civil society relations to address corruption; and (iii) continuing efforts to strengthen civil society oversight of the legal process.

### Decentralization needs to be accompanied with guarantees for community control.

District governments need to pass regional regulations to guarantee the existence of community participation to eradicate corruption, as stipulated by Government Regulation Number 71/2000 on the “Procedures for Implementation of Community Participation and Rewards for Prevention and Eradication of Corruption Crimes.”



**Development of a local level anti corruption platform.** The most fundamental finding of this research is that success in handling corruption cases is determined by cooperation between local government, law enforcers and local anti-corruption actors. Therefore, it is important that each region has a shared vision and strategy in preventing and handling corruption cases. Lessons learned from the experience of anti-corruption actors in these ten cases can be used as a foundation for the formulation of a joint government-civil society-community anti-corruption platform in reform-minded regions.

**Strengthening of local level anti-corruption initiatives.** Various community groups and organizations in this research have been successful in starting the measures to address corruption. More needs to be done to document and disseminate the successful strategies. Efforts need to be intensified where weaknesses exist, such as with respect to execution of judicial verdicts. Specifically, additional support needs to be provided to local civil society groups to build on and enhance anti-corruption initiatives: i) support to improve knowledge on local budget procedures, the legal process and skills in corruption investigation and advocacy; ii) support to strengthen networks between anti-corruption organizations at the local level with their better resourced national level counterparts; and iii) greater concentration from provincial and national level to continue monitoring and scrutiny of legal proceedings once they move up the judicial hierarchy on appeal.

**Local level legal and judicial reform.** Fairer and more effective law enforcement requires several changes in the law enforcement institutions at local level: i) strengthening cooperation between law enforcement institutions and anti-corruption organizations at the local level by engaging law enforcers in legal and anti-corruption education activities for the public; ii) establishing and enforcing benchmarks for the duration of each phase of legal proceedings in order to speed up resolution and prevent bribery aimed at stretching out the legal process; iii) a circular letter from the Attorney General's Office that requires District Prosecutors' Offices to hold case presentations for anti-corruption organizations and facilitate community organizations to conduct public examination of court verdicts.

Together these recommendations can complement ongoing anti-corruption initiatives geared more towards prevention of embezzlement and abuse of power. Building on success, addressing these cases can help reduce endemic corruption, institutionalize social accountability and stabilize local democracy so that the process of regional autonomy can deliver on its promise of better public services and good governance for the people of Indonesia.

## RINGKASAN EKSEKUTIF

**Desentralisasi dan korupsi di Indonesia.** Sejak tahun 2002 lalu telah terjadi gelombang pengungkapan kasus dugaan korupsi DPRD di berbagai daerah berawal dari maraknya pemberitaan tentang korupsi DPRD propinsi Sumatera Barat dan menjalar ke berbagai wilayah lain seperti Sulawesi Tenggara, Kalimantan Barat, Lampung dan kemudian hampir merata di berbagai wilayah Indonesia lainnya. Belakangan kecenderungan korupsi oleh pihak eksekutif di daerah semakin meningkat dengan tajam.

**Penelitian Korupsi Pemerintahan di tingkat Lokal.** Fenomena pengungkapan dugaan korupsi dalam jumlah dan cakupan wilayah sebesar ini belum pernah terjadi di Indonesia sebelumnya. Adalah penting bagi Indonesia untuk mengambil kesempatan guna mendapatkan beberapa pembelajaran dari fakta maraknya pengungkapan kasus dugaan korupsi di tingkat lokal: faktor apa yang mendorong pengungkapan korupsi di tingkat lokal? Siapa yang berperan penting dalam melakukan pengungkapan korupsi dan apa saja upaya yang sudah mereka lakukan? Faktor apa yang mendukung aktor tersebut dalam mendorong upaya penyelesaian kasus korupsi? Berbagai pertanyaan tersebut dirumuskan dalam 3 tujuan penelitian yaitu: i) untuk mendokumentasikan dinamika para pelaku di tingkat lokal dalam mendorong penyelesaian kasus dugaan korupsi; ii) untuk mengidentifikasi modus operandi korupsi serta aksi dan strategi aktor pendorong penyelesaian kasus korupsi dan iii) untuk mengidentifikasi peluang keberhasilan dan kegagalan penanganan kasus korupsi di tingkat lokal.

**Penelitian kualitatif dilakukan terhadap 10 kasus dugaan korupsi yang terjadi di 5 propinsi di Indonesia;** Sumatera Barat, Kalimantan Barat, Jawa Timur, Sulawesi Tengah dan Nusa Tenggara Barat. Dari total 10 studi kasus terdapat 4 kasus dugaan korupsi lembaga Legislatif di tingkat Kabupaten; 4 kasus dugaan korupsi lembaga eksekutif di tingkat Kabupaten; dan 2 kasus dugaan korupsi lembaga legislatif di tingkat propinsi. Studi kasus dilakukan pada bulan Mei sampai November 2006 dengan melakukan *in-depth interview* kepada lebih dari 200 responden dan 13 *Focus Group Discussion* yang melibatkan kurang lebih 150 peserta meliputi: warga masyarakat, aparat penegak hukum, tersangka korupsi dan pengacaranya, aktor pendorong dan media massa.

**Peluang dan modus operandi korupsi pemerintahan di tingkat lokal.** Desentralisasi membawa implikasi pada terjadinya pergeseran relasi kekuasaan pusat – daerah dan antar lembaga di daerah. Berbagai perubahan membuka peluang maraknya *'money politics'* oleh kepala daerah untuk memperoleh dan mempertahankan dukungan dari legislatif, pemanfaatan berbagai sumber pembiayaan oleh anggota legislatif sebagai setoran bagi partai politik serta – yang paling umum, adalah keinginan untuk memperkaya diri sendiri. Peluang korupsi semakin terbuka dengan adanya perbedaan/inkonsistensi peraturan yang dikeluarkan oleh pemerintah pusat dan daerah, 'kerjasama' antara legislatif dan eksekutif serta minimnya porsi partisipasi dan pengawasan publik. Sebenarnya, tidak ada yang terlalu baru dalam modus operandi korupsi pemerintahan daerah.

**Modus operandi korupsi.** Kasus korupsi Legislatif dalam studi kasus ini ditandai dengan modus antara lain: i) memperbanyak dan memperbesar mata anggaran; ii) menyalurkan dana

APBD bagi lembaga/yayasan fiktif; dan iii) manipulasi perjalanan dinas. Sementara di lembaga eksekutif terjadi modus korupsi sebagai berikut: i) penggunaan sisa dana (UUDP) tanpa prosedur; ii) penyimpangan prosedur pengajuan dan pencairan dana kas daerah; iii) sisa APBD dan iv) manipulasi dalam proses pengadaan.

### **Pola pengungkapan kasus korupsi di tingkat lokal.**

**NGO sebagai wadah perlawanan.** Temuan adanya indikasi korupsi berasal dari masyarakat dan bukan dari badan pengawas atau instansi penegak hukum. Temuan tersebut dilaporkan oleh masyarakat desa, hasil kajian aktor pendorong (NGO/koalisi NGO), dan kelompok 'barisan sakit hati'. Darimanapun laporan indikasi korupsi berasal, NGO atau koalisi NGO selalu dipakai sebagai ujung tombak dalam pengungkapan dan mendorong penyelesaian kasus dugaan korupsi.

**Karakteristik keberhasilan aktor pendorong.** Aktor pendorong adalah orang dan atau organisasi masyarakat (NGO, koalisi NGO) yang baik sendiri-sendiri atau bersama-sama melakukan upaya pengungkapan kasus, pelaporan dan pemantauan terhadap proses penyelesaian kasus. Karakteristik keberhasilan aktor pendorong dalam mengungkap kasus: i) pengetahuan dasar mengenai peraturan/isu korupsi; ii) tersedianya akses terhadap dokumen anggaran/pengadaan/laporan pertanggungjawaban; iii) media massa terlibat dalam koalisi aktor pendorong; iv) pelibatan berbagai elemen kelompok masyarakat sipil.

**Aksi dan strategi aktor pendorong.** Yang terjadi di tubuh aktor pendorong di tingkat lokal pada dasarnya adalah proses *'learning by doing'* dimana pengalaman dan contoh dari kasus lain dalam menangani kasus korupsi sangat terbatas. Aksi yang dilakukan lebih banyak merupakan reaksi spontan atas jalannya proses hukum terhadap suatu kasus dan terbatas pada tahap ketika proses hukum masih berlangsung di tingkat lokal. Strategi aktor pendorong yang dapat diidentifikasi dari studi kasus antara lain i) membangun konstituensi atau basis-basis anti korupsi di tingkat desa atau komunitas; ii) membentuk koalisi sementara dengan menggabungkan berbagai elemen dan organisasi masyarakat; iii) membangun kesadaran dan kepedulian masyarakat untuk mendesak tuntutan adanya proses hukum yang adil dan terbuka; serta iv) membangun kerjasama dengan aparat penegak hukum yang reformis. Dari berbagai strategi tersebut, pelibatan media massa merupakan kunci keberhasilan aktor pendorong untuk melakukan tekanan selama proses hukum berlangsung.

**Bagaimana mengukur keberhasilan aktor pendorong?** Aktor pendorong dipercaya oleh masyarakat untuk mengungkap dan mendorong penyelesaian kasus melalui proses hukum. Meski kapasitas dalam melakukan kajian anggaran dan investigasi kasus masih terbatas, namun laporan aktor pendorong selalu menjadi kunci dimulainya proses hukum. Tidak banyak kasus yang ditangani oleh aktor pendorong berhasil diselesaikan melalui proses hukum. Kalaupun ada sedikit yang akhirnya selesai ditandai dengan sanksi yang lemah atau eksekusi yang tidak kunjung terlaksana. Namun hal itu tidak berarti bahwa aktor pendorong telah gagal. Keberhasilan aktor pendorong sebaiknya dilihat dari perspektif jangka panjang dimana berbagai aksi dan strategi dalam penyelesaian kasus berdampak signifikan bagi penguatan inisiatif tata pemerintahan yang baik (*good governance*) di tingkat lokal.

## Penegakan Hukum

### **Proses hukum, satu-satunya pilihan penyelesaian, mulai menjanjikan perubahan.**

Proses hukum adalah satu-satunya pilihan bagi aktor pendorong dalam menyelesaikan kasus dugaan korupsi. Studi kasus ini memperlihatkan munculnya beberapa indikasi yang membawa harapan terjadinya perbaikan upaya penegakan hukum di tingkat lokal seperti: *Pertama*, terlihat adanya kecenderungan instansi penegak hukum untuk lebih responsif dan adanya kesediaan aparat penegak hukum untuk membangun kerjasama yang lebih kuat dengan aktor pendorong. *Kedua*, meski tidak terjadi pada semua kasus, namun secara umum dimana terdapat sekelompok aktor pendorong yang kuat maka akan ditemui proses hukum yang cenderung berjalan dengan lebih transparan dan relatif lebih cepat.

**Kelemahan utama penegakan hukum.** Di sisi lain, instansi penegak hukum di tingkat lokal masih sulit menghilangkan beberapa kelemahan menahun: kekurangan sarana dan prasarana, diskriminasi dalam proses hukum dan rentan terhadap suap serta tekanan politik. Lebih jauh, kemampuan aktor pendorong untuk melancarkan tekanan terhadap proses hukum hanya bisa terjadi selama proses berlangsung di tingkat lokal. Selepas tahap di Kejaksaan dan Pengadilan Negeri, aktor pendorong hanya bisa berharap pada jaringan kerja yang mereka miliki di tingkat propinsi atau pusat. Situasi ini berdampak pada keluaran proses hukum yang dinilai belum adil: sanksi yang lemah dan eksekusi yang sangat sulit untuk dijalankan. Dengan kata lain, aktor pendorong berhasil membuat proses hukum berjalan lebih responsif, terbuka dan relatif cepat namun belum tentu adil.

## Rekomendasi

**Desentralisasi perlu dilengkapi dengan jaminan pengawasan masyarakat.** Penting untuk memastikan adanya jaminan hukum atas peran serta masyarakat sebagaimana yang telah diatur dalam Peraturan Pemerintah no 71 Tahun 2000 tentang Tata Cara Pelaksanaan Peran Serta Masyarakat dan Pemberian Penghargaan dalam Pencegahan dan Pemberantasan Tindak Pidana Korupsi dalam bentuk Perda.

**Penyusunan platform anti korupsi di tingkat lokal.** Penelitian ini menunjukkan bahwa keberhasilan penanganan korupsi ditentukan dengan adanya kerjasama antara pemerintah daerah, aparat hukum dan aktor pendorong. Oleh karena itu, penting untuk setiap daerah memiliki visi dan strategi bersama dalam mencegah dan menangani kasus korupsi yang terjadi. Berbagai pelajaran dari pengalaman aktor pendorong dalam mengungkap dan menangani kasus korupsi dapat menjadi dasar yang sangat berguna bagi perumusan platform anti korupsi di tiap-tiap daerah.

**Penguatan inisiatif anti korupsi di tingkat lokal.** Berbagai kelompok/organisasi masyarakat dalam penelitian ini telah berhasil memulai langkah penanganan terhadap korupsi. Keberhasilan tersebut berdampak signifikan baik bagi penguatan inisiatif tata pemerintahan yang baik maupun dalam penegakan hukum di tingkat lokal. Masih diperlukan berbagai dukungan agar kelompok/organisasi masyarakat di tingkat lokal bisa terus melanjutkan inisiatif anti korupsi seperti: i) dukungan untuk meningkatkan pengetahuan tentang pengelolaan budget lokal, proses hukum serta keterampilan investigasi korupsi dan

advokasi; ii) dukungan bagi penguatan jaringan kerja antara organisasi anti korupsi di tingkat lokal dan jaringan kerja dengan berbagai badan dan organisasi anti korupsi di tingkat nasional; iii) dukungan berupa pembagian peran bagi organisasi anti korupsi nasional untuk melanjutkan pemantauan dan tekanan dalam proses hukum yang telah didorong oleh aktor lokal.

**Reformasi hukum di tingkat lokal.** Untuk mendukung berjalannya penegakan hukum atas korupsi yang lebih adil dan anti-korupsi dibutuhkan beberapa perubahan bagi instansi penegak hukum di tingkat lokal antara lain: i) memperkuat kerjasama antara instansi penegak hukum dan organisasi anti korupsi di tingkat lokal dengan melibatkan aparat hukum dalam kegiatan pendidikan hukum dan anti korupsi bagi kelompok masyarakat dampingan; ii) menetapkan indikator lama proses hukum pada tiap-tiap tahap selama proses hukum berlangsung; iii) surat edaran dari Kejaksaan Agung agar Kejaksaan Negeri wajib melaksanakan gelar perkara atas suatu kasus dugaan korupsi bersama organisasi anti korupsi serta memfasilitasi organisasi masyarakat untuk menyelenggarakan eksaminasi publik terhadap putusan pengadilan.

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# Section I

## Introduction



## I. Corruption at Local Level

*“Corruption does not exist on its own... there is the organization and it is perpetrated by people with positions everywhere; in government as well as private institutions, as long as they have the power to determine how to gain the most money possible through their power,”*

Anti Corruption Actor, Pontianak

Beginning in 2002, a wave of corruption allegations against members of regional councils or DPRD were reported, beginning with the widely covered corruption case in West Sumatra. This was followed by allegations against legislators in Southeast Sulawesi, West Kalimantan and Lampung. Soon, alleged corruption by DPRD members was being reported throughout Indonesia. Based on data issued by Provincial Prosecutor’s Offices across Indonesia, as of September 2006 there were 265 corruption cases being handled by 29 District Prosecutor’s Offices involving 967 DPRD members. During the same period, investigation permits were issued covering another 327 provincial DPRD members and 735 city/district DPRD members.<sup>1</sup>

While reports on graft were initially dominated by DPRD corruption, there have been increasing levels of corruption perpetrated by members of the executive branch. International Corruption Watch (ICW) notes that in 2004 there were 48 corruption cases against both members of DPRD and the executive branch. In 2005, corruption by the executive branch took the top position with 47 cases. In 2006, the number of executive corruption cases increased to 69 cases.<sup>2</sup> Data from District Prosecutor’s Offices across Indonesia shows that there were 46 corruption cases perpetrated by district heads with 61 people as suspects/defendants/convicted. Forty-three of these cases were handled by the Provincial Prosecutor’s Office and three by the Prosecutor General’s office. Data from the Ministry of Home Affairs shows that from 2004 through early 2006, permits were issued to investigate seven Governors and 60 District Heads/Mayors or their Deputies.

This phenomenon of identifying local level corruption cases has never before been experienced to this extent in Indonesia. Some believe the reason why this is the case is because decentralization opened up even more opportunities for local level corruption. The increase in allegations of corruption cases closely followed the implementation of regional autonomy. The implementation of Law No. 22/1999 on Regional Government, replacing Law No.5/1974 on Government in the Regions, provided local government institutions with greater power, particularly relating to budget management and this, in turn, increased opportunities for corruption.

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<sup>1</sup> People’s Representative Assembly of the Republic of Indonesia, Report of Working Committee on Law Enforcement and Regional Governance, 2006

<sup>2</sup> Kompas, *Kecenderungan Korupsi; Eksekutif di Posisi Teratas*, January 25, 2007.

This highlights the importance of examining the correlation between different aspects of decentralization (constitutional, political and fiscal) and levels of corruption. Examining various studies across different countries there is inconclusive, if not sometimes contradictory, evidence about whether decentralization either leads to an increase or decrease in corruption. Research findings appear to vary depending on the approach taken to defining the different dimensions of decentralization. In spite of this, in general there are three dimensions of decentralization that are empirically connected to symptoms of corruption at the local level. These are fiscal decentralization, constitutional decentralization and political decentralization.<sup>3</sup>

In the Indonesian context, corruption did not originate with the implementation of decentralization policy. It would be naïve to assume that corruption didn't exist beforehand. It is more the case that the collection of data to support allegations of corruption in the regions was seriously constrained during the New Order administration due to the dominant role played by the bureaucracy and weaknesses within law enforcement agencies. It is, however, very likely that decentralization has changed the playing surface for corruption at the local level; whether related to shifts in power relations between the centre and the regions or executive and legislative branches of government, that brings with it new corruption actors, or creating more variation in the background and modus operandi for corruption.

In other words, corrupt practices were present long before the implementation of decentralization. What has changed is that over the past 5 years there has been a pronounced increase in number of corruption cases that are exposed and an emergence of actors at the community level who are willing to advocate for the proper resolution of these cases. Karklins states that "*Anti-corruption work among public administrator and high level officials can help, but in the long run, the mobilization of democratic forces from below and the forging of civil society is the decisive way to contain corruption in democratic society*",<sup>4</sup>. Based on experiences in various countries it can be concluded that, regardless of whatever system of government is in place, strengthening public participation will result in great transparency and accountability of government.

## II. Local Government Corruption Study

There are a number of key issues that need to be examined relating to the increase in disclosure of local level corruption cases in Indonesia. These include: what factors support exposure of corruption cases at the local level? What actors play important roles in exposing corruption cases and what steps are they required to take? What factors support these actors in their attempts to resolve corruption cases? And what challenges do communities face in trying to eradicate corruption?

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<sup>3</sup> Sebastian Freille, *Federalism, Decentralization and Corruption*, [www1.worldbank.org/publicsector/anticorrupt/ACLitSurvey](http://www1.worldbank.org/publicsector/anticorrupt/ACLitSurvey)

<sup>4</sup> Karklins, Rasma, *Anti-Corruption Incentives and Constituencies in the Post-Communist Region*, Paper for Workshop 1: Creating a Trustworthy State, Collegium Budapest, Draft, September 2002, p.1

These questions have direct relevance to the strategy of Justice for the Poor – The World Bank. Corruption cases can be useful in providing a picture of how communities and the legal system interact, because such cases frequently involve community participation in various aspects of the regulatory and legal dispute resolution process. Since 2003, the Justice for the Poor team has conducted research on the settlement of corruption cases by communities at the village and sub-district levels (Village Justice Paper, 2003), resulting in recommendations for strengthening the role of communities and legal reform at the local level. Given the significant changes in power structure and strengthening of civil society at the district and provincial level with the implementation of decentralization, similar research is needed at this level.

Local elements are engaged in all corruption cases at the local level, whether those elements are: the corruptor, local political parties, community organizations, professional associations, academics, anti-corruption NGOs, mass media or local law enforcement institutions. The way each of these actors address corruption can help form lessons learned or build perceptions of the legal process in Indonesia. These experiences will in turn identify key characteristics to support the pursuit of corruption cases in the context of a decentralized Indonesia.

The Justice for the Poor program began to study local level corruption across five provinces in May 2006. The goal of the Local Government Corruption Study (LGCS) was to document local-level actors' experiences exposing corruption, reporting complaints, and seeing action taken.

#### **Research Objectives**

- To document the dynamics of local level players in the settlement of corruption cases that implicate both the legislative and the executives;
- To identify the opportunities for and patterns of corruption in local government;
- To identify opportunities for success and failure in handling local-level corruption complaints.

#### **Methodology**

LGCS focused on corruption cases involving both by the executive and the legislative branches at the local level. The following criteria were used to select the case studies:

- i) Corruption allegations dealing with the Local Budget Allocations (APBD) from Fiscal Year 2001-2004;
- ii) The case is currently in or has been settled through formal legal proceedings;
- iii) Community engagement (local anti-corruption actors) exposed and promoted case settlement.

Research locations were selected based on the following criteria: geographical diversity, presence of corruption cases at both district and provincial levels, and legislative and executive cases. Research locations were also selected among places where Justice for the Poor is active so that there would be practical benefits to existing Justice for the Poor

activities. The five provinces in Indonesia selected were West Sumatra, West Kalimantan, Central Sulawesi, East Java and West Nusa Tenggara, with two case studies in each province.

LGCS used the following qualitative research methods:

- a. Collection and analysis of mass media coverage, investigation results, documentation by local anti-corruption actors and legal documents i.e. charges, indictments and court verdicts
- b. In-depth interviews with respondents from NGOs, coordinators of NGO alliances, journalists, corruption suspects or their lawyers, the suspects' supporting group and law enforcement apparatus involved in the legal proceedings. Interviews were also conducted with local DPRD members and executive officials. Approximately 200 respondents were interviewed in total.
- c. Focus Group Discussions (FGD) were held to compliment findings from document reviews and interviews. FGDs were conducted with local anti-corruption actors, suspects, academics and law enforcement. For LGCS, thirteen FGDs were conducted with 150 participants.

These case studies were conducted over several phases. First, chronologies of all the cases, starting from exposure of the case to enforcement of judgement, were drafted. The output was case chronologies that show each step of the dispute resolution process along with the 'action-reaction' between anti-corruption actors and the legal process. In this step data was collected up to November 2006. *Second*, after the chronologies were completed, researchers identified the relevant 'why' and 'how' questions both through conducting interviews and FGDs. *Third*, after the data was compiled, analysis of the cases was undertaken consistent with the research objectives.

Consistent with the research objectives, the main respondents in this research were anti corruption actors at the local level who played a role either in exposing the cases, supporting the legal process or both. In all the cases examined, there were numerous supporting actors involved, either individually or collectively, in all or many of the steps outlined in the chronologies. Due to constraints in the research schedule, not all of these actors could be interviewed. As a result, reference to the role of some actors in this research is not intend to minimize or neglect the role of other actors who may not have been covered by the research.

### **What is discussed in this report?**

This report is a synthesis of ten case studies conducted to provide further direction on the three objectives identified above. It is expected that the general patterns identified in the research can provide direction to local actors in other parts of Indonesia to strengthen anti-corruption initiatives in their respective regions. It is also hoped that this study will support the Government of Indonesia's efforts to prevent corrupt behavior, improve the legal system, and strengthen community participation.

This research is not intended to be a special study on shortcomings in decentralization, an evaluation of regulations or an assessment of criminal sanctions arising from corruption

cases. The research focused on the efforts of local level anti-corruption actors to address corruption cases. Discussion of decentralization-related aspects was used as needed to explain the local context. The same applies for discussions on legal aspects, which are limited to examining interactions between relevant parties and law enforcement institutions. In a nutshell, decentralization and legal proceedings were used to identify key factors, both strengths and weaknesses, for local anti-corruption actors in handling a case.

Section One of this report provides background, methodology and objectives of the research as well as a summary of each case study.

Section Two contains a brief description of the decentralization dimension in the context of Law No. 22/1999 resulting in some shift in local level power relations from the executive to the legislative. This section also provides a brief description of the policies and initiatives of local and national anti-corruption movements as well as the *modus* of local-level government corruption.

Section Three provides information about the anti-corruption actors outlining profiles, motives as well as actions undertaken and work strategies. In addition, case handling chronologies from the perspective of the anti-corruption actors are provided, starting from before cases were exposed until when cases entered the legal process. Each of the cases studied had unique features. In order to ensure that these differences are captured and to strengthen the analysis, this section also contains various quotations and brief descriptions of incidents that are particular to specific cases.

Section Four analyses the legal process, starting from investigation by the police and district prosecutors to the Supreme Court and enforcement.

Section Five presents research conclusions and recommendations.

### ***Why is the report important?***

There are at least three reasons why research on government corruption at the local level is important. *First*, Indonesia is renowned as a country with one of the highest levels of corruption in the world. Because of this, all efforts to counter corruption should be highlighted as evidence that the battle against corruption exists and is ongoing. Moreover, the analysis documents the direct experiences of anti-corruption actors. These efforts to expose corruption at the local level are still novel in Indonesia. By recognizing these efforts, this report aims to provide encouragement to other anti-corruption initiatives at the local level, whether in Indonesia or elsewhere.

*Second*, unlike previous studies, the analysis of local dynamics and anti-corruption actors in this research was placed in the context of a decentralized Indonesia. The changing power structures that accompanied this decentralization process significantly increased opportunities for community participation and improvements in the law enforcement process at the local level. In this context, documenting the experience of anti-corruption

actors, in opposing corrupt acts, can provide significant support for other *good governance* initiatives at the local level.

*Finally*, initiatives from various anti-corruption actors and the performance of law enforcement institutions demonstrates the opportunities that exist for strengthening people's access to law and justice, indicating the presence of legal reform at the local level. Opportunities aimed at improving the performance of legal institutions at the local level can be identified through learning about their responses to corruption cases such as those outlined in this report.

### III. Summary of Case Studies

The ten case studies include two corruption cases from provincial councils (DPRD), DPRD of West Sumatra and West Nusa Tenggara Provinces; four corruption cases of DPRD at district level, DPRD of Madiun, Pontianak, Toli-Toli and Donggala Districts; four corruption cases perpetrated by the executives at district level, Mentawai District Secretary, Kapuas Hulu District Head, Blitar District Head and by the Land Procurement Committee in Central Lombok.

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#### *West Sumatera*

**Local Budget Corruption in West Sumatra Provincial DPRD, 1999-2004 (*Legislative – Provincial*).** The West Sumatra Provincial DPRD corruption case began at the initiative of several local NGOs and academics, which established the Care for West Sumatra Forum, (*Forum Peduli Sumatera Barat-FPSB*). FPSB regularly conducted reviews of Draft Local Budgets in FY 2002 and began uncovering corruption in the form of 27 additional budget items relating to DPRD allowances and expenses amounting to IDR 5.9 billion. After warning the DPRD that it was in violation of PP 110/2000, the local anti-corruption actors began to agitate for legal proceedings on the allegation. Previously the West Sumatra Provincial Prosecutor's Office stated that they would provide 'education' to the DPRD, although later legal proceedings began. There was serious resistance from DPRD, including filing a judicial review of PP 110/2000 to the Supreme Court. The Supreme Court found the defendants guilty, but the decision has yet to be enforced.

**Corruption case of Mentawai District Secretary (*executive – district*).** In mid 2002, several NGOs formed the Mentawai Community Alliance (*Aliansi Masyarakat Mentawai, AMM*) to review the implementation of development in the District that had only been established in 1999. They found several indications of corruption by the DPRD and the District Head and turned to Legal Aid Institute (*Lembaga Bantuan Hukum, LBH*) to assist in providing a special legal review on corruption allegations totaling an estimated IDR 7.6 billion. Following the DPRD's rejection of the District Head's accountability report, AMM filed a complaint with the West Sumatra Provincial Prosecutor's Office, which later declared the District Secretary and several district officials/staff as corruption suspects. During the eleven month trial process in Padang District Court, the accused were proven to have violated budget management but the Judge acquitted them of all charges stating that they acted in the interests of the District and not for their own enrichment. The District Prosecutor's Office later filed an appeal to the Supreme Court, which upheld the verdict of the Padang District Court. Along with the lengthy legal proceedings, pressure from the motivating actors weakened. Several of the primary motivating actors were later elected as DPRD members.

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#### *West Kalimantan*

**The Bestari Foundation and Pontianak District DPRD (*Legislative – District*).** Following several informal meetings, the District Head and DPRD leadership agreed to channel funds

to the Bestari Foundation in the local budget FY 2002. After the local budget was disbursed, funds were distributed to 45 DPRD members in two phases, phase I amounting to IDR 1.13 billion and phase II as much as IDR 1.7 billion. In October 2003, a group of contractors who were aggrieved by the development tender process filed corruption allegations with the local District Prosecutor's Office. The case mobilized large numbers of NGOs and community associations; at least 37 community organizations with a total of 332 stories in the mass media. The local Sultan in the Amantubillah Palace even expressed open support for legal sanctions to perpetrators of corruption. Unfortunately the coalition was undermined by polarization along ethnic lines and the bribery of several NGO figures. On May 12, 2005, three defendants in the case were found not guilty. The public prosecutor has filed an appeal to the Supreme Court but as of November 2006 there has been no ruling.

**Corruption of Forest Resource Provision (*Provisi Sumber Daya Hutan, PSDH*) Fund and Reforestation Fund (*Dana Reboisasi, DR*) of Kapuas Hulu District (*Executive – District*). Ministry of Forestry Directive No. 05.1/Kpts-II/2000 provided authority to all Districts across Indonesia to issue licenses for small-scale, non-mechanized timber extraction on less than 100 ha. In Kapuas Hulu, the District Head then issued a directive mandating all PSDH – DR must be deposited to district's account. The Head of the Provincial Forestry Agency later revealed that reforestation funds of more than IDR 150 billion had not been deposited. Anti-corruption and anti illegal logging NGOs in West Kalimantan were convinced that the funds were being withheld by the District Head and being used for personal gain. On December 2004, the case was reported to the West Kalimantan Police and an investigation by the Provincial Prosecutor's Office followed. However, the Putu Sibau District Court rejected the charges filed by the Public Prosecutor stating that the case was vague. The Public Prosecutor has reportedly filed an application for case review to the Supreme Court but as of November 2006 there has been no follow through on the case.**

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*Central Sulawesi*

**Local Budget Corruption in Toli-Toli District DPRD of 1999-2004 (*Legislative – District*). Starting from a review of Local Budget conducted by NGO Dopalak an indication of DPRD corruption was discovered in the APBD FY 2002 where there was a budget mark up for DPRD allowances and expenses amounting to more than 3% of Locally Generated Revenue (PAD), leading to state losses of IDR 4.5 billion. Dopalak succeeded in mobilizing poor communities, such as pedicab drivers, motorcycle taxi drivers, and students, who eventually rallied to reject the Local Budget. The anti-corruption actor used the momentum of local elections to “divide and conquer” the suspects and in the end different suspects provided evidence related to the corruption allegations against competing political parties. The community's enthusiasm in following the developments of the case was so great that the trial took place in a sports facility building. The Provincial High Court even increased the sentences of the defendants. After an appeal was filed, the Supreme Court upheld the initial verdict of the Central Sulawesi High Court. However, only fourteen out of sixteen members of the Budget Committee were named suspects; two members of the budget committee with military backgrounds returned to that institution, legal proceedings against these two remain unclear.**



**Local Budget Corruption in Donggala District DPRD of 1999/2004 (*Legislative – District*).** Several activists from a Palu-based anti-corruption NGO (*Koalisi Rakyat Menggugat*) conducted a budget analysis that found additional line items for allowances and facilities to the DPRD amounting to IDR 5.2 billion. The local anti-corruption actors played on divisions within political parties and local government and, with the support from national-level anti-corruption institutions, brought this case to court. District and provincial level courts found the defendants guilty but there has been no verdict of the Supreme Court on the appeal filed by the defendants.

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*East Java*

**Local Budget Corruption in Blitar District Government (*Executive – District*).** Blitar District Head and his staff manipulated the Local Budget FY 2002–2004 to show losses of IDR 97 billion. Exposure of this case came from an alliance of seven village heads, NGOs (*Somasi* and *KRPK*), and members of bureaucratic apparatus' Team-11. Although legal proceedings against the District Head and several staff members were successful, the Deputy District Head (currently the District Head) escaped punishment. The anti-corruption actors had support from a local private radio station that broadcasted the trial live. Further support came from the national level including the Attorney General's Office and the Supreme Court, which supervised the course of the legal proceedings at the local level.

**Local Budget Corruption in Madiun District DPRD 1999–2004 (*Legislative – District*).** In this case, the Local Budget FY 2002–2004 included IDR 8.8 billion in new line items and mark ups of other line items in the interests of the DPRD. Defendants included the Speaker and Deputy Speakers of the DPRD. The main promoting actor in this case was the NGO Madiun Corruption Watch (MCW) who cooperated with law enforcement during legal proceedings. MCW mapped the local actors interested in the case (including supporters who protested during legal proceedings) and called for fair legal proceedings against all suspects. Although the Supreme Court found the DPRD Speaker guilty, the Provincial High Court has not acted on the other defendants' appeals.

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*West Nusa Tenggara*

**West Nusa Tenggara Provincial DPRD of 1999 - 2004 (*Legislative – Province*)** Student organizations exposed corruption in the Local Budget estimated at IDR 17.5 billion. While many local NGO and community organizations pushed for legal action, during the proceedings the DPRD Speaker was elected Governor of West Nusa Tenggara. Political interests created divisions among the anti-corruption actors and legal proceedings were terminated. The process was marked by violence as the suspect's supporters attacked and damaged the West Nusa Tenggara Provincial Prosecutor's Office. The District Prosecutor's Office covered up some suspects' names and gave them discriminative legal treatment. In June 2006, after eleven months of legal proceedings, the panel of judges rejected the Public Prosecutor's case. The Public Prosecutor then filed an appeal to the Provincial High Court while the defendants' lawyers filed a final appeal to the Supreme Court.

**Land Acquisition Committee, Central Lombok District Government (*Executive – District*)**. Suspicions of corruption began when a member of the community was asked to sign a blank receipt. Suspicions grew when the local government resisted calls to provide data on the Local Budget and the ceiling for land price. A local journalist conducted an in-depth investigation on the committee’s performance and found a number of questionable indications. A political party chaired by a former senior prosecutor in the local District Prosecutor’s Office brought the case to the DPRD to demand for accountability of the executive. Legal proceedings were halted by the Head of the District Prosecutor’s Office and then reopened when a new Head took office eight months later. The suspect’s lawyer admits to bribing the District Prosecutor’s Office and the panel of judges in charge of the case. The verdict against the suspects was well below expectations. Familial relationships between the suspects, leaders of political parties and law enforcement has left this case unresolved.

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## **Section 2**

### Decentralization & Corruption

## IV. The Local in Transitions

*“The basic problem is that...most DPRD members have financial problems. Once they are sworn in, they have to repay the campaign debts accrued during the party list development... after they take office, they want a return on their “investment.”*

West Nusa Tenggara Provincial DPRD member

### A. Decentralization: Shift in Power Relations & the Anatomy of Regional Corruption

Decentralization was one of the initial key indicators of reform efforts in Indonesia. The decentralization initiative, highlighted by the passage of Law 22/1999 on Local Government to replace Law 5/1974 on Government in the Regions, emerged from a desire to develop local democratic principles that had been neglected during the New Order.

The most prominent change brought about through the passage of Law 22/1999 was the devolution of government authority for the delivery of public service from the central to the local level. Government services devolved to district/city governments included: public works, health, education and culture, agriculture, transportation, industry and trade, capital investment, the environment, cooperatives and manpower.<sup>5</sup>

**Table 1. Changes after Decentralization.<sup>6</sup>**

No	Item Changed	Law 15/1974	Law 22/1999
1.	Local government structure	DPRD is part of the Executive	DPRD is independent
2.	Local Elections for District Head	Prerogative of national government	DPRD's prerogative
3.	Oversight	Executive oversees DPRD	DPRD oversees the executive
4.	DPRD Rights	DPRD rights differentiated from DPRD members' rights	DPRD's as well as DPRD members' rights
5.	DPRD Budget	Determined and managed by the executive	Determined and managed by DPRD
6.	DPRD summon to officials or members of community	Delegated to subordinates of witness	DPRD could impose sanction on witnesses who did not respond
7.	Exploration of natural resources	DPRD had no knowledge on agreements related to exploitation of region's natural resources	DPRD is given the authority to provide opinion and advice
8.	DPRD's Right of Investigation DPRD	Never used as there was no Law stipulating it	The right is stipulated by DPRD themselves in DPRD Standing Order
9.	Implementation of people's aspirations	DPRD just accommodated and channeled them to the executive	DPRD was given a task to accommodate and channel people's aspirations
10.	DPRD fractions	There were only 3 fractions	Could be more than 5 fractions

<sup>5</sup> Article 11(2) UU 22/1999

<sup>6</sup> Habibie Centre Foundation, *“Otonomi Daerah; Proyeksi dan Evaluasi”*, YHB, Jakarta, 2003, pp. 194-195

Some of the more important aspects of decentralization captured in Law 22/1999 included: financial decentralization, political decentralization and relations between local level government institutions, as indicated by the strengthening of the position of legislative bodies compared to the executive. Under this law DPRD's had the authority to elect and impeach district heads and district heads were required to provide accountability reports to the DPRD.

This strengthening of the DPRD's position, in turn, resulted in a shifting of power relations at the local level, whereby district heads had to seek 'cooperation' with the DPRD in order to be able to become district heads and maintain their positions. This change in power relations allegedly led to a shift in the *locus* of corruption at the local level, whereby political 'transactions' now occurred in local parliaments.<sup>7</sup> Corrupt practices at the local level began before taking over official responsibilities; in order to receive support from DPRD members, candidates for the position of district head had to provide bribes to these members, a practice frequently referred to as '*money politics*'. In research in the Poso region, Aditjondro claimed the amount required to be paid by district head candidates to obtain the support of local members was Rp 20 million per member. These payments don't only come from the victorious candidates, so local members receive more than one bribe.<sup>8</sup>

The anatomy of corruption at the local level is not limited to the 'local' perspective. To fulfil 'political payments' in the selection process, candidates for district head often need to seek financial support from interest groups and political players at the national level. Players at the national level have their own special interests in what occurs at the local level. Aditjondro noted that business players at the provincial and national level provided support for candidates based on their vested interests, and these interests had to be 'repaid' once candidates were appointed to their positions. This concept is consistent with the fact that the Law on Local Government provides district heads with the authority to approve investment plans for businesses in their districts.<sup>9</sup> Aditjondro concluded that the main sources of local government corruption were as follows:

- a. Embezzlement of funds during a district head's campaign and 'contributions' paid to political parties and DPRD members by district head candidates that violate stipulations on financial contributions to political parties.
- b. Embezzlement of funds, mainly Block Grant (DAU) funds, from the central government to the regions implicating both officials and councilors at the local level and their accomplices in central government.
- c. Expenses by district heads to business interest groups who provided campaign financing and funded vote buying practices of council members and political parties.

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<sup>7</sup> Eryvn Kaffah, *Pergeseran Relasi Kuasa di Daerah*, unpublished, 2007

<sup>8</sup> George J. Aditjondro, Review Local Government Corruption Study report, April 2007, unpublished.

<sup>9</sup> George J. Aditjondro, *idem*.

## B. Strengthening Community Organizations at the Local Level

The new decentralization environment has stimulated a marked increase in the number of civil society organizations. The Institute for Research, Education and Information on Social and Economic Affairs (LP3ES) noted that in 2003 there were an estimated 450 local NGOs. This figure is likely to be even higher in 2007 as organizations are not required to register themselves with a state institution.<sup>10</sup>

In addition, the proliferation of local and national media outlets has led to increasingly open coverage of government policy and local political dynamics. However, in some areas the regional governments are the biggest shareholders in local media.

## C. Anti-Corruption Policy & Law Enforcement

The national government has made efforts to eradicate corruption concurrent with the decentralization process. From 1998–2006 more than thirteen regulations concerning corruption eradication were passed.<sup>11</sup> The most significant for prosecuting corruption cases are:

- a. Law No. 31/1999, amended by Law No. 20/2001, on the Eradication of Corrupt Criminal Acts
- b. Law No. 30/2002 regarding the Corruption Eradication Commission (KPK). KPK investigates corruption cases when state losses exceed one billion Rupiah and/or draw significant public attention. The KPK coordinates supervision of law enforcement agencies in corruption cases, monitors state officials, conducts investigations and files charges in corruption cases as well as undertaking various steps in corruption prevention.
- c. Presidential Instruction No. 5/2004 on the Acceleration of Corruption Eradication Efforts.
- d. Circular Letter of the Attorney General No. 007/A/JA/11/2004 on Acceleration of Corruption Handling across Indonesia. This regulation states that corruption cases processed in all Provincial and District Prosecutor's Offices must be concluded within three months' time.
- e. National Action Plan on Corruption Eradication (*Rencana Aksi Nasional Pemberantasan Korupsi*, RAN PK) of 2004–2009 explains the government's action plan and is managed by Bappenas in coordination with related Ministries/Non-Department State Institutions, the KPK and elements of civil society.
- f. Circular Letter of *Dirtipikor Kabareskrim* of Police Headquarter No. Pol.:B/345/III/2005 on Putting Priority on Corruption Case Handling.

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<sup>10</sup> Tim Lindsey, "Anti-corruption and NGOs in Indonesia," in *Stealing from the People: The Clamp Down: in Search of New Paradigms, Book 4, pgs 35-42*.

<sup>11</sup> Davidsen, Soren, Vishnu Juwono, David G. Timberman, *Curbing Corruption in Indonesia 2004–2006*, USINDO CSIS, 2006

Additional political pressure has been brought to bear since the election of President Susilo Bambang Yudhoyono in 2004. Corruption eradication was among the new President's top priorities. This clear emphasis has placed direct and indirect pressure on law enforcement agencies and other institutions to process corruption complaints in a timely manner.

### **Anti-Corruption Initiatives in the Regions: An Overview**

Nineteen local governments have regulations (*Perda*) on transparency and public participation in local governance.<sup>12</sup> Examples of local regulations include laws that guarantee public access to information on budgetary issues (planning, passage, appropriation, and accountability), executive accountability reports, tender process and others.

A number of high profile initiatives are also having an effect in the regions. Indonesia's two largest Muslim organizations, NU and Muhammadiyah, established the Anti-Corruption Joint Movement. Transparency International initiated its Integrity Pact in 2002. The concept was further developed through *Tiga Pilar* a coalition of TI, KADIN, the State Apparatus Empowerment Minister, and MTI. Currently thirty districts/cities, four ministries, five state-owned enterprises (BUMN), five private companies, and the MPR/DPR-RI have signed the Integrity Pact commitment, either initiated by TI-Indonesia or *Tiga Pilar*.

The Partnership for Governance Reform in Indonesia initiated Parliamentary Caucus. The Caucus is an effort to build an anti-corruption movement among legislative members at central and local levels. DPRD members in seven districts/cities/provinces in Indonesia are involved in the Parliamentary Caucus.<sup>13</sup>

## **V. Opportunity & Modus Operandi of Corruption**

### **DPRD:**

- Increasing the number or amount of line items for Council members allowances and facilities
- Channeling APBD funds for DPRD members through a fictitious foundation
- Forging official travel documentation

### **Executive:**

- Misuse of excess funds (UUDP)
- Violation of regional payment request and disbursement procedures
- Embezzlement of remaining fund in APBD
- Manipulation in procurement process

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<sup>12</sup> Kompas, November 25, 2006

<sup>13</sup> Interview with Saldi Isra

## **DPRD Corruption**

One of the main opportunities for corruption comes during the drafting of the APBD. Modes of corruption revealed in the case studies were the following:

### **1. Increasing the number or amount of line items for Council members allowances and facilities**

**West Nusa Tenggara Provincial DPRD.** According to national regulations, for a province with a PAD of between IDR 10–100 billion, the council's supporting budget must be between a minimum IDR 625 million or maximum 1% of PAD. West Nusa Tenggara's PAD for 2002 was IDR 98 billion, thus the maximum budget for council supporting activities should have been IDR 984 million. The local budget allocated IDR 11.7 billion or almost twelve times this amount.

**West Sumatera Provincial DPRD.** Corruption took place by: i) breaking one line item into several items; such as 'health allowance' into 'allowance for health care', 'health insurance premium', and 'check-up expenses', ii) duplicating items by allocating 'health care expenses' as well as 'health insurance premium budget', iii) creating other sources of income, such as funds for 'honorarium allowance' (IDR 600 million), 'rice allowance' (IDR 62.8 million), 'funds for electoral district constituency relations' (IDR 137.5 million), 'study mission package' (IDR 797.5 million) and others

**Toli-Toli District DPRD:** In Toli-Toli, mark-ups and additional line items were added in negotiations between the DPRD and local government when revising the budget in 'half-chamber meetings' that were closed to the public.

### **2. Channeling APBD funds for DPRD members through fictitious foundations**

**Bestari Foundation (YB).** This foundation was established with the slightly dubious mission of improving the welfare of council members in 1998. It did not have foundation requirements such as an official stamp, secretariat, work plan and it never held a Board meeting. The only financial source for YB was APBD funding under the line item 'organizational support item'. Two meetings were held between DPRD members, who were also on the Board of YB, and the District Head and his staff to negotiate the amount of APBD under 'organizational support item' for YB. The foundation received approximately IDR 1.1 billion that was distributed to the 45 council members: the Speaker received IDR 30 million, Deputy Speakers received IDR 27.5 million and members received IDR 25 million.

### **3. Fictitious official travel**

A West Sumatra DPRD member who later resigned stated that members were allocated IDR14 million per year for an official trip to Jakarta but, by and large, the funds were used for other purposes and members forged receipts.



## Executive Corruption

*“We were as if in a bus stopped by a police officer; the police would never know that the driver had no license unless there was a passenger letting him know...”*

Corruption case defendant – Blitar District Government

It is important to note that the executive branch is implicated in the cases of DPRD corruption discussed above. The executive participates in budget drafting as part of the budget committee and subsequently approves the draft. Therefore there were officials from the executive involved in just about all the local government corruption investigations analyzed.

Corruption strategies purely on the executive side included:

### 1. The use of funds (UUDP) for personal interest or other reasons without proper accountability

**Mentawai District Government** used the following tactics: i) producing fictitious receipts for the purchase of furniture for the District Head and his staffs’ official homes, totaling IDR 412 million, ii) using UUDP funds to secure DPRD members’ approval of the District’s Accountability Report, iii) at the District Head’s request, the treasurer disbursed IDR 270 million for operational needs, official travel or serving visitors without official papers and receipts.

### 2. Manipulation of regional account mechanisms

**Blitar District** submitted requests for funds to the district treasurer for the District Head’s personal activities (total requested: IDR 68 billion). Financial staff manipulated records by issuing expenditures under Code D, meaning it was not an ‘article of disbursement’ but a ‘point of revenue’ disbursed as a Block Grant (*Dana Alokasi Umum*, DAU) which must then be replaced by revenue from the PAD.

### 3. The transfer of regional funds to District Head’s personal account

In Kapuas Hulu District, funds from forestry products intended for Reforestation were transferred to the District Head.

### 4. Embezzlement of excess APBD funds

In **Blitar District**, the District Head embezzled APBD funds remaining at the end of FY 2002. Regent instructed the financial section to create fictitious government agency expenditures totaling IDR 20 billion.

## **5. Procurement Process Manipulation**

In **Central Lombok District**, the Committee Secretary was implicated in manipulation of land prices. The Secretary tried various strategies including asking those selling land to sign blank receipts before the receipt of payment.

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## **Section 3**

### The Local Level in Action

## VI. Local Anti Corruption Actors

*“They (the anti-corruption actors) affected us, we felt controlled, watched. So we didn’t dare play around...”*

Head of District Court, Blitar

**Each of the case studies contained the following four groups of actors:**

**1. Anti-corruption actors.** These actors are individual citizens or community groups who expose cases, file complaints, and/or monitor the case settlement processes. Anti-corruption actors do not need to be local; they may be individuals or organizations acting independently or in concert with a local level actor. Without these actors, most corruption cases would not be exposed or prosecuted.

**2. Law enforcement institutions.** Law enforcement includes the police, district prosecutor’s offices, and courts. District prosecutor’s offices are represented by the public prosecutor. In courts, a panel of judges presides over cases.

**3. Corruption suspect:** A person or regional government institution accused of corruption. There is a difference between graft suspects in the DPRD and those in the executive. In a DPRD corruption case, in theory the entire council leadership and members are implicated as they all share in decision-making. In practice the only case where all council members were brought to trial was West Sumatra. In the case studies, interviews were conducted with corruption suspects and or their lawyers.

**4. Supporters of Suspects.** As a political figure or regional head, the suspects inevitably have a mass base either from their political party, organizational ties and ethnic and/or regional ties. The supporter group actively pressures anti-corruption actors and law enforcement institutions to drop cases, sometimes using violence.

### **Profile of anti corruption actors**

Below are the profiles of a number of local anti corruption actors in the settlement of graft allegations found in the case studies:

#### **\_\_\_\_\_ Forum Peduli Sumatera Barat (FPSB), Coalition of academics – NGO**

This organization began as a discussion series by NGO activists critiquing local budget allocations. An array of concerned organizations and citizens including LBH of Padang, *Kisi Anak Nagari Sumbar*, Walhi of West Sumatra, LBH Apik, LSM Sopan and LKBH KWRI, as well as a number of legal practitioners, lecturers, business figures and artists joined together to form FPSB. The FPSB base is centered in universities and student organizations. Their outreach work included campus road shows to discuss corruption indications in the budget. Initially, the FPSB budget came from personal contributions of activists. However, once the

West Sumatra DPRD corruption case became a national issue, support came from donor agencies in Jakarta.

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### **Political party leaders**

A prominent politician exposed the case in Central Lombok District. He was a former senior prosecutor in the local District Prosecutor's Office and thus had the legal background to understand the land acquisition committee's actions. The exposure was politically motivated; this politician wanted to create a clean, reform-minded image for his party in preparation for the 2004 election. Despite his purely political motivation, the whistle-blower's actions created significant difficulty for himself: he was related to the main graft suspect. The politician faced significant family pressure to 'tame' the case. Nonetheless, the whistleblower and his party supported the case exposure through the DPRD, where they had four representatives as council members.

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### **Team 11 of Blitar District Government – bureaucratic opposition**

Corruption in Blitar was exposed by a group of disaffected officials calling themselves team 11. The team supplied important data concerning mismanagement of the district account. According to an NGO activist and journalist who was often in contact with team members, the group consisted of top district government officials who felt discriminated against by the District Head with regards to job rotation and promotion. The identities of the officials on Team 11 remain a secret.

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### **Team 7 of Village Leaders – Local leaders**

This team consisted of seven village heads in Blitar District. Led by the Jambewangi Village Head, they obtained information on mark ups for Community Protection Unit uniforms by the District Government. With proof in hand, the seven village heads went to Jakarta, met with President-elect Susilo Bambang Yudhoyono and a Blitar community figure who was also a top official in the Attorney General's Office. They reported the corruption allegations and requested that the government and legal institutions handle the case seriously, considering the impact on the implementation of development programs in villages in Blitar. The village heads spent their own money to go to Jakarta and were criticized by other village heads for acting above their station.

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### **Madiun Corruption Watch (MCW) – a local NGO**

This anti-corruption NGO was established in July 1999 to perform anti-corruption monitoring and community education in the Madiun area. This institution has a strong network at the national level, including ICW, Gerak Indonesia and Watch Terminal. To strengthen the network at the grassroots level, they publish the biweekly tabloid "BENAR" that contains reports on activities and corruption allegations in the local area. Community interest in the tabloid's news is clear: though a community service, the tabloid is not free. People care enough about the events and news to buy each issue.

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### **Contractor Group– a professional organization**

The Bestari Foundation corruption case was raised by a group of local contractors upset by preferential treatment in tenders for government development projects. Suspicious of

apparent new wealth among Council members, they obtained copies of Foundation documentation signed by Council members acknowledging receipt of funds.

### **The Royal Palace: Keraton Amantubillah (Mempawah)**

Another significant actor in the Bestari Foundation case was the Royal Palace of Amantubillah. The Palace mobilized mass protests that kept consistent pressure on the courts during the legal proceedings. The Palace was used as the venue for meetings of anti-corruption actors and the Sultan himself provided advice on settling the case. When the panel of judges acquitted the defendants, the Sultan led a community prayer to request God’s wrath on seven generations of the council members’ families.

### **Anti Corruption Actor’s Motives**

Anti-corruption actors’ motives are diverse, often overlapping. Some are acting for the benefit of society by working for anti-corruption and legal aid NGOs, others have personal, political or economic interests. Actor motives often determine the amount of endurance they have for the tiring and time-consuming process of advocating for case settlement. Motive is not the only factor for success or failure in handling corruption cases; leadership and consolidation of actors plays a much more significant role. (See discussion below)

**Table 2. Anti corruption Actors’ Motives**

<b>Anti corruption Actor</b>	<b>Motives</b>
<i>NGO</i>	<ul style="list-style-type: none"> <li>• Workplan demand</li> <li>• Anti-corruption education to the public</li> <li>• Mandate from the base or groups assisted</li> <li>• Opposition to legal discrimination</li> <li>• Increase of bargaining position of NGO in local political arena</li> </ul>
<i>Academics (student organization/ professor)</i>	<ul style="list-style-type: none"> <li>• Practical application of educational background</li> <li>• Provision of support to NGO or community organization</li> </ul>
<i>Politician/political party</i>	<ul style="list-style-type: none"> <li>• Mandate from party members</li> <li>• Political rivalry</li> <li>• Retaliation following loss in elections</li> </ul>
<i>Professional organization</i>	<ul style="list-style-type: none"> <li>• Business competition</li> <li>• Retaliation for a project tender discrimination</li> <li>• Increasing political position at local level</li> </ul>
<i>Bureaucracy</i>	<ul style="list-style-type: none"> <li>• Competition for position in administration</li> <li>• Retaliation for absence of promotion</li> <li>• Increasing bargaining position for higher administrative position</li> </ul>
<i>Media</i>	<ul style="list-style-type: none"> <li>• Public education</li> <li>• Increasing number of copies/rating</li> <li>• Opportunity to earn funding for program</li> <li>• Political rivalry or business competition of the investor</li> </ul>
<i>Village leaders</i>	<ul style="list-style-type: none"> <li>• Improvement in public service quality</li> </ul>

Despite its importance in driving anti-corruption cases, motive alone is not sufficient to ensure success. Other factors include: leadership and consolidation. Apart from that, in reality motives of different actors usually overlap with one another.

## VII. Case Handling from the Perspective of Anti Corruption Actors

### Key Findings 1: Patterns in Exposing Cases at the Local Level

- Complaints originate with the community (NGOs, villagers, aggrieved or disaffected groups) rather than with government oversight bodies or law enforcement institutions
- Regardless of the source of corruption allegations, NGOs are always chosen as the vehicle for consolidating actors and moving forward
- Anti-corruption actors maximize frictions between competing political institutions or groups
- The mass media spearheads case exposure
- Characteristics of successful anti-corruption actors: i) Basic knowledge of regulations and corruption issues; ii) Ability to access budget/procurement/accountability documents; iii) Engagement of mass media in the coalition of anti-corruption actors; iv) Engagement of different civil society elements.

### A. Sources of corruption allegations

The main sources in uncovering corruption indication are:

- Studies conducted by local NGOs/NGO coalitions
- Complaints from the community
- Complaints from aggrieved/disaffected groups or political opponents

**Local NGO studies.** At the same time as extensive media attention was focused on the DPRD corruption case in Sumatera Barat, similar movements to review local budgets were evolving in a number of other districts throughout Indonesia. These movements focused on issues such as planning documents and local regulations covering budgets and district head accountability reports. Finding indications of corruption was not hard as there existed a standard format to assess these documents, PP110/2000 in reviewing APBD plans and regulations. This process occurred in almost all the DPRD corruption cases, including West Sumatera, NTB, Madiun, Toli-Toli and Donggala.

These studies are almost impossible to carry out without access to important documents related to the budgets. Although APBD plans and regulations or district head accountability reports are supposedly public documents, all parties highlighted the challenge of actually obtaining copies. At this point knowing 'an insider' who was willing to provide a copy of the document became crucial. Alternatively, as in West Sumatera case, academics – usually

requested by regional government institutions to draft academic reviews – were sometimes willing to provide copies of documents to anti-corruption actors for joint reviews.

Limitations of district-based NGOs often lead them to collaborate with provincial-level NGOs to carry out studies. As was the case in Mentawai District, the NGO *Aliansi Masyarakat Mentawai* (AMM) felt it necessary to cooperate with Padang-based LBH Umanta to conduct a legal review of the District Head’s accountability report and APBD.

**Community’s Complaints.** Community members are often the first to feel the effects of government mismanagement. Among the cases researched, allegations of corruption emerged, for example, after community members in Central Lombok suffered due to land price manipulation. Similarly, in Blitar allegations emerged after community members had directly suffered a loss due to mismanagement of the regional account: honorarium-based teachers were not paid, development contractors refused to continue working without payment, and village heads saw village facilities crumbling. The important factor is the existence of an organization or facility with some capacity for the community to channel their restlessness and suspicion. Without local organizations, community complaints will not move from rumors to action.

**Aggrieved or disaffected groups.** Decentralization has brought more open competition among political actors at the local level. Those defeated in elections are often the most enthusiastic source of information, though allegations with political motivations must always be treated with caution. As demonstrated by the Pontianak and Blitar cases, anti-corruption actors benefited greatly from an aggrieved or disaffected group supplying information and evidence.

Some anti-corruption actors have successfully played upon political rivalries to obtain evidence. In Toli-Toli, anti-corruption actors used a divide-and-conquer strategy to obtain more information on corruption allegations. NGOs, LBHs and similar anti-corruption actors must remain focused on combating corruption and be wary of being manipulated by those with political interests. As seen in West Nusa Tenggara and Pontianak, political motivations can ultimately undermine consolidation among the anti-corruption actors.

### **Box 1. Where is the Regional Internal Audit Body?**

*“As long as Bawasda is under the District Head, they cannot be expected to function effectively. How can I control my superior? That is not possible.”*

*Bawasda Apparatus of Toli-Toli District*

In PP No. 8/2003 on Guidelines of Regional Organizations, the position of the Regional Internal Audit Body or *Bawasda* was not specifically mentioned, but was to be further stipulated by each region. However, one of the tasks of this agency is to conduct functional oversight of regional governments. It is also meant to examine and investigate alleged violations and misuse of authority based on either their own findings or complaints or



information from external parties. In carrying out their tasks and functions the agency reports to the District Head through the District Secretary.<sup>14</sup>

There have been no cases of corruption disclosed as a result of *Bawasda* reports.

**Blitar.** Before the corruption allegation case of Blitar District Government emerged, the District Head gave a briefing for *Bawasda* staff with the theme ‘work discipline’. During this briefing, staff learned they were forbidden to examine the financial section of the District Government and the district account. Allegedly, one of the members of Team 11 came from *Bawasda*.

**Central Lombok.** *Bawasda* of Central Lombok knew about the Land Acquisition Committee actions in 2001. However, the matter was ‘settled’ internally by the District Government. When the District Prosecutor’s Office examined the suspect eight months later, *Bawasda* of Central Lombok again conducted an audit. There were strong allegations that the Project Leader of the Land Acquisition Committee bribed the *Bawasda* staff.

**Donggala.** In a statement to the mass media, Head of the local *Bawasda* stated that there had not been any fund leakage, fictitious expenditures or budget mark ups. The actions were termed ‘administrative tardiness’.

**Mentawai.** In a court hearing in the case against Mentawai District Secretary, the Head of *Bawasda* stated that he also was among those who ‘borrowed’ funds from District Secretary. The funds, according to the District Secretary, had been returned when the *Bawasda* Head was examined by the West Sumatra Provincial Prosecutor’s office.

**NGO’s as Openings:** Wherever the corruption indications came from, the focal point for case disclosure was always through NGO institutions or organizations. Channeling complaints through an NGO, or creating one for the purpose, is a logical step: as the case moves forward law enforcement, the media and others want to know who is making the complaint. An NGO, even a newly formed NGO, legitimizes the actions being taken by the community.

## **Box 2. What if there are no strong NGOs in the district?**

Problems arose in locations where anti-corruption actors were too weak to establish a temporary organization or where there were no NGOs. In Central Lombok, the promoting actor was a local journalist who worked at a media outlet whose majority shareholder was the District Government. The important steps taken by the journalist were the following:

- i) Case investigation: He conducted his own investigation using his networks, which happened to include an officer at the District Government.

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<sup>14</sup> <http://bawasda.jakarta.go.id/>

- ii) Local actor mapping: He mapped the people and institutions that had the potential or influence to expose the case and decided to approach a district leader from a political party.
- iii) Publication: After persuading the political figure and providing him with necessary data, the journalist used the political figure to expose the corruption allegations through the media he worked for.

A similar situation took place in Kapuas Hulu. In this situation, however, an anti-corruption actor based at the provincial capital was called upon. Transportation/communication barriers hampered effective follow-up and resolution of the case.

## **B. Publication of Cases**

NGOs take the following actions when preparing cases:

- a. Early investigation. This measure is needed when the source of information is a community complaint and there were no prior studies conducted by the NGO.
- b. Preparation of draft complaint. The NGO or NGO coalition will form a working group to conduct a study and prepare a draft complaint to submit to law enforcement institutions. In this phase, a resource person or an NGO that has some knowledge of legal proceedings or investigation skill concerning corruption and local budget issues is required.
- c. Mass rally. Normally to the district or provincial prosecutor's offices with a demand for an immediate investigation into the graft allegations.

## **Role of Mass Media**

Limited access to public documents impacts on the quality of evidence included in reports prepared by anti-corruption actors to hand over to law enforcement agencies – as a result these agencies commonly claim they are either not able to follow up on the reports or at least delay the investigation process. It is at this point that the media can play a crucial role in exposing cases. Media coverage, even if it is initially only general in nature, can have a snowball effect, pending on local level politics, galvanising anti-corruption actors which, in turn generates greater media coverage.

Using the media to publish a report on corruption allegations leads to at least two important implications: i) public opinion is generated thereby increasing public demand for transparency and more proactive law enforcement, and ii) government institutions and law enforcement agencies tend to be more responsive in anticipation of greater public demands. These two results significantly strengthen the bargaining position of anti corruption actors in collecting important documents related to the case and opening discussions with local government and legal institutions. The more extensive the media coverage, the stronger the bargaining position of anti corruption actor in calling for local government transparency and accountability – although this does not necessarily mean that the anti-corruption actors always manage to obtain the information needed for investigations to continue.

Basically studies conducted by anti-corruption actors are often subject to questioning, including questions raised by suspects themselves. However, in some cases, as highlighted in cases in West Sumatera and Madiun, the corruption suspects refused to engage in dialog instead insisting that there was no corruption.

In addition to challenges in accessing budget documents and building effective coalitions, anti-corruption actors also face counter pressure from suspects and their supporters. This not only appears in the form counter rallies, but in some places also includes assault or threats addressed to anti corruption actors, including ‘defamation’ charges targeted at leaders of anti corruption coalitions. When faced with such situations, written statements of support or the involvement of higher level anti-corruption institutions can counter this.

### **How to cooperate with journalists**

Below are tips recommended by anti-corruption actors in the case studies:

1. Start to engage journalists/media as members of coalitions in discussion forums
2. Actively supply data/information on the updated development to media partners
3. Develop personal relations with the journalists through informal activities
4. Organize regular meetings with editorial boards of local media
5. Develop programs that are creative and can benefit the media

### **D. Complaints**

It generally does not take long time for anti corruption actors to conduct their initial investigations: between 1 – 2 months. Although not a formal requirement, legal proceedings normally only begin following a complaint from a community group. In the cases of Blitar and Pontianak, there was no early investigation or official complaint submitted to law enforcement from anti-corruption actors. Responsiveness from local law enforcement will also depend on how national and local level political winds blow.

Almost all complaints were filed directly to district prosecutor’s offices, except in the case of Madiun, where the anti-corruption actors also reported their complaints to local police in an attempt to get the complaint addressed quickly.<sup>15</sup> This NGO also circulated copies of the complaint to various parties such as the DPRD, the District Head, the District Court, political parties and, most importantly, to the media. If the anti-corruption actors have a network at the provincial or national level, the complaint will usually be forwarded as early information on the case.

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<sup>15</sup> Interview with the Chairman of Madiun Corruption Watch.

## VIII. Strategies and Action of Anti corruption Actors

### Strategies of anti-corruption actors in exposing and promoting the settlement of corruption cases:

- Building constituencies
- Building temporary coalitions
- Creating public demand
- Cooperation with law enforcement institutions

Anti corruption actors are essentially 'learning by doing', as experience and examples from others in dealing with corruption cases are limited. As a result, it is difficult to find examples of strategies and workplans that were developed from the outset. Most actions taken were generally spontaneous reactions to developments in legal proceedings. Even this is limited to legal proceedings that take place at local level. Strategies of anti corruption actors identified from the case studies included:

**Building constituencies.** Pressure mounted by anti-corruption actors has greater impact when there is public legitimacy. A large body of supporters at public events such as rallies, hearings, statement signings and court sessions increases leverage. Various groups within the community are often targeted, they usually include the urban poor, student organizations, and groups with a religious or ethnic base.

Building constituencies can be a challenge for many anti-corruption actors. They may not have mass support at the local level and building a constituency at the community level takes time. For those without a mass support base, media coverage can assist with bringing pressure to bear during legal proceedings.

### Box 3. Good Practice; Village against Corruption

*“Legal apparatus at the district or provincial level are easily influenced by the District Head (the suspect). Therefore we decided to report directly to Jakarta.”*

Team of Seven Village Heads, Blitar

The disclosure of the corruption case in Blitar was not only the result of work by NGOs and community groups at district level but was also marked by the presence of Team of 7 Village Heads, who were actively involved in pursuing the case to the point of meeting with the President in Jakarta.

Indications of corruption within the Blitar District Government initially started with rumors that the regional account had been spent leading to an inability to provide services and development works for communities. Learning of this situation, the Village Head of Jambewangi started to discuss possible options with a neighboring Village Head from Popoh. The two leaders invited 5 other village heads to join them in order to strengthen their bargaining position.

In the beginning, the Team of 7 Village Heads did not engage with the other local anti corruption actors, who were at the same time disclosing corruption allegations against the District Government. Instead, they started collecting evidence to find out why the accounts were empty. *“If it was only about mark-ups, there is no way the account would finish. There must have been something else,”* said Jambewangi Village Head. The data collection even involved visiting the regional coordination agency in Madiun.

Once the data was collected, a new problem arose; whom should they report to? They knew that corruption complaints should be reported to law enforcement agencies such as the police or prosecutor’s office. However, they perceived these institutions to be easily influenced by political interests so they decided to submit the case directly to the national level. At their own expense and reflecting their commitment to the case, the 7 village heads brought the case to Jakarta by visiting the residence of newly-elected President SBY. In addition, they managed to find out that there was a top AGO official who originally came from the district. The Team reported the case to these two figures and urged immediate action.

Only after this did the Team of 7 Village Heads met with SOMASI (the coalition of anti corruption actors in Blitar) and start to work together on the case. However, when they felt the legal proceedings weren’t progressing in the District Prosecutor’s Office, a village head representative again went to Jakarta to call for faster settlement. The team themselves, were offered bribes by a representative of the suspect., several hundred million rupiah in exchange for dropping their plan to file a complaint in Jakarta. After this offer failed, threats against their families’ safety were made. In addition, they faced pressure from the Association of Village Heads in Blitar, who organized a rally claiming that the actions of the 7 Village Heads was against the main tasks and functions of village heads.

No one could believe that in investigating small amounts of corruption the team would end exposing up to an estimated 73 billion rupiah of state financial losses. What they did provides a good precedent on how villages can structurally contribute to the strengthening of district governance, an example that should be developed and looked up to by other villages in Indonesia.

**Establish a temporary coalition.** Slightly different from building constituencies, the strategy to establish a coalition is intended to invite influential figures or organizations at the local level to join the movement. Main targets include academics, legal practitioners, professional organizations, indigenous (*adat*) institutions as well as other NGOs at local level. Temporary coalitions are prone to splits caused by differences in objectives or in approaches to building a strategy and applying pressure. In the cases studied, no example exists of coalitions that remained together until the end of legal proceedings. Weaknesses in leadership and coordination often triggered the emergence of new coalitions – frequently competing with previously existing coalitions.

## Building a Strong and Effective Coalition?

Below are some tips based on the experiences of anti-corruption actors in the case studies:

1. Have networks with anti-corruption institutions/NGOs at provincial/national level.
2. Engage figures or NGOs who are considered senior or have good track records in the community and the media.
3. Formulate a code of ethics at the outset toward parties outside the coalition, such as law enforcement, government, or corruption suspects and their supporters.
4. Limit the sharpening of ideological differences and work to build synergy
5. Use a presidium or rotating leadership model to avoid domination by coalition members
6. Make a commitment to transparency among coalition members
7. Increase capacity to respond to differences in objectives and strategy

The situation can worsen through rumours that coalition members are either taking a ‘soft’ stance or accepting bribes, as occurred in the cases in Pontianak and Blitar. In the Pontianak case, the coalition split after an academic who had been engaged since the beginning to prepare complaints and arguments against the group of suspects turned out to be giving a statement that was considered to favor the suspects when invited as an expert witness in court hearings.

*Pressure can be more effective without a coalition.* MCW, the anti corruption actor in the case of Madiun provides an interesting example. No coalition was established at the outset in an attempt to push a case settlement. Different actions to mount pressure were designed and led directly by MCW. However, the pressure leveraged by MCW was sufficient and consistent enough to ensure that the case went to the Supreme Court. Without building a coalition, MCW was very active in mapping the local political players and using different groups for different activities corresponding to those groups’ aims and interests. For example, in pressing for the detention of all suspects, MCW did not hesitate to work together with supporters of one of the suspects, who felt he was being used as a scapegoat by other suspects who were not detained.

### Box 4. Split-up within the Anti corruption Actors

*“Imagine, how beautiful my game was. I took part in the rally (calling for the detention of the corruption perpetrators) but when he (the DPRD Speaker) was hospitalized, I was the first to visit him. Now, anytime there is community group who wants to stage a rally against the DPRD or the District Head, I block them.”*

Chairperson of FKMD

Example 1. Some members of the anti corruption coalition in the Mentawai District case made a sudden visit to the suspect in Muara Padang Prison. At that time, the suspect, while crying, asked them to submit a request to postpone his detention and in return he promised to give evidence that would disclose the District Head’s involvement in the corruption case.

Several days later, the NGOs filed such a request to Provincial Prosecutor's Office arguing that there had been 'vacuum of authority' in Mentawai District leading to a decline in the provision of public services. Although the request was granted, the suspect has still failed to keep his side of the bargain.

Example 2. The quote above is from the Chairperson of FKMD of Donggala. The Chairperson took part in public speeches and rallies demanding that the DPRD Speaker and the District Head be prosecuted. The FKMD Secretariat was even used as the venue for consultation and strategy development. As the case progressed, FKMD started to change direction. They visited the Speaker when he was hospitalized and ultimately withdrew their support from the case. Most recently, FKMD prevented the community from holding a mass rally against the DPRD Speaker.

**Creating public demand.** Mass media coverage of cases can effectively build public interest in corruption cases. The initiative to hold radio shows, as in the Blitar case, proved successful in drawing enthusiasm and active participation of the community. Community members not only cared but also voiced their demands directly, calling law enforcement officers to work in a timely and transparent manner.

#### **Box 5. Good Practice: Media and Public Participation**

**Mayangkara Radio, Blitar.** Print media coverage, despite its significance, has its limitations. Mayangkara Radio Station is a private news radio station. The station not only sent its reporters to cover developments in the corruption case, it organized interactive events where people could ask questions to resource people and express opinions on the developments of the case.

The interactive program took place daily from 6 to 9 am and boasted wide community participation and strong listener base. The program's ratings were steadily improving and it drew a steady stream of advertisers. In addition, Mayangkara Radio worked with the District Court to broadcast the hearings live. The court approved the proposal in anticipation of high public interest in the hearings.

**"Benar" Tabloid, Madiun Corruption Watch.** In an effort to strengthen and enlarge the corruption eradication constituency base in the community, MCW took the initiative to publish an anti-corruption tabloid with the title *Benar*. *Benar* actively covers various corruption allegations, particularly the Madiun District case. The tabloid is circulated for free but also sold to general public.

**Developing cooperation with law enforcement.** In rare cases, coalitions have worked with law enforcement and achieved greater success in prosecuting corruptors. It must be remembered that investigating and enforcing corruption cases is new for the police and

incentives for them to investigate are few. In the cases examined for this report, the police were grateful to anti-corruption actors for assistance in collecting evidence.

## IX. How to measure the success of anti corruption actors?

The success of anti corruption actors should be viewed from a long-term perspective whereby their various actions and strategies in resolving cases can significantly strengthen good governance.

### **Indicators used to measure the achievement of anti-corruption actors:**

1. Capacity to identify and highlight cases
2. Good investigation and reporting
3. Building coalitions and constituencies
4. Pushing for fair, fast and transparent legal proceedings

Anti corruption actors are entrusted by the public to expose cases and advocate for case settlement through legal proceedings. Although their capacity to review budgets and undertake case investigations is still weak, complaints filed by anti corruption actors remain the key in starting legal proceedings. Weaknesses in building constituencies and consolidating coalitions affect the ability of anti corruption actors to apply pressure whilst legal proceedings are occurring. Corruption within legal institutions resulted in weak charges, lenient verdicts and weak enforcement.

The presence of anti corruption actors is the key factor in resolving corruption cases. With a simple study and report, complaints made by anti corruption actors are the basis of the beginning of a legal process. Furthermore, even when the reported allegation is not supported by sufficient evidence, the report constitutes the first step for law enforcers to reveal other indications of corruption, often even bigger than those covered by the initial report.

The biggest constraints faced by anti corruption actors in the initial phase is access to budget or procurement documents, which are essentially public documents but are very difficult to obtain. In order to overcome this constraint, anti-corruption actors take advantage of political rivalry among local level political players (normally around election or accountability report time) to obtain supplementary information and other important documents. Local political dynamics also enable anti corruption actors to gain political support in mounting pressure for resolving cases.

Support from political groups (especially those with ulterior motives) has to be dealt with carefully by anti corruption actors. This type of intervention can easily transform the nature of the case from a legal one to one focused on trying to remove political opponents. Political groups are not the only ones that may act in self-interest. Decentralization has opened up political participation –not only for old players but also new ones, including anti corruption actors' themselves. As such their motives for pursuing cases may include self-interest or



political reasons. The reasons behind actors pursuing cases should not influence the decision on whether or not to pursue the case. It needs, however, to be taken into consideration in developing case strategies.

The impact of the actions of local anti-corruption actors was not limited to pressuring law enforcement agencies to pursue cases against perpetrators of corruption. Their efforts also had significant impact, both direct and indirect, in strengthening good governance initiatives. These efforts often constitute the first steps in increasing civil society participation in the local political process.

According to Kaufmann<sup>16</sup>, governance is defined, “*as the traditions and institutions by which authority in a country is exercised for the common good*”. This has 6 dimensions, i.e.:

- A selection process and provisions for transfer of power: i) participation and accountability, ii) political stability and absence of violence;
- Government capacity in drafting and implementing policy; iii) government effectiveness, iv) quality of regulations;
- Confidence of public and government agencies’ in checks and balances and regulatory regime: v) legal order and vi) control on corruption.

The efforts of anti-corruption actors have the potential to significantly influence local governance, in particular relating to the i, iv, v and vi dimensions identified above, in addition to impacting on transparency and the speed of the legal process.

**Success Indicators for Anti Corruption Actors.** When the research was started, it was difficult to answer the question of what indicators should be used to measure the success of anti corruption actors. Given that many legal proceedings had not been completed or criminal sanctions were minimal, pessimists may claim that the local level anti-corruption movement show more failure than achievements. That judgement seems premature. As with civil society efforts in other fields, success should be measured from a long term perspective of impact on increasing awareness.

**‘Radar’ to detect indications of corruption.** the use of NGOs as the first choice of institutions by community groups – even by administration ‘insiders’ – to expose corruption cases, highlights the relative success of anti corruption actors in conducting oversight and monitoring. Even in the absence of reports, efforts by local institutions to conduct reviews and analysis of local government finances inevitably capture indications of corruption. However, the ability of anti corruption actors to build constituents from within the government needs to be improved.

**Research and report writing on corruption allegations.** NGO’s are not equipped with legal knowledge, authority or work facilities to conduct investigations and draft comprehensive reports on indications of corruption. However, expectations of the legal

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<sup>16</sup> Kaufmann, Daniel, 10 Myths about Governance and Corruption, Finance and Development, September 2005. For complete report see in <http://www/worldbank.org/wbi/governance>.

apparatus can create minimum standards for NGOs, to ensure that reports contain basic information about the suspect, the cause of action and possible charges. Good reports are not only useful for law enforcement agencies but can also provide foundations for advocating further pressure by anti corruption actors themselves.

**Building constituencies and coalitions.** Efforts to build local constituencies and establish coalitions are key aspects of anti-corruption cases. Failure to clearly define aims or strategies will result in poor coordination amongst anti-corruption actors. The commencement of legal proceedings brings different demands. Legal proceedings are time consuming and require specific knowledge on legal matters. Anti-corruption actors need to allocate full-time staff to manage cases.

**Building demand for effective legal processes.** Examining the relationship between actions of anti-corruption actors and the effect on the legal apparatus identifies two patterns. First, anti-corruption actors have an impact in pressuring law enforcement agencies to act more transparently and efficiently in handling cases. Second, this does not extend to having an impact on the outcomes of the legal proceedings. That is, there is no correlation between pressure mounted by anti-corruption actors and the nature of the charges laid or the strength of the verdict. Anti-corruption actors, therefore, are successful in urging more efficient and transparent proceedings but not necessarily in ensuring the fairness of the proceedings.

### **Supporting & Limiting Factors**

As mentioned above, the main role of anti-corruption actors at the local level is to expose indications of corruption and to monitor the legal process. To this extent, from the cases studied it is possible to identify key factors that impact on the ability of anti-corruption actors to call for fair, efficient and transparent justice from law enforcement agencies.

#### **Supporting factors:**

- Access to budget and procurement documents
- Knowledge and skills in budget review and corruption allegation investigations
- Networking at national level
- Mass media coverage, and
- Cooperative position of the law enforcement institutions

The chances of success for anti corruption actors is enhanced by several factors including:

- i) Access to budget and procurement documents. By law, budget and procurement documents are public documents. In addition to access to documents, there is a greater likelihood of success if the promoting actor has an informant who can provide not only documents but also other critical information.
- ii) Knowledge and skills in budget review and corruption investigations. Without knowledge and skills in budget review, corruption is difficult to identify and the process of bringing charges may deteriorate into a competition between political actors. Nevertheless, even weak studies led the legal apparatus to investigate and discover more serious cases than previously reported.

iii) *Networking* with national level anti-corruption institutions. Apart from support in the form of education and training, national level anti-corruption networks can help local actors increase pressure for investigations and prosecutions. This assistance is key in the first and second appeal phases, when local actors cannot easily and effectively monitor and push for resolution.

*“After we found out that ICW sent a letter to the Provincial Prosecutor’s Office, we were even more motivated to expose the corruption case in Donggala”*

NGO in Central Sulawesi

- iv) Mass media coverage. Media plays a key role in building public awareness and mounting pressure for timely and transparent handling of cases. Media is also a powerful tool to encourage the public-at-large to monitor the legal process.
- v) Finally, although rarely found, the existence of reform-minded law enforcement officers who support anti-corruption initiatives can be very helpful. These people will not only act as sources of information on what is taking place in the legal process, but also contribute to providing advanced education for anti-corruption actors in understanding complex legal aspects and presentation of evidence in corruption cases. Unfortunately, there is no data that shows the presence of incentives for reform-minded apparatus in the case studies.

**Constraining factors:**

- Intimidation and threats of legal charges by suspects
- Non-transparent legal proceedings
- Division of cases into several files, and
- Division amongst anti corruption actors

A number of factors weakening the efforts of anti corruption actors are as follows:

- i) Counter attack from corruptors. Intimidation, threats, potential law suits and counter rallies are all aspects of local level counter attacks by corruption suspects. When these activities occur at the local level, national level work to promote the case must increase. Corruption suspects often have greater success consolidating their position at the national level through political statements, pressure on the Attorney General’s Office, and filing judicial reviews with the Supreme Court. Meanwhile, without the same access to political institutions and government, the access of anti-corruption actors to negotiations between the legal apparatus and government institutions is restricted.
- ii) Non-transparent legal process
- iii) Division of case into several legal cases for each suspect. The splitting of cases stretched the ability of anti-corruption actors’ to monitor legal proceedings of all cases. For the public, this weakness is often seen as discriminating against anti-corruption actors or taking sides in exposing corruption allegations.
- iv) Split within anti corruption actor coalition. The split within the anti-corruption actors themselves is difficult to avoid whether due to reasons of differences in vision, strategy or preference of action. Basically these splits are attributed to the fact that actions are

often responses to the course of legal proceedings and not part of a strategy developed jointly when the coalition was established.

#### **Box 6. Legal Guarantees on Role and Participation of Anti-Corruption Actors**

The rights and protection offered to anti-corruption actors are guaranteed under Government Regulation No.71/2000 on the Procedures for Implementation of Community Participation and Appreciation in Prevention and Eradication of Corrupt Criminal Acts. The articles relevant to the role and protection of local anti corruption actors include:

**Article 2, Paragraph 1.** Any person, Community Organization or Non-Governmental Organization has the right to seek, obtain, and provide information on allegations of corruption and provide suggestions and opinions to law enforcement and/or the Commission regarding cases of corruption.

**Article 3, Paragraph 1.** Information, suggestions or opinions from the community as provided in Article 2 must be submitted in writing and accompanied by:

- a. Data on the name and address of the reporting party, leadership of the community organization, or leadership of non-governmental organizations by attaching photocopies of resident's cards or other identity cards; and
- b. Description of the allegation of corruption against the perpetrator along with initial evidence.

**Article 3, Paragraph 2.** Any information, suggestions, or opinions from the community shall be clarified with presentation of the case by law enforcement.

**Article 4, Paragraph 1.** Any person, community organization or non-governmental organization has the right to receive services and responses from law enforcement or the Commission on the information, suggestions or opinions submitted to law enforcement or the Commission.

**Article 4, Paragraph 2.** Law enforcement agencies or the Commission are obliged to provide responses verbally or in writing regarding information, suggestions and opinions from any person, community organization or non-governmental organization no later than 30 (thirty) days starting from the date the information, suggestions, or opinions are received.

**Article 6, Paragraph 1.** Law enforcement agencies or the Commission are obliged to keep the reporting party's identity or the content of information, suggestions, or opinions submitted confidential.

**Article 6, Paragraph 2.** When needed, based on the reporting party's request, law enforcement agencies or the Commission may provide provision of physical security for the reporting party and his/her families.

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## **Section 4**

### Law Enforcement

## XI. Legal Context of Corruption

### Key Finding # 2. Patterns in legal proceedings

- Legal proceedings are the only choice available to anti corruption actors in case settlement
- Initial responses from district prosecutor's offices is relatively quick, but strong allegations of corruption in legal institutions remain
- Not all suspects have charges filed against them
- The pressure of anti-corruption actors decreases during the course of legal proceedings
- Characteristics of success in legal proceedings: i) Pressure from higher-level legal institutions; ii) Anti-corruption actors' success in advocating for transparent legal proceedings; iii) Support from national level anti-corruption institutions

In Indonesia, most criminal investigations begin with the police and are then referred to the District Prosecutor's Office. Corruption investigations, however, may begin with either the police or the District Prosecutor's Office.

After investigating the charges, the public prosecutor submits the case to court. The court examines the charges and, if it accepts them, the case will go to trial. The public prosecutor submits charges and a request for sentencing. Following the court's verdict both the public prosecutor or the defendant can appeal, to a Provincial High Court or directly to the Supreme Court. If the Provincial High Court acquits the defendant or rejects the charges, the public prosecutor can appeal directly to Supreme Court.

Legal proceedings have no prescribed length although there are rules for how long suspects can be detained during the legal process.<sup>17</sup> A Circular Letter from the Attorney General's Office on Accelerating the Handling of Corruption Cases and the Circular Letter of Police Headquarters on the Priority of Corruption Allegation cases stipulates a specific time limit for each institution to process corruption cases.

### Several Regulations related to Local Government Corruption Cases

**Government Regulation (PP) No. 110/2000.** PP 110/2000 is part of a package of implementing regulations supporting Article 39 of Law 4/1999 on the Composition and Provisions of the MPR, DPR and DPRD. PP 110/2000 describes the financial provisions for these institutions. It determines the types of allowances that can be provided to DPRD members, with detailed prescriptions for the amount of allowances. PP 110/2000 also proscribes DPRD budget levels in relation to each region's level of regional revenue (PAD).

This regulation faced many challenges from DPRD associations who argued that this regulation contradicts Law 4/1999 and Law 22/1999, which stated that the DPRD has the

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<sup>17</sup> See Criminal Code Procedures (*Kitab Undang Undang Hukum Acara Pidana*)

authority to draft its own budget. West Sumatra Provincial DPRD was charged with corruption for breaking this provision and filed a judicial review to the Supreme Court (MA) on May 25, 2001. On September 9, 2002, the Supreme Court annulled PP 110/2000. As a result, 3 months following the issuance of this verdict this PP can be used as a foundation for investigation of graft charges by Prosecutor's Office.

**Government Regulation No. 105/2000** on Regional Financial Management and Accountability states that the Regional Head holds general power over regional financial management through enactment of local regulations and approval from the DPRD. In the case of regional financial losses due to acts violating the law or negligence, the regulation states that the Regional Head must file charges for compensation. Corruption suspects have used this regulation to argue that violations of PP 105 require administrative action rather than legal sanction.

**Government Regulation No. 109/2000 on the Financial Provisions of the Regional Head and Deputy Head of Region.** PP 109/2000 stipulates that regional heads and deputy heads income consists of their salary and other allowances. In addition, they receive official housing and vehicles from the state. They are not allowed to receive other state-provided income or facilities, a clause that prevents an office holder from simultaneously having more than one position in government.<sup>18</sup>

Regional heads and deputy heads are also provided with an operational budget for expenses such as official travel, household expenses and others. Their operational expenses are based on their region's PAD. For example, for a province, when the PAD is between 150 million and 15 billion, activity-supporting expenses for regional heads and deputy heads are a maximum of 1.75% of the province's PAD. In cases where their budget appropriations exceed this, the regional regulation allows that the expense can be annulled by the Minister of Home Affairs acting on behalf of the President.

## XI. Case Handling from a Legal Perspective

### A. District Prosecutor's Office

In corruption cases the Prosecutor's Office is invariably the first institution to become involved in legal proceedings. The biggest challenge they face is often meeting the high expectations of the community. First, witnesses are interviewed to verify the accusations. Subsequently, suspects are identified and charges are drafted. After the case enters the court, the prosecutors are also responsible for recommending appropriate sentences.

Responses from prosecutors varied from case to case. There were cases where complaints were ignored until orders came from Provincial Prosecutor's or the Attorney General's Office. On the other hand, there were cases where the Prosecutor's Office conducted

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<sup>18</sup> Civil servants elected to office must temporarily resign their positions.

immediate investigations into the accusations or, as in the West Sumatera case, stated that they would initially conduct an ‘education effort’ for the DPRD regarding the corruption allegations they were accused of.

In handling corruption cases, prosecutors are confronted by suspects who have both political power and influence at the local level. Suspects make numerous attempts to avoid legal proceeding, ranging from rejecting summons and declining arrest to mobilizing rallies against the Prosecutor’s Office. As a member of the District Leadership Deliberation Team (*Musyawarah Pimpinan Daerah* or Muspida), the position of the Prosecutor’s Office is further complicated where the charges involve the district head themselves.

The process of preparing the evidence involves numerous players and requires a good understanding of financial procedures and budgetary drafting. Prosecutors therefore need time to study different regulations relating to district budgeting. On the other hand, prosecutors are under pressure to act quickly through rallies or media campaigns organized by anti-corruption groups,

#### **Box 7. West Nusa Tenggara: When the Governor is a Suspect**

It took almost one month for the West Nusa Tenggara Provincial Prosecutor’s Office to receive a permit from the President to examine the Provincial Governor as a witness in the Provincial DPRD graft case. The Governor responded to his first summons saying he was too busy to attend – the same excuse he used for his four subsequent scheduled examinations.

On March 28, 2005, the investigating prosecutor was preparing to examine the Governor, who, again, failed to answer the summons or provide a clear reason for his absence. Instead, the Head of the Provincial Prosecutor’s Office was asked to attend a *Muspida* meeting at the Governor’s office. During the meeting, the Prosecutor’s Office was visited by 3000 of the Governor’s supporters. Despite their proximity to the West Nusa Tenggara Provincial Police Office (75 meters), the mob was able to smash much of the glass in the Prosecutor’s Office.

Two days later, at the appointed time for the summons, the Governor again failed to appear. His staff continued to confirm the Governor’s attendance at the examination until mid-afternoon when they announced that he was traveling outside the province.

The first examination finally took place in the evening on April 16, 2005, at the Governor’s request.

There are also other explanations for lengthy processes in the Prosecutor’s Office. In some areas, there was serious ‘bargaining’ that occurred among local political players in determining whether or not to pursue the accusations. Where the suspects’ side was successful, the investigation process was generally delayed significantly and the indictments were vague. Or the case was simply closed. In the Loteng case, there was an 8 month delay



and the case was only re-opened after the newly appointed Head of the District Prosecutor's Office, enquired in a welcome reception "is there any corruption case here to 'rise'".

Cases where the response of law enforcement institutions was relatively quick were characterized by: i) continuous media coverage relating to the corruption allegations; ii) the anti-corruption actor pursuing the District Prosecutor's Office or the police for regular updates. In the Madiun case, Madiun Corruption Watch went to the Provincial Police and Prosecutor's Office daily to monitor, answer questions, and provide documents needed by law enforcement staff.

**Detention.** Political and social unrest often takes place during the District Prosecutor's investigation when suspects are concerned about detention. Two questions arise: will the suspects be detained and who among them will be required to go to jail. For anti-corruption actors, the detention of suspects indicates that their complaint has been taken seriously.

The selection of suspects for detention often reveals the nature of the forthcoming legal process: detention of all suspects can indicate a fair investigation and trial process while selective detention may indicate more discrimination within the legal proceedings. Suspects and their supporters view detention as a serious political defeat. Whether or not the suspects are detained, both anti-corruption actors and suspects can easily mount disruptive protest rallies during this period.

There are two kinds of rallies from a suspect's supporter group; i) calling for the suspects release and dismissal of charges, or ii) demanding other suspects be detained without questioning the corruption charges. While the first kind of protest pits the supporters' group against the anti-corruption actors, the second variety may bring anti-corruption actors and suspect's supporters together to increase pressure on the District Prosecutor to process other suspects.

On average, anti corruption actors organized between 3 and 10 activities over the course of the proceedings in the Prosecutor's Office. These actions included, among others: public demonstrations; submitting new complaints in an improved format; filing complaints to AGO, central government agencies or even the President; filing reviews to District Prosecutor's Offices that never commenced investigations, organizing public dialogs and requesting their national level networks to send the Prosecutor's Office a letter.

### **Charges & Demands**

*"I don't know where the corruption occurred; I don't know the rules. What rules did we break? All the rules came from them (the executive budget committee). I did not agree when the APBD was enacted. But I was trapped in the system. So I returned the money. But as I was in the system as a budget committee member, I was also subject (to legal proceedings). To me this is unfair."*

A corruption suspect, Toli-Toli

The regulations used by prosecutors in the charges were:

1. Law number 31/1999, as amended by Law number 20/2001 on the Eradication of Corruption, particularly articles 2, 3 and 18 (2).
2. Law number 22/1999 on Regional Governance, particularly articles 43 (d), 45 (1), and 48 (b) and (d).
3. Government Regulation No. 110/2000 on Financial Provisions of DPRD, particularly articles 2 and 14 (1, 3).
4. Government Regulation No. 105/2000 on Regional Head's Financial Management and Accountability particularly article 2 (1) and article 23 (1)
5. Ministry of Home Affairs Decree No. 29/2002 on Guidelines for Management, Accountability, and Oversight of Regional Finances and Procedures in APBD Drafting, Regional Financial Administration Implementation and Drafting of APBD Calculations, particularly article 31 (1).
6. Ministry of Home Affairs Regulation No. 2/2004 on APBD Implementation.
7. Ministry of Home Affairs Circular Letter No. 903/2477/SJ on General Guidelines for Drafting and Implementation of APBD FY 2002.

The length of process in the District Prosecutor's Office varied from one place to the other; the shortest process, 3.5 months, took place in Donggala case, while the longest was the 28 month-long case in Central Lombok.

## **Box 8. Several Definitions of Corruption and Indonesia's Corruption Law**

### **Indonesian Laws defining Corruption**

Criminal Law Code, article 415 stipulates: "an official or other person who is assigned to carry out a position continuously or temporarily, who purposely embezzles money or keeps valuable documents that relate to his/her position, or allows the money or valuable documents be embezzled or taken by others, or provides assistance in committing the act, is punishable by penalty of not more than seven years of imprisonment."

Article 2 of Law No.31/1999 on the Eradication of Corruption stipulates: "Any person who commits an act against the law that will enrich him/herself or others or a corporation that will bring losses in state finance or state economy is punishable." Article 3 stipulates: "Any person who purposely benefits him/herself, others or a corporation, abuse authority, opportunity or facility on his/her jurisdiction related to his/her position, which may bring losses in state finance or state economy is punishable..."

**Indonesian Society for Transparency (MTI).** "An act of dishonesty or violation committed due to a gift. In practice, corruption is known as acceptance of money that is related to a position without an administrative record."

**Handbook on fighting corruption –the Centre for Democracy and Governance.** "...in broad terms, corruption is the abuse of public office for private gain. It encompasses unilateral abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence peddling, and

fraud. Corruption arises in both political and bureaucratic offices and can be petty or grand, organized or unorganized. Though corruption often facilitates criminal activities such as drug trafficking, money laundering, and prostitution, it is not restricted to these activities. For purposes of understanding the problem and devising remedies, it is important to keep crime and corruption analytically distinct.”

**Transparency International (TI).** “...behavior on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them. This would include embezzlement of funds, theft of corporate or public property as well as corrupt practices such as bribery, extortion or influence peddling.”

**World Bank.** “Corruption involves behavior on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed.”

**Article 8 of the Convention against Transnational Organized Crime.** “The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”

## **B. Legal Hearings**

Public hearings lead to many interesting initiatives. To accommodate public enthusiasm in observing corruption hearings, in Toli-Toli District proceedings were moved from the court building to a local sports facility. Similarly, in Madiun District Court, a large television screen and loudspeaker were installed in the court complex so the community could follow proceedings. Cooperation between the District Court and a private radio station in Blitar led to an initiative to broadcast the hearings live. This does not suggest however, that all court proceedings for corruption cases are easy to monitor. On several occasions there were efforts to restrict access to, if not entirely stop, the trial process. This occurred particularly when charges were read out or verdicts handed down.

The main reasons why pressure from coalitions reduced during the legal proceedings were among others i) Anti-corruption actors often lacked capacity to understand specific legal terminology and were unable to follow and contribute to the proceedings. ii) As corruption cases often split into several legal cases with different charges and hearing schedules, local actors became less able to thoroughly monitor all proceedings.

In all cases, the majority of anti-corruption actors did not continue regular monitoring after the first three hearings. Consequently, a review of charges and later the verdicts did not take

place. Anti-corruption actors' pressure was limited to bringing the case to court; it did not extend to pushing for final charges, verdicts, or imposition of sanctions. Ironically, the time needed for the trial process was relatively shorter than the process in the District Prosecutor's Office.

**Verdicts.** Verdicts in the case studies were: two acquittals, two sets of charges were rejected by the court, and in the remaining eight cases, the defendants were found guilty and sanctioned with imprisonment, fine and restitution of half-losses, as seen in the Blitar case. Adequate sentencing however remained challenging: in the Toli-Toli case, the District Court only granted two of the twelve years requested, on appeal the Provincial High Court increased this amount to half of the prosecutor's demand, six years of imprisonment.

**Acquittal.** Suspects were acquitted in the Mentawai District Secretary and Bestari Foundation of Pontianak District DPRD cases. In the Mentawai case, the panel of judges assumed that the lending of UUDP funds in the APBD FY 2002 by the District Secretary was done in the interests of local government agencies in the newly established district. There was no evidence of the element of personal enrichment. Judges in the Pontianak case acquitted the suspects based on the annulment of PP 110/2000 by the Supreme Court and that there was not a clear violation of PP 105/2000 and Ministry of Home Affairs' Decree No.29/2002.<sup>19</sup>

**Charges rejected.** The panel of judges did not accept the charges filed by the public prosecutor in the West Nusa Tenggara Provincial DPRD case. The charges were rejected on the grounds that an official audit result was needed to prove the state losses, in accordance with the stipulation in the Law. Further, the judges stated that violations of PP 105/2000 were not considered criminal acts.<sup>20</sup> The charges against the Kapuas Hulu District Head were rejected, as there was no proof that the suspects had enriched themselves or others.<sup>21</sup>

Acquittal or rejection of charges was generally attributed to the weak content of charges filed by the public prosecutor rather than poor monitoring by anti-corruption actors. On occasions where suspects were acquitted there were also strong suspicions of bribery.

The shortest trial process was just one month, in the Kapuas Hulu case. The next shortest trial process, three months, resulted in a guilty verdict in the Toli-Toli case. The longest trials were those of Donggala and West Sumatra cases, each lasting twelve months. The average time needed for first phase trial process was 7.2 months.

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<sup>19</sup> Ruling of Mempawah District Court No.139/PID.B/2004/PN.MPW

<sup>20</sup> Ruling of Mataram Court No.321/Pid.B/2005/PN.MTR dated July 7, 2006 p.187

<sup>21</sup> www. Pontianakpost.com, Pontianak Pos on-line, Wednesday September 27, 2006

## **C. Appeals**

### **Appeals to the Provincial High Court**

In all cases where the suspects were found guilty, both the prosecutor and suspect filed an appeal to Provincial High Court. District and Provincial Prosecutors filed appeals primarily due to light sentencing. Suspects filed appeals to have their verdicts overturned or to lessen sentencing/sanctions. The main argument used by suspects' lawyers was that the case was not a criminal infraction but an administrative one.

For cases where the suspects were acquitted, the public prosecutor did not file an appeal but filed a case review directly to the Supreme Court, in accordance with the criminal code procedures. For two cases where the prosecutor's charges were considered weak or rejected by the court, prosecutors filed an appeal to the Provincial High Court.

During an appeal, the Provincial High Court conducts a review of documents from the District Court's verdict and the appeal request without holding open hearings. Without open hearings and given that the Provincial High Court is based in the provincial capital, case monitoring by anti-corruption actors decreases dramatically, if not ceasing altogether. At this stage, pressure and monitoring amounts to visiting the District Prosecutor's Office or Court to request updates on the appeal process. Pressure is mounted solely through media coverage and occasional requests for attention from national level anti-corruption networks.

Comparing the sentences between the District and Provincial High Courts, there were three cases where High Court's verdicts were heavier, two cases with more lenient sanctions and one case where the High Court simply upheld the previous sentence. Where there was little pressure from anti-corruption actors or the media, the High Court's verdicts were largely determined by the content and legal arguments of District Court's panel of judges.

The length of the appeal process varied greatly. As of November 2006, of the eight cases where appeals were filed, four cases were still in process. In most cases, what began as one corruption charge became several different cases as charges against various suspects were broken down and, in turn, became individual legal cases. In the Madiun DPRD case, for example, the DPRD Speaker's appeal was completed in three months, while the Deputy Speaker's process continued over seventeen months. The fastest appeal processes occurred in the Donggala DPRD case. Verdicts covering three case files were completed within a month, whilst the fourth was handed down after only 21 days.

### **Appeal to the Supreme Court**

There were eight cases where reviews were requested from the Supreme Court, including the Pontianak and Mentawai cases where the District Court acquitted the suspects from all charges. Again, the length of the appeal process varied, even within a single case and its different files. The quickest Supreme Court appeal process was the Madiun DPRD case, which was completed in three months. The Blitar District case and one file of the West Sumatra case required 17–22 months.

In this stage, monitoring and pressure from anti-corruption actors is largely non-existent. Options were limited to requesting a case update from the local District Prosecutor's Office or making a statement calling for swift conclusion of proceedings if an anti-corruption actor happened to visit national level political institutions or law enforcement. Of the three cases completed at the case review stage, the verdict issued by the Supreme Court upheld the Provincial High Court's appeal verdict.

#### **D. Enforcement of Verdicts**

As a case moves up the legal ladder, the ability of anti-corruption actors to access information decreases. Even for the case review stage, anti-corruption actors relied on updates from the District Prosecutor's Office, which is responsible for carrying out the final sentence once the appeal process ends.

During the appeal and cassation stage, lack of information meant the cases were largely removed from local level public discourse. But when it came time to enforce the verdicts local political unrest reemerged. By far the most attention-getting enforcement of verdicts was a lack of enforcement in the West Sumatra DPRD case, despite the Supreme Court's guilty verdict. The anti-corruption actor, FPSB, then filed suit in the West Sumatra District Prosecutor's Office. Disagreement between the anti-corruption actors over the need to see the verdict enforced eventually led to the group's disintegration and the verdict remains un-enforced. In the Madiun and Blitar verdicts, enforcement of prison-time could be monitored, but it remains unclear if the fines and restitution were ever paid.

### **XIV. Legal Proceedings: Opportunity or Barrier?**

The submission of complaints alleging corruption, marks a starting point in the 'battle against corruption'. Progress varies significantly depending on how local political dynamics affect the legal process. A key question that needs to be dealt with is whether or not the legal process supports the 'battle against corruption' or hinders it.

**The Legal process is the only option.** Even though anti-corruption actors generally have substantial reservations about using the legal system, it is seen as the only option in dealing with corruption cases. One consequence of this is that it places an additional significant burden on anti-corruption actors. Not only do they have to deal with intimidation and pressure exerted by suspects but they also to undertake advocacy so that the legal process takes place quickly, in a transparent manner, is non-discriminative and addresses the public's desire for justice.

#### **A. Transparency of Legal Proceedings**

Public access to the most important stage of the legal process, the District Prosecutor's Office, was very limited. Anti-corruption actors' ability to monitor progress and learn the results of examination usually relied on personal communications with public prosecutors.

Information on case status could only be obtained several days or a week after an anti-corruption actor inquired. Frequently, action would only occur after anti-corruption actors inquired.

There are many stages where anti-corruption actors could not be involved, thus making these phases of the legal process prone to negotiation and bribery. This was particularly the case for the suspect examination and drafting of charges and indictment phases. Anti-corruption actors were powerless when the public prosecutor's charges were weak and eventually rejected by court, as in the cases of NTB and Kapuas Hulu. The examination, charges and indictment files are products of the District Prosecutor, and verdicts naturally cannot go beyond the charges filed. Considering the importance of District Prosecutor's charges and indictments, it is important to organize public examination of those two files prior to trial.

### **Box 9. Confession of a Suspect's Lawyer<sup>22</sup>**

*"...when the prosecutors themselves are corrupt then the case could be made dormant for a while. At that time the Head of the Intelligence Unit also got [some money]. He asked my client for more than 20 million during the investigation with a promise that the case would be delayed. But when they moved, were they still responsible? I confronted him, but he transferred an insignificant amount of money to my account, two million if I'm not mistaken... he was greedy—he even asked my client for a cell phone."*

*"...the Head of the District Prosecutor's Office passed away. Before he died he returned all the money to me, as much as ten million. This was because I saw him when he was ill and I told him that, no matter how much he had taken, I would let it go as long as he helped my client."*

*"when the hearings began, I met with A (one of the judges). After that I decided that curing someone bitten by a venomous snake requires the snake's venom—you have to use corruption to handle corruption cases."*

*"Q: Did they (court) ask for money so brashly from the lawyer?"*

*A: This is the way it works...when there is a hole in the law, the judges would ask directly, 'Why don't you ask for help?'"*

## **B. Length of Settlement**

There is no objective indicator for evaluating the length of legal proceedings. In corruption cases, the Attorney General's Office's circular requests Heads of Provincial Prosecutor's Offices to conclude corruption case in a period no longer than three months starting from the beginning of investigation. This helps moves proceedings along.

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<sup>22</sup> Name and case are not disclosed for the suspect's interest.

The length of proceedings varied significantly across cases. In the corruption allegation case of Kapuas Hulu Regent it took Prosecutor's Office 31 months while in the case of DPRD of Donggala it took only 3.5 months. In the case of Donggala, it took the High Court only 21 days while in Madiun case the process in High Court had not even finished after 17 months. In general, the process in the District Prosecutor's Office takes longer than the trial process in District Court. Meanwhile, comparison of all cases demonstrated that the longest process was when a request for review is filed with the Supreme Court.

**Table 3. Comparison on the Length of Legal Proceedings (until November 2006)**

Case	District Prosecutor's Office	District Court	Provincial High Court	Supreme Court
DPRD of West Sumatra	14	12	7	7 22 (not completed)
Mentawai District Government	10	11	-	16
Blitar District Government	9	5	5	18 (not completed)
DPRD of Madiun District	4	4	3 17 (not completed)	3
DPRD of Pontianak	10,5	9	-	17 (not completed)
Kapuas Hulu District	20	1	Revision of documents not completed	
DPRD of Toli-Toli District	4	6	2	14
DPRD of Donggala	3,5	12 5	1 21 days	8 (not completed)
DPRD of West Nusa Tenggara Province	18	10,5	4 (not completed)	-
Central Lombok District Government	28	5	6	14 18 (not completed)

### C. Legal Discrimination (Select Charges)

*"...Sing salah bungah-bungah, sing bener tenger-tenger"* – the guilty ones have fun, the righteous ones difficulty.

Defendant in the Blitar Corruption Case

From the perspective of anti-corruption actors, both the executive and legislative were equally involved in corruption occurring in APBD drafting. Thus, in complaint reports, the anti-corruption actors demanded that both bodies were examined. Many in local communities wrongly assumed that the anti-corruption actors were pursuing only the legislative branch when in fact it was the choice of the District Prosecutor to focus on the DPRD.



**Detention.** Suspects in the same case received unequal treatment when it came to detention. In legislative budget corruption cases, such as in Madiun, only the DPRD Leadership was processed while other members were exempted. In the cases of Pontianak, Donggala, Toli-Toli and West Nusa Tenggara, despite demands from anti-corruption actors that all DPRD members be processed, only certain members of the APBD drafting committee were prosecuted. Across all corruption cases involving the legislature, no members of the executive were prosecuted. While in the executive corruption case, the situations varied. In Blitar, the Deputy District Head was temporarily free while the District Head and several local government staffers were prosecuted; in Mentawai both the District Head and the District Secretary were released even though they were the target of legal action.

**Box 10. Privileged Treatment for the DPRD Speaker of Donggala**

- During the examination in District Prosecutor’s Office, while other suspects were put in custody after the first examination, the DPRD Speaker was temporarily released.
- When detention finally happened, the DPRD Speaker submitted a request for exception due to health concerns; during the first hearings the Speaker was hospitalized.
- During the detention, the Speaker received unlimited guests while for other suspects the number and schedule of visitors was restricted.
- When the first hearing took place, the Speaker refused to use prison transport and instead used his private car accompanied by his lawyer. The lawyer admitted that this was illegal, but “*a lawyer will always find holes to help his/her client and get acquittal if possible.*”
- While waiting for the hearing, other suspects were instructed to stay in the court’s detention room while the Speaker was allowed to stay in a different room.

**Charges.** Without the anti-corruption actor monitoring the substance of charges and demands, there is no specific response to the variation in charges among suspects in the same case. Those accused with a military/police background received different treatment than their fellow suspects. Their legal process does not take place in a public court therefore it was difficult to monitor whether or not any legal process took place.

**Table 4. Difference in Legal Proceedings of Corruption Suspects**

Case	Complaint filed by Anti-Corruption Actor	Process in District Prosecutor’s Office	Process in District Court	Not/Yet to be Processed
<b>Legislative</b>				
<i>DPRD of West Sumatra</i>	<ul style="list-style-type: none"> <li>• All DPRD members</li> <li>• Governor</li> </ul>	All DPRD members	All DPRD members	<ul style="list-style-type: none"> <li>• Governor</li> <li>• TNI/Polri</li> </ul>
<i>DPRD of Madiun</i>	<ul style="list-style-type: none"> <li>• DPRD Leadership</li> <li>• DPRD members</li> </ul>	DPRD Leadership	DPRD Leadership	DPRD members
<i>DPRD of Pontianak</i>	<ul style="list-style-type: none"> <li>• All DPRD members</li> <li>• District Head</li> </ul>	<ul style="list-style-type: none"> <li>• All DPRD members</li> <li>• Board of Foundation</li> </ul>	<ul style="list-style-type: none"> <li>• DPRD Leadership</li> <li>• Board of Foundation</li> </ul>	District Head
<i>DPRD of West Nusa Tenggara</i>	<ul style="list-style-type: none"> <li>• All DPRD members</li> <li>• Local Government staff</li> </ul>	13 Budget committee members	12 Budget committee members	Local Government Staff
<i>DPRD of Toli-Toli</i>	All DPRD members	14 Budget committee members	14 Budget committee members	<ul style="list-style-type: none"> <li>• DPRD members not in Budget committee</li> <li>• two Police</li> </ul>

Case	Complaint filed by Anti-Corruption Actor	Process in District Prosecutor's Office	Process in District Court	Not/Yet to be Processed
<i>DPRD of Donggala</i>	All DPRD members	21 Budget committee members (14 were brought to court; 6 were still in District Prosecutor's Office)	14 Budget committee members	members were returned to their units DPRD members not in Budget committee
<b>Executive</b>				
<i>Mentawai District Gov't</i>	Local government including the District Head	District Secretary and 3 Local government officers	District Secretary and 3 Local government officers	District Head
<i>Blitar District Gov't</i>	The report did not mention the corruption suspects	<ul style="list-style-type: none"> <li>• District Head</li> <li>• 4 Local Government Officials</li> <li>• District Secretary</li> <li>• DPRD Speaker</li> </ul>	<ul style="list-style-type: none"> <li>• District Head</li> <li>• 4 Local Government Officials</li> </ul>	<ul style="list-style-type: none"> <li>• Deputy District Head</li> <li>• District Secretary</li> <li>• DPRD Speaker</li> </ul>
<i>Kapuas Hulu District</i>	District Head	<ul style="list-style-type: none"> <li>• District Head</li> <li>• Head of Forestry Agency and the Deputy</li> </ul>		
<i>Central Lombok District Gov't</i>	Land Acquisition Committee	<ul style="list-style-type: none"> <li>• Land Acquisition Committee</li> <li>• Head of Health Agency</li> </ul>	<ul style="list-style-type: none"> <li>• Land Acquisition Committee</li> <li>• Head of Health Agency</li> </ul>	

#### D. Substance of Charges and Verdicts

The sentencing demands of the public prosecutor on corruption charges include among others: i) imprisonment; ii) fine; iii) restitution of state losses. Fines and restitution of state losses can be exchanged for time in prison. Criminal sanctions can change at the following stages of the legal process: the prosecutor's demand, District Court's verdict, Provincial High Court's verdict and Supreme Court's verdict.

Comparison between the prosecutor's demands and the verdict of the District Court's panel of judges showed that there was a tendency for lower sanctions than demanded by the District Prosecutor's Office. Comparison between the District and High Court's verdicts indicated a different tendency: out of six cases going to the High Court, there were three cases with heavier sentences, two cases with lower and one where the High Court upheld the District Court's verdict. The difference in sanction between the Supreme and High Court's sanctions were insignificant and it can be said that the Supreme Court tends to uphold the verdicts made by High Courts. Below are examples of criminal sanctions at various phases of the legal process.

Prosecutor's sentencing demand	District Court's Verdict	Provincial High Court's Verdict	Supreme Court's Verdict
Council Speaker- DPRD of Madiun District; 4 years of imprisonment; fine of 200 million; restitution of state losses of 336.3 million	Similar with prosecutor's demand	Upheld District Court's verdict	Upheld High Court's verdict
10 DPRD members of West Nusa Tenggara Province: 5 years of imprisonment; fine of 240 million	Prosecutor's charges were rejected by District Court		
Defendant I, DPRD of Toli-Toli District 12 years of imprisonment; fine of 350 million; restitution of state losses of 170 million.	two years of imprisonment; fine of 50 million; restitution of state losses of 58 million	6 years of imprisonment; fine of 50 million; restitution of state losses of 58 million	Not clear if Supreme Court's verdict has been made

**Please choose: 100 million or 30 days in prison?**

Convicted corruptors must pay fines and/or restitution of state losses with a provision that if the defendant is not able (or willing) to pay the fine, it can be exchanged with imprisonment. There is no standard for creating equivalencies between prison time and fines/restitution owed. In the West Sumatra case, the 100 million Rupiah fine could be exchanged for 24 months in prison. In Blitar, the restitution of 27 billion in state losses equaled 12 months imprisonment. Meaning, in the Blitar case, that two billion in state losses were considered comparable with 30 days of imprisonment. When the figures were averaged, based on the prosecutor's demand, one month of imprisonment equaled a fine of Rp. 34 million. A similar period of imprisonment equals restitution of 100 billion of state losses.

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## **Section 5**

### Conclusion & Recommendation

## Conclusion and Recommendation

**Decentralization & Corruption.** Corruption has a longer history than the government system, either centralized or decentralized. Corruption is more like a shadow that follows wherever the pendulum of power swings; wherever power lies, corruption stays not far away. When the center is dominant, the locus and modus of corruption stays in the center and the regions only replicate. Or, when power is devolved to the regions, the political and economic interest holders in those regions develop the locus and modus of corruption.

Is it then justified to say that decentralization policy in Indonesia has provided fertile ground for corrupt practices? Unfortunately there is insufficient data available concerning corruption cases that actually took place in the regions prior to decentralization policy, making it difficult to make a comparison. The beginning of decentralization policy saw an increasing number of corruption allegations disclosed in the regions. What can be concluded, therefore, from this phenomenon is an answer not to the question of whether corruption increases or decreases but to *where the locus are* and *what the modus are* of corruption in the regions.

Most observers shared the opinion that there was a strengthening of the legislative body's position under Law 22/1999 (*legislative heavy*) leading to the fact that the 'locus' of corruption moved to this body. However, this does not mean that corruption practices in the executive ceased to occur. Under the New Order administration, the executive in the regions were dominant and constituted a fertile 'locus' of corruption in the region for decades. In other words, there was a shift of 'locus' of corruption to the legislative body – but using a relatively simple 'modus'. Meanwhile, room for executive corruption that, for a while, was decreasing led to more complicated 'modus'. The change of Law 22/1999 to Law 32/2004 results in a similar pattern; there were changes in 'locus' and 'modus' but not necessarily a decrease in corrupt practice in the regions.

**An Opportunity for strengthening Local Level Anti-corruption initiatives.** Decentralization has seen increasingly strong local level anti-corruption initiatives. Indications of this can be seen in the strengthening of civil society groups, who are taking more active roles in monitoring the government. The emergence of NGOs, development of mass media, and revitalization of various traditional organizations and village institutions has created the opportunity to increase the community's bargaining position – one way is to expose and enforce the settlement of corruption allegation cases.

Community groups, however, have to realize that their efforts may not strengthen the bargaining and political positions at the local-level. The case studies demonstrate that the anti-corruption actor groups can take advantage of friction between political groups as opposition and aggrieved/disaffected groups spread corruption rumors or supply data and documents to anti-corruption actors.

Local level stakeholders are beginning to recognize the need for a balance of power between the legislative and executive. Ideally, this would mean a strengthened mechanism of checks

and balances. It is expected that this would also strengthen the community's position and its role in overseeing government.

A consolidation of the political and economic stakeholders at local level could lead to a new *modus* of corruption with each side providing cover for the other. Civil society groups could then find it impossible to carry out their monitoring function or, as during the New Order, there would be an 'artificial' engagement of the community: participation is guaranteed but only for civil society groups who are willing to cooperate, known as 'red-plate organizations'.

**Recommendation:**

- Call for stronger legal base for the role of community in handling corruption cases in the form of local regulations, as stipulated in Government Regulation 71/2000
- Formulate a strategy and platform for joint action in eradicating corruption at the local level
- Engage law enforcement and government institutions in conducting anti-corruption training and education for assisted community groups

**Strengthening the quality of law enforcement.** Consolidation by corruption perpetrators can be prevented if there is better law enforcement. There are hopeful signs for improved law enforcement in corruption cases including increased responsiveness and a clearly demonstrated willingness to work with anti-corruption actors. This positive change is due to the strengthened corruption eradication agenda of the central government.

Although it did not apply in all cases, generally where there was a strong group of anti-corruption actors, a more transparent and relatively quicker legal process was found. Pressures generated by anti-corruption actors' actions combined with consistent media coverage succeeded in getting case updates to the public.

Nevertheless, the chronic weaknesses of local level law enforcement institutions' still affect cases. These include lack of facilities and infrastructure, discrimination during the legal process, and vulnerability to bribery and political pressure.

**Recommendation:**

- Enhance the capacity of local level anti-corruption actors in legal issues and investigation skills.
- Support local level anti-corruption actors in building networks at the provincial and national levels
- Assist local-level anti-corruption actors in monitoring and pushing the legal and political process at national level. For instance, it is important to evaluate not only how the legal process proceeded but also how legal processes did not proceed in some cases. This role could be played by national institutions, such as KPK, anti-corruption NGOs or an ombudsman.

Furthermore, the capacity of anti corruption actors to apply pressure on the legal process is limited to legal proceedings at the local level. Once the case moves beyond the district level,

anti corruption actors need to rely on their networks at the provincial or national level. Both the quality and enforcement of sentences were weak in the legal proceedings. In other words, anti corruption actors were successful in pushing for a more responsive, open, and relatively quick legal process, but not necessarily a fair one.

**Recommendation:**

- Law enforcement institution should enforce various regulations and other articles related to follow-up steps in the legal process once a corruption complaint has been made.
- Create indicators for the length of the legal process.
- Hold an open presentation of cases in District Prosecutor’s Office and an examination of the court’s verdict.

**Support from the National Level.** Finally, despite the successes of anti-corruption actors in handling corruption allegations at local level one important issue still needs to be addressed, namely national level support. In examining the anatomy of corruption in the regions it becomes obvious that sources of corruption not only come from local level stakeholders but also involve national level players who have political and economic interests at the local level. An additional concern is that the law enforcement process remains centralized. No matter how successful district prosecutors and courts are in handling cases, the final result is more often than not determined by the appeals process – where the control of anti corruption actors is incomparably weaker when compared to the political and economic network of corruption suspects.

**Box 11. Corruptors’ Counter Attack**

The following national actions are often described as Corruptors’ Counter Attack: Judicial review on PP 110/2000, the results of the Working Committee on Law Enforcement and Regional Governance of DPR RI and the enactment of PP 37/2006.

**Judicial Review on PP 110/2000**

*“T: Why other members of DPRD budget committee have not yet been processed...?”*

*“J: That is what confuses me. What should my demand be based on? So far our foundation for charges was violation of PP 110/2000. But last July issued was AGO’s circular that graft cases violating PP 110/2000 should not be continued. That is why I am confused...”*

Prosecutor in Donggala

PP110/2000 determined the types and amounts of allowances that can be granted to DPRD members. It also stipulated the amount of DPRD activities budget based on the level of Regional Revenue. Initially, the corruption case in West Sumatra province did not use this regulation due to a conflict with Article 34 of Law 4/1999 and Article 19 of Law 22/1999, which states that DPRD has the authority to draft their own budget. Eventually, when the suspects were charged under PP110/2000, they filed a request for judicial review to the Supreme Court. The Supreme Court subsequently annulled PP 110/2000. Because of the

annulment the suspects in the West Sumatra case were dismissed and further exposure of other DPRD corruption cases was discouraged.

**Working Committee of DPR RI.** The exposure of DPRD corruption cases drew national attention, including heated arguments between the Attorney General and Commission III of DPR RI relating to the handling of complaints. DPRD members and regional heads claimed complaints against them were unfair, selective, unprofessional and disproportionate. In March 2005, a 50 member Working Committee on Law Enforcement and Regional Governance was formed. The aim of the Committee was to carry out oversight functions on the implementation of laws and implementing regulations and ensure law enforcement was conducted in accordance with the law.

On October 10, 2006, after working for 20 months, the Working Committee issued the following recommendations to President Susilo Bambang Yudhoyono: i) Reinstate the names of DPRD members and regional heads who had been prosecuted and restore their rights; ii) Instruct law enforcement not to discriminate against DPRD members and regional heads in corruption investigations, and iii) Reprimand the Attorney General for not providing leadership to regional prosecutors regarding corruption cases

#### **Government Regulation No.37 year 2006**

Following the annulment of PP 110/2000, a number of government regulations were issued concerning DPRD finances that continued to cause dissatisfaction among DPRD associations. The last piece of legislation was PP No.37/2006 on Protocol and Financial Provisions of Leadership and Members of DPRD. In this PP, DPRD income consists of: representation fee, family allowance, rice allowance, package fee, official allowance and other allowances. The most controversial item was the inclusion of a monthly communication allowance amounting to a maximum of three times the representation fee of the DPRD Speaker and additional monthly operational allowances amounting to a maximum of six times the representation fee for the DPRD Deputy Speaker. The aforementioned allowances would be provided retroactively, starting from January 2006. Hard lobbying by DPRD associations went into this PP but it met with protests both at the local and national levels. Observers stated that this PP ‘gives legitimacy to DPRD corruption’.

#### **Supporting and Inhibiting Factors for Anti Corruption Actors.**

Main factors in support of anti-corruption cases are:

- Access to regional government budget and procurement documents.
- An insider who can provide documents and information on the case to anti-corruption actors.
- Local actors with knowledge of local budget procedures and corruption investigation skills.
- Media coverage of the corruption allegations helped push the process along and increased the bargaining position of anti-corruption actors in pushing for a better legal settlement.
- Networks with national level anti-corruption institutions.



- Building cooperation with the legal apparatus contributes to the effectiveness of case settlement.
- Strong coalitions and good coordination among anti-corruption actors are important.
- A solid, consistent long term strategy in working on a case.

Factors that weaken corruption cases are:

- Intimidation and pressure exerted by the suspects' group, targeting both the anti-corruption actor and law enforcement
- Poor performance of law enforcement
- Non-transparent process
- Legal system vulnerability to bribery and lenient charges and verdict

### **Recommendations**

#### **Anti-corruption actors:**

1. Work on policy advocacy by passing local regulations that increase community participation in corruption eradication as stipulated in PP 71/2000
2. Formulate a strategy and joint platform to push for the settlement of corruption cases at local level
3. Strengthen cooperation with law enforcement institutions, such as anti-corruption education for assisted community groups

#### **Anti-corruption institutions, NGOs, and donors at the national level:**

4. Improve knowledge of legal issues and investigation capacity for local level anti-corruption actors
5. Strengthen networks of anti-corruption actors with national level anti-corruption institutions/organizations
6. Assist anti-corruption actors by monitoring and continued activism at the High and Supreme Court levels

#### **Law enforcement institutions**

7. Provide a set of alternative stipulations that can be used by prosecutors to develop corruption cases against local government
8. Set indicators on length of legal process for each law enforcement institution
9. Issue circular letter on the obligation of district prosecutor's offices to present the case to the public and facilitate examination of the court's verdict

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## **Annexes**

## Annex 1. Table of Modus Operandi of Local Government Corruption

Case	Opportunity for Corruption	Modus Operandi
<i>Legislative</i>		
DPRD of West Sumatera	<i>Budget making</i>	<ul style="list-style-type: none"> <li>• Creating additional budget items for council expenses leading to a total of 27 budget items</li> </ul>
	<i>Budget mark up</i>	<ul style="list-style-type: none"> <li>• Budget mark up by breaking down existing budget items and duplicating budget to obtain new income/allowance</li> <li>• Fictitious official travel</li> </ul>
DPRD of Madiun	<i>Budget making</i>	<ul style="list-style-type: none"> <li>• Creating additional budget items for council expenses</li> </ul>
	<i>Budget reporting</i>	<ul style="list-style-type: none"> <li>• Disbursement of council members' insurance policy in cash</li> <li>• Absence of Accountability report (SPJ) for council expenses</li> </ul>
	<i>Budget disbursement</i>	<ul style="list-style-type: none"> <li>• Disbursement of local election funding 3 times larger than allocated budget</li> </ul>
DPRD of Pontianak District	<i>Budget making</i>	<ul style="list-style-type: none"> <li>• Allocating Block Grant for council-managed foundation</li> <li>• Foundation's fund disbursed and distributed directly to all council leadership and members</li> </ul>
DPRD of NTB	<i>Budget making</i>	<ul style="list-style-type: none"> <li>• Creating additional budget items for council expenses</li> </ul>
DPRD of Toli-Toli	<i>Budget making</i>	<ul style="list-style-type: none"> <li>• Enlarging budget for council expenses exceeding 3% of PAD</li> </ul>
DPRD of Donggala	<i>Budget making</i>	<ul style="list-style-type: none"> <li>• Creating similar budget items under different budget categories</li> </ul>
<i>Executive</i>		
Mentawai District Government	<i>Use of APBD remaining fund</i>	<ul style="list-style-type: none"> <li>• Remaining fund in the form of Fund to be Accounted (UUDP) not deposited in regional account</li> <li>• UUDP was lent to government offices and used for the interests of the Regent, Vice Regent and Regional Secretary using forged receipts</li> </ul>
Blitar District Government	<i>Budget disbursement process</i>	<p>Manipulation of regional account expenditure by:</p> <ul style="list-style-type: none"> <li>• Disbursing fund from regional account by issuance of SPMG code D, which is not existent among budget codes</li> <li>• Transfer of fund from regional to personal account</li> <li>• Disbursement of fund from regional account and saved in the forms of bank deposits/</li> </ul>
Kapuas Hulu Regent	<i>Appropriation of fund deposited to regional account</i>	<ul style="list-style-type: none"> <li>• Continue to use PSDH/DR licenses despite the prohibition by law</li> <li>• Not depositing income from PSDH/DR fees (forest management) to Minister of Forestry's account</li> <li>• Transfer of PSDH/DR fee from regional to personal account</li> </ul>
Lombok Tengah District Government	<i>Procurement, land acquisition by District Government</i>	<ul style="list-style-type: none"> <li>• Chairperson and personnel of land acquisition committee made direct negotiation with land owners</li> <li>• Keeping the information on the land purchase price ceiling</li> <li>• Conducting act of deception during transaction by asking land owners to sign blank receipts</li> <li>• Taking price margin between budgeted price and price paid by land owners</li> </ul>

## Annex 2. Table of Charges and Verdicts

CASE	Charges of Public prosecutors	Verdict of District Court	Verdict for Appeal at High Court	Verdict at Court of Final Jurisdiction - Supreme Court	IMPLEMENTATION of VERDICT
<i>Legislative</i>					
West Sumatera Provincial DPRD	<ul style="list-style-type: none"> <li>• Council Leadership;               <ol style="list-style-type: none"> <li>a. 4 year 6 month of imprisonment</li> <li>b. Compensation of consecutively: IDR 101,6 million; 114,4 million; 112,2 million (2 years of imprisonment)</li> </ol> </li> <li>• 40 DPRD members:               <ol style="list-style-type: none"> <li>a. 4 years of imprisonment</li> <li>b. fine of IDR 200 million (8 month of imprisonment)</li> <li>c. replacement of state losses of between IDR 100 – 200 million (2 years of imprisonment)</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Council Leadership:               <ol style="list-style-type: none"> <li>a. 2 year 3 month of imprisonment</li> <li>b. fine of IDR 100 million</li> <li>c. Replacement of state losses of IDR 100 million each (6 month of imprisonment.)</li> </ol> </li> <li>• 40 DPRD members:               <ol style="list-style-type: none"> <li>b. 2 years of imprisonment</li> <li>c. fine of 100 million (2 month of imprisonment)</li> <li>d. replacement of state losses between 100 – 125 million (6 mo of imprisonment)</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Council Leadership:               <ol style="list-style-type: none"> <li>a. 5 years of imprisonment</li> <li>b. fine of IDR 250 million (5 month of imprisonment)</li> <li>c. replacement of state losses of IDR 100-125 million (6 month of imprisonment)</li> </ol> </li> <li>• 40 DPRD members:               <ol style="list-style-type: none"> <li>a. 4 years of imprisonment</li> <li>b. fine of IDR 200 million (4 mo of imprisonment)</li> <li>c. replacement of state losses of 100-125 million (6 mo of imprisonment)</li> </ol> </li> </ul>	Upheld High Court's verdict	Not carried out

CASE	Charges of Public prosecutors	Verdict of District Court	Verdict for Appeal at High Court	Verdict at Court of Final Jurisdiction - Supreme Court	IMPLEMENTATION of VERDICT
Madiun District DPRD	<ul style="list-style-type: none"> <li>• Council Speaker:               <ol style="list-style-type: none"> <li>4 years of imprisonment</li> <li>fine of IDR 200 million (6 mo of imprisonment)</li> <li>Replacement of state losses of IDR 336.3 million (from a total of loss of IDR 8.8 billion)</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Council Speaker:               <ol style="list-style-type: none"> <li>4 years of imprisonment</li> <li>fine of IDR 200 million (6 mo of imprisonment)</li> <li>restitution of state losses of 336.3 million</li> </ol> </li> </ul>	Upheld District Court's verdict for Council Speaker	Upheld the appeal verdict against Council Speaker	Implementation of verdict against Council Speaker was carried out.
	<ul style="list-style-type: none"> <li>• 3 Council Deputy Speakers:               <ol style="list-style-type: none"> <li>4 years of imprisonment</li> <li>fine of IDR 200 million</li> <li>replacement of state losses</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• 2 Deputy Speakers:               <ol style="list-style-type: none"> <li>1 year of imprisonment</li> <li>fine of IDR 50 million (1 mo of imprisonment)</li> <li>replacement of state losses of 7.18 million</li> </ol> </li> <li>• 1 Deputy Speaker from TNI/Polri:               <ol style="list-style-type: none"> <li>1 year of imprisonment</li> <li>fine of IDR 50 million (1 mo of imprisonment)</li> <li>replacement of state losses of 5.7 million</li> </ol> </li> </ul>	For Deputy Speaker still under review process.		
Pontianak District DPRD	<ul style="list-style-type: none"> <li>• Board of Bestari Foundation:               <ol style="list-style-type: none"> <li>2 years of imprisonment each</li> <li>fine of IDR 50 million each (4 mo of imprisonment)</li> </ol> </li> </ul>	Acquittal for all defendants		Public prosecutor filed a final appeal. Under review in	

CASE	Charges of Public prosecutors	Verdict of District Court	Verdict for Appeal at High Court	Verdict at Court of Final Jurisdiction - Supreme Court	IMPLEMENTATION of VERDICT
	<ul style="list-style-type: none"> <li>Council Leadership:               <ol style="list-style-type: none"> <li>2 years of imprisonment</li> <li>fine of 50 million (4 mo of imprisonment)</li> <li>paying replacement money of 2.837 billion altogether (6 mo of imprisonment)</li> </ol> </li> </ul>			Supreme Court.	
NTB Provincial DPRD	<ul style="list-style-type: none"> <li>10 DPRD members (Budget committee)               <ol style="list-style-type: none"> <li>5 years of imprisonment</li> <li>fine about IDR 250 million (6 months of imprisonment)</li> <li>Fine between 240 million – 290 million for each defendant (1 year imprisonment)</li> </ol> </li> </ul>	Charges rejected for being premature	Public prosecutor filed an appeal. Still in process.	Defendants' lawyer filed a cassation pleading. Still in process.	
Donggala District DPRD	Charges of 4 years of imprisonment, and fine of IDR 50 million and replacement of state losses. Total state losses of IDR.7,680,300	<ul style="list-style-type: none"> <li>Defendant of Package 1:               <ol style="list-style-type: none"> <li>1 year of imprisonment</li> <li>fine of IDR 50 million(6 mo of imprisonment)</li> <li>restitution of state losses of respectively IDR 50.33 million, 63.28 million, 66.38 million; 67.28 million</li> </ol> </li> <li>Defendant of Package 2&amp; 3:               <ol style="list-style-type: none"> <li>1 year of imprisonment</li> <li>fine of IDR 50 million</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>Defendant of Package 1:               <ol style="list-style-type: none"> <li>4 years of imprisonment</li> <li>fine of IDR 50 million (6 mo of imprisonment)</li> <li>restitution of state losses 3 times the District Court's verdict</li> </ol> </li> <li>Defendant of Package 2&amp;3:               <ol style="list-style-type: none"> <li>4 years of</li> </ol> </li> </ul>	All in the process of final appeal review, except for Defendant of Package IV that received reduction of sentences into 1 year and 2 years of imprisonment, fine of 50 million (6 mo	

CASE	Charges of Public prosecutors	Verdict of District Court	Verdict for Appeal at High Court	Verdict at Court of Final Jurisdiction - Supreme Court	IMPLEMENTATION of VERDICT
		<p>(3 month of imprisonment)</p> <p>c. restitution of state losses of : Defendant I &amp; II IDR 132.73jt</p> <ul style="list-style-type: none"> <li>• Defendant of Package 4: <ul style="list-style-type: none"> <li>a. 4 years of imprisonment</li> <li>b. fine of IDR 50 million (6 mo of imprisonment)</li> <li>c. restitution of state losses of IDR 17 million</li> </ul> </li> </ul>	<p>imprisonment</p> <p>b. fine of IDR 50 million (2 mo of imprisonment)</p> <p>c. Restitution of state losses of 3 times the District Court's verdict</p> <ul style="list-style-type: none"> <li>• Defendant of Package 4: <ul style="list-style-type: none"> <li>a. 3 years of imprisonment</li> <li>b. fine of IDR50 million (3 months of imprisonment)</li> <li>c. restitution of state losses of equal amount of District Court's verdict</li> </ul> </li> </ul>	<p>of imprisonment) and restitution of state losses of 17 million</p>	
Toli-Toli District DPRD, Central Sulawesi	<p>Package I: Defendant 1 (DPRD Deputy Speaker):</p> <ul style="list-style-type: none"> <li>a. 12 years of imprisonment</li> <li>b. fine of 350 million (6 mo of imprisonment)</li> <li>c. restitution of state losses of IDR 170 million</li> </ul> <p>Defendant 2 (DPRD member)</p> <ul style="list-style-type: none"> <li>a. 12 years of imprisonment</li> </ul>	<p>Package I:</p> <ul style="list-style-type: none"> <li>a. 2 years of imprisonment</li> <li>b. fine of IDR 50 million (1 mo of imprisonment)</li> <li>c. Restitution of state losses of IDR 58.3 million, 32.1 million, 44.1 million (1 year of imprisonment)</li> </ul>	<p>Package I:</p> <ul style="list-style-type: none"> <li>a. 6 years of imprisonment</li> <li>b. fine of IDR 50 million (6 months)</li> <li>c. restitution of state losses of similar amount of District</li> </ul>	<p>Allegedly cassation verdict that upheld appeal verdict was made</p>	

CASE	Charges of Public prosecutors	Verdict of District Court	Verdict for Appeal at High Court	Verdict at Court of Final Jurisdiction - Supreme Court	IMPLEMENTATION of VERDICT
	<p>b. fine of 350 million (6 mo of imprisonment)  c. restitution of state losses of 153.45 million</p> <p>Defendant 3 (DPRD member)  a. 12 years of imprisonment  b. fine of 350 million  c. restitution of state losses of 117.2 million</p> <p>Defendants 4-6 (DPRD members)  a. 9 years of imprisonment  b. fine of 350 million (6 mo of imprisonment)  c. restitution of state losses of 92.2 M</p> <p>Defendant 7 (DPRD member)  a. 9 years of imprisonment  b. fine of 350 million (6 mo of imprisonment)  c. restitution of state losses of 156.6 million</p> <p>Package II:  Defendant 1 (Deputy Speaker of DPRD of Toli-Toli): 9 years of imprisonment, fine of 350 million (or 6 months of imprisonment) and restitution of</p>	<p>Defendant Package II:  a. 2 years of imprisonment (except defendant 7, 1 year 8 months)  b. Fine of 50 million (1 month of imprisonment)</p>	<p>Court's verdict (6 million)</p> <p>Package II  a. Defendants 1-6 : 6 years of imprisonment  Defendant 7 : 5 years of imprisonment  b. fine of 50 million (6</p>		



CASE	Charges of Public prosecutors	Verdict of District Court	Verdict for Appeal at High Court	Verdict at Court of Final Jurisdiction - Supreme Court	IMPLEMENTATION of VERDICT
	<p>state losses of 119.6 million</p> <p>Defendant 2 (DPRD member): 12 years of imprisonment, fine of 350 million (6 months of imprisonment), and restitution of state losses of 138.45 million</p> <p>Defendant 3 (DPRD member) : 12 years of imprisonment, fine of 350 million (6 months of imprisonment) and restitution of state losses of 92.2 million</p> <p>Defendant 4 (DPRD member) : 9 years of imprisonment, fine of 350 million (6 months of imprisonment) and restitution of state losses of 132.2 million</p> <p>Defendants 5-6 (DPRD member) : 9 years of imprisonment, fine of 350 million (6 months of imprisonment and restitution of state losses of 92.2 million.</p> <p>Defendant 7 (DPRD member): 5 years of imprisonment, fine of 350 million (6 months of imprisonment) and restitution of state losses of 34.5 million</p>	<p>c. Restitution of state losses of :</p> <p>Defendant 1: 44.66 million Defendant 2-6 : 32.1 million</p> <p>(restitution of state losses can be replaced by 1 year of imprisonment)</p> <p>Defendant 7: no penalty in the form of restitution of state loss.</p>	<p>months of imprisonment)</p> <p>c. Restitution of state losses of similar amount with District Court's verdict (in the case of failure replaced by 6 months of imprisonment)</p>		

CASE	Charges of Public prosecutors	Verdict of District Court	Verdict for Appeal at High Court	Verdict at Court of Final Jurisdiction - Supreme Court	IMPLEMENTATION of VERDICT
<i>Executive</i>					
Regional Secretary of Mentawai District, West Sumatera	<p>Regional Secretary:</p> <ul style="list-style-type: none"> <li>a. 5 years of imprisonment</li> <li>b. fine of 200 million (4 months of imprisonment)</li> <li>c. Restitution of state losses of 3.2 billion (2 years of imprisonment)</li> </ul> <p>Defendant 1: Head of Financial Section, Defendant 2: Treasurer of Regional Secretary and Defendant 3: Former Treasurer of Regional Secretary), each was charged:</p> <ul style="list-style-type: none"> <li>a. 5 years of imprisonment</li> <li>b. fine of 200 million (4 months of imprisonment)</li> <li>c. paying compensation of: <ul style="list-style-type: none"> <li>Defendant 1: 2.5 billion</li> <li>Defendant 2: 2.588 billion</li> <li>Defendant 3: no compensation</li> </ul> </li> </ul> <p>(in failing of payment there was 2 years of imprisonment)</p>	Acquitted from all charges		Prosecutor claimed to file a second appeal but letter of submission was not found.	

CASE	Charges of Public prosecutors	Verdict of District Court	Verdict for Appeal at High Court	Verdict at Court of Final Jurisdiction - Supreme Court	IMPLEMENTATION of VERDICT
Corruption case of Blitar District Government	<ul style="list-style-type: none"> <li>• Regent:               <ul style="list-style-type: none"> <li>a. 18 years of imprisonment</li> <li>b. fine of IDR 500 million or 6 months of imprisonment</li> <li>c. restitution of state losses of IDR 51 billion, or 3 years of imprisonment</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>a. Regent :               <ul style="list-style-type: none"> <li>a. 15 years of imprisonment</li> <li>b. fine of IDR 400 million or 6 months of imprisonment</li> <li>c. restitution of state losses of IDR 36.7 billion, or 2 years of imprisonment</li> </ul> </li> <li>b. Head of Financial Unit of District Government:               <ul style="list-style-type: none"> <li>a. 13 years of imprisonment</li> <li>b. fine of IDR 150 million or 6 month imprisonment</li> <li>c. restitution of state losses of IDR 15.4 billion or 2 years of imprisonment</li> </ul> </li> <li>c. Head of Book-keeping subunit in Regional Secretary's Office:               <ul style="list-style-type: none"> <li>a. 5 years of imprisonment</li> <li>b. fine of IDR 50 million or 6 months of imprisonment</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Regent:               <ul style="list-style-type: none"> <li>a. 10 years of imprisonment</li> <li>b. Fine of 500 million</li> <li>c. Restitution of state losses of 27 billion or 1 year of imprisonment</li> </ul> </li> <li>a.               <ul style="list-style-type: none"> <li>a. 10 years of imprisonment</li> <li>b. fine of IDR 100 million or 3 months of imprisonment</li> <li>c. restitution of state losses of IDR 6.5 billion or 10 months of imprisonment</li> </ul> </li> <li>Head of Book-keeping subunit accepted District Court's verdict</li> </ul>	<ul style="list-style-type: none"> <li>Regent: filed an appeal pleading. Still in process.</li> <li>Other defendants accepted High Court's verdict.</li> </ul>	Only Head of Regional Account paid the fine in installments

CASE	Charges of Public prosecutors	Verdict of District Court	Verdict for Appeal at High Court	Verdict at Court of Final Jurisdiction - Supreme Court	IMPLEMENTATION of VERDICT
		<p>Head of Treasury and Regional Account Office of Blitar District:</p> <ul style="list-style-type: none"> <li>a. 10 years of imprisonment</li> <li>b. fine of IDR 100 million or 6 months of imprisonment</li> <li>c. restitution of state losses of IDR 1 billion or 1 year of imprisonment</li> </ul> <p>Head of Regional Account:</p> <ul style="list-style-type: none"> <li>a. 11 years of imprisonment</li> <li>b. Fine of IDR 100 million or 3 months of imprisonment;</li> <li>c. Restitution of state losses of IDR 3 billion OR 2 years of imprisonment</li> </ul>	<p>Head of Treasury and Regional Account Office:</p> <ul style="list-style-type: none"> <li>a. 5 years of imprisonment</li> <li>b. fine of IDR 50 million or 1.5 months of imprisonment</li> <li>c. restitution of state losses of IDR 50 million OR 6 months of imprisonment</li> </ul> <p>Head of Regional Account:</p> <ul style="list-style-type: none"> <li>b. 5 years of imprisonment</li> <li>c. fine of IDR 50 million or 2 months of imprisonment</li> <li>d. restitution of state losses of IDR 500 million OR 1 year of imprisonment</li> </ul>		
PSDH/DR Fund by Kapuas Hulu Regent	Demands had not been read, as in the injunction the charges were declared unacceptable	Judges in their injunction did not accept prosecutor's charges for being obscure (obscure libel)	Prosecutor filed <i>verset</i> to High Court against the injunction		

CASE	Charges of Public prosecutors	Verdict of District Court	Verdict for Appeal at High Court	Verdict at Court of Final Jurisdiction - Supreme Court	IMPLEMENTATION of VERDICT
Lombok Tengah District	<p>Project Leader and Treasurer:</p> <ul style="list-style-type: none"> <li>a. Project leader 3 years of imprisonment, treasurer 2 years of imprisonment</li> <li>b. Fine of 50 million (or 5 months of imprisonment)</li> <li>c. Collective restitution of state losses of 426,261,545 million.</li> </ul> <p>Project's Person in Charge:</p> <ul style="list-style-type: none"> <li>a. 3 year imprisonment</li> <li>b. fine of 50 million (or 5 months of imprisonment)</li> <li>c. Restitution of state losses of 426,261,545 million collectively with other defendants.</li> </ul>	<ul style="list-style-type: none"> <li>• Project leader: <ul style="list-style-type: none"> <li>a. 18 months of imprisonment</li> <li>b. fine of IDR 10 million</li> </ul> </li> <li>Project treasurer: <ul style="list-style-type: none"> <li>a. 12 months of imprisonment</li> <li>b. fine of IDR 10 million</li> </ul> </li> <li>• Project's Person in Charge: <ul style="list-style-type: none"> <li>a. 9 months of imprisonment</li> <li>b. fine of IDR 10 million</li> </ul> </li> <li>• Head of Health Office (implicated in land acquisition transaction): <ul style="list-style-type: none"> <li>a. 4 month of trial penalty</li> </ul> </li> </ul>	<p>Project leader:</p> <ul style="list-style-type: none"> <li>a. 6 months of imprisonment</li> </ul> <ul style="list-style-type: none"> <li>• Project's Person in Charge: 4.5 months of imprisonment</li> <li>• Head of Health Office: Released with 1 year probation.</li> </ul>		

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Putusan Pengadilan Negeri Mempawah No.139/PID.B/2004/PN.MPW

Putusan Pengadilan Mataram No.321/Pid.B/2005/PN.MTR tanggal 7 Juli 2006