Why did Anticorruption Policy Implementation Fail?

A Study of the Implementation Failure of Anticorruption Policies of the Authoritarian New Order Regime and the Democratic Reform Order Regime of Indonesia, 1971–2007

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Statement of Originality

This thesis is my original work

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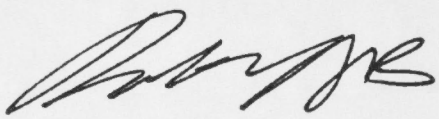

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Abstract

This study comparatively examines the cases of implementation failure of the Anticorruption Law 1971 of the authoritarian New Order regime, and of the Anticorruption Law 1999 of the democratic Reform Order regime, in Indonesia. It investigates to what extent and for what reasons the implementation of these Laws failed to attain the policy objectives of eradicating corruption in the public sector. The research employed a case study approach, interviewing 67 key informants, including law enforcers in nine provinces, and surveying 253 university students in law and government at 13 universities.

Employing the refined top-down implementation model, this study found that to some extent the implementation of the 1971 and 1999 Laws failed, and many factors contributed to this failure. These factors can be classified into five types: policy design, political, institutional, managerial, and societal factors. Among these factors, defects in the implementation structures and processes are the primary explanation for the implementation failure. This study has also confirmed that the political systems of the two regimes did have a role in contributing to the implementation failure of these Laws. However, it has further found that, since the implementation structures and processes of the authoritarian political system of the New Order regime were inherently more defective than those of the democratic political system of the Reform Order regime, the degree of implementation failure of the 1971 Law was evidently higher than that of the 1999 Law.

The study found that the most influential similar factors which caused the failure in implementation of these Anticorruption Laws are:

1. The political will and commitment of the political leaders and the enforcers were too weak to effectively and seriously enforce the Anticorruption Laws and curb corruption.
2. The serious and chronic problem of the court mafia had systematically disabled the institutional capacity and integrity of the enforcement agencies and the criminal justice system to combat corruption.
3. The people were tolerant of corrupt conduct.
4. The corruption problem itself had become serious, endemic and, without radical anticorruption measures, very difficult to control.
5. The use of discretion by the law enforcers was unclearly defined and unchecked.
6. The government and the enforcement institutions had become an integral part of the serious corruption problem, not an effective solution to this problem.
7. The implementation structures and processes of Anticorruption Laws 1971 and 1999 were defective.

This study will contribute to the anticorruption and policy implementation literature, in particular, of how the refined top-down implementation model is tested for comparatively examining the implementation problem of anticorruption law in a developing country, in this case, Indonesia, undergoing political transitions from an authoritarian to a democratic political system. This study will 'complete' the picture of the implementation phenomenon which was partially portrayed by the refined top-down implementation model and other implementation models.

The study concludes that combating corruption in a country transforming from an authoritarian to a democratic political system, where corruption has become chronic and systemic, is problematic and difficult. When corruption has systematically infected and distorted the institutional structures and processes of the government, in particular the law enforcement mechanisms, implementing anticorruption laws is expected to be suboptimal and subsequently fail. To overcome this problem, the factors attributing to the policy implementation failure must be eliminated.

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Chapter 1 Introduction

A. Failed anticorruption measures in Indonesia

Indonesia has very poor international reputation in terms of corruption and anticorruption measures (World Bank 2003). Indonesia was classified as one of the most failed countries among developing economies in terms of anticorruption measure; its percentile ranking was seven out of 100 (Kaufmann, Aart and Pablo 2002).

The country's corrupt dysfunctional political institutions and leadership ultimately led to the dramatic collapse of the authoritarian New Order regime in 1998. However, the current democratic Reform Order regime has struggled to combat the country's systemic, pervasive corruption.

After the collapse of the New Order regime, most Indonesians and non-governmental organisations such as Indonesian Corruption Watch (ICW) and Transparency International (TI Reports 2002 and 2003) perceived that the level of corruption under the democratic governments of the Reform Order regime was higher than the level under the authoritarian government of the New Order regime. They also believed that corruption was primarily responsible for obstructing and slowing political and economic reform processes in the country. Moreover, according to Transparency International's Corruption Perceptions Indexes from 1995 to 2007, the country had always been perceived as one of the most corrupt countries among those surveyed.

B. Scope and research focus

This case study investigates and analyses the failure of anticorruption policies in Indonesia. It undertakes a comparative examination of the implementation failure of Anticorruption

Law Number 3/1971 under the authoritarian New Order regime and the Anticorruption Law Number 31/1999 under the democratic Reform Order regime in Indonesia, in the period from 1971 to 2007.[1]

This study focuses on the important aspect in any implementation study, that is, the factor/s affecting policy implementation effectiveness. More importantly, it examines and explains the role of the different political systems of the authoritarian New Order regime and the democratic Reform Order regime in structuring the implementation processes of the Anticorruption Laws 1971 and 1999 and in influencing their implementation outcomes. The study assesses the anticorruption enforcement or interventionist measures, not the preventive approaches, of the two regimes in combating public sector corruption in the country.

C. Purpose of the study

The purposes of this study are: to comparatively evaluate the extent to which the implementation of the Anticorruption Law 1971, operating under the authoritarian political system and leadership of the New Order regime, and the Anticorruption Law 1999, framed under the democratic political system and leadership of the Reform Order regime, failed in attaining their policy objectives; and to explain the factors contributing to that.

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[1]The research does not cover the period after 2007. The post-2007 policy research which evaluated anticorruption effectiveness in Indonesia, in particular the role of the Anticorruption Commission or *Komisi Pemberantasan Korupsi*/KPK can be studied in Bolongaita (see Bolongaita, E.P., 2010, 'An exception to the rule? Why Indonesia's Anti-Corruption Commission succeeds where others don't–a comparison with the Philippines' Ombudsman', Bergen: Christian Michelsen Institute U4 Issue, No.4, August 2010, pp. 13–20) and Hartwell's studies (see Hartwell, E. 2009. *' "Wild Money": The Human Rights Consequences of Illegal Logging and Corruption in Indonesia's Forestry Sector'*, New York: Human Rights Watch). Both studies found effective role of the KPK in combating corruption in the country. However, in the period from 2008 to 2011, according to Transparency International's Corruption Perceptions Indexes/CPI; PERC's annual surveys on corruption in 11–16 Asia-Pacific countries; and World Bank's Control of Corruption indicator covering 213 countries, corruption remains a serious governance problem in Indonesia.

D. Theoretical context and gaps

The research question in this study is investigated and examined using policy implementation models. In particular, the study employs Sabatier and Mazmanian's synthetised or refined top-down implementation approach to analyse and evaluate the failure of the implementation of the Anticorruption Laws 1971 and 1999, and to identify and explain the factors leading to that failure.

This study has been undertaken to fill an existing gap in implementation studies. Implementation as the study of the interplays and interactions between the policy stakeholders, politicians, administrators, and service providers, has been 'a neglected area of analysis and research' (Parsons 1995:462). Van Meter and Van Horn (1975:450) suggested that this may be because such studies are seen as deceptively simple and unworthy of the attention of scholars. Hargrove (1975) concluded that the lack of research in this area was the 'missing link' in the study of policy process.

Moreover, both students of government and policy practitioners are only beginning to appreciate the nature and significant role of implementation process (Mazmanian and Sabatier 1989:4). Most scholars are more interested in studying how and why a policy is developed, possibly assuming the policy will be implemented as designed, without any significant difficulties. Therefore, policy development studies have long overshadowed the studies of policy implementation (Hargrove 1975; Pressman and Wildavsky 1983).

Furthermore, despite increasing evidence on the role of policy design in shaping and delaying an effective implementation of a policy or program, policy implementation has been infrequently studied (Harbin 1992:103). '…Only a few observers even appreciated the need to understand why implementation failed or succeded' (Yin 1982:37).

Only a few studies have been conducted on the implementation of anticorruption policies or programs. These studies, however, were newly initiated (Fritzen 2003:3). By evaluating the implementation of the Anticorruption Laws 1971 and 1999, and by identifying and explaining the factors influencing such implementation, this study will contribute to understanding why a policy implementation has been effective or failed. It will fill the gap by answering the theoretically and empirically important and interesting question: why did the implementation of the Anticorruption Laws 1971 and 1999 under two different political systems, the authoritarian New Order regime and the democratic Reform Order regime, fail?

E. Central research question

The central research question investigated and examined in this study is to what extent and for what reasons did the implementation of the Anticorruption Law Number 1971 of the authoritarian New Order regime and the Anticorruption Law Number 1999 of the democratic Reform Order regime fail in achieving their policy objectives? Hypothesising the influence of a political system on policy implementation, this study also explores how the different political systems of the two regimes affected and contributed to the implementation failure of these Anticorruption Laws 1971 and 1999.

F. Central argument

Using the theoretical framework on policy implementation and anticorruption to investigate and examine the central research question, this study argues that the implementation of the authoritarian New Order regime's Anticorruption Law 1971 and that of the democratic Reform Order regime's Anticorruption Law 1999, to some extent, failed to attain their policy objectives of eradicating or controlling corruption in the government. The primary explanatory factor for this failure is defects in the implementation structures and processes of the authoritarian political system of the New Order regime and of the democratic political

system of the Reform Order regime. However, since the implementation structures and processes of the authoritarian political system of the New Order regime were inherently more defective, the implementation of the Reform Order regime's Anticorruption Law 1999 had a lesser degree of failure.

G. Theoretical and methodological approaches

This study employs Sabatier and Mazmanian's refined top-down implementation model to theoretically approach and analyse the research problem. This analytical and prescriptive implementation approach is used as it has not only overcome the theoretical weaknesses of the competing, mainstream theories on implementation—the top-down and the bottom-up implementation models—but has also synthesised their theoretical strengths in analysing and prescribing policy implementation.

Unlike most implementation studies which analyse policy implementation problem only from micro-analytical perspectives, this study also views it from macro-analytical perspectives, that is, the influence of a political system on policy implementation effectiveness. The analytical approaches of this study hopefully will give a broader understanding of a policy implementation phenomenon, in this case the implementation failure of the Indonesian Anticorruption Laws 1971 and 1999.

Employing a qualitative research method, this study uses a formal summative evaluation approach. It employs a 'two way' analytical approach, combining forward and backward analytical strategies. Thus, this study evaluates implementation effectiveness from both the perspectives of the top-downers or policy elites, and those of the bottom-uppers or implementers at the field level.

H. Justification for the study

Corruption has become widespread and has recently attracted global initiatives to combat it. Such initiatives can be seen in the adoption of Inter-American Convention against Corruption on 29 March 1996; the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 21 November 1997; and the United Nations Convention against Corruption (UNCAC) on 31 October 2003.

Moreover, the Indonesian crisis has refocused our attention on corruption, an issue which is on the political agenda in many countries (Klitgaard 1998:1). Corruption has been perceived as one of the causes of slow reforms towards economic development and democratisation in many developing countries (World Bank 2000). 'By undermining trust in political institutions and public officials and by distorting government policy against the best interests of the majority, corruption impairs the process of democracy', as US congressman John Brademas pointed out (in Eigen 1996:160).

Thus, we conclude that 'corruption has become a major world problem…'(Eigen 1996: 168). This implies that many countries' anticorruption policies or laws have failed to curb or control the problem. Considering this and the far-reaching negative consequences of corruption, it is highly important to research the causes of the failure of an anticorruption policy by examining and identifying the factors contributing to its failure so that an effective anticorruption measure can be designed. For this purpose, this study investigates the research puzzle: why did an anticorruption policy fail in achieving its objective of curbing corruption?

This study is important since only a few studies have explained the implementation failure of anticorruption policy or law, particularly in developing countries. Very little research has indentified and explained factors contributing to anticorruption policy implementation failure in a country transforming from an authoritarian to a democratic regime, especially comparing anticorruption policy implementation under an authoritarian regime with that under a democratic regime in a country undergoing democratic transition.

In the case of Indonesia, almost no systematic, theoretical, and comprehensive implementation research has been conducted to compare, evaluate and explain the (in)effectiveness of anticorruption policy enforcement under the authoritarian New Order regime and the democratic Reform Order regime. Most research and literature have focused on the country's recent anticorruption initiatives of the Reform Order regime's governments and investigated only limited aspects of the complex phenomenon.

For example, Fiona Robertson-Snape (1999:589-602) examined how political, economic and cultural factors had contributed to the rise of KKN—the Indonesian acronym for *Korupsi, Kolusi dan Nepotisme* (corruption, collusion and nepotism), and whether the political reform under the post-Suharto government offered hope for good governance in the country. Natasha Hamilton-Hart (2001:65-82) summarised the anticorruption reform initiatives by the Reform Order regime since 1998 and explained why such reforms had very limited success. Stephen Sherlock (2002:367–83) assessed the role of the Ombudsman and the Assets Auditing Commission created by the Reform Order regime and concluded both organisations had limited role due to their weak power and political support, limited resources, and isolated existence from other enforcement agencies.

In his article written before the Anticorruption Commission was established, Assegaf (2002:127-46)—using institutional approach and criticising the government for too much relying on legislative reform or 'instrumentalist' approach—examined past and existing anticorruption enforcement agencies and their failure in combating corruption. Limited their research from Suharto to Abdurrahman Wahid (2001) administration, Ibrahim Assegaf et al (2002:135-76) explored their research question, "can corruption in the country be minimised?", by examining the relationship between legal, policy and institutional anticorruption approaches. In general, they concluded that since Suharto the regimes had no commitment and comprehensive legal repressive approach in combating corruption.

On the other hand, Davidsen, Juwono and Timberman (2006), limited their research to examining the range of anticorruption measures that had been undertaken by the administration of President Susilo Bambang Yudhoyono from 2004 to 2006. They assessed whether these initiatives had the potential to significantly reduce corruption in Indonesia. Hadiz (2004:209-36) examined the conditions of corruption in Indonesia, in particular under the Reform Order regime. He concluded that despite progress in the country's anticorruption reforms, corruption remained endemic. The problem, he argued, was not in Indonesian culture, lack of political will, and needed institutions per se, but lied more on the same predatory interests that reinvented themselves and captured the democratic state institutions of the Reform Order government. Therefore, to effectively combat corruption, while keeping reforming state institutions, the anticorruption reformists had to strategically counter these predatory interests.

Therefore, all these studies have resulted in incomprehensive explanations of the anticorruption measures in Indonesia. Moreover, these studies looked more at preventive aspects of the anticorruption policy; only few studies focused on factors influencing

anticorruption law enforcement (in)effectiveness. Furthermore, most of them did not specifically refer to an implementation theoretical framework.

This study fills the gap by advancing and contributing to the theoretical and empirical understanding and knowledge of anticorruption policy implementation in Indonesia.

I. Theoretical and policy significance of the study

This study further adds to knowledge on anticorruption policy implementation by applying and examining the adequacy and usefulness of the western democratic country-centred refined top-down implementation model in explaining the implementation problems in a developing country, Indonesia, undergoing political transformation from an authoritarian to democratic political system.

The important contributions of this study for implementation, policy, and anticorruption study will be to aid understanding of how the implementation of the Anticorruption Laws 1971 and 1999 in Indonesia under two different political systems, the authoritharian New Order regime and the democratic Reform Order regime, failed, and to identify and explain the factors constraining effective implementation of these Laws. In short, this study contributes to the theoretical, empirical and policy understanding and knowledge on anticorruption policy implementation studies, particularly in the Indonesian context.

J. Structure of the thesis

The thesis consists of seven chapters. After introducing the study in this chapter, Chapter 2 explains and examines the theoretical framework for this study. Chapter 3 discusses the research methodology—why, how, where, and when this study was conducted. Chapter 4 examines the implementation of the Anticorruption Law 1971 of the authoritarian New Order regime. The implementation of the Anticorruption Law 1999 of the democratic

Reform Order regime is analysed in Chapter 5. Chapter 6 comparatively evaluates the implementation of the Anticorruption Laws 1971 and 1999. Finally, the thesis concludes by highlighting this study's main empirical findings and theoretical analyses.

Chapter 2
Explaining anticorruption implementation failure: a theoretical framework of analysis

A. Introduction

What factors or conditions are required for successful implementation of an anticorruption policy? This chapter attempts to theoretically explain this important and challenging question. It reviews the leading literature and research on anticorruption and implementation and identifies and examines factors or conditions necessary for effective implementation. After discussing the leading theories and arguments, I will then construct a theoretical framework for analysing the problems of anticorruption implementation in Indonesia.

Synthesising the theoretical strengths of the competing perspectives on implementation, the top-down and the bottom-up implementation models, and taking into account the other theoretical perspectives on anticorruption and implementation, I argue that for an anticorruption policy to be effectively implemented, the implementation structure and process must be carefully designed and managed. As the level of inherent defectiveness of these structure and process is high in an authoritarian regime, the degree of implementation effectiveness is inherently less than in a regime run by a (transitional) democratic government.

B. Anticorruption: why anticorruption policy implementation can fail

The international literature on anticorruption identifies factors which cause anticorruption policy failure or ineffectiveness. The purpose of this review is to theoretically frame and explain the central research question, and to provide the theoretical foundation for the

central argument (hypothesis) formulation and the scope of the study. The literature argues that there are various factors impeding effective implementation of anticorruption policies. Some are specifically attributed to the degree of corruption and the type of political system or the political development stage of the country in question. I classify these different factors into four main categories: political, societal, enforcement, and managerial factors.

To provide the scope for the study the review first examines the various definitions of corruption. It then discusses the typologies of anticorruption measures, assesses their strengths and weaknesses, and locates the study in one of the anticorruption categories.

The next section examines and identifies the factors constraining the implementation of anticorruption policies. It assesses specific implementation failure factors associated with authoritarian and democratic political systems. The review concludes by highlighting the thesis's arguments and emphasising the most significant factors constraining the effective implementation of anticorruption laws.

1. Defining corruption. This section reviews the different approaches and difficulties in defining the concept of 'corruption'. It examines the strengths and shortcomings of each approach, and contends that the dynamic and contextual nature of corruption makes a universal definition difficult to formulate. A broader definition of the concept may be more appropriate.

To be useful, conceptual definitions must be theoretically generalisable, allowing their empirical and cross-cultural applications. As a political concept, corruption has been extremly problematic to define, both theoretically and ethically (Mulgan 2004:1), causing dissatisfaction among scholars (Miller 2004). 'Corruption is a term of dispute', lacking

conceptual precisions and attracting political debates (Alemann 1989). Without a specific definition of corruption, the analysis of corruption, and therefore anticorruption, may be theoretically flawed and misleading.

In cases involving political corruption, the scope of corrupt behaviour is particularly difficult to define. This impacts on the prevention of corruption and enforcement of anticorruption laws in any political system, as these are not only greatly influenced by how corruption is defined, but 'more deeply by how we are to understand the character of politics' (Philp 1997:437).

Many definitions of corruption refer to the abuse of power for private gain and assume the corrupt persons are in positions of (public) office or power (World Bank 1997:6; Johnson 1997:62; Stapenhurst and Sedigh 1999; Manion 2004:5). The fundamental shortcoming of these public office-centred definitions is that they assume corrupt acts can only be committed by those who have (public) power, duty or role (the recipient of bribes), therefore they look at the demand side of the phenomenon. They ignore the fact that corrupt acts can also be committed by those paying bribes, and thus fail to consider the role of the supply side.

Alatas (1990:1) broadly defined the concept as essentially 'the abuse of trust in the interest of private gain'. He further defined corruption under two categories: 'autogenic corruption', which means the corrupt act engages only one party and involves acts such as embezzlement of public resources; and 'transactive corruption', which involves more than one party; for example, in instances of extortion and bribery.

Kurer (2005) argued that corrupt acts were 'characterized by a holder of public office violating non-discriminatory norms in order to gain a private advantage'. He proposed a potentially cross-cultural definition of corruption by contending that in any society, modern/western or traditional, the public condemn a public office holder who acts corruptly against non-discriminatory norms governing allocation of resources and rights.

The principal-agent model considers that corruption occurs when the agent distorts the implementation of the principal's rules by collusion with a third party for his or her personal benefits (Lambsdorff 2002:97). However, the corrupt act is not necessarily undertaken for private gain, but may be motivated by the desire to acquire power and status.

In contemporary political science, definitions of corruption have fallen into three categories: public office, public interest, and market (Brown 2004). Public office-centred definitions view corruption as misuse of public office for private gain; public interest-centred definitions perceive corruption as behaviour injurious to the public interest (Harris 2003:5); and market-centred definitions see it as the functioning of a free market in exercising public office, especially where there are no clear governing rules for such corrupt behaviour.

The above classifications have conceptual problems (Brown 2004; Sousa 2004). For the public office-centred classification, it is unclear when such a public office is misused (Gillespie and Okruhlik 2000:78). Moreover, in social reality what is perceived as corruption cannot be reduced to its legal definition. Often the law governing the conduct of public office lags behind the social, cultural, and political dynamics of what is considered as corruption. The reliance on legal norms may be problematic when a certain type of corrupt behaviour is tolerated 'as part of the way things are done' (Hindess 2004:5), or what was previously regarded as legally corrupt is decriminalised.

Public interest and market definitions have a different problem. If the perpetrator acts in the public interest, can we still classify his action as corrupt behaviour? An example of this could be if a corporatist press association in an authoritarian regime bribes policy makers to enact a law on freedom of information. This definition fails to acknowledge the subjective and contextual scope of the public interest (Gillespie and Okruhlik 2000:77–8; Sousa 2004). The market definitions of corruption acknowledge the cost of breaking the law without specifying it but ignore the social condemnation of the evil behaviour.

Australian and Indonesian social scientists, in a governance dialogue in Bogor (Indonesia) in 2003, offered a much broader definition of corruption. The 'Bogor definition', simply stated, 'abuse of entrusted power' (Brown 2004:14).

In an authoritarian political system, the Bogor definition and other definitions which refer to abuse of power are theoretically problematic. How can we claim that entrusted power is abused when the political system, including those who make the laws, are corrupt? Philp (1997:25) argued that 'the law itself can originate in corrupt practices; that an act is legal does not always mean that it is not corrupt'.

In situations of democratic transition three kinds of corrupt interactions can exist. The first is 'policy corruption' (Phongpaichit 2000).Two groups, politicians and bureaucrats, corruptly conspire to defend the corrupt political system or pre-reform structure from which they have benefited by influencing policy-making and resisting reforms which may threaten the survival of the corrupt system.

Another kind of corrupt interaction is 'state capture' (Hellman et al. 2000:2). This stresses the corrupt interactions between the (passive) state actors on the demand side (the policy

makers) and the (active) private actors on the supply side (the firms). State capture refers to private actors who make illicit private payments or provisions of private benefits to policy makers to shape laws or other government policies for their own benefit at the cost of the public at large (World Bank 2000; Hellman et al. 2000:6). In the context of economic reforms, this type of corrupt activity is directed towards extracting rents from the state by balancing, not necessarily blocking, the reform equilibrium (World Bank 2000:xvi; Hellman 1998).

The third type of corrupt interaction is administrative corruption, defined as 'private payments to public officials to distort the prescribed implementation of official rules and policies (Hellman et al. 2000:2).

In the context of economic and political reforms and democratic transition, the three corrupt interactions described above may be classified as follows. Policy corruption and state capture are an *ex ante* policy-making form of corrupt interactions by which corrupt actors resist or influence the reform process before the reform progams or policies are implemented. They direct their strategies at the policy formulation stage. Administrative corruption is an *ex post* policy-making form of corruption which is undertaken after reform programs or policies are implemented by distorting or resisting their implementation. Both types of corrupt activities can have significant negative impact on the succesful implementation of the reforms.

The following characteristics can be identified in all the above definitions of corruption: subjectivity of the concept (the question of when power, role, office, duty, or trust is abused, misused or becomes illegal or illegitimate is subjectively judged); corruption is related to power, office or trust; and it is for private gain. If these charecteristics are integrated, the

term may be redefined as 'abuse of public trust for private gain', which includes the bribe giver or private actor as an active actor in the corrupt transaction, thus including the supply side of corruption.

This revised definition does not categorically refer to the misuse of power. It may, therefore, be applied in the analysis of corruption and anticorruption policies both in an authoritarian and a democratic regime.

For the purpose of this study, the legal definitions of corruption as formally stated in the Indonesian Anticorruption Laws1971 and 1999 are used. This study compares these legal definitions by examining how they developed and were related to each other, and what legal and technical difficulties, if any, they created that might have impeded the effective implementation process of these Laws.

2. Categorising anticorruption strategies. Larmour and Wolanin (2001:xv–xxiii) categorised the theoretical frameworks on anticorruption measures into three different schools of thought: interventionism, managerialism, and organisational integrity. These anticorruption measures are specifically designed to curb corruption within agencies. Interventionism is an *ex post* 'curative' crime (corruption) control approach, assuming that society is protected by law enforcement, for example increasing the probability of detection, punishment and severity of the penalties imposed so that potential and actual offenders are deterred from committing or recommitting crimes or corruption (see also Becker 1968 and Rose-Ackerman 1999).

The managerialism model employs *ex ante* preventive anticorruption (crime) measures by reducing the opportunities for corruption through the establishment of appropriate systems

and management processes. Klitgaard's formula (1988) that Corruption = Monopoly + Discretion – Accountability may suggest a managerialist approach in combating corruption by the reduction of corrupt opportunities through demonopolisation or privatisation, allowing the working of a competitive market and clear, transparent and accountable decision-making processes for allocating public goods and services.

Organisational integrity approaches of corruption control require the integration of corruption control strategies and ethical standards into an organisation's operational systems. 'It is about establishing a social norm in an organization which accurately defines and resists corruption' (Larmour and Wolanin 2001:xx). The Transparency International's national integrity system anticorruption approach (TI in William and Doig 2000:61) may be classified into this category.

This approach was built on John Braithwaite's theory of reintegrative shaming (Larmour and Wolanin 2001).This theory argued that the dynamics of shame in a society largely governs the incidence of deviance (crime, corruption). Hence, if society does not subject criminal or corrupt behaviour to shame, such behaviour would flourish and tend to be internalised as a group's norm.

Gillespie and Okruhlik (2000:80–2) classified anticorruption strategies or 'corruption cleanups' as societal, legal, market, and political strategies. Societal strategies are targeted at changing people's (and public officials') attitudes and values from tolerance to intolerance of corrupt behaviour through education, ethichal norms, and public vigilance. Legal strategies focus on the use of sanctioning mechanisms to deter corrupt behaviour or activities through the enforcement of legal codes which increase the effectiveness and probability of detection, punishment, and imposed penalties. Market strategies stress the

functioning of competitive market forces in the allocation of public goods and services through, for instance, deregulation and debureaucratisation of public policies. Political strategies use tactics to control the use of public powers through, for example, the institutionalisation of good governance in policymaking and decision-making processes.

Pope (1999b) classified anticorruption reforms into four categories: prevention, enforcement, public awarness, and institution building. Each aims to increase the risks or costs and decrease the incentives or profits of the corrupt undertaking. Prevention measures confront the problem of corruption by reducing the opportunities for the evil behaviour, such as the simplification of governmental process (deregulation and debureaucratisation), privatisation, institutionalisation of vertical and horizontal accountability or good governance in the public management sector, transparency and public participation in the decision-making process, and coalition building.

Enforcement strategies, which are comparable to the interventionism and legal strategies, focus their tactics on enhancing the likelihood and effectiveness of detection, punishment, and imposed penalties of the corrupt activities. For this purpose, Pope argued, it is essential to have an independent judicial and enforcement system.

Public awareness measures are similar to the societal strategies. They employ resources and tactics to engender anticorruption values, ethics, norms, and attitudes in the public, thus encouraging them to not tolerate, and to fight corrupt behaviour. Conducive legal, administrative, and societal environments must be created to facilitate these efforts. Lastly, institution-building approaches, like the organisational integrity strategies, aim their efforts at increasing the quality, integrity, capacity, and effectiveness of anticorruption and governance institutions in combating corruption.

All the above anticorruption approaches can be categorised into three typologies: preventive, repressive, and educational strategies. Preventive measures (managerialism, organisational integrity, market, political, and institution building strategies) are *ex ante* strategies to prevent corruption from occuring in the first place. These involve eliminating or reducing the opportunities, incentives or benefits (social, political, economic, and institutional) for engaging in corrupt behaviour or activities.

Repressive measures (interventionism, legal, and enforcement strategies) are essentially *ex post* approaches to address corruption which has occurred. Typical meausures are to detect corrupt behaviour in order to punish actors and deter potential offenders. Educational approaches (societal and public awarness strategies) aim at educating and changing people's attitudes, norms, and values from tolerance to intolerance of corrupt behaviour. Even though these strategies contain elements of corruption prevention, they focus more on tackling the demand side of the corruption problem external to the organisational settings of government. To effectively curb corruption, integrated preventive, repressive, and educational approaches must be institutionalised and implemented.

3. Assessing the strategies. The above typologies of anticorruption measures emphasise the state-centric, top-down approach in fighting corruption and disregard other possibilities. The state-centric anticorruption measures assume that only the state has the capacity to fix the problem.

This could be a problem if the state itself is dysfunctional or fails to perform its functions; for example, if it is a failed state because of systemic widespread corruption. As has been theoretically and empirically argued, corruption is a symptom of the dysfunctionality of a state's institutional structures and processes. Therefore, in a country with widespread,

systemic and pervasive corruption, implementation of anticorruption measures is problematic (Manion 2004:22), or perhaps impossible. In such a situation, the state itself is an integral part of the problem, not the solution.

Failed states are often confronted with radical anticorruption measures. These include revolution, social pressure, *coup de etat*, and international intervention. I categorise revolution and *coup de etat* as 'radicalism', and international intervention as 'internationalism'. Radicalism is the belief that 'normal' measures of anticorruption will not work to combat systemic corruption; therefore, 'abnormal' or radical measures have to be taken. Internationalism as a movement, international policy or strategy believes that corruption and its effects are globalised; thus, global anticorruption measures must be pursued. Revolution and social pressure are bottom-up and people-centric approaches to combating corruption.

Revolution and *coup de etat* combat the systemic widespread corruption by radically changing (usually by force) a corrupt government and its corrupt political system (in most cases, an authoritarian political system) into a clean government and democratic political system. Alatas (2003) once suggested revolution as an alternative option to combat endemic and systemic corruption. The collapse of the corrupt communist regimes in East Europe, the Marcos regime in the Philipines, and the authoritarian New Order regime in Indonesia by massive demonstration or 'people power' (revolution), and the change of these regimes to relatively democratic governments and political systems are instances of anticorruption revolution. The real examples of *coup de etat* as an alternative measure to fight widespread corruption are military coups in Nigeria, Pakistan, and Thailand.

Social pressure is a social movement, usually organised and led by civil society organisations or public interest groups, to pressure a corrupt government regime into controlling chronic corruption and to institutionalise good governance without necessarily involving the use of (physical) force and the change of regimes, for example, social anticorruption movements in Latin American countries.

'Internationalism' as an option to combat corruption consists of systematically organised efforts and pressure by international financial institutions, donor countries, or states. Such pressure is aimed at changing and reforming, to some extent by economic and political forces and influence, corrupt governments and political systems of other countries into more accountable governments and democratic political systems. The use of economic influence or pressure by the International Monetary Fund and the World Bank to 'force' corrupt regimes to adopt anticorruption measures, and the adoption, ratification, and implementation of the United Nations Convention against Corruption, and other anticorruption conventions by OECD and Latin American countries, are examples of this anticorruption strategy.

This study examines the interventionist or law enforcement approaches of the authoritarian New Order regime and the democratic Reform Order regime in combating corruption. Thus, it focuses on the repressive typology of anticorruption strategies. This study comparatively evaluates the implementation performance of Anticorruption Law Number 3/1971 of the New Order regime and the Anticorruption Law Number 31/1999 of the Reform Order regime. It does not evaluate the preventive anticorruption measures of the two regimes, although they will be discussed as they might influence the effectiveness of the repressive strategies.

However, interventionist approaches may not be able to effectively deter potential offenders as 'most crime and even more corruption go undetected, unreported and hence unrestored…' (Larmour and Wolanin 2001:xv–xvii). Moreover, an interventionist or curative approach does not tackle the sources or opportunities for corruption. This study investigates these weaknesses and other potential constraints of the two regimes' interventionist approaches that may have contributed to the failure of the Anticorruption Laws.

4. Explaining anticorruption policy failure. This section reviews factors impeding the implementation of anticorruption policies which may contribute to the failure or ineffectiveness of these policies. These can be classified into political, societal, enforcement, policy design, and managerial factors. It can be argued that corruption itself is the primary explanatory factor of the implementation failure of anticorruption measures. Law institutions and enforcers may fail to implement anticorruption laws if they themselves are corrupt. Corruption makes institutional structure and the process for implementing anticorruption policy defective and dysfunctional.

a. Political factors

The factors in this category have their roots in lack of political commitment and the failure of power holders and political institutions to provide a political framework conducive to effective implementation of anticorruption policies.

In a country where corruption systematically infected and damaged the political and law enforcement institutions, the leaders' political will and commitment to combat corruption are reasonably questioned, as the politicians and the law enforcers have no incentives to effectively and seriously control corruption. In a situation where corruption is widespread and systemic, for example in Thailand, political will or commitment on the part of political

leaders was seriously in doubt (Phongpaichit 2000:3) or 'there may be little, if any, political will' to anticorruption reforms (Klitgaard 2000:4). The experiences of some Asian countries demonstrate this. Quah (1989:849) argued that the failure of anticorruption measures in some ASEAN countries was attributed to the weak commitment of the political leaders to wipe out corruption.

Political will has an important role in effective corruption control, even in a country where political leaders constrain the smooth functioning of the democratic process. For example, even though Singapore has less democracy and poor development of civil society's participation in the decision-making process, the country has effectively curbed corruption. The political will of the Singaporean Government, particularly the leadership of Lee Kuan Yeuw, was the key factor in the success story (Quah 1989:851).

A democratic form of governance does not guarantee that the level of corruption will be effectively reduced if political leaders lack a strong political will to fight corruption. India, for instance, is regarded as a democratic state with a relatively developed accountability structure and people's participation in policymaking processes; however, it still has a serious problem of corruption. People perceive that the political leaders of this country are not strongly committed to eradicating corruption.

However, political will may be difficult to translate into concrete actions. Nelson (1984:991) found that 'commitment is crucial', while 'it is no guarantee of ability to implement a program'. In reality, even committed leaders face an array of constraints including resistance from political elites. Moreover, political will may be difficult to measure and 'speeches from politicians commiting support do not necessarily translate into concrete action' (Marquette 2001:402).

Commitment, Nelson (1984) contended, is a variable that may be influenced by outside agencies. Thus, commitment is a matter of degree, requiring that programs are specifically designed according to the extent of the political leaders' commitment to implement them. More importantly, unless programs are also designed to tackle political impediments, strong commitment, she contended, may be insufficient.

Two competing models of the politics of economic reform may explain the political factors contributing to the failure or ineffectiveness of anticorruption reforms in countries experiencing democratic and economic transitions. These are the J-Curve Model and the Partial Reform Model. These two models offer theoretical and empirical explanations of the politics of economic reforms in transition countries based on the distribution of the costs and benefits of economic reforms. According to the J Curve Model, the costs of the reforms were concentrated on the short-term losers such as the unemployed, striking workers, and frustrated bureaucrats, while the benefits were dispersed. Therefore, the short-term losers would collectively block the reform processes. This model prescribes that in order to sustain reforms, including anticorruption reform, which aims at reducing rent-seeking activities, the state should be insulated from the pressure of short-term losers.

In contrast, the Partial Reform Model (Hellman 1998) argued that the benefits of the reforms were concentrated on the short-term winners of the reforms, for example insider entrepreneurs and commercial bankers; while the costs were dispersed. These short-term winners used their economic power to influence the reform path and shape the policymaking processes in order to generate rents and protect their interests at the cost of the public at large. Instead of insulating the state from the conventional short-term losers, this model suggests insulating the state from the short-term winners in order to sustain the reforms.

Anticorruption reforms may fail if short-term winners can effectively influence the policy-making and implementation process of the reforms to protect their rent-seeking interests.

In a country experiencing political and economic transition where economic reform is being implemented, there may be incentives for the ruling party to preserve the pre-reform structure if it facilitates the corrupt undertaking that has direct or indirect value to the party (Goudie and Stasavage 1998:126). This partially confirms the arguments of the J Curve Model and the Partial Reform Model that in economic transition the short-term losers and the short-term winners will influence, and to some extent, impede, the implementation process of the reform to protect their pre-reform interest structure. The strategic interactions among numerous competing social interests are what Bardach called "implementation games".The competing actors influence the policy implementation process to pursue their own goals, which might be compatible or in conflict with the policy objectives (Bardach 1977:9).

The two political economic models suggest that the implementation of anticorruption reforms in transition countries may fail or be ineffective if the state is not insulated from the influence of the J Curve Model's short-term losers (especially pro-status quo corrupt politicians, bureaucrats, and legal enforcers) and the Partial Reform Model's short-term winners (corrupt entrepreneurs, politicians, and bureaucrats).

b. Societal factors

Societal failure factors are mainly linked to the underdevelopment of civil society and weak participation by the people in the governance process. These conditions weaken the role of social control in the implementation of anticorruption policies.

An important societal factor is the lack of social pressure, especially in combating systemic, widespread corruption. Phongpaichit (2000:3) argued that 'real reform is not going to come from the top down [the state], when the big problems are at the top'. She argued that real pressure must come from the bottom up or civil societies to counter resistance to reforms from corrupt politicians and bureaucrats. Furthermore, enactment of anticorruption laws is not sufficient if there is no social pressure to enforce these laws (Phongpaichit 2000:1–3).

The second factor is the lack of social support in the effort to curb corruption. The experience of Nepal demonstrates that even though the government enacted and implemented anticorruption reform programs, the programs were not effective as there was a lack of active support from other segments of society, such as civil societies and businesess (Panday 2000:35).

The third societal failure factor is the lack of social sanction for corrupt behaviour. In systemic corruption, Klitgaard (2000:3) argued, the lack of social sanction weakens the anticorruption reform.

c. Enforcement factors

Enforcement factors are attributed to the collapse of, or the ineffectiveness of a justice system to provide a legal framework conducive to or supportive of the implementation of anticorruption policies.

Becker (1968) stressed the importance of the legal framework to increase the probability of detection and punishment of corrupt activities. He argued that deterrence of criminal [corrupt] behaviour correlates with or depends on the likelihood of the corrupt behaviour being detected and punished, and on the severity of penalties imposed, by the legal system

as well as moral sanctions such as loss of reputation or shame. If corruption systematically distorts the enforcement structure and process of anticorruption law, the probability of detecting and punishing corrupt behaviour is expected to be low, eventually leading to implementation failure or ineffectiveness. However, a high probability of detection may not be effective without effective punishment and the imposition of penalties to such corrupt behaviour.

Rose-Ackerman (1999:53) suggested that because corrupt deals involve two parties, corrupt behaviour would be effectively confronted if the law can at least deter one party. In a two-party 'transactive' or 'extortive' corruption (Alatas 1990), enforcement of anticorruption laws may be less effective if neither recipients (usually public officials) nor bribe givers (private persons) are deterred from engaging in corrupt behaviour. However, corrupt acts do not always involve two parties. In 'autocorruption' (Brooks 1974) or 'autogenic corruption'(Alatas 1990), for example the embezzlement of government resources, only one party commits the corrupt act.

Rose-Ackerman (1999:53) further argued that while a high-fixed penalty would reduce the levels of corruption, it would increase the size of bribe given. If the penalty is high, officials will act rationally by demanding a higher return. To confront this paradox she proposed that penalties be tied to the size of the payoffs. In practice, however, her advice may be difficult to implement, as the value of the payoffs is not stable, due to, for example, inflation. In different social economic conditions, the same size of bribe may also have different social and economic effects.

However, the interventionist or enforcement approach is problematic as it assumes clean enforcers, and enforcement may be constrained by limited resources to detect a high

proportion of corrupt officials in a situation when corruption is widespread (Manion 2004:22).Corrupt enforcers and enforcement institutions can disrupt the implementation structure and process to enforce anticorruption law effectively.

Goudie and Stasavage (1998:124) emphasised the important role of the judicial system in limiting corruption by monitoring public officials and politicians and holding them accountable for their wrongdoings. They suggest three important characteristics which are crucial in this regard: first, an independent judiciary attained by effectively maintaining separation of power between the judiciary and other branches of government; second, the effectiveness of the law enforcement agencies in the implementation of the law; and third, the integrity and effective management of the law enforcement sector. A partial judiciary system and corrupt law enforcers cause the implementation structure and process required to enforce anticorruption law effectively to become defective and dysfunctional.

Manion (2004:23) contended that in a setting of widespread corruption the interventionist measures targeted at changing corrupt behaviour are also problematic. She asserted that the government with its unreliability in enforcing laws is not an outside player, but an integral part of the setting. From the principal-agent perspective, this situation suggests a massive monitoring failure.

In an authoritarian regime, Goudie and Stasavage (1998) argued that where political leaders have effective and tight control over the judiciary and the enforcement agencies, they will have the capacity to engage in corrupt activity with impunity. In such autocratic governance, the costs of exposure will be typically small, in terms of both legal sanctions and political responsibility, even if the risk of detection is significantly high and the corrupt act is openly exposed and acknowledged.

Other implied implications of Goudie and Stasavage's arguments are that under an authoritarian system of government public officials and politicians have strong incentives to engage in corrupt activity as the costs of committing the corrupt act are lower than the benefits of doing it. The probability of detection and punishment is low because the judicial system and law enforcement sector are under the influence of the executive or other state institutions. This partial justice system constrains the attainment of anticorruption policy objectives by disabling the control and monitoring mechanisms.

d. Policy design factors

The factors under this category are associated with the failure of decision makers to design effective strategic anticorruption policy or programs.

In recent years, many countries and development agencies have devoted substantial resources and energy to combating corruption. However, it is not yet certain, especially in countries with pervasive corruption, that the levels of corruption have declined significantly (Shah and Schacter 2004:40). Shah and Schacter argued that this could be attributed to the fact that many anticorruption programs use a 'one-size-fits-all' approach to combat different types of corruption. Anticorruption measures that have been successful or effective in one country may fail or be ineffective in another country with different underlying causes of corruption or problems of governance.

Shah and Schacter (2004:40–3) proposed an anticorruption model, assuming the governance-corruption nexus and dividing developing countries into three categories: 'high', 'medium', and 'low'. These categories reflect the incidence of corruption and quality of governance in a country. Each has different priorities which explain why many anticorruption measures have failed. For example, a high category country with

a high incidence of corruption and low quality of governance may fail in its anticorruption efforts if it prioritises a decentralisation program, which may be more effective in a country with a medium category.

Decentralisation, they argued, can be effective in controlling corruption as it increases the accountability of public servants to citizens. However, it may also multiply the opportunities for corruption because it creates many new public authorities with the potential for abuse of power in a country with weak governance.

Corruption can stem from various sources. Some authors claimed that inadequacy of public sector salaries, weak financial management and accountability mechanisms, poor procurement, conflict of interest or no clear separation between private and public interests (Langseth et al. 1996), bureaucratic delays (Lambsdorff 1999), non-transparent decisionmaking processes, red tape, and unclear rules for public official behaviour (Rose-Ackerman 1996) were the sources of corruption in the public sector administration. Anticorruption strategies, therefore, the authors suggested, must address these sources. For example, Klitgaard (1998) argued 'it is unrealistic to expect poorly paid judges, prosecutors, and police' to combat corruption. The law enforcers may have incentives to deflect and distort the implementation process if they are underpaid, to meet the minimum cost of living.

e. Managerial factors

The root causes of the factors under this classification may be attributed to the collapse or dysfunctionality of management functions in the implementation process of anticorruption policies. Thus, the failure is tactical and functional.

Pope (1999b) observed that uncoordinated anticorruption efforts were a contributing factor to anticorruption ineffectiveness. Huberts (1998) learnt that the lack of internal institutional control, supervision, public exposure, anticorruption attitude, and leadership were the key factors for anticorruption failure. Eigen (1996:162) suggested that corruption could be curbed by empowering outside monitoring by independent agents.

In sum, the factors contributing to the implementation failure of anticorruption policies are represented in the following tables:

Table 2.1 **Political factor typology**

Political factor				
Factors (authors)	**Extent of corruption**		**Type of political system/regime**	
	Non systemic	**Systemic**	**Authoritarian**	**Democratic**
Lack of commitment or political will (Pope, Quah, Nelson, and Pongphaichit)	*present*	*present*	*present*	*present*
Lack of political accountability (Goudie and Stasavage)	*present*	*present*	*present*	*present*
Blocking/resistance by the short-term losers (J Curve modelist)	*present*	*present*	*present*	*present*
Distortive influence by the short-term winners (Hellman)	*present*	*present*	*present*	*present*
Incentives to preserve corrupt pre-reform structure (Goudie and Stavasage)	*present*	*present*	*present*	*present*
Inherit corrupt bureaucracies (Pope)	*present*	*present*	*present*	*present*

Table 2.2 **Societal factor typology**

Societal factor				
Factors (authors)	**Extent of corruption**		**Type of political system/regime**	
	Non systemic	**Systemic**	**Authoritarian**	**Democratic**
Lack of public pressure (Phongpaichit and Panday)	*present*	*present*	*present*	*present*
Lack of social support or participation (Panday)	*present*	*present*	*present*	*present*
Lack of social sanction (Klitgaard and Becker)	*present*	*present*	*present*	*present*
Lack of social coalition building (Pope)	*present*	*present*	*present*	*present*
Lack of public exposure (Huberts)	*present*	*present*	*present*	*present*

Table 2.3 **Enforcement factor typology**

Enforcement factor				
Factors (authors)	**Extent of corruption**		**Type of political system/regime**	
	Non systemic	**Systemic**	**Authoritarian**	**Democratic**
Ineffective detection and punishment (Becker and Rose-Ackerman)	*present*	*present*	*present*	*present*
Corrupt enforcers / agencies (Manion, Goudie, Stasavage, and Pope)	*present*	*present*	*present*	*present*
Weak deterrence (Becker and Rose-Ackerman)	*present*	*present*	*present*	*present*
Lenient penalties (Goudie and Stasavage)	*present*	*present*	*present*	*present*
Partial judiciary/ enforcement agencies (intervention)(Pope, Goudie and Stasavage)	*present*	*present*	*present*	*present*

Table 2.4 **Policy design factor typology**

Policy design factor				
Factors (authors)	**Extent of corruption**		**Type of political system/regime**	
	Non systemic	**Systemic**	**Authoritarian**	**Democratic**
Incomprehensive anticorruption legislation (Pope)	*present*	*present*	*present*	*present*
Inadequate public sector salary (Langseth et al.)	*present*	*present*	*present*	*present*
Use of the same anticorruption strategy for different corruption problems (Shah and Schacter)	*present*	*present*	*present*	*present*
Wrong policy priority targeting (Shah and Schacter)	*present*	*present*	*present*	*present*
Unsound financial and public procurement policy (Langseth et al.)	*present*	*present*	*present*	*present*
Unaccountable and non transparent decision-making process (Rose-Ackerman)	*present*	*present*	*present*	*present*
Absence or inadequate code of ethics for public servants (Rose-Ackerman)	*present*	*present*	*present*	*present*
Small costs of public exposure (Goudie and Stavasage)	*present*	*present*	*present*	*present*

Table 2.5 **Managerial factor typology**

Managerial factor				
Factors (authors)	**Extent of corruption**		**Type of political system/regime**	
	Non systemic	**Systemic**	**Authoritarian**	**Democratic**
Lack of resources (Manion)	*present*	*present*	*present*	*present*
Incompetent enforcers (Manion)	*present*	*present*	*present*	*present*
Lack of independent outside monitoring (Eigen)	*present*	*present*	*present*	*present*
Ineffective enforcement agencies (bad management) (Goudie and Stasavage)	*present*	*present*	*present*	*present*
Lack of internal control (Huberts)	*present*	*present*	*present*	*present*
Lack of coordination (Pope)	*present*	*present*	*present*	*present*
Lack of leadership (Huberts)	*present*	*present*	*present*	*present*
Public servants' tolerance of corruption (Huberts)	*present*	*present*	*present*	*present*

The above tables indicate that all factors may exist in any level of corruption in authoritarian and democratic political systems or regimes. This study focuses on comparatively examining the factors impeding the implementation of the Anticorruption Laws 1971 and 1999 of the authoritarian New Order regime and the democratic Reform Order regime; it

investigates and examines the factors that have strong bearings on the failure of these Anticorruption Laws.

C. Why did public policy implementation fail?

This section attempts to describe and explain policy implementation. It first discusses definitions of implementation, and then examines competing approaches to implementation analyses and strategies to frame the theoretical approach that will be employed in this study, giving particular emphasis to the refined top-down implementation model. The top-down and the bottom-up perspectives on success/failure factors for effective implementation will be specifically examined. This section then attempts to compare and integrate the failure factor typologies in the anticorruption literature and the implementation literature. After examining the competing implementation models, the theoretical framework for the study will be adopted.

I argue that various factors influence (in)effective implementation of public policies. These factors can be classified into five types: policy design, political, institutional, managerial, and societal. These can be further grouped into two essential problems in policy implementation: those in the implementation structure and those in the implementation process.

1. Definitions. Implementation is defined as a 'process of interaction between the settings of goals and actions geared to achieve them' (Pressman and Wildavsky 1973: xv). Mazmanian and Sabatier (1989:4) asserted that policy implementation is concerned with understanding those events, processes, and activities after a policy is formulated or a program is adopted, including the behaviour of those involved in the process, especially those bodies responsible for administering the policy. Policy implementation includes 'the

web of direct and indirect political, economic, and social forces that bear on the behaviour,' the compliance of target groups, and the substantive impacts the policy has on people and events. Thus, scholars assume a clear distinction between formulation and implementation of policy.

In their detailed account of implementation and its process and analysis, Mazmanian and Sabatier (1989:21) defined implementation as:

> ... [T]he carrying out of a basic policy decision, usually incorporated in a statute but which can also take the form of important executive orders or court decisions. Ideally, that decision identifies the problem(s) to be addressed, stipulates the objective(s) to be pursued, and, in a variety of ways, "structures" the implementation process...

This implementation process, according to these leading implementation scholars, goes through several stages:

> The process normally runs through a number of stages beginning with passage of the basic statute, followed by the policy outputs (decisions) of the implementing agencies, the compliance of target groups with those decisions, the actual impacts – both intended and unintended–of those outputs, the perceived impacts of decisions, and finally, important revisions (or attempted revisions) in the basic statute.

This implementation process is structured through a policy network, which is composed of interconnected clusters of firms, governments, and associations, termed the 'implementation structure' (Hjern 1993:250).

Quade (1989:338) further defined the meanings of implementation, implementation process, and implementation success:

> Implementation is the directed change that follows a policy mandate, the process of rearranging patterns of conduct so as to honor the prescriptions set forth in the decision. Implementation thus starts after the decision to adopt a particular course of action is made. It ends succesfully when the goals sought by the decision are achieved and when financial and other costs, including time, are reasonably in accord with expectations.

We can conclude that implementation is the process of a planned 'social engineering' to change or rearrange patterns of behaviour. Implementation will be judged as effective when

it results in the intended impact or has a higher ratio of effectiveness to cost. This elitist top-down view of implementation assumes that the formal goals are uncontroversial and the only source of value for measuring policy performance. This top-down view divides the implementation process into three stages: policy formulation, implementation, and policy reformulation.

2. The competing analytical frameworks on implementation

a. Top-down vs bottom-up approaches. The debate on implementation studies comprises of two competing schools of thought: the top-down and bottom-up models of implementation.

Sabatier (1993) critically examined and compared both approaches to implementation analysis. He observed that the first generation of implementation studies in America was a single case study of policy implementation, resulting in conclusions questioning the capacity of governments to pursue effective implementation of their programs (see also Derthick 1972; Pressman and Wildavsky 1984; and Murphy 1973).

The second generation of implementation research, which used more analytical and comparative approaches, aimed at explaining the comparative variations of the implementation success of various governmental programs and units, focusing on specific factors and theoretical models (Goggin 1986; Van Meter and Van Horn 1975; Sabatier 1993).

However, Sabatier claimed, most implementation scholars employed the same approach in analysing the implementation process, the top-down analytical framework: 'they started with a policy decision, usually a statute, and examined the extent to which its legally mandated

objectives were achieved over time and why'. During the 1970s, the top-down approach was the dominant analytical model in evaluating the effectiveness of a policy or program in terms of attaining its formal objectives and in explaining the contributing factors.

In the early 1980s, scholars such as Lipsky, Berman and McLaughin, Hanf and Scharpf, Ingram, Elmore, Browning et al., Barret and Fudge, Hjern and Hull perceived the weakness of the top-down perspectives and employed a different approach in analysing the implementation process, the bottom-up approach. Based on his analyses of that approach and the scholars' studies on implementation, Sabatier described the distinct characteristics of the bottom-up framework:

> Rather than start with a policy decision, these 'bottom uppers' started with an analysis of the multitude of actors who interact at the operational (local) level on a particular problem or issue. In the process, the familiar policy stages of formulation, implementation, and reformulation tended to dissapear. Instead, the focus has been on the strategies pursued by various actors in pursuit of their objectives. Such studies have shown that local actors often deflect centrally-mandated programs toward their own ends.
> (Sabatier 1993:266–7)

Thus, the essential difference between the two analytical approaches is their starting point of analysis. The top-downers start their analyses from the top of the implementation process and structure, focusing more on the policymaker's perspectives, interests, and goals, down to analysing the implementation process at the operational level, particularly the behaviour of the implementing officials or what Lipsky termed 'street-level officials'.

On the other hand, the bottom-uppers begin their analyses from the very bottom of the implementation process and structure, stressing more the analysis of the perspectives, interests, demands, conflicts, goals, and strategies of all involved at operational level, particularly those of the implementing agencies, and move to the top level of the

implementation process and structure to the analysis of the perspectives and objectives of the policymakers.

In sum, Sabatier (1986:32) compared the essential characteristics of the top-down and bottom-up approaches to implementation analysis:

Table 2.6 **Comparison between top-down and bottom-up approaches**

	Top-down (Sabatier and Mazmanian)	**Bottom-up (Hjern et al.)**
Initial focus	(Central) government decision, eg., new pollution control law.	Local implementation structure (network) involved in a policy area, eg.pollution control.
Identification of major actors in the process	From top down and from government out to private sector (although importance attached to causal theory also calls for accurate understanding of target group's incentive structure).	From bottom (govt. and private) up.
Evaluative criteria	Focus on extent of attainment of formal objectives (carefully analysed). May look at other politically significant criteria and unintended consequences, but these are optional.	Much less clear. Basically anything the analyst chooses which is somehow relevant to the policy issue or problem. Certainly does not require any careful analysis of official government decision (s).
Overall focus	How does one steer system to achieve (top) policymaker's intended policy results?	Strategic interaction among multiple actors in a policy network

Source: Adapted from Sabatier (1986b:32).

Thus, from Sabatier's comparison the top-downers and the bottom-uppers have differing views about what counts as implementation effectiveness. For the top-downers, policy implementation will be judged as effective or successful if it results in the attainment of

policy objectives; whereas, for the bottom-uppers, this effectiveness may be seen in solving a policy problem, taking into account the implementation structure/network, perspectives, resources, interactions, and capacities of the implementers, institutions, and the other actors at the street or operational level.

Relevant to this study, therefore, Sabatier's comparison reminds us about the factors or conditions which may lead to implementation failure. For the top-down theoriests, implementation will fail or be ineffective if policy-makers and implementers fail to control and steer the implementation structure, system, and process according to the policy and implementation directives from the top officials. Thus, this rather authoritarian, militaristic approach views effective implementation as concerned with effective control and command from the officials at the top level to those at the bottom level. On the other hand, the bottom-uppers suggest that policy implementation will be ineffective if we fail to manage strategic interactions and implementation politics among actors in a policy network, in particular those at the bottom level of the implementation structure and process.

From the description and analysis of the two competing approaches and strategies of implementation, it can be argued that the top-down approach is essentially the application of the rational model of decisionmaking and management by objective (Weber 1991; Simon 1960) in the process and management of policy implementation. The top-down theorists contend that effective implementation requires the management of policy implementation processes towards the attainment of the policy objective through managing the effective chains of command, coordination, and control. The implementation decisions and strategies are set by the top policymakers, and carried out, through the hierarchy of chain of command and control, down the implementation structure and process by the implementers or the 'street level' officials.

On the other hand, the bottom-up models basically apply the incremental model of decisionmaking (Lindblom 1965 and 1979) in the area of policy implementation. By critisising the top-down approach for failing to consider the role of other actors and levels in the implementation process (Parsons 1995:467), the bottom-up models stress the importance of negotiation, compromise, consensus building, and the interactions between implementers and clients at the 'street level' (Lipsky 1971) in the politics and process of policy implementation. The implementation process involves policymaking by the implementers, and is not seen as 'a process in which x follows y in a chain of causation,...what actually counts as success and failure is a matter of controversy and conflict' (Parsons 1995:467).

b. Top-down perspectives of implementation factors. Mazmanian and Sabatier (1989) explained their top-down theoretical notions of implementation failure or success. According to them '...the crucial role of implementation analysis is the identification of the variables which affect the achievement of legal objectives throughout [the implementation] process'. The successful implementation of a policy or program, they argued, is associated with the tractability of the social problem being dealt with. Some policies are more difficult to implement than the others, therefore increasing their probability of failure or ineffectiveness. Lack of understanding of the causal theory underlying a policy can also contribute to implementation failure. A policy, the scholars further contended, has a greater chance of failure when the behaviour being regulated is diverse, making it difficult to frame a clear regulation.

Mazmanian and Sabatier asserted the probable achievement of statutory objectives would be low when the target groups whose behaviour is being regulated are large in number and difficult to define and locate, thus creating difficulties in mobilising the political support for

the program. The formal policy goal may be more difficult to attain if the amount of behaviour modifications required is particularly high.

Mazmanian and Sabatier further argued that policymakers have a significant role in substantially attaining legal objectives by coherently structuring the implementation process. The lack of a coherent implementation structure for a policy, therefore, may impede the implementation process. Another factor for implementation success is adequate provision of financial resources in the initial stage of the implementation process.

The successful implementation of a policy, Mazmanian and Sabatier claimed, is also partly contingent on the ability of a statute to hierarchically integrate implementing organisations, both within and among those institutions. Lack of a hierarchical organisational integration makes coordination and collaboration in the implementation process difficult. A statute, they suggested, may also have a role in increasing the likelihood of implementation success by limiting veto points and the abilty of other organisations to veto the decisions of implementing agencies; providing adequate incentives for compliance; and by structuring an effective decisionmaking mechanism of the implementing agencies. Many veto points, weak incentives, and bad decision rules, therefore, may constrain implementation process.

However, Mazmanian and Sabatier argued that, 'no matter how well a statute or other basic policy decision structures the formal decision process, the attainment of legal goals is unlikely if implementors are not committed to achieving those goals'. Lack of commitment would be particularly greater when the behaviour of the implementing officials has become an integral part of the problem being regulated.

Mazmanian and Sabatier contended that the effective implementation of a policy or program may also be affected by the extent to which a statute influences the participation of actors outside the implementing agencies, such as target groups or beneficiaries. Implementation of a policy will be less effective and the probability of attaining the legal goals will be low when a statute fails to open access for participation from those actors. Supports from the public for statutory objectives must also be gained from all jurisdictions in any stage of the implementation process. Lack of public support in one stage of the process may affect the overall effectiveness of the policy.

In their analysis, Mazmanian and Sabatier also implied that sovereigns, for example legislatures, chief executives, courts, and superior agencies, may also constrain implementation through their informal oversight and control or withdrawal of their political support. In addition, commitment, leadership, and skills of implementing officials play an important part in effective implementation.

After drawing attention to the general neglect of the implementation studies and summing up the contemporary theory and practice of implementation, Gunn (1978) suggested other typical top-down essential conditions for effective implementation:

1. Conducive external circumstances.
2. Adequate resources for the program.
3. Adequate resources made available at any stage of the program implementation.
4. Adequate causal theory of policy.
5. The causal relationship is direct, with few, if any, intervening links.
6. The need for a single, independent agency responsible for policy implementation.
7. Complete understanding and agreement of policy objectives.
8. Detailed and perfect sequence of the tasks performed by each participant.
9. Perfect communication and coordination.
10. Perfect obedience to the authorities' commands.

Thus, for Gunn (and other top-downers) effective implementation is about structuring and controlling the implementation process towards the attainment of formal policy objectives

according to the top officials' directives and policy. If implementation fails, the problems can be traced in the defectiveness of these implementation structures and processes.

c. Bottom-up perspectives of implementation factors. Bottom-up models are largely a descriptive framework on policy implementation. They, at least explictly, do not offer prescriptions on conditions or factors for effective implementation of public policies. Viewing this as the fundamental limitation of the bottom-up framework, Sabatier (1986:35) argued that the bottom-up theoriests failed to 'start from an explicit theory of the factors affecting its subject of interest'.

Implicitly, however, the bottom-up theoriests do suggest some important prescriptions on effecting public policy implementation. Their focus on the role, power, and strategies of the street-level bureaucracies in effecting implementation offers prescriptive notions for effective implementation. Therefore, for effective implementation they implicitly suggest the importance of managing the politics and interactions between actors at the street or operational level of the implementation process and structure.

The street-level bureaucrats, who are officials interacting and having wide discretion over the allocation of benefits and public sanctions, sometimes have to cope with uncertainties, work pressures, and limitations. Moreover, they often operate in 'a corrupted world of service' (Lipsky 1993:383). To overcome these difficult situations, Lipsky argued, '...the decisions of street level bureaucrats, the routines they establish, and the devices they invent...effectively *become* the public policies they carry out'. In these circumstances, which are not of their own choosing, street-level bureaucrats end up making policy and devising strategies to protect their working environment (Hudson 1993:387).

Thus, the bottom-up theoriests suggest that the factors which may impede the effective implementation of public policies must be analysed and identified from the implementation structure and process at the street or operational levels. These implied implementation failure factors could be corrupt, self-interested and deflecting policymaking activities, strategies, politics, and interactions among actors, officials, and agencies at the street level of the implementation structure and process.

3. Refined top-down implementation model. Having examined the gaps and shortcomings of the top-down and the bottom-up models, scholars, for example Majone, Browne, and Wildavsky, proposed alternative models of implementation called 'a hybrid theory' implementation model, which modified and synthesised the arguments and strengths of the top-down and the bottom-up models. Hybrid theorists view implementation as evolution (Majone and Wildavsky 1978), as mutual adaptation (Browne and Wildavsky 1984), and as exploration (Browne and Wildavsky 1987). According to this hybrid model, implementation is 'a process which involves implementers in making policy as well as in carrying out, or putting into effect, policy from above' (Parsons 1995:465).

This study focuses on the employment and assessment of the refined top-down implementation model as proposed by Sabatier and Mazmanian (1979, 1980, 1986). Although this model is largely top-down, it takes into account the arguments of the bottom-uppers and, to some extent, synthesises the perspectives of the top-down theorists such as Pressman and Wildavsky and those of the bottom-uppers, for instance Lipsky (see Sabatier 1986:23).

Before employing and assessing this refined top-down implementation approach as an analytical and theoretical framework for the study, we need to understand and examine the

strengths and weaknesses of both the top-down and the bottom-up models. The following table, which summaries the strengths and weaknesses of these competing approaches, is adapted from Sabatier (1986b:21-48), Hjern and Hull (1982), Hanf (1982), Lipsky (1980), Baret and Fudge (1981), Elmore (1979), and other implementation scholars.

Table 2.7
Comparison of the strengths and weaknesses of the top-down and the bottom-up approaches

Top-down approach		**Bottom-up approach**	
Strengths	**Weaknesses**	**Strengths**	**Weaknesses**
1.Real importance attached to legal structuring of the implementation process.	1. Its emphasis on 'clear and consistent policy objectives' are unrealistic.	1. Developed an explicit and replicable methodology for identifying a policy network ('implementation structure').	1. Likely to overemphasise the ability of the Periphery to frustrate the Centre.
2.Proven usefulness of the prescribed six conditions for effective implementation used as a checklist for policy performance evaluation.	2. Its emphasis on the perspective of (central) decision maker and thus tend to neglect the perspective and actions of other actors.	2. Ability to assess the relative importance of a variety of governmental programs *vis-à-vis* private actors in solving problems.	2. Takes the present participants in an implementation structure as given without examining the prior effort of various individuals (policymakers) to affect participation rates.
3.The managable list of factors and its focus on stagist policy cycle (formulation-implementation-reformulation) make it possible for a longer time-frame policy evaluation.	3. Difficult to use if there is no dominant policy (statute), but rather a multitude of governmental directives and actors.	3. Free to see all sorts of (unintended) consequences of policy or program.	3. Its failure to start from an explicit theory of the factors affecting its subject interest.
4.The focus on legally mandated objectives produces a more objective and less pessimistic evaluation of policy performance.	4. Tends to ignore the strategies used by the street-level bureaucrats to divert (central) policy objectives to their own purposes.	4. Ability to deal with a policy area involving a multitude of public (private) programs.	
	5. The stagist view of implementation is misleading.	5. Better able to deal with strategic interaction over time among actors.	

By focusing on the attainment of legally mandated objectives and setting explicit criteria against these objectives, the top-down approach is useful for giving a clear guide or direction to the evaluation process of policy implementation performance. Therefore, it will be easier to hold policy makers and implementing agencies accountable for policy outcomes.

However, its emphasis on the formal policy objectives and the perspectives of the policy elites is problematic.This approach assumes that the policy objectives are uncontroversial. In reality, formal policy objectives are sometimes controversial, only representing the objectives and values of some policy elites and actors. For example, in an authoritarian (corrupt) regime, most public policies and their objectives are created to protect the power, and advance the interests of the rulers or power elites. This could mean that the law and its objectives and implementation may have elements of corruption. Thus, it is problematic and undemocratic to measure and judge policy performance using such corrupt, elite-centric policy objectives as the only evaluation criteria.

The bottom-up approach which focuses on the objectives, perspectives, institutional conditions, and interactions of street-level actors and institutions enables policy analysts to realistically and fairly assess the implementation process and evaluate policy performance. Furthermore, its non-elitist evaluation approach is more democratic in terms of considering and accomodating the objectives and perspectives of other actors or people involved in the implementation process.

However, due to the bottom-up model's failure to focus on formal policy objectives for measuring policy implementation performance, it creates practical difficulties in controlling and managing the evaluation process. Moreover, the focus on the objectives of street-level bureaucrats or actors makes judgment of (policy) implementation performance, in terms of

solving policy problems, more complicated. In a complex policy area which involves a multitude of actors and a complex implementation structure/network, the objectives of actors at the street level may be unclear, competing, and conflicting. Accomplishment of the personal and institutional objectives of some actors and institutions may mean the unaccomplishment of the personal and institutional objectives of other groups of actors and institutions; a solved policy problem for one group may create a new policy problem or make a policy problem of the other groups worse.

Sabatier and Mazmanian (Sabatier 1986:23) created a refined top-down implementation model, which prescribed the following six sufficient and necessary conditions for effective policy implementation:

1. Clear and consistent policy objectives.
2. Adequate causal theory underlying a policy.
3. Implementation process legally structured to enhance compliance by implementing officials and target groups.
4. Committed and skillful implementing officials.
5. Support of interest groups and sovereigns.
6. Changes in socioeconomic conditions do not undermine political support and causal theory.

In other words, Sabatier and Mazmanian suggested that policy implementation may fail and the legal goal will not be attained if:

1. Policy objectives are ambiguous and inconsistent.
2. Policy causal theory is inadequate.
3. By policy design, the implementation process has a poor legal structure.
4. Implementing officials are uncommitted and unskillful.
5. Interest groups and sovereigns in all branches of government are unsupportive.
6. Socioeconomic conditions or changes substantially undermine political support and causal theory.

In their refined top-down implementation model Sabatier and Mazmanian seriously considered the arguments of the bottom-up theorists, such as Lipsky, Berman, and Elmore, concerning the substantial limitations of programmed or hierarchical control; but they rejected the pessimists' conclusion that policymakers would inevitably adapt to the preferences of street-level bureaucrats and target groups (Sabatier 1986:24). They identified, instead, legal and political mechanisms affecting these preferences and for constraining the behaviour of street-level actors. For instance, policymakers, they argued, can select supportive implementing officials, affect the number of veto points, provide appropriate incentives and sanctions, and influence the balancing of supportive constituents.

By prescribing conditions 3 and 4 in their refined top-down implementation model, Sabatier and Mazmanian took into account the perspectives of the bottom-up theoriests on the critical role of local implementers and actors in effecting implementation. By legally structuring the implementation process and selecting supportive and committed implementing officials and institutions, policymakers can constrain the behaviour of the street-level actors to deviate from the policy objective.

Therefore, this model cannot be defined as purely a top-down model, but is a refined top-down or synthesised model of the top-down and bottom-up perspectives. This model is a refined top-down model because it largely takes the perpectives of most top-down theorists: condition 1, from Van Meter and Van Horn (1975); 2, from Pressman and Wildavsky (1973); 3, from Pressman and Wildavsky (1973); 5, from Sabatier (1975); and 6, from Aaron (1978) (see Sabatier 1986:24-5). Only condition 4 explicitly takes the perspectives of the bottom-up theorists, recognising and viewing as critical 'the unavoidable discretion given implementing officials, their commitment to policy objectives and skill in utilizing available resources…' (see Sabatier 1986:24) as key factors for effective implementation.

D. Comparison and integration of failure factor typologies

Based on their nature and characteristics, the implementation factors, comparable to the anticorruption factors, can be classified into five types: policy design, political, institutional, managerial, and societal.

The defining characteristics of the failure factors under policy design typology can be traced to the defects in policy design which eventually impede the implementation of a policy or program and constrain the attainment of policy objectives. As was the case in the anticorruption measures, the failure factors under the political category are mainly rooted in the failure of power holders and political institutions to provide a political framework for the effective implementation of policies or programs.

The institutional typology of failure factors traces the problems in the established organisational practice, relationship, values, and norms affecting the implementation process; whereas, the nature and characteristics of the failure factors under the managerial typology may be associated with the collapse or dysfunctionality of management functions in policy or program implementation; thus, the failure or ineffectiveness is tactical or functional.The societal typology of factors is mainly linked to underdevelopment of civil society and people's weak participation in the governance process, weakening the role of social control in the implementation of policies or programs.

The five typologies can be further classified into two categories: the problems in the implementation structure and those in the implementation process. Policy design typology is typically a part of the problem in the implementation structure as indicated by the top-down theorists; while managerial and societal typologies reflect problems in the implementation

process. The institutional and political typologies indicate the problems exist in both the implementation structure and process.

The factor typologies in the implementation literature have a similar nature and characteristics to the factor typologies in the anticorruption literature. The anticorruption literature identifies these as political, societal, enforcement, policy design, and managerial. The factor typologies identified in the implementation literature are categorised as policy design, political, institutional, managerial, and societal. Enforcement and institutional typologies share similar defining characteristics. These two factor typologies reflect institutional problems in established organisational practice, relationship, values, incentives, and norms which affect the implementation process. Essentially all typologies reflect the defects in implementation structures and processes.

However, there are differences in terms of implementation problems. The anticorruption literature specifically identifies problems in enforcement, while the implementation literature is particularly concerned with the problem in institutional arrangements and conditions of the implementation structure and process. These differences suggest the need to better structure and manage the implementation process.

The failure factors in the anticorruption and implementation literature can be integrated into five typologies: policy design, political, institutional, managerial, and societal. The following is the integration of the factor typologies of the two literature reviews:

Table 2.8 **Integrated policy design factor typology**

Policy design factor				
Factors (authors)	**Extent of corruption**		**Type of political system/regime**	
	Non systemic	**Systemic**	**Authoritarian**	**Democratic**
Use of same strategy for different corruption problem (Shah and Schacter)	*present*	*present*	*present*	*present*
Wrong policy priority targeting (Shah and Schacter)	*present*	*present*	*present*	*present*
Much reliance on law enforcement /legal remedies (Pope)	*present*	*present*	*present*	*present*
Incomprehensive anticorruption reforms/legislation (Pope)	*present*	*present*	*present*	*present*
Small costs of public exposure (Goudie and Stavasage)	*present*	*present*	*present*	*present*
Inadequate causal theory (Sabatier, Mazmanian, Gunn)	*present*	*present*	*present*	*present*
Lack of coherent implementation structure (Mazmanian and Sabatier)	*present*	*present*	*present*	*present*
Inadequate (initial) provision of resources (Sabatier and Mazmanian, Gunn)	*present*	*present*	*present*	*present*
Lack of hierarchical integration of implementing agencies (Sabatier and Mazmanian)	*present*	*present*	*present*	*present*
Inadequate public sector salary (Langseth et al.)	*present*	*present*	*present*	*present*
Unaccountable and non-transparent decisionmaking process (Rose-Ackerman)	*present*	*present*	*present*	*present*
Ambiguous and inconsistent policy objectives (Sabatier, Mazmanian, and Pope)	*present*	*present*	*present*	*present*

Table 2.9 **Integrated political factor typology**

Political factor				
Factors (authors)	**Extent of corruption**		**Type of political system/regime**	
	Non systemic	**Systemic**	**Authoritarian**	**Democratic**
Lack of commitment or political will (Kaufmann, Johnston, Pope, Manit, Quah, Nelson, and Pongphaicit)	*present*	*present*	*present*	*present*
Lack of political accountability (Goudie and Stasavage)	*present*	*present*	*present*	*present*
Blocking/resistance by the short-term losers (J Curve modelist); resistance to change (Mazmanian and Sabatier)	*present*	*present*	*present*	*present*
Distortive influence by the short-term winners (Hellman)	*present*	*present*	*present*	*present*
Incentives to preserve corrupt pre-reform structure (Goudie and Stavasage)	*present*	*present*	*present*	*present*
Inherit corrupt bureaucracies (Pope)	*present*	*present*	*present*	*present*
Disagreement on policy goals (Gunn)	*present*	*present*	*present*	*present*
Lack of political support (Sabatier and Mazmanian)	*present*	*present*	*present*	*present*

Table 2.10 **Integrated institutional factor typology**

Institutional factor				
Factors (authors)	**Extent of corruption**		**Type of political system/regime**	
	Non systemic	**Systemic**	**Authoritarian**	**Democratic**
Ineffective detection and punishment (Becker and Rose-Ackerman)	*present*	*present*	*present*	*present*
Corrupt enforcers/ agencies (Manion, Goudie, Stasavage, and Pope)	*present*	*present*	*present*	*present*
Weak deterrence (Becker and Rose-Ackerman)	*present*	*present*	*present*	*present*
Lenient penalties (Goudie and Stasavage)	*present*	*present*	*present*	*present*
Partial judiciary/ enforcement agencies (Goudie and Stasavage)	*present*	*present*	*present*	*present*
Bad decision rules of implementing agencies (Sabatier and Mazmanian)	*present*	*present*	*present*	*present*
Prior, not conducive institutional arrangements (Harbin)	*present*	*present*	*present*	*present*
Many veto points (Sabatier, Mazmanian, and Gunn)	*present*	*present*	*present*	*present*
Lack of incentives (Sabatier and Mazmanian)	*present*	*present*	*present*	*present*
Lack of implementing officials' commitment (Sabatier and Mazmanian)	*present*	*present*	*present*	*present*
Resistance to commands (Gunn)	*present*	*present*	*present*	*present*
Corrupt, self-interested and deflecting 'policy-making' activities, strategies, politics, and interactions among actors, officials, and agencies at the street level of the implementation structure and process (Bottom-up theorists)	*present*	*present*	*present*	*present*

Table 2.11 **Integrated managerial factor typology**

Managerial factor				
Factors (authors)	**Extent of corruption**		**Type of political system/regime**	
	Non systemic	**Systemic**	**Authoritarian**	**Democratic**
Lack of resources (Manion)	*present*	*present*	*present*	*present*
Incompetent enforcers (Manion)	*present*	*present*	*present*	*present*
Lack of independent outside monitoring (Eigen)	*present*	*present*	*present*	*present*
Ineffective enforcement agencies/bad management (Goudie and Stasavage)	*present*	*present*	*present*	*present*
Lack of specific and achievable objectives (Pope)	*present*	*present*	*present*	*present*
Lack of internal/ administrative control (Huberts)	*present*	*present*	*present*	*present*
Unclear sequence of tasks (Gunn)	*present*	*present*	*present*	*present*
Lack of coordination and collaboration (Pope, Long, and Gunn)	*present*	*present*	*present*	*present*
Communication breakdowns (Sabatier, Mazmanian, and Gunn)	*present*	*present*	*present*	*present*
Lack of leadership and skill of implementing officials (Huberts, Mazmanian, and Sabatier)	*present*	*present*	*present*	*present*
Poor public servants' attitude/tolerance of corruption (Huberts)	*present*	*present*	*present*	*present*

Table 2.12 **Integrated societal factor typology**

Societal factor				
Factors (authors)	**Extent of corruption**		**Type of political system/regime**	
	Non systemic	**Systemic**	**Authoritarian**	**Democratic**
Lack of social pressure (Phongpaichit and Panday)	*present*	*present*	*present*	*present*
Lack of social support or participation (Panday, Mazmanian, and Sabatier)	*present*	*present*	*present*	*present*
Lack of social sanction (Klitgaard and Becker)	*present*	*present*	*present*	*present*
Lack of social coalition building (Pope)	*present*	*present*	*present*	*present*
Lack of public exposure (Huberts)	*present*	*present*	*present*	*present*
Socioeconomics conditions and changes that are not conducive (Sabatier, Mazmanian, and Gunn)	*present*	*present*	*present*	*present*

E. Theoretical framework for the study

The study employs Sabatier and Mazmanian's refined top-down approach to evaluate the (in)effectiveness of the implementation of the Anticorruption Laws 1971 and 1999, identify and explain the factors affecting their (in)effectiveness. This approach is used as this analytical strategy has overcome the weaknesses and combined the strengths of the top-down and the bottom-up approaches. This analytical framework has also been relatively rarely employed in the analysis of the policy implementation process in developing countries, particularly that of anticorruption policies.

Most of the studies applying this refined approach were done in the US and European countries (Sabatier 1986b); almost all were in developed, democratic countries. Thus, this study provides the opportunity to test this integrated, theoretical framework and to assess its

adequacy and usefulness in explaining the problem of anticorruption policy implementation in Indonesia under the authoritarian New Order regime and the democratic Reform Order regime.

However, a fundamental question arises: can the top-down and the bottom-up approaches be methodically and theoretically integrated or combined? In real policymaking and implementation practicies, there are almost no purely top-down or bottom-up approaches to implementation analyses and strategies.

Policymakers, implementers, and policy analysts, probably without realising it, use some form of integrated approaches which combine the perspectives, methodologies, and strategies of the top-downers and the bottom-uppers. For instance, in democratic countries, most policymaking and implementation activities will almost certainly consider the perspectives of the policy stakeholders, and assess the conditions of the implementation structures and processes, both at the top and bottom levels. In most cases, a task force or committee involving actors and stakeholders from both the top and operational levels will be formed to make and implement policies. Recently in Indonesia, for example, a joint task force involving non-government organisations, policymakers, and implementers from the Departments of Health and Social Affairs was formed to make, implement, and evaluate policies on AIDS and bird flu management. Thus, methodogically and theoretically, in reality, the synthesised approach is or can be employed.

This study investigates and examines the explanatory usefulness of Sabatier and Mazmanian's refined top-down implementation framework of six essential conditions for effective implementation. It assesses whether or not these six factors had an important role in influencing the implementation effectiveness of the Anticorruption Law 1971 of the

authoritarian New Order regime and the Anticorruption Law 1999 of the democratic Reform Order regime; or whether there were more relevant and important factors affecting the (in)effectiveness of these Anticorruption Laws.

This study, which adopts the refined top-down implementation approach, not only investigates the failure or (in)effectiveness of the Anticorruption Laws and the contributing factors from the perspectives, interests, and goals of the policymakers at the top level, but also those from the implementers at the bottom level of the implementation process and structure.

Thus, the study investigates and analyses both the role of the policymakers and the law enforcers such as police investigators, prosecutors, judges, lawyers, and other actors involved in the implementation process. This integrated approach is used for examining and explaining the role of management (top-down) and politics (bottom-up) in the implementation of the Anticorruption Laws in both regimes.

This study defines implementation as both *ex post* 'policymaking' (bottom-up perspectives) and the carrying out of the Anticorruption Laws 1971 and 1999 (top-down perspectives). Enforcement is defined as a form of policy implementation which uses legal force to detect, investigate, and punish corrupt behaviour through legal system mechanisms.

For comprehensiveness, the policy analysis is integrated, treating implementation as a subsystem within the policy process for 'policy is being made as it is being administered, and administered as it is being made' (Anderson 1975:98). Thus, the analytical approach of this study combines the applications of the analytical frameworks of the top-down and the bottom-up perspectives.

For the practical purpose of the evaluation, however, the study relies more on the use of the top-down analytical approach in evaluating the implementation process and outcomes in terms of meeting the policy objectives of the Anticorruption Laws. More detailed explanations and justifications for the evaluation and methodological approaches adopted for this study will be discussed in Chapter 3.

F. Conclusion

From the literature review on anticorruption, it is apparent that there are various factors working against the effective implementation of anticorruption policies. Some of those are specifically associated with the extent of corruption and the type of regime or stage of political development where anticorruption policies are implemented. Combating corruption in a country where corruption has become systemic and distorted the institutional and legal framework for implementation is difficult and problematic. In such a situation, corruption itself has constrained the implementation process required for the effective implementation of anticorruption laws.

The implementation structure and process in an authoritarian regime is defective. The politicians and leaders have strong incentives to control and structure the implementation process to protect their corrupt interest. However, fighting corruption in a country undergoing democratic transition will face challenges from self-interested short-term losers and short-term winners who want to protect their pre-reform incentive structure. The problems will be especially difficult if the government has inherited chronic corruption and corrupt bureaucracies from its prior authoritarian regime.

The anticorruption policy implementation factors can be categorised into four main typologies: political, societal, enforcement, and managerial. When compared and integrated

with the factor typologies in the implementation literature, these failure factors can be further categorised into policy design, political, institutional, managerial, and societal typologies. All of these failure factor categories, to some extent, reflect the problems and defectiveness in the implementation structure and process.

While focusing on the investigation and examination of the implementation failure factors indicated by Sabatier and Mazmanian, the study will also assess the enforcement failure factors and some relevant factors from the other categories. Examining the demand and supply sides of the corruption problem as defined in the Anticorruption Laws, this study will focus on the interventionist or enforcement approach of the authoritarian New Order regime and the (transitional) democratic Reform Order regime.

This literature review has discussed the nature, problems, and approaches of policy implementation. Policy implementation has proven to be difficult. Many factors influence implementation (in)effectiveness. All these factors show the problems in the implementation structure and process.

Competing approaches have become central in implementation studies: the top-down model versus the bottom-up model. However, it can be argued that each approach has its weaknesses and strengths, and may only be useful for analysing the implementation process and structure of some policies in countries with particular political characteristics. Bottom-up approaches, for example, may be especially relevant in analysing the implementation process in democratic regimes where there is a multitude of actors or participants in the implementation process. On the other hand, the top-down theoretical models will be particularly useful in explaining the implementation failure or effectiveness in a country

governed by an authoritarian or militaristic ruler where the regime employs more centrally controlled approaches and commands in implementing policies.

Chapter 3 Research methodology

A. Introduction

This chapter will explain 'what, why, how, where, and when' this study was conducted. The mechanics of the research process will be exposed so that other researchers can verify and replicate the research. First, the research method employed in this comparative case study will be explained. The chapter then discusses general problems in policy evaluation, in particular the difficulties in evaluating crime control or anticorruption policy. Next, the chosen evaluation method for this study will be justified, including justifying the pre-judgment of implementation failure and selecting its evaluation criteria. This will be followed by elaboration of data sources and data collection methods.

The chapter then explains four approaches employed to analyse, examine, and explain the collected data: theory-informed analysis, content analysis, macro-analytical approach, and integrated implementation analysis, followed by how data validity and reliability are maintained. The chapter ends by elaborating the ethical issues surrounding the research.

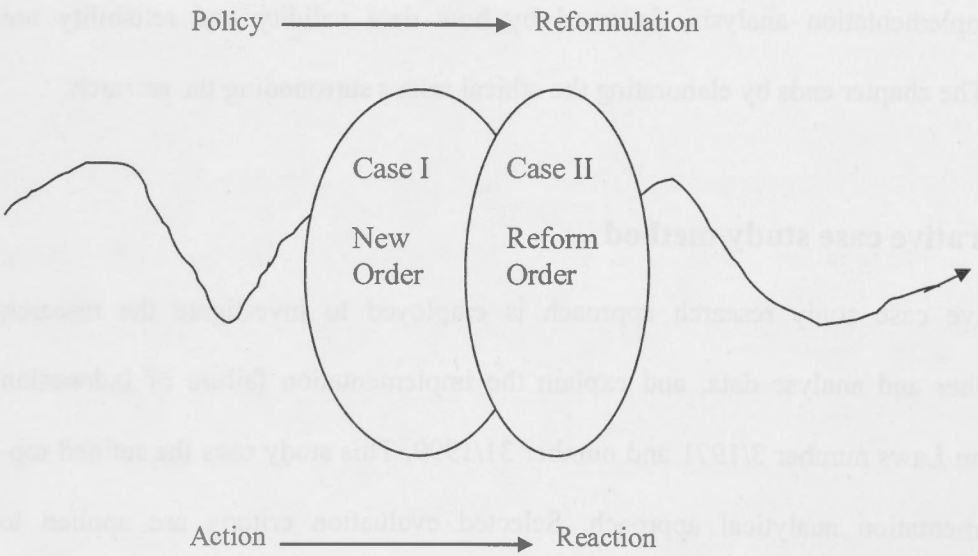
B. Comparative case study method

A comparative case study research approach is employed to investigate the research question, gather and analyse data, and explain the implementation failure of Indonesian Anticorruption Laws number 3/1971 and number 31/1999. This study uses the refined top-down implementation analytical approach. Selected evaluation criteria are applied to analyse, evaluate, and explain the implementation processes and outcomes of both Laws. This case study approach is descriptive, evaluative, and explanatory.

Rather than use samples and follow a rigid protocol to investigate and examine the research problem, this case study method involves an in-depth examination of the implementation problem to gain a heightened understanding of why the Anticorruption Laws failed. It uses information-oriented sampling, which is the richest in information, and involves multiple sources of qualitative and quantitative evidence.

This case study selects and investigates two cases: the implementation failure of the Anticorruption Law 1971, which operated under the authoritarian political system or regime of the New Order government from 1971 to 1998, and the implementation failure of the Anticorruption Law 1999 under the democratic political system of the Reform Order governments from 1998 to 2007. Although each case is closely examined, the two are treated as one unit of case study. Using Barret and Fudge's policy-action continuum model (1981:25), the following depicts the interconnection between these cases:

Figure 3.1 **Policy– action continuum and relation between the cases**



From an examination of the individual and common characteristics of both cases, the patterns and processes of policy action, reaction, and reformulation can be be analysed. Moreover, applying Karl Popper's falsification test, this study allows for summarising and

developing general propositions and theories of the studied implementation phenomenon (Flyvbjerg 2006:225–6).

Theoretically framed by the refined top-down implementation model, this case study is designed to examine the adequacy and usefulness of this model in the context of the Indonesian case, and to test the research hypothesis or argument.

Defining the central research question and argument. The central research questions investigated and examined in this study are: to what extent and for what reasons did the implementation of Anticorruption Law number 3/1971 of the authoritarian New Order regime and Anticorruption Law number 31/1999 of the democratic Reform Order regime fail in achieving policy objectives? Assuming the influence of a political system on policy implementation, how did the different political systems of the two regimes influence and contribute to the implementation failure of these Anticorruption Laws?

This study hypothesises that, to some extent, the implementation of both the authoritarian New Order regime's Anticorruption Law 1971 and the democratic Reform Order regime's Anticorruption Law 1999 failed to attain policy objectives of eradicating or controlling corruption in the government. This study argues that defects in the implementation structures and processes of the political systems of both regimes were the primary explanatory factor for the implementation failure of both Laws, but the defects were inherently greater in the authoritarian political system of the New Order Regime. Therefore, the implementation of Anticorruption Law 1999 had a higher degree of effectiveness.

The key terms in these research questions and argument are defined as follows:

Corruption. This term is defined in accordance with the legal definitions of corruption stipulated in Anticorruption Law 1971 and Anticorruption Law 1999. Under these Laws,

corruption in the public sector includes illicit enrichment, misuse of office, bribery, kickbacks, gratification, and embezzlement. Detailed analysis of these Laws are included in Appendices A and B.

Implementation. For the purpose of this research, implementation is defined as a 'process of interaction between the settings of goals and actions geared to achieve them' (Pressman and Wildavsky 1973:xv). For comprehensiveness, implementation is treated as a subsystem of the policymaking processes.

Anticorruption policies. This term refers to Anticorruption Law Number 3/1971 of the authoritarian New Order regime and Anticorruption Law Number 31/1999 of the democratic Reform Order regime.

Policy implementation failure or ineffectiveness. This term refers to the extent to which the implementation of Anticorruption Law 1971 and Anticorruption Law 1999 failed to attain their legally mandated objectives of curbing corruption in the public sector.

The authoritarian New Order regime. This is the centralised authoritarian government under former President Suharto that enacted Anticorruption Law Number 3/1971 and implemented it until its collapse, due to the economic and political crises, on 21 May 1998.

The democratic Reform Order regime. This is the democratic governments under former presidents B.J. Habibie (1998–1999), Abdurrahman Wahid (1999–2001), Megawati Soekarnoputri (2001–2004), and Susilo Bambang Yudhoyono (2004–2007) that implemented Anticorruption Law Number 31/1999 in 1999 until 2007.

C. Evaluating Policy Performance

Evaluating policy performance involves a multiplicity of methods and approaches. This section reviews the nature, aims, and functions of policy evaluation. It examines the criteria and approaches employed in judging the merits of a policy or program. The complexities of

appraising the impacts of a crime/corruption control policy or criminal justice program are then discussed to provide the scope for the study.

1. Nature, aims, and functions of policy evaluation. Evaluation refers to systematic data collection and analysis of the extent of policy outcome's contribution to the attainment of policy objectives. Unlike monitoring, which answers the question: 'What happened, how, and why?', evaluation as a policy analysis method responds to the question: 'What difference does it [policy action] make?' (Dunn 1981:356). Evaluation informs and facilitates a subjective judgment about the value of the findings.

As opposed to *ex ante* policy analysis which prospectively informs decisionmaking, policy or program evaluation focuses retrospectively on assessing policy or program performance (Rist 1990:5). By applying systematic research methods, evaluation judges the adequacy of program design, implementation, and effectiveness (Chelimsky 1985:7). Evaluation is a systematic effort to model the causal relationship between policy actions and impact, and to judge the worth of this impact.

In policy analysis evaluation provides reliable and valid information about policy performance. It clarifies and critiques values underlying the formulation of policy goals and objectives (Dunn 1981:356). The information produced in evaluation may be then employed to adjust, continue, terminate, or restructure policies and programs (Dunn 1981:356). Thus evaluation is instrumental in policy and decisionmaking.

2. Problems in crime control/anticorruption policy evaluation. The nature of corruption as a conspiracy and secret crime may create difficulties in evaluating an anticorruption policy or program.

Gardiner (1975:178) claims there are five fundamental problems in the evaluation of criminal justice programs or crime control policies. First, there is a lack of clarity in the goals of crime control policies and those of criminal justice agencies: 'goals are vague, overlapping, and frequently contradictory'. Contradictions could occur between different levels of goals, for instance between outcome goals such as protection of individual liberty and output goals such as arrests made. Conflicting goals may also occur between levels, for example, between those to protect the innocent and those to convict the guilty.

Gardiner (1975:179) suggests that when evaluating a criminal justice or crime control program 'the point is not ...to find a clear and unambiguous set of goals in the program being stated, but rather that [the evaluator] must be sensitive to the varying effects of the program along many different lines'. In a situation where there is no clarity in the goals of a crime control policy, the assessment of the policy impacts and how target groups or stakeholders perceive those impacts may be adequate to judge the performance of the policy.

Another problem, Gardiner argues, is the difficulty in determining the criteria or indicators of program success or failure. After the goals against which the policy performance is measured, he suggests, the evaluator must choose criteria or indicators to appraise the extent to which the policy or program has attained its goals. However, for many reasons, the development of such performance criteria or indicators has proven to be difficult in the area of criminal justice. He asserts that there are two main reasons for this. First, researchers and evaluators in criminal justice or crime control policy may have difficulty in collecting sufficient data on crime and crime control. Second, the available data in most cases are collected for managerial purposes only and may be difficult to adapt to evaluation questions.

Third, many crimes go unreported. According to some surveys, 'approximately one half of all major crimes are never reported to the police' (Gardiner 1975:180). Therefore, Gardiner contends, it is difficult and perhaps impossible, to judge that an increase in reported crimes or re-arrests of recidivists represents an actual rise in crime and recidivism, indicating policy failure, or merely reflects a more accurate reporting of a stable or perhaps declining crime problem.

The fourth problem is the obstacle to formulating criteria or indicators for evaluating policy performance in criminal justice. The difficulty is that some goals, such as justice and fairness, may be difficult to quantify, making scored data on progress towards such goals not readily available. Unless the evaluator tackles these difficulties, 'they rapidly run the danger of substituting measurable but minor indicators for immeasurable indicators of more important issues' (Gardiner 1975:180). Instead of employing a quantitative method, therefore a qualitative approach may be more appropriate to measure the impact of a crime control policy.

The fifth basic problem is the difficulty in linking the contribution of the activities of criminal justice agencies to the attainment of criminal justice goals. Difficulties, both conceptual and methodological, may arise in developing a causal model for such a relationship even after the goals and criteria for policy performance have been established. Law enforcement or criminal justice activities, Gardiner argues, are only a few of the factors (social, biological, cultural or psychological) affecting crime rates or other policy outcomes.

A lack of understanding exists not only about the particular strengths and contribution of each factor influencing policy outcomes, but also evidence suggests that each factor has a

different impact on each type of offender (Glaser 1973). However, the possibility that the criminal justice program did reduce crime cannot be ruled out; there has been an effort to eliminate spurious correlations and reduce the available alternative explanations for the variations in crime policy outcomes.

D. The evaluation method for the study

Approaches to evaluation. Dunn (1981:343–52) divides the approaches to evaluation into three categories: pseudo evaluation, formal evaluation, and decision-theoretic evaluation. The pseudo evaluation approach is the application of scientific analytic monitoring methods to produce valid and reliable information about policy outcomes without critiquing the worth of those outcomes to particular target groups. This approach primarily assumes that there is no controversy regarding the value of policy outcomes among policy stakeholders or target groups.

Using specific methods such as experimental design and statistical techniques, evaluators employing this approach explain the variations in policy outcomes through the analysis of policy input and process variables. The techniques employed in pseudo evaluation are similar to those used in monitoring; for example, social system accounting (for measures of social changes), social auditing (monitoring of the use and allocation of resources), and social research cumulation (comparison and assessment of the outcomes of past reported policy implementation).

The formal evaluation approach, using specifically designed scientific methods, evaluates policy outcomes against formally announced policy objectives, assuming that they are sufficiently appropriate to measure the worth of policies or programs. As with pseudo evaluation, the purpose of formal evaluation is to produce valid and reliable information

about policy output and impact variations that may be associated with the variations in policy inputs and implementation process. Without questioning the appropriateness of policy objectives, the formal evaluation approach uses legislation, government documents, and interviews with policymakers and program administrators to define and identify policy objectives. In this approach, effectiveness and efficiency are the criteria most frequently used to evaluate policy performance.

The two major types of formal evaluation are summative and formative evaluation. Summative evaluation involves monitoring the attainment of the formal objectives of a policy or program that has been implemented at a particular point in time. On the other hand, a formative evaluation continuously monitors and evaluates the accomplishment of those policy objectives.

Decision-theoretic evaluation is designed to produce valid and reliable information about the worth of policy outcomes from the perspectives of policy stakeholders. Assuming that the formal objectives of policymakers and administrators is only one source of values, this approach measures policy performance by identifying both latent and explicit objectives of policy stakeholders.

1. The evaluation method employed. This study employs the formal evaluation approach using the Anticorruption Laws 1971 and 1999 and other related legislation, government documents, and interviews with policymakers and law enforcers to define and identify the formal objectives of these Laws.

The type of formal evaluation approach employed is summative evaluation (Parsons 1995:546–51; Dunn 1981). As I have already judged that Anticorruption Laws 1971 and

1999 and their enforcement failed to attain policy objectives, the appropriate method for evaluating the implementation performance of the Laws is a post-implementation summative evaluation. Thus, this study focuses on measuring the impact of the Anticorruption Laws on reducing or controlling corruption in the public sector. It also identifies and explains the factors in the anticorruption enforcement process that had contributed to the failure of these Anticorruption Laws.

The evaluation analysis is integrated into the analyses of the contents of the Laws, in particular their objectives; implementation processes; the actual or perceived impact of the Laws; research questions; the theoretical frameworks on anticorruption and implementation; the thesis argument, and the criteria used to evaluate the effectiveness or performance of the Anticorruption Law implementation.

2. Justifying the pre-judgment of implementation failure. Self-evident facts and research led this study to pre-judge that the implementation of Anticorruption Law 1971 under the New Order regime, and Anticorruption Law 1999 under the Reform Order regime had failed to attain their formal objectives. From the early period of the New Order regime in 1967, to the collapse of this corrupt authoritarian government in 1998, corruption continued to be rampant, endemic, and chronic. Suharto, as President of the New Order government, in his State Speech on 16 August 1970 (Ministry of Justice 1971) acknowledged the seriousness of this problem.

The Decision of the People's Consultative Assembly Number XI/MPR/1998 on Administration of the State Clean and Free from Corruption, Collusion and Nepotism officially stated that corruption, collusion and nepotism had become a serious governance problem under the New Order regime. This Assembly instructed the new government to investigate the suspected involvement of Suharto and his cronies in corrupt practices during

his rule. The fact that on 21 May 1998, Suharto and his New Order regime dramatically collapsed because of pressure from the people demanding that he and his corrupt, authoritarian regime resign, further indicated that the regime had become an integral part of the corruption problem, not the solution. In 1995, Transparency International's Corruption Perceptions Index ranked Indonesia last as the most corrupt country as perceived by survey respondents.

Under the Reform Order regime, the extent of the corruption and governance problem did not change much. Some anticorruption civil society organisations even stated that the problem had become more chronic and pervasive. This regime undertook some reform, but retained the corrupt politicians and bureaucrats to govern the changed system. According to Transparency International's Corruption Perceptions Indexes from 1998 to 2007, respondents still perceived the country as one of the most corrupt in the survey list.

3. Criteria for policy evaluation. Evaluation criteria refer to rules or standards especially designed to measure policy outcomes.[3] However, the application of policy performance criteria or standards may be problematic as '...any regulatory regime is not only characterised by a conflict of interests, but also by conflict of standards of appropriateness that lead to inherent tension and potential causes for failure' (Lodge 2002:271). Consensus or agreement on what should become the acceptable criteria, therefore, is vital to the evaluation process.

[3]Dunn (1981:280–2) differentiates the meanings of policy inputs, process, outputs, impacts, and outcomes. Policy inputs are the resources needed to produce policy ouputs, which are the goods and services received by target groups or beneficiaries. Policy processes are the activities and attitudes shaping the transformation of the policy inputs into policy outputs and impacts through administrative, organisational, and political mechanisms; whereas policy impacts are actual behavioural and attitudinal changes affected by policy outputs. Policy outcomes are policy outputs plus impacts.

Evaluation is not conducted in a vacuum, but is related to politics in a number of ways (Palumbo 1987:12). First, used in the political decision-making, evaluation becomes integral to the political process and affects the program being assessed; thus the evaluators become participants in the process. Second, by judging policy performance evaluations are essentially political. Finally, evaluations may be politically motivated, for example, serving the purpose of political actors. Thus, evaluations and politics are intimately connected, and 'the nature and direction of the relationship will vary from one political context to another' (Fowler and Lineberry 1980:75).

Experts have offered various criteria for evaluating policy performance. Bobrow and Dryzek (1987) argue that 'strictly speaking, there is no limit to the range of criteria one could apply.' Dunn (1981) proposes evaluation criteria similar to those applied in policy recommendation: effectiveness, efficiency, adequacy, equity, responsiveness, and appropriateness. However, all criteria for policy evaluation are employed retrospectively (*ex post*), while criteria for policy recommendation are applied prospectively (*ex ante*).

The 'effectiveness' criterion is used to test whether the implementation of a policy or program has resulted in the achievement of the intended policy objectives. Therefore, a policy or program will be regarded as effective if its outputs and impact have contributed to a significant level of achievement of the policy objective. A criterion for effectiveness, for instance, may be expressed in units of service provided.

However, O'Keefe (1982) observes there is still scope for debate on the concept of effectiveness. Consequently, the employment of different effectiveness criteria may result in different answers to the effectiveness questions (Bozeman 1994:326). To effectively evaluate policy performance, disagreement on policy criteria must first be resolved.

Application of the 'efficiency' criterion in the evaluation of a policy or program is directed at determining how much effort, usually in terms of monetary value, is required to achieve a valued outcome or policy objective. A policy and its implementation are judged as efficient if it has a higher ratio of effectiveness to cost. Net benefits and cost-benefit ratio are two examples of the measures for efficiency.

The 'adequacy' criterion is used to test the extent to which the achievement of a valued outcome or policy objective has resolved the policy problem. Thus, this problem-solving criterion considers a policy or program as inadequate if its implementation and outcomes did not significantly resolve the policy problem, or perhaps, created more problems.

The 'equity' criterion deems a policy or program as equitable if its outputs and impact have resulted in the fair and just distribution of costs and benefits (resources) to different groups in society. The Rawls criterion, which is primarily concerned with the welfare of the least advantaged groups, and the Pareto criterion, which sets a minimal welfare social condition without negatively impacting on other groups or persons, are primary examples of this criterion.

The criterion of 'responsiveness' appraises the extent to which policy outcomes satisfy the needs, values, and preferences of particular groups; whereas, the 'appropriateness' criterion asks the question: 'Are desired outcomes actually worthy or valuable?', thus critically examining the substantive rationality of policy objectives.

Difficulties may arise in the application of the above criteria. Some may be in conflict. For example, policy actions that are designed to gain net efficiency may be in conflict with

policy goals to fairly distribute resources among particular groups. Agreement on the ranking of criteria is crucial to resolve this kind of conflict.

4. The evaluation criterion for the study. This study, adopting the refined top-down implementation approach, employs a goal-oriented evaluation approach and focuses on the reasons for the implementation failure of Anticorruption Laws 1971 and 1999 in accomplishing their objectives. Mazmanian and Sabatier (1989:10) assert that 'on the issue of evaluative criteria, most research has begun with the formal objectives enunciated in the original statute or appellate court decision'. Therefore, before formulating the criteria, the policy goals[4] of the Laws must firstly be defined and analysed.

The objective of Anticorruption Law 1971 of the authoritarian New Order regime can be determined from its preamble:

> Considering:
> a. that corrupt acts damage state finance/state economy and impede national development;
> b. that Law Number 24/1960 on Investigation and Prosecution of Corruption, due to social development, was no longer effective to attain the intended impact, therefore must be repealed.

Policymakers noted the adverse effects of the corrupt acts on state finance/economy and national development. It can be implied, therefore, that the formal policy objective of Anticorruption Law 1971 was to prevent, control or reduce corruption so that the advancement of state finance/economy and national development is not constrained. The objective of reducing or eradicating corruption can also be implied from the literal translation of the title of this Law: 'Eradication of Corruption Acts'.

[4]In this study, for practical purposes policy goals and policy objectives are used interchangeably.

The formal objective of the Anticorruption Law 1999 can be implied from its preamble:

Considering:

a. that corrupt criminal acts have adversely affected state finance or state economy, and constrained national development, therefore these acts must be eradicated in order to create a prosperous and just society based on Pancasila [the five principles of the state philosophy] and the 1945 Constitution;
b. that the adverse effects of the corrupt criminal acts which have occurred, not only damaged state finance/economy but also impeded the smooth advancement and continuity of national development which demands high efficiency;
c. that the Law Number 3/1971 on Eradication of Corrupt Criminal Acts is no longer congruent with the development of the legal needs of society, and therefore must be replaced with a new act on eradication of corrupt criminal acts to be more effective in preventing and eradicating corrupt criminal acts.

Essentially, Anticorruption Laws 1971 and 1999 have the same formal policy objectives; however, unlike the 1971 Law, the 1999 Law specifically mentions 'preventing and eradicating corrupt criminal acts' and the creation of 'a prosperous and just society based on Pancasila...and the 1945 Constitution'. The objective of eradicating corruption can also be identified from the title of the 1999 Law: 'Eradication of Corruption Acts'.

As the study adopts the refined top-down implementation approach, the policy performance criteria formulated must indicate the extent to which the objectives of Anticorruption Laws 1971 and 1999 have been achieved. Therefore, the general criterion applied to evaluate the implementation outcomes or performance of these Laws against their objectives is effectiveness. The implementation of these Laws will be judged ineffective if their outputs and impact have not contributed to a significant level of achievement of policy objectives.

Quah (1989) proposes a criterion which judges that an anticorruption measure will be deemed effective if corrupt behaviour has not become a way of life in society. As the

volume of corruption may be difficult to define due to its secretive and conspirational nature, this type of criterion can be valuable. By observing people's attitudes to corruption or asking the perceptions and opinions of the research participants about the extent of corruption, indications of the seriousness of the problem, and thus, the implementation performance of the Anticorruption Laws, may become known.

To measure people's perceptions of the extent of corruption, this study used Transparency International's Corruption Perceptions Index (CPI). However, the readers should be cautious in interpreting this CPI, as Larmour (2009:159) has suggested:

> The CPI is a poor register of change and the effects of reform. The score is deliberately damped down to avoid sharp year-on-year changes. Changes in ranking depend on what happens in other countries and whether they are surveyed, as well as what any country does itself. Rankings are potentially treadmills…

This study used the TI CPI only as an indication of the extent of corruption in Indonesia. Multiple sources of measurement such as opinions, perceptions, and judgment of the key interviewees and respondents in the sample survey were employed. The study also used the quantitative data on the performance of the Anticorruption Law enforcement from the enforcement agencies. As this study is mainly qualitative, readers should rely more on the opinions, perceptions, and judgment of the interviewees, who were experienced and knowledgeable persons.

Taking into account the framework in the anticorruption literature review chapter and the policy objectives of the Anticorruption Laws, the following are the criteria that will be used to evaluate the implementation performance of the Anticorruption Laws:

1. Strong positive public perceptions on the reduction of public sector corruption;
2. Significant recovery of the state asset losses;
3. Significant increasing public confidence in the capacity of the criminal justice system to fight corruption;

4. Significant positive changes in anticorruption attitudes of the people and public officials.

The unique character of corruption crime (secretive and conspirational) makes the actual volume of corruption difficult to measure. Consequently, the performance of an anticorruption policy or enforcement program in terms of its ability to reduce or eradicate corruption is hard to evaluate. It cannot be measured from the number of corruption cases handled by the law enforcers, as Basrief Arief, a senior public prosecutor and Vice Attorney General, believed:

> In my opinion, the increasing number of corruption cases handled by the enforcers is not an indicator of successful law enforcement. The indicator should be more on to what extent people do not commit corruption. Thus, the deterrent effects are functioning.[5]

Lieutenant General Police Makbul Padmanegara, a senior police officer and Head of Criminal Investigation Board, National Police Headquarter opined:

> The many number of corruptors in the prisons cannot be used as an indicator for enforcement effectiveness. The problem is in the "dark number" [unknown actual volume of corruption]. The fact that in the New Order there were only few corruption cases prosecuted does not mean there was not much corruption. On the other hand, the fact that now we investigate many corruption cases does not mean the enforcement is effective.[6]

While from the perspective of a judge, Iskandar Kamil, Junior Chief Justice of the Supreme Court, argued that, 'an indicator for enforcement effectiveness, we, as judges, see it from [the quality and quantity of] the court decisions. We are passive'.[7]

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[5]In an interview with me, 26 June 2006. In his second term of presidency in 2010 President Yudhoyono appointed Basrief Arief as Attorney General.

[6]Interview with Lieutenant General Police Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006. He was then promoted to Vice Chief of the National Police.

[7] Iskandar Kamil, Junior Chief Justice, Criminal Division, the Supreme Court, 29 June 2006.

Can the significant increase in arrests of corruptors be used as a valid criterion to measure the performance of the police? Maybe yes, maybe no. The response is 'yes' if we assume that the actual volume of corruption in society is stable, for instance seven arrests of out 10 reported corruptors (70 per cent), but, 'no' if the actual level of corrupt activities in society has significantly increased, compared with the actual volume of previous years; for example seven arrests of out 20 reported corruptors (35 per cent).

To overcome this problem, the study uses the perceptions of corruption from the policy stakeholders or research participants, and secondary materials as an indicative measure of the actual volume of corruption in the two regimes. Alternatively, as Quah has suggested, the seriousness of the problem of corruption can be determined from the extent to which the corrupt behaviour has become way of life in society, or from the public officials' attitudes to corruption.

As the data on corruption, particularly historical data on the anticorruption enforcement during the New Order regime, were difficult to collect, this study focused on the application of the impact criteria to measure the performance of both Anticorruption Laws. However, as I have already judged that the Laws failed in attaining their legally mandated objectives, more focus has been given to investigating and analysing the factors contributing to this failure.

E. Data collection

The purpose of data collection was to obtain information on the research question. Data collection took place in three stages. First, pre-collection activity, where the purpose of data collection, concepts, sample size, and data collection method were determined. Secondly, data collection, where interviews, a sample survey, and administrative by-product data

methods were employed to collect the data. Finally, data or finding presentation, which sorted, analysed, classified, examined, and explained the data.

1. Primary sources of data. Primary data were collected from sources such as policymakers, members of the central parliament, politicians, experts, academics, civil societies (Transparency International Indonesia, Indonesian Corruption Watch, Legal Aid Institute, and other anticorruption NGOs), law enforcers such as police, prosecutors, lawyers, judges, Anticorruption Commission, Judicial Commission, Department of Justice and Human Rights, Supreme Court, high and district courts, central and regional police offices, central and regional prosecutor offices, and university students.

The data were collected from sources in nine provincial administrations and 15 districts in Indonesia. The period for collecting and processing the data was from 2005 to 2006. The data gathered were mostly from sources in Java Island, where most corruption cases have occurred and most law enforcement offices and anticorruption civil societies are located. In West Java Province, the data were from: Bekasi District Court, Bale Bandung District Prosecution Office, Bandung City District Prosecution Office, Bale Bandung District Court, Bogor City Prosecution Office, West Java Province Police Office, West Java Province Prosecution Office, Bandung Institute of Governance Studies, Djuanda University in Bogor, Padjajaran University and Langlangbuana University in Bandung. In East Java Province, the data were collected from East Java Province Prosecution Office and Legal Aid Office Surabaya Branch. The data from sources in Yogyakarta Province were from Yogyakarta Province Prosecution Office, Yogyakarta Province Police Office, and Atmajaya University; whereas in Banten Province data were gathered from Syekh Yusuf Islamic University in Tangerang.

Data were also collected from other islands in four provinces: East Kalimantan, South Sulawesi, West Sumatra, and Bali. In East Kalimantan, the data sources were from East Kalimantan Province Police Office, East Kalimantan High Court, Tenggarong Kutai District Prosecution Office, and Working Group 30. The data sources in South Sulawesi Province were from South Sulawesi Provincial Prosecution Office and South Sulawesi High Court. The data collected in West Sumatra Province were from West Sumatra High Court, West Sumatra Province Prosecution Office, Andalas University in Padang, and West Sumatra Awareness Society. In Bali Province, the data were gathered from Bali Province Police Office, Bali Province Prosecution Office, and Bali Corruption Watch.

The majority of data were collected in Jakarta Province, the capital city where head offices of the law enforcement agencies are located and most corruption cases, especially the 'big fish' ones, were prosecuted. Sources were: the Supreme Court, Jakarta High Court, National Police Headquarters, East Jakarta Police District Office, Central Jakarta District Court, Central Jakarta District Police Office, the Attorney General's Office, South Jakarta District Prosecution Office, Anticorruption Commission, Judicial Commission, the Indonesia Law Commission, House of Representatives, Ministry of Justice, the Indonesian Society for Transparency, Transparency International Indonesia Chapter, Government Watch Jakarta, the Indonesia Court Monitoring Society, Legal Aid Institute, the University of Indonesia, and Trisakti University.

2. Secondary sources of data. Secondary data were gathered from literature, archival records, research reports, conference papers, government documents, the records and statistics of the law enforcement agencies, anticorruption laws and other related policies or legislation, newspapers, the internet, and other media.

F. Data collection method

To investigate the research questions, the following methods were used to gather the data: face-to-face, in-depth, semi-structured interviews; a sample survey; and administrative by-product data such as historical records, government documents, newspapers, legislation, anticorruption policies, and literature.

1. Interview. As this study was basically a qualitative one it relied more on interviews as the principal method of collecting data. The interview was specifically designed to gather an in-depth understanding of the implementation process, outcomes, and performance of Anticorruption Laws 1971 and 1999 from the perspectives of the interviewees. It investigated why and how these Laws failed to attain the policy objectives.

Keeping to the framework of the topic to be explored and allowing flexibility in tailoring new questions according to the interview context and the interviewee meant this method was useful in overcoming the "interview effect" and in exploring a sensitive topic such as corruption.To focus the interview on the topic, I used a prepared interview guide (Lindlof and Taylor 2002:195).

This study interviewed 67 key informants in nine provincial administrations and 15 districts including law enforcers such as judges, police officers, prosecutors, and lawyers, both at the top level (Head of Criminal Investigation Board of the National Police, President/Chief Justice of the Supreme Court, and Vice Attorney General) and the bottom level (police investigators, public prosecutors, judges, and lawyers at district level). The reason for choosing officials from both levels was to understand the research questions from the perspective of the decisionmakers (top level) and the enforcers or implementers at the field level (bottom level).

Experts, academics, anticorruption civil societies, commissioners of the Anticorruption Commission, the Judicial Commission, and the Law Commission, and members of the House of Representatives were also interviewed. Most of the interviewees were those who had deep experience and knowledge of the implementation of Anticorruption Laws 1971 and 1999.

2. Document and literature analysis. One of the methods to gather information in qualitative research is analysis of documents or materials/literature (Marshall and Rossman 1998). Document data, which are also called administrative by-product data (Weimer ed. 1995), were collected from government and civil society organisations as a by-product of the organisation's day-to-day operations. The data from law enforcement agencies have highlighted information on the typology and patterns of corruption (*modus operandi*), locations of the corruption offence (*locus delicti*), monetary value of the state assets losses and the state assets recovery, the positions of the corrupt suspects or defendants, the motives of the corrupt acts, and the articles of Anticorruption Laws 1971 and 1999 which had been used to prosecute, try, and punish the corruptors.

I had anticipated that it would be difficult to get data on sensitive legal cases such as corruption. However, this difficulty was overcome by first asking the highest ranking officials of the law enforcement agencies, for example the President/Chief Justice of the Supreme Court, Head of Criminal Investigation Board of the National Police, and Vice Attorney General, to kindly write a letter instructing their lower officials to help me collect the data related to the corruption legal cases.

The secondary data were also gathered from literature sources such as books, journals, conference papers, newspapers, and magazines, both online and hard copies.

3. Sample survey. To explore and investigate the research questions the study employed a sample survey to complement the qualitative data collected from the qualitative data collection method. This sample survey method was designed to measure the judgment of the respondents on the implementation performance of Anticorruption Laws 1971 and 1999, identify and examine the reasons they gave such judgment, in this case, the factors contributing to the implementation failure of Anticorruption Laws 1971 and 1999.

The size of the population of interest in this study was very large: any citizen of Indonesia who had become the 'victim' of public sector corruption. Therefore, it was not economically feasible to survey the entire population; moreover, the nature and composition of the population is changing over time (Ader, Mellenbergh, and Hand 2008). For that reason, the study used a sample survey method to select a subset of individual observations within that population to gain the perceptions of the respondents on the research questions.

Since the target population was very big and heterogeneous, and the research budget was limited, the study employed nonprobability sampling. The selection of elements of the population was non-random; it did not allow the estimation of sampling errors. Furthermore, the nonprobability sampling method gave rise to the problem of exclusion bias or undercoverage, making it difficult to infer from the sample to the population. To overcome this problem and because the number of the people who had expertise, knowledge, and experience in the area being researched was limited, I used purposive sampling. That is, I selected the sample or respondents I thought appropriate and feasible for the study.

I used this nonprobability sampling survey to complement the qualitative method which was mainly employed in the study. Hence, any generalisations obtained from the nonprobability sample survey can be filtered through the findings and conclusions of the qualitative method.

As the sampling frame of the study I selected law and government students, whom I believed had the knowledge and intellectual capacity to critically and objectively evaluate the enforcement problem and performance of Anticorruption Laws 1971 and 1999. Some were graduate students who also worked as experienced law enforcers for both the New Order regime and the Reform Order regime.

A total of 253 students in law and government at 13 universities located in seven provincial regions were surveyed to analyse and evaluate the Anticorruption Law enforcement processes and outcomes. These students were from Andalas University, in West Sumatra Province; Padjajaran University, Pasundan University, Djuanda University, and Langlangbuana University in West Java Province; Atmajaya University in Yogyakarta Province; Syekh Yusuf Islamic University in Banten Province; Al Azhar University, Trisakti University, Sahid University, Sultan Agung University in Jakarta Province; Muslim University of Indonesia in South Sulawesi Province, and Mulawarman University in East Kalimantan Province.

A paper-and-pencil questionnaire (Mellenbergh 2008:211–36) with the combination of open-ended and closed-ended questions was used in this study. Before the students filled out the questionnaire I informed them about the objectives of the research and the survey and they were given the option of whether or not to disclose their identities. The response rate of this survey was nearly 100 per cent.

G. Data analysis and analytical approach

The analysis of data in this qualitative study is a process designed to inspect, analyse, categorise, interpret, and transform the data into useful information, perspectives and conclusions about the research questions and argument. This process of qualitative data

analysis is designed to holistically and contextually understand and explain the research problem. The analytical process is divided into several phases (Ader 2008:334–35): data cleaning, initial data analysis, final data analysis, necessary additional analyses and report. The analysis compares and contrasts the views expressed by the various research participants to identify points of consistency and gaps in their understanding of the research questions and the case study. This study employs four methods of data analysis and analytical approaches: theory-informed analysis, content analysis, macro-analytical approach, and integrated implementation analysis.

1. Theory-informed analysis. In investigating the research questions and analysing the data, this study was theoretically framed, guided, and informed by Sabatier and Mazmanian's refined top-down implementation model. This analytical and prescriptive implementation approach was employed because, as previously mentioned, it has overcome the analytical deficiencies and, at the same time, combined the theoretical strengths of the mainstream implementation models, the top-down implementation model and the bottom-up implementation model.

In its investigation of the research problem and analysis of the data, this study was analytically framed and informed by six important conditions or factors for effective implementation of public policy (Sabatier 1986b:23) of Sabatier and Mazmanian's refined top-down implementation model:

1. Clear and consistent policy objectives.
2. Adequate causal theory underlying a policy.
3. Implementation process legally structured to enhance compliance by implementing officials and target groups.
4. Committed and skillful implementing officials.
5. Support of interest groups and sovereigns.

6. Changes in socioeconomic conditions do not undermine political support and causal theory.

2. Content analysis. Content analysis, as 'any technique for making inferences by objectively and systematically identifying specified characteristics of messages' (Holsti 1969), is used to study and analyse the contents of historical records, government documents, newspapers, legislation, anticorruption policies, books, and the recorded transcripts of interviews as Harold Lasswell has suggested. The core questions of this method of analysing the data are: 'Who says what, to whom, why, to what extent, and with what effect?' This analytical method is used to provide the legal and evaluative evidence of the study.

3. Macro-analytical approach. The research analyses the implementation effectiveness of Anticorruption Laws 1971 and 1999, using not only the micro-analytical lenses, a research approach commonly used in implementation studies, but more importantly, the macro-analytical perspectives.This research studies the macro-influence of the political systems of the authoritarian New Order regime and the democratic Reform Order regime on the implementation processes and outcomes of these Anticorruption Laws. As a result, a broader picture of the Anticorruption Law implementation phenomenon is provided.

4. Integrated implementation analysis. This study uses a 'two-way' analytical approach, combining the forward and backward analytical strategies which were introduced by Elmore (1982). Thus, it evaluates the implementation effectiveness from the perspectives of both the top downers and the bottom uppers.

Forward mapping, identical to the top-down analytical approach, is an analytical strategy focusing on the role of policymakers in influencing the implementation process. Beginning from the top of the process, this approach states clearly the intent of the policymaker, and

proceeds through specific sequences, down the line of the implementation structure, to define what is required from the implementers at each level of the hirarchy. At the last stage of the process, the analyst states clearly the expected outcome which is measured against the intended objectives of the policymaker. In short, 'forward mapping begins with an objective, elaborates increasingly specific set of steps for achieving that objective, and states an outcome against which success or failure can be measured' (Elmore 1982:19–20).

The backward mapping approach to implementation analysis, essentially a bottom-up analytical approach, starts from the very bottom of the process where administrative actions interact with private interests or actors. This approach begins by specifically defining the behaviour of the actors at the lowest level of the process which generates the need for a policy or program.

The refined top-down implementation model used in this study has synthesised the analytical and paradigmatic strengths of the top-down implementation model and the bottom-up implementation model. However, in practice this refined model largely uses the analytical and evaluative approach of the top-down implementation model.

H. Maintaining data validity and reliability

Triangulation as a 'method of cross-checking data from multiple sources to search for regularities in the research data' (O'Donoghue and Punch 2003:78) to give '...a more detailed and balanced picture of the situation' (Altrichter et al. 2008:147) is used to maintain the data validity and reliability of this study. To increase the credibility and validity of the results and analysis, this qualitative study employs three basic types of triangulation (Denzin 2006): data triangulation, theory triangulation, and methodological triangulation.

Data triangulation in this study involved multiple sources of data, both primary and secondary sources. Data were also collected in different locations in nine provincial administrations and 15 districts in Indonesia. In addition, the study gathered data from different persons with different professions and ranks relevant to the research questions.

In this study, theory triangulation involved using more than one theoretical framework in the interpretation and analysis of the research problem and findings. Employing the refined top-down implementation approach, therefore this study, to some extent, also examines the research question from the perspectives of the top downers and the bottom uppers.

This study also applied methodological triangulation employing various data collection methods and analytical approaches. The former consisted of interview, document and literature data, and sample survey; the latter involved theory-informed analysis, content analysis, macro-analytical approach, and integrated implementation analysis.

To establish the data validity and quality, the study also managed a pilot project and member check (Lincoln and Guba 1985). In the pilot project I piloted a small scale preliminary interview and survey to ensure the feasibility of the research design. In the member check, during the interview process, I restated and summarised what the interviewees had said, and then asked them to check the accuracy of my interpretations.

I. Ethical issues

Klitgaard (1998:12) asserts the importance of confidentiality in research on corruption [and therefore on anticorruption]:

> Citizens know where corrupt systems are and how they work ...But if an individual stands up to denounce the system, he or she may be attacked by it. So the way to cull the knowledge citizens have about corrupt systems is to organize confidential surveys and interviews...knowledgeable citizens could be asked to diagnose corrupt systems.

The interviews and survey in this study were confidential and voluntarily organised.[8] The research participants were firstly informed about the nature and purpose of the research. In an information sheet[9] given or read to the interviewees, the interviewees' willingness to participate in the research was voluntarily given, and they could freely withdraw their participation at any time.

If a participant wished, the interview would be conducted in confidence and their identity would not be disclosed in the thesis. Interviewees were told that all legal measures would be taken to protect them from any perceived risk of disclosing information in the interviews. If they agreed to be identified, they could verify the cited interview materials before its publication in the thesis. The majority of interviewees and survey respondents did not object to participating in this study or disclosing their identity. Interviewees were advised that the interview materials would be safely stored and later destroyed.

[8] As my research involved humans I had to firstly ask for approval under Protocol 2005/192 from the Human Research Ethics Committee of the Australian National University, and in a letter dated 10 August 2005 they approved my proposed research.

[9] The complete information sheet is attached in the Appendix K.

Chapter 4
Implementation of the Anticorruption Law 1971 of the authoritarian New Order regime[10]

A. Introduction

This chapter discusses part of the central research question: why the implementation of Anticorruption Law 1971 of the authoritarian New Order regime, to some extent, failed to attain its formal objective of reducing or controlling corruption in the public sector, and argues that defects in the implementation structures and processes in the authoritarian political system of the New Order government were the primary explanatory factor for the failure.

The chapter will also assess the theoretical and empirical accuracy and usefulness of the refined implementation model in explaining the implementation (in)effectiveness of Anticorruption Law 1971.Therefore, to some extent, it will compare the theoretical notions of the top downers and the bottom uppers.

First, this chapter will discuss the authoritarian political leadership of the New Order regime under which the implementation of Anticorruption Law 1971 operated. To better assess the implementation performance of this Law, it will then map the anticorruption measures of the regime. Next, it will evaluate the implementation outcomes of the Law, one of the central themes of this thesis. The most important theme of the central argument, the factors influencing the implementation outcomes of the Law, will then be examined. Generally,

[10]Some parts of this chapter were presented at the 7th Annual International Conference of the European Society of Criminology on Crime Prevention and Control, Bologna, Italy, 26–29 September 2007 and published (in Chapter 6:123–53) in C. Wescott, B. Bowornwathana, and L. R. Jones (eds), *The Many Faces of Public Management Reform in the Asia-Pacific Region*, Research in Public Policy Analysis and Management, Volume 18, Emerald Group Publishing Limited UK, 2009.

these factors are examined using the theoretical framework of the integrated anticorruption and implementation failure factor typologies: policy design, political, institutional, managerial, and societal factors. Finally, the argument linking the authoritarian political system of the New Order regime to the implementation failure of the Law will be examined.The chapter concludes by reflecting on key findings and arguments relating to the theories introduced in Chapter 2.

B. The authoritarian leadership

> "Under the New Order regime, even though the state was constitutionally constructed as a rule of law-abiding state (*negara hukum*), in practice we were a power-oriented state (*negara kekuasaan*)."
> (Frans H. Winarta, Member of the National Law Reform Commission, and lawyer)[11]

The New Order regime, in Indonesian *Rezim Orde Baru* (ORBA), was an authoritarian, militaristic, centralistic, corporatist rule, with a limited political party system under the leadership of President Suharto, who governed the country from 1966 to 1998. This regime was the antithesis of the ideologies and political leadership of the Old Order (*Orde Lama*) regime under the first president of the country, Sukarno (1945–1967).[12]

Suharto, leader of the elite Army Strategic Reserve (*Kostrad*), came to power after an attempted coup on 30 September 1965. Suharto blamed the coup and related killings on the Indonesian Communist Party and led anticommunist military operations that killed between 500,000 and one million of the party's activists and followers (Cribb 2002). On 21 March 1968, the Provisional People's Representative Assembly named Suharto as acting president, replacing Sukarno, the founder of the Republic and the Old Order regime.

Under the strong, centralised and military-dominated administration of the New Order, Suharto's 32-year rule achieved significant economic growth and industrialisation (Miguel

[11] In an interview with me, 26 May 2006.
[12] This argument concluded the historical observations and arguments of Sebastian Pompe on the Old Order regime and the New Order regime (2005).

et al. 2005). Moreover, the health, education, and living standards of the people improved dramatically (McDonald 2008). Suharto's strong anticommunist stance and ability to maintain political stability won him economic and diplomatic support from the West, in particular, the US. Noam Chomsky (1998:1) observed that, 'Mr Suharto's rule relied crucially on US support'. According to Chomsky, to sustain Suharto's power the White House even backed the regime by repeatedly ignoring congressional restrictions on military aid and training.

Suharto's reign was characterised by an authoritarian and military style of government. No one could question his leadership. The military led and controlled all branches of the state organs. The armed forces also controlled the workings and politics of the regional governments.Thus, as Sujata (2000:214–15) observed, the military, which was previously a supporting institution, was now a controlling agent.

This dual function of the armed forces, as the defence and political force of the state, can be traced to its formation in 1945 at the beginning of the revolution against the Dutch (Crouch 1991:574).The collapse of the Old Order regime's parliamentary democracy, after it failed to deal with the separation movements in the regions in 1957, led to the introduction of martial law.This enabled the army to expand its role to include political, administrative, and economic functions of the government. Since then, army officers had held influential positions in the cabinet, bureaucracies, and regional governments.

Suharto tightly controlled political activities. He banned all political opposition except three amalgamated parties[13] and largely proscribed critical civil society groups such as

[13]They were *Golongan Karya* or Golkar (the regime's functional group or 'party'), *Partai Persatuan Pembangunan* or PPP (United Development Party), and *Partai Demokrasi Indonesia* or PDI (Indonesia Democratic Party). The amalgamation of the political parties was officially regulated in Law Number 3/1975 on Political Parties and *Golongan Karya*. In the preamble of this law, the

independent labour unions, NGOs and activist student groups (Weiss 2007:34). In 1998, the People's Consultative Assembly through its Decision Number XI/MPR/1998 formally stated that the regime had systematically weakened the public expression against the government. Crouch observed how the military's dual function had led to the depoliticisation of the masses,

> More than a decade of military domination led to a substantial depoliticization of the masses. The army's repressive measures resulted in the political parties' losing much of their potential for mobilizing mass protests against the government, although they had not been made completely prostrate. (Crouch 1991:576)

To achieve the national policy goals of maintaining national unity and political stability and advancing national economic development as outlined in all the Five-Year Development Plans, and to maintain his power, Suharto controlled all branches of the government. For example, under Law Number 16/1969 on Structures and Status of the People's Consultative Assembly, the House of Representatives, and Regional Legislatures, he appointed one third of the People's Consultative Assembly, the highest state organ, which had the power to elect the president. He also exerted control over the judiciary, making it possible for the executive to intervene in judicial matters.[14] Failure of the 1945 Constitution to guarantee the judicial power independency and to effectively limit the power of the executive also made executive intervention possible (KHRN 1999:19). Furthermore, members of the cabinet were required to seek his approval for any major policy initiatives; therefore, Malley (1998:156) observed that 'one should not make too much of Suharto's cabinet choices'. If the advice he needed was not available from the cabinet, Malley further observed, he would readily seek it from his outside advisers or personal assistants.[15]

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lawmakers expected that the political parties and *Golongan Karya* maintain and advance the unity of the state, political stability, and national development.

[14]Interview with M. Syaiful Aris, Director and public lawyer, Surabaya Legal Aid Institute, 15 August 2006.

[15]One of the president's influential, but infamous personal assistants in the 1970s and 1980s was General Ali Murtopo, the then Minister of Information.

The regime was also characterised by patron-client economic governance. Muhaimin (1990:7–8) observed this corrupt patron-client relationship between politicians, bureaucrats, and entrepreneurs:

> What is happening in Indonesia is that the role of the state in nurturing indigenous capitalists…has only culminated to the point where it has produced patron-client relations between the politicians in the bureaucracies, the entrepreneurs, and certain business groups. In this type of relation, capitals, contracts, concessions, and loans from the state are firstly directly given to the state-owned corporations and particular national entrepreneurs…thus they have become client-entrepreneurs. This kind of entrepreneurs operate with the support and under the protection of the various networks of the government powers; they have patrons in the political bureaucratic power groups, and are dependent on the concessions and monopolies given by the government.

This patron-client relation and the authoritarian rule of the regime had chronically corrupted the administration of the New Order's government. Both Suharto and his family were allegedly corrupt and he was ranked as the most corrupt leader in the world (*BBC News* 2004), with an estimate of embezzlement ranging from US$ 1.5 billion to US$ 35 billion (Robin Hodess et al. (eds.), 2004:13).

This centralised, authoritarian and corrupt government, in turn, disabled the institutional political structures of the regime. In the MPR's Decision Number XI/MPR/1998, this highest body of the state formally recognised that in the administration of the state the regime had centralised the powers, authorities, and responsibilities of the government, 'causing the disfunctionality of both the highest and high institutions of the state'.

The regime's authoritarian rule and widespread corruption became the source of much discontent (*BBC News* 2004). Following the devastating effects of the 1997–1998 Asian financial crisis on Indonesia's economy and standard of living, popular, military and political support for Suharto's 32-year government dramatically eroded. On 21 May 1998, following mass demonstration and bloody violence, Suharto was forced to resign, ending the New Order authoritarian rule.

C. Anticorruption measures

Mapping the history of anticorruption measures of the New Order regime.[16]The following historical mapping of the New Order regime's anticorruption measures provides the framework for analysing the development and evolution of the anticorruption policies and strategies adopted by this regime.

On 2 December 1967, Suharto, in his capacity as the country's acting president, issued Presidential Decree Number 228/1967 on the Formation of Anticorruption Team. Led by the Attorney General, Sugiharto, and advised by the Chief of the Armed Forces, the Minister of Justice, and the Chief of the National Police, the team was tasked with assisting the government to combat corruption using both preventive and repressive measures.

President Suharto in the State Presidential Address before the People's Consultative Assembly on 16 August 1968 explained the purpose for establishing this anticorruption team:

> In a concrete effort to realise the clean and law-abiding state officials we have taken special measures to combat corruption. In order for the measures to be done faster and stronger against any person, civilian or military, we have created an anticorruption team led by the Attorney General.

In 1970 the president, through Presidential Decree Number 12/1970, established an anticorruption commission, Commission Four (*Komisi-4*), consisting of four distinguished members, led by Mr.Wilopo, former Prime Minister of the Old Order regime, and advised by Mr. Muhammad Hatta, former Vice President of the Old Order regime. The preamble of this decree stated that the purpose in creating the commission was to combat corruption more effectively and efficiently; its duties were to research and evaluate the anticorruption policies and their outcomes, and make recommendations to the government on necessary

[16] See also Tempointeraktif.'Pemberantasan Korupsi dari Masa ke Masa' 25 October 2004, www.tempointeraktif.com .

policies to further combat corruption. The president gave the commission the authority to contact civilian and military government officials and persons in the private sector to request necessary information and materials. It also had the authority to examine letters, documents and accounting records of the government and private organisations.

The commission gave the following recommendations on both preventive and repressive anticorruption measures:[17]

A. Preventive anticorruption measures:

1. Reform the structures and procedures of the public administration;
2. Reform the procedure and supervision of government procurement;
3. Forbid the receiving of commissions by public officials;
4. Record state-owned property;
5. Implement the repressive and preventive supervision;
6. Reregulate the selling of houses for government officials, and forbid the renting of government property;
7. Require public officials to deposit their foreign currency income in domestic state-owned banks, and provide information on the deposit;
8. Tighten control of the activities of the customs and tax offices; and,
9. Manage the deposit of state money.

B. Repressive anticorruption measures:

1. Combat corruption faster and more professionally;
2. Reform the anticorruption team;
3. Prioritise the investigation of corruption cases: COOPA, CV Waringin, Mantrust Company, Department of Religious Affairs, and Telekom Company.

To combat smuggling-related corruption, which had frequently occurred in 1966, 1967 and 1968, the government also established an antismuggling team, *Team Pemeriksa Penjelesaian Perkara Penjelundupan* (TP-4).This had the authority to investigate smuggling cases involving both civilian and military personnel.

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[17] See State Presidential Address before the People's Consultative Assembly on 16 August 1970.

In his State Presidential Address before the People's Consultative Assembly on 16 August 1970, President Suharto reported the preventive anticorruption measures that the government had taken. Among these were:

1. Stricter supervision of state-owned companies;
2. Tighter control of the use of government money;
3. Regulation of the management of state properties;
4. Improvement in the sale of government houses and vehicles to public servants; and
5. Regulation of the use of the government's annual budget.

Later, Anticorruption Law Number 3/1971 was passed by the parliament and came into force in 27 March 1971.This Law was introduced to replace the Anticorruption Law Number 24/1960, which was judged ineffective in combating corruption.

In 1977, responding to the public complaints about the practice of extortion or 'illegal taxing' (*pungutan liar* or *Pungli*) by public officials, the regime staged a law and order operation to restore public order. This anticorruption team was tasked with eradicating any form of misuse of public authority and restoring public trust in the state apparatus. To effectively implement his orders, the president issued Presidential Instruction Number 9/1977 on the Law and Order Operation (*Operasi Tertib*/OPSTIB).The objectives were to combat all forms of corrupt practice in the public sector, in particular extortion by public officials, and improve the effectiveness and efficiency of government agencies and their officials. The president appointed the Minister for Public Administration Affairs as policy coordinator, and the Chief of Law and Order Operational Command, General Sudomo, as operational coordinator.

The scope for the instruction was extended to improving and reforming the organisation, administration, and operation of government agencies.This instruction was based on the concrete instances of pervasive corruption practices in the government sector.

The corrupt activities targeted by the presidential instruction were[18]:

1. The illegal taking of a proportion of the salaries and pensions of public officials by the person in charge of the payment.
2. Extortion in the recruitment and promotion of public officials by the recruiting and promoting agency.
3. Illegal taking of money from a public official's transport allowance by the person in charge of the payment.
4. The inflated prices of goods and services in government procurement.
5. Extortion in the granting of government licenses; for instance, licenses for businesses, trade, work, and building, and the issuance of passports. The president observed that these corrupt activities occurred in almost all government licensing agencies.
6. Extortion by officials of the state's payment office/treasury in the paying out of government budget proposals.
7. Extortion in the importation of goods, particularly by customs officers.
8. Extortion and illegal taking from tax revenues by tax officers.
9. Formal 'taxing' or money collection by agencies in the central and regional governments, which was not based on, or contradicted, legitimate legislation.
10. Extortion by state-owned banks in the granting of loans or credit.

Alatas (1990) termed these types of corruption a two-party 'transactive' or 'extortive' corruption. In the context of the New Order regime, their occurrence can be partly attributed to the weak financial system of the government and the low salary of public officials.

In 1980, the regime enacted Law Number 11/1980 on Bribery, punishing both the givers and recipients of bribes. In the same year, the government also promulgated Government Regulation Number 30/1980 on Public Servant Discipline.

[18] See also Soedjono (1977).

Corruption and anticorruption in the New Order rule, however, was used by Suharto to manage power balances and political struggles between three political powers: the military, bureaucracies, and firms. Suharto was highly effective in using this strategy to maintain their loyalties and political support, as Hendarto observed:

> Corruption was used as political strategy, and the great guru [for this strategy] was Suharto.The armed forces, bureaucracies, enterpreneurs were powers of their own. Suharto clearly knew that there was corruption in the military and bureaucracies....[19]

By developing what MacIntyre (2001) called a single political and economic institutional monopolist structure, where the economic and political powers were concerted in the hands of the president, Suharto could effectively control his corrupt deviant agents for his economic and political purposes. Through these corrupt political-economic structures, Barr observed (1998:1), Suharto's own family and cronies had corruptly profited during his three decades in power. Barr further noted that in his struggle with the International Monetary Fund Suharto was forced to offer assurances that he would reform the corrupt and authoritarian political and economic system. Before realising his assurances, however, on 21 May 1998, due to mass demonstrations against his corrupt authoritarian political governance and economic mismanagement which indicated the failure of his anticorruption measures, Suharto resigned, ending the New Order regime rule.

D. The implementation outcomes of the Anticorruption Law 1971

From the analysis of Anticorruption Law 1971[20], it can be stated that the formal objective of this Law was to eradicate corrupt activities and behaviour in the public sector, which would in turn advance the state's economy and development.

Thus, the policy objective-related outcome criteria that can be formulated are as follows:

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[19]In interview with Agung Hendarto, Executive Director, the Indonesian Society for Transparency, 9 June 2006.

[20]See detailed analysis of Anticorruption Law 1971 in Appendix A.

1. Strong positive people's perceptions on the decreasing level of corruption in the public sector.
2. Significant recovery of state assets losses.
3. Significant increasing public confidence in the capacity of the criminal justice system to combat corruption.
4. Strong anticorruption attitudes of the people, in particular, public servants.

The refined top-down implementation evaluation approach used in this study will judge the implementation of Anticorruption Law 1971 as effective if its outcomes have met these policy objective-related criteria. The following perceived and actual evidence shows the policy implementation performance of Anticorruption Law 1971 under the New Order regime.

1. Public perceptions on bureaucratic corruption reduction

> "In Indonesia, combating corruption is difficult because all sectors of the government have been systematically corrupted and are dysfunctional."
> (Prof.Dr. M. Mahfud MD, former Minister of Justice and Minister of Defence, Member of Commission III of the House of Representatives, Professor of Law)[21]

Since the real volume of corruption under the New Order regime was unknown, this study relies on the perceptions of the survey respondents and interviewees concerning the extent to which implementation of the Anticorruption Law 1971 reduced corrupt activities in the public sector.The volume of corruption might also be influenced by economic and social factors. However, the enforcement of this Law might have had a significant role in influencing the amount of corrupt activities in the public sector.

The majority of respondents surveyed (98 per cent) perceived that the implementation of this Law failed to attain its policy objective of reducing corruption in the public sector. As

[21] In interview with me, 1 June 2006. In 2009, he was elected Chief Justice and President of the Indonesia Constitutional Court.

Mahfud observed, corruption under the New Order regime had infected all sectors of the government, including the law enforcement institutions.

Many kinds of corruption, from autogenic, *pungli,* to multiparty transactive systemic corruption, occurred in almost all government sectors, in both central and local governments, in all 27 provincial administrations. Some forms of corruption, such as extortion, were autogenic, while others were systemic, involving the whole organisation. However, corruption in the use of regional parliament budgets was rare under the New Order regime.[22] On the other hand, corruption in Bimas (*Bimbingan Masyarakat* or society development projects) took place in all regions in Indonesia.[23]

The judicial institutions were not only perceived by the respondents to have failed in combating corruption, but were also perceived as being corrupt. Not many corruption cases were exposed.[24] The police handled few such cases.[25] Moreover, judges were hesitant to try their fellow bureaucrats.[26]

The international ranking of Indonesia under the New Order regime in terms of corruption perceptions was one of the worst among the surveyed countries. In its Corruption Perceptions Indexes (CPIs) from 1995 to 1998, Transparency International (TI) consistently ranked the country among the top ten corrupt countries in the list. In 1995, the country was

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[22]Interview with Musram Amin and Efriandi Aziz, Anticorruption Unit, West Sumatra Province Police Office, 7 July 2006.
[23] Interview with Mr. Andi Ware Pasinringi, Judge, West Sumatra High Court, 5 July 2006.
[24]Interview with Asep Rahmat Fajar, Secretary General of the Indonesia Court Monitoring Society and Expert of the Judicial Commission, 24 July 2006.
[25]Interview with Kombes Djaswardhana, Director, Criminal Investigation Division of West Java Province Police Office, former Investigator of the Indonesia Anticorruption Commission, 11 July 2006.
[26] Interview with Ridwan Mansyur, Judge, Central Jakarta District Court, 10 June 2006.

even perceived as the most corrupt.The following table shows the relative position of Indonesia in term of perceived corruption as indicated by the TI CPI:[27]

Table 4.1 **Corruption Perceptions Indexes 1995-1998 (Indonesia—the New Order regime)**

Period	Number of countries surveyed	Ranking of Indonesia	CPI score	Standard deviation/ Confidence range	Surveys used
1995	41	41	1.94	0.26	7
1996	54	45	2.65	0.95	10
1997	52	46	2.72	0.18	6
1998	85	80	2.0	0.9	10

Source: Adapted from Corruption Perceptions Indexes 1995-1998, Transparency International.

Therefore, from the table it can be judged that in terms of the public perceptions on corruption reduction criterion, in particular those of the experts and business leaders, the performance of the New Order regime in combating corruption, in the form of bribes, was extremely poor.

In 1998, shortly after the corrupt authoritarian New Order regime collapsed, the People's Consultative Assembly formally affirmed the chronic corruption problems under the New Order regime and its effects on the state. Through its Decision Number XI/MPR/1998 on Administration of the State, Clean and Free from Corruption, Collusion and Nepotism, this Assembly stated:

> That in the governing of the state, the business practices that were more beneficial for certain groups had happened, allowing corruption, collusion and nepotism to flourish; involving the state officials and entrepreneurs; and weakening the pillars of the state governance and all various aspects of the national life.

[27]The TI CPI is based on "poll of polls" ranging from at least three surveys to a maximum of 14 surveys. It measures the extent of corruption in terms of the frequency and size of bribes. The respondents are experts such as from risk agencies or country analysts, both residents and non residents, and resident business leaders. See the CPI methodology in www.transparency.org for more detail.

2. Recovery of the state assets losses

Professor Sumitro Djojohadikusumo, a leading economist and former senior minister, claimed that the level of financial leakage in the development budget was over 30 per cent (*Media Indonesia,* 14 November 1996).Calculated from the total government expenditure[28], comprising routine plus development expenditures in 1995/96 which was IDR 78 trillion (Bird 1996:17), this leakage amounted to IDR 23.4 trillion. In 1996, Indonesia's GDP was IDR 532.6 trillion (EIU Country Report 1998:5); therefore, this leakage was 4.3 per cent of the GDP.[29]

Although Sumitro did not clarify the exact details of the leakage, Soetardjo Soeryoguritno, vice chairperson of the Commission II of the House of Representatives, believed that the leakage proved that corruption was widespread, supervision functions were dysfunctional, and the enforcers were not serious in combating corruption (*Media Indonesia,* 14 November 1996). The following table shows the negative outcomes of the implementation of the Anticorruption Law in terms of the recovery rate of state assets losses in 1977 to 1981:

Table 4.2. **Recovery rate of the state assets losses 1977–1981**

Year	Monetary value of the state assets losses (IDR)	Monetary value of the recovered state finance (IDR)	Percentage of the recovered state finance (%)
1977	4,021,626,824.79	140,535,177.95	3.49
1978	30,055,259,157.77	18,577,849,448.88	61.81
1979	27,461,992,239	177,359,809.92	0.64
1980	28,441,704,454.66	17,938,666,735.50	63.07
1981	47,434,959,136.61	2,967,831,116.64	6.25
Total	137,415,541,812.83	39,802,292,288.89	28.96

Source: Attorney General's Office of Indonesia (adapted from Hamzah 1984:169).

[28]The New Order government adopted a balanced budget, where total revenue = total expenditure.

[29]Even though corruption was pervasive, under Suharto Indonesia experienced high economic growth. Its average GDP from 1993 to 1997 was IDR 463.66 trillion or on average grew by 7.12 per cent annually (EIU Country Report 1998: 5); while GDP growth from 1972 to 1977 was 7.6 per cent (Central Statistical Bureau 1978). The regime had also reduced unemployment rate from 54.2 million or 40 per cent of the total population in 1976 to 22.5 million or 11 per cent in 1996 (Central Statistical Bureau 1997).See the relation between corruption and economic growth or investment in Indonesia in MacIntyre (2001).

The table reveals that from 1977 to 1981 the prosecution only recovered IDR 39.8 billion (28.96 per cent) of the total stolen assets. In 1992, Lopa (1992:58) stated that the recovery rate was only 10 to 15 per cent. The prosecution's best performance was in 1980 when it recovered 63.07 per cent, up from 0.64 per cent in 1979. Its worst performance was in 1979, recovering only 0.64 per cent.[30]

It is worth noting that if the total state assets losses of IDR 137.4 billion is weighed up against the perceived widespread corruption in the public sector, it was very small. As Sumitro had indicated that the financial leakage was more than 30 per cent of the state budget.[31]The budget revenue in 1978/1979 was IDR 5,301.6 billion (Rosendale 1980:12). Thus, calculated from this budget revenue, 30 per cent leakage amounted to IDR 1,590.4 billion. Alternatively, if we weight the leakage against the country's GDP in 1977, which was IDR 8,770 billion (Garnaut 1979:23), it was IDR 2,631 billion. However, the total five-year stolen government assets that the prosecution detected was only 2.5 per cent of the budget revenue in 1978/1979, or 8.6 per cent of the possible leakage of the 1978/1979 budget revenue.

The law enforcers not only performed poorly in terms of detecting state assets losses, they were also inferior in their capacity to recover them. A comparison of the total five-year recovered state finance (IDR 39.8 billion) with the possible leakage of the 1978/1979 budget revenue (IDR 1,590.4 billion), the total money recovered was only 2.5 per cent. If the recovered state wealth in 1979 only, which was IDR 0.17 billion, is weighed up against the possible 1978/1979 budget leakage, it was much lower, just 0.01 per cent.

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[30]The wide differences in percentage of the recovered state finance was perhaps caused, among other factors, by the forms of corruption prosecuted and the level of difficulty in proving corruption offences and in recovering the state assets losses.

[31]Sumitro made the statement in the beginning of the 1990s. However, he might also be referring to the financial leakage of previous years.

Thus, it can be concluded that in terms of the recovery rate of the state assets losses criterion, the law enforcement institutions of the New Order regime, in particular the prosecution and the courts, especially in the period from 1977 to 1981, failed to significantly recover stolen state assets.The poor performance of the enforcers in this area led to the low confidence of the public in the capacity of the criminal justice system to combat corruption in the public sector.This will be discussed in the following section.

3. Public confidence in the criminal justice system

> "There is a need to devise an emergency measure, a "Caesarean operation". Many law enforcers cannot properly enforce the anticorruption laws since they themselves are corrupt. As the existing law enforcement institutions have been corrupt, it will be more effective to create a new institution [to fight corruption]." (Prof.Dr.M. Mahfud MD, former Minister of Justice and Defense, Member of Commission III of the House of Representative, Professor of Law).[32]

The poor performance may indicate that the people had low confidence in the capacity of the law enforcement institutions of the New Order regime in combating corruption. At the beginning of the New Order era, even though there was perceived widespread corruption in the public sector, only 144 corruption cases were filed at court. From these, 90 cases were decided by the courts (Ministry of Justice 1971:45).This, according to President Suharto in his State Address before the People's Consultative Assembly on 16 August 1970, made the public, particularly students, question the seriousness of the government in combating public sector corruption.

Not only were few corruption cases investigated[33], but in those brought before the courts, the judge panel quite often gave a lenient punishment. For instance, in the case of State vs. Soetopo, the defendant, who was a tax examiner, was punished with only 3.6 years'

[32]In an interview with me,1 June 2006.
[33]Interview with Heni Wahyu Puwarti, Prosecution Section Head, Yogyakarta Province Prosecution Office, 1 August 2006.

imprisonment[34], despite being proved guilty of corruption by manipulating tax calculations from IDR 240,000 to IDR 120,000 for his and the taxpayer's (Oei Kok Ham) benefits. Moreover, in reality, many corruption cases detected by government agencies did not proceed to court. Instead, these agencies only imposed administrative sanctions on the perpetrator (Hamzah 1984:145).

The low public confidence in the capacity, commitment and integrity of the enforcement institutions to control corruption might be partly attributed to "court mafia" or the chronic corruption problem affecting these institutions.'There is judiciary corruption by the judicial apparatus, starting from the police, prosecutors, judges, and lawyers. It has already happened in Indonesia. I myself truly saw and witnessed it.'[35] Under the New Order regime, this court mafia or judicial corruption, however, was not openly exposed.

Following the collapse of the New Order regime, the People's Consultative Assembly, through its Decision Number XI/MPR/1998 on Administration of the State, Clean and Free from Corruption, Collusion and Nepotism, pronounced that the persistent corruption problem in the government had ruined the pillars of the state administration in all aspects of life.

4. Changes in anticorruption attitudes

> "In the New Order era, public officials committed corruption without any fear."
> (Kahar Al Bahri, Coordinator, NGO Pokja (Task Force) 30, East Kalimantan).[36]

A survey of 1000 respondents carried out in February 1998 by the Centre for the Study of Development and Democracy in Jakarta found that 78 per cent believed that paying bribes to

[34]See State vs Soetopo, Magelang District Court Decision Number 1/Pid/1968.
[35]Interview with Major General Police (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006.
[36]In an interview with me, 26 July 2006.

public officials was difficult to avoid when dealing with the government (Snape 1999:590).This indicated that even at the end of the New Order rule the anticorruption attitudes of the public and bureaucrats had not changed much, except that perhaps the public were now more tolerant of corruption. The Corruption Perceptions Indexes of Indonesia from 1995 to 1998 might also indicate that the public and the government officials' attitudes were generally tolerant of corruption. They themselves most likely involved in the corrupt practices, in this case, giving and receiving bribes.

Muhammad Hatta, former Vice President and Prime Minister of the Old Order regime, voiced the opinion that corruption in Indonesia had become the culture of the people. Therefore it was very difficult to combat. Public officials, in both the executive and the judicial agencies, not only tolerated corruption but also engaged in corrupt practices. For example, public officials 'fought' to be committee head of a government project tender[37], as this position was a lucrative source of self-enrichment. A former Justice of the Supreme Court called the judicial corruption the '3S'—*Sowan, Sungkem,* and *Setor*—meaning the person wanting a job promotion should meet, have a high regard for, and pay off the superior promoting judges or high officials in the Department of Justice in order to be promoted. The moral integrity and performance of judges were not important,[38] as long as the judges satisfactorily served their superiors.

From the perspective of the refined top-down implementation model, the implementation of Anticorruption Law 1971, in all of the four criteria, failed to attain the policy objective of reducing corruption in the public sector.Thus, these findings support the central argument of this study that the implementation of Anticorruption Law 1971 of the authoritarian New

[37]Interview with Lieutenant General Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.
[38]Interview with Soekotjo Soeprapto, Commissioner, Judicial Commission, former Commissioner of Public Officials' Asset Audit Commission, 24 July 2006.

Order regime failed in attaining its formal objective of controlling corruption in the government.

The essential question, therefore, has to be asked: why did the regime fail to tackle the chronic corruption problem in its administration? Assuming the influence of a political system type on implementation effectiveness, how did the authoritarian political system of the New Order regime contribute to the implementation failure of Anticorruption Law 1971? These two important governance issues will be examined in the following sections.

E. The implementation failure factors of the Anticorruption Law 1971

Various factors contributed to the implementation failure of Anticorruption Law 1971. This section will discuss the failure factors in each of the previously determined categories: policy design, political, institutional, managerial and societal factors. The functional relationship between the authoritarian political system of the New Order regime and the implementation failure of the Anticorruption Law 1971, which is also central to the argument, will be examined.

1. The policy design factor[39]

This section will examine how the policy design of Anticorruption Law 1971 influenced the implementation and attainment of the policy objective of this Law.The three policy design-related conditions for effective implementation as suggested by the refined top downers will be particularly examined.These three necessary conditions (Sabatier 1986b:23), which stress the important role of policy design to effectively implement policy, are:

1. Clear and consistent policy objectives.
2. Adequate causal theory underlying a policy.

[39] More detailed analysis of structure and contents of the Anticorruption Law 1971 is attached in Appendix A.

3. Implementation process legally structured to enhance compliance by implementing officials and target groups.

I argue that the implementation failure of Anticorruption Law 1971, to some extent, was associated with the defectiveness of the policy design. This Law failed to legally structure the implementation process to enhance the compliance of the enforcers in terms of policy objectives. Instead, this Law gave the enforcers wide discretion and powers, with weak accountability, which led to the abuse of the implementation process.

a. Policy objectives of the Anticorruption Law. Anticorruption Law 1971 did not expressly state its objectives of combating corruption in the public sector. That can only be implied from its preamble, which states, 'the corrupt acts are very injurious to the finance and economy of the state and have impeded the advance of the national development', and from President Suharto's statement in his State Presidential Speech at Plenary Cabinet Meeting on 30 January 1970, that corruption must be 'controlled and reduced to the least minimum point'. The Minister of Justice, in his Government Address on Anticorruption Bill before the *Gotong Royong* House of Representatives on 28 August 1970, pronounced that the Law was proposed to substitute for Anticorruption Law 1960, which had been judged ineffective and inefficient in fighting corruption. The minister stated that, '[t]his eradication of corruption has to be reinforced in an effort to realise our commitment to be back to *Negara Hukum* [the rule of law], which recognises and highly respects the human rights of a person in a criminal process'.

Therefore, we can formulate the policy objectives of the Law as:

1. to control and reduce corruption to the minimum point in an effective and efficient way;
2. to advance the national development in the longer term; and
3. to promote the rule of law in a corruption-related criminal process.

Are these objectives of the Law clear and consistent? Anticorruption Law 1971 did not clearly express its objectives. This may have encouraged different interpretations and confusion among law enforcers as to what the Law was trying to achieve. A clear and expressly stated policy objective must be formulated to better guide the implementers in their efforts to combat corruption. For example, President Suharto's statement 'controlled and reduced to the minimum point' can be reformulated as a policy objective 'to control and reduce corruption to the minimum point in an effective and efficient way'. This will guide the implementing agencies in their decisions and efforts not only in terms of combating corruption (effectiveness), but also, cost (efficiency).

The three formulated policy objectives are in the same way conflicting. The lawmakers intended not only to combat corruption with an effective and efficient method, but also to fight it in a rule of law-abiding process, which respected the human rights of all parties involved in a corruption case. The Minister of Justice rejected the use of the reverse burden of proof method in proving the corrupt intent of the accused, as it was against the "non self-incrimination" principle and contradicted the rule of law and the human rights of the accused.

However, Manan said, 'corruption is an extraordinary crime'.[40] It is extraordinary both in its characteristics and impact. This evil act is secretly and conspiratively committed, making its investigation and prosecution difficult.Corruption also has a wide spectrum of degrading impacts on society, including disrespecting the political and economic rights of the people. Therefore, Atmasasmita contended[41], an extraordinary criminal procedure such as the

[40]In my interview with Prof.Dr. Bagir Manan SH.,McL, Chief Justice and President of the Supreme Court, Professor of Constitutional Law, Padjadjaran University, 21 June 2006.
[41]In my interview with Prof.Dr Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of

reverse burden of proof, which is more effective and efficient in proving a corrupt act, must be employed. In the Indonesian context where corruption has been chronic and endemic, this extraordinary criminal procedure should be allowed in order to protect the wider human rights of the people. In the case of Singapore's successful anticorruption measures this procedure, as stipulated in its Prevention of Corruption Act of 1960, has proven to be effective. This Act provides the court with the power to confiscate the wealth owned by the accused which is disproportionate to his income if he cannot satisfactorily account for it.

The objectives of Anticorruption Law 1971 would have been difficult to attain. Corruption is a complex social problem involving many social, economic and political factors. Mazmanian and Sabatier (1989) argued that the successful implementation of a policy or program is associated with the tractability of the social problem being dealt with. The problem of corruption in the public sector of the New Order government was very complex, involving many factors, actors and stakeholders.Therefore, the probability of effective implementation of the Law would have been low.

b. Causal theory of the Anticorruption Law. There were arguably three causal theories argued by the lawmakers of the Anticorruption Law 1971. First, typical to the interventionism approach, the lawmakers assumed that society would be protected, and therefore, the public interest would be served by enforcing the Anticorruption Law. This would be achieved by increasing the probability of detecting corruption and imposing penalties on corruption offenders. A potential corruption offender, as Becker (1968) argued, will be deterred from committing his evil intent if he thinks his deviant act will be easily detected and harshly punished.

Anticorruption Law 1999, Delegate to United Nations Convention against Corruption, and Professor of International Criminal Law of Padjadjaran University, 12 June 2006.

However, by design, the Anticorruption Law was weak in effectively detecting and punishing corrupt conduct. It adopted ordinary criminal procedure, making a suspected corrupt act more difficult to detect and punish. Since the prosecutor has the burden to prove his accusation, collecting evidence of a secret and mutual act of crime such as corruption is hard. It would be easier if the burden of proof is reversed by obliging the accused to prove the legality of his wealth. Second, the lawmakers may have also assumed that a potential corruption offender will be deterred by increasing the severity of the punishment of a corruption offence. One factor which made the previous Anticorruption Law 1960 ineffective, as argued by the Minister of Justice (1970), was its lenient penalties. Therefore, Anticorruption Law 1971 increased the penalties to a maximum life sentence or 20 years imprisonment and/or IDR. 30 million in fines.

Nevertheless, as Rose-Ackerman (1999:53) contended, a high-fixed penalty would increase the size of the bribe given because if the penalty is increased, a corrupt official will demand a higher return. Therefore, Rose-Ackerman suggested the penalty should vary according to the size of the payoffs. Contrary to this, several different forms of corrupt conduct stipulated in article 1 paragraphs (1) and (2) of the Anticorruption Law imposed similar penalties on the offender. Fixed increased penalties weakened the deterrent effect of the Anticorruption Law.

The other causal theory the lawmakers might have assumed was that the problem was mainly in the defective policy design of the Anticorruption Law 1960, not in its implementation. Silaen has observed that the problem was truly with the enforcers, in its implementation.[42]The Anticorruption Law 1971 was good enough (Hamzah 1984:144).

[42]My interview with Henri Silaen, Judge, East Kalimantan High Court, 26 July 2006.

Therefore, the government should focus more on fixing the problems in the implementation of the anticorruption law, not making a new law.

c. Implementation structure and process of the Anticorruption Law.

Anticorruption Law 1971 not only contained substantive provisions, but also structured its implementation processes. However, two primary deficiencies in structuring the processes can be identified. First, the ordinary evidentiary procedure the Law adopted required a lot of resources and time and made it difficult for enforcers to investigate, prosecute, and try a corruption case. Timing is important in a corruption case. A suspect could destroy and manipulate the evidence if the enforcer did not quickly investigate the case.

Secondly, evidentiary procedural defectiveness was related to the element 'damage to state finances' in the definition of corruption in the Anticorruption Law. Even though it was legally sufficient that the corrupt act had potentially damaged the finances of the state (Lopa 2001), in practice, the judge required the public prosecutor to prove that such damage was real and had occurred. According to Silaen[43], defence lawyers had used this element to disprove financial loss and free the accused.

If the Anticorruption Law did not particularly regulate the enforcement process, the relevant legislation would be applied to structure the investigation, prosecution, and trial of corruption cases.[44] In most cases, the Criminal Procedural Code (KUHAP) was applied. Based on the KUHAP, the investigator was obliged to deliver the investigation dossier to the public prosecutor.[45] The public prosecutor, within seven days of the acceptance of this

[43] My interview with Henri Silaen, Judge, East Kalimantan High Court, 26 July 2006.
[44] Article 3.
[45] Article 8 (2).

dossier, had to notify the investigator on the completeness of this investigation.[46] However, if he judged that the investigation was incomplete, he had to return this dossier to the investigator, with guidance for completion.[47] The investigator must then further investigate the case and deliver the dossier back to the public prosecutor within 14 days.[48] If within 14 days after receiving back the dossier it was not returned by the prosecutor, the investigation was assumed to be complete. Alternatively, the investigation was deemed to be complete if before the lapse of this time the prosecutor informed the investigator about the completeness of the dossier.[49]

The following questions, therefore, may be raised about these critical relations between the police investigator and the prosecutor:

1. What sanctions will be imposed on the investigator if he does not deliver the investigation dossier or return it to the prosecutor after corrections by the prosecutor?
2. Is the investigator obliged to follow the guidance given by the prosecutor? If not, what will happen?
3. How many times can the prosecutor return the dossier to the investigator?
4. What is meant by the investigation dossier is 'complete'?

The KUHAP was defective in legally structuring these critical points. It did not sanction the investigator if he failed to deliver or return the dossier and did not follow the guidance given by the prosecutor. Furthermore, there were no provisions limiting how many times the prosecutor could return the dossier to the investigator. And more importantly, the meaning of 'complete' was up to the subjective judgement of the prosecutor. Since there was no clear rule on what was meant by 'complete', the police investigator and the prosecutor might have different perceptions on the completeness of the investigation dossier. This might open

[46] Article 138 (1).
[47] Article 110 (2).
[48] Article 138 (2).
[49] Article 110 (4).

another 'playing field' between the two enforcers, which to some extent might advance their corrupt preferences and interests. Thus, in this particular area the KUHAP might have failed to constrain the corrupt preferences of the local actors, which in effect might divert the policy objectives of the Anticorruption Law, an important implementation failure factor argued by the refined top-down modelists.

This weak legal structuring and sanctioning mechanism in effect became the source of corrupt abuses by the enforcers. To some extent, this might have contributed to the implementation failure of the Anticorruption Law. M. Syaiful Aris, director and public lawyer, Surabaya Legal Aid Institute, observed this problem:

> There are no time limits for returning the investigation dossier from the prosecutor to the police investigator. Therefore, the KUHAP is open to abuse. For example, the prosecutor returned the dossier back to the police because of a lack of evidence, but sometimes he still returned it even though the evidence was strong. [50]

Thus, in effect the KUHAP caused what the refined top downers called a lack of coherent implementation structure between the investigation and prosecution agencies. The KUHAP created some veto points, which might have contributed to the implementation failure of the Law.The prosecutor might veto the investigation decisions by returning the investigation dossier to the investigator. On the other hand, the investigator may veto the prosecutor's decision by not completing and returning back the investigation dossier to the prosecutor.

The KUHAP was also defective in legally structuring the critical relations between the prosecution and the judges. These two critical actors had the potential to deflect from attaining the policy objectives of the Anticorruption Law. The public prosecutor had the right to appeal the decision of a court due to the court's 'error in the application of law'.[51]In other words, the prosecutor could veto the decision of the court by appealing to the higher

[50] In an interview with me, 15 August 2006.
[51] See article 67.

court. On the other hand, the judge could veto the indictment brought by the prosecutor if, for instance, there was no sufficient evidence or he reasonably believed that the defendant was not guilty of committing the charged offence.

The problem was that there was no clear rule on the scope and meaning of 'error in the application of a law'. Again, it was up to the subjective judgments of the higher court's judge panel and the prosecutor appealing the court's decision. The scope and meaning of the 'reasonable belief of the judge' was also subjective, depending on the judgment of the trial judge. As a result, all of these might encourage different perceptions between the prosecutor and the judge on what 'right law' and 'sufficient evidence' should be applied to the tried case. In some cases, the judge panel might reject the prosecutor's indictment for the reason that such an indictment was 'weak' or did not meet the legal requirements of the KUHAP. Prof. Bagir Manan, Chief Justice and President of the Supreme Court, observed this particular problem:

> [There were] Many problems in the KUHAP, for example the problems in the institutional relations between the prosecution and judges. In the HIR era, a judge may correct the charging document made by the prosecutor. It was good. Now, the judge cannot do that. Consequently, the judge can reject the incorrect indictment in the court proceedings.[52]

During the colonial HIR era, structurally the prosecution and the judiciary were, to some extent, integrated. The prosecution office in a district was attached to the district court office.The judge, for instance, was authorised to supervise and correct the formulation of the indictment made by the prosecutor.This, in effect, reduced the different perceptions on the applicability of the law and evidence to the tried case, reducing the probability of the charge being rejected by the trial judge panel.

[52] In an interview with me, 21 June 2006.

Under the KUHAP, the judge was no longer authorised to supervise and rectify the charging document.This widened the different perceptions on the law and evidence applied to the tried case, thus increasing the possibility that the charge would be discarded by the judge.The lack of control and supervision in the formulation of the indictment might also open the opportunity for the prosecutor to compromise and corruptly abuse the prosecution processes, which might then divert the policy objectives of the Anticorruption Law, an important failure factor which has become the main concern of the bottom uppers. Thus, the KUHAP might have failed to limit and constrain the possible corrupt preferences of the prosecutor, a siginificant implementation failure factor argued by the refined top downers.

The KUHAP, however, did check the use of power by the enforcers. Through the pre-trial mechanism or *praperadilan*, the judge of a district court, based on the request from the suspect, was authorised to examine the legality of his arrest and detention.[53] Moreover, based on the application from the investigator, the prosecutor, or an interested third party, the pre-trial judge might also consider the legality of the termination of the investigation and prosecution of a corruption case.[54]

The KUHAP, however, did not punish by imprisonment the investigator and the prosecutor who committed the illegal arrest, detention, and termination of the investigation and prosecution. It only granted the suspect, the defendant, and the interested third party, the rights for compensation and rehabilitation.[55] Thus, the KUHAP might have not deterred the investigator and the prosecutor to make such illegal acts, an important failure factor as asserted by Becker and Rose-Ackerman.

[53] See articles 77 and 79.
[54] See article 80.
[55] See articles 77 and 81.

It was also difficult to file the pre-trial against the enforcers since they were in a strong position to abuse and manipulate the process. M. Syaiful Aris, Director and public lawyer, Surabaya Legal Aid Institute, observed this problem:

> We have difficulty in taking legal actions against the illegal actions of the law enforcers, as the scope of their authorities is wide. Our criminal procedural law [KUHAP] gives a big room for abuses. The enforcers may manipulate the pre-trial procedure.[56]

2. The political factor

Under this factor category, the implementation failure of the Anticorruption Law 1971 can be attributed to the failure of the New Order regime to set up political institutions and leadership conducive to the effective implementation of this Law. This problem, however, can be associated with the poor support from the political leaders to form a clean government.

Under Suharto's authoritarian leadership, '...all strategic institutions and positions were controlled and held by military members. The institutional effects on the Attorney General Office were extraordinary'.[57]As stipulated in Prosecution Law Number 15/1961 the president placed the Attorney General's Office under the executive control.[58] He had the power to appoint and dismiss the Attorney General.[59]The Attorney General was responsible to him. As a result, Suharto, through his military men in the Attorney General's Office, was able to influence the workings of this institution. He could, for instance, order the prosecutor to stop the investigation and prosecution of a corruption case.

Moreover, in controlling the workings of the prosecution office the president had the power to decide the structure and organisation of the National Prosecution Department.

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[56] In an interview with me, 15 August 2006.
[57] Interview with informant B, 'street level' Head of District Prosecution Office B, 12 July 2006.
[58] Article 5.
[59] Article 19.

Furthermore, by a presidential decree, the president also had the financial power to determine the allowance for prosecutors[60]. Thus, the prosecution was not independent of Suharto's influence, both organisationally and financially.

Under the Police Law 1961, the president also had the power to control the police. He also had the power to determine the duties and organisational structure of the national police.[61] Under Suharto's militaristic regime, 'structurally the superiors in the military could order the subordinate commanders of the police, and intervene in investigation matters'.[62] In the New Order era, interventions from the central government were common.[63] Therefore, '...the law enforcers functioned merely as the hands of those in powers...'.[64]

The New Order regime, through Decision of the People's Consultative Assembly Number II/MPR/1983 on State Policy Guideline, and State Speech of the President of the Republic of Indonesia on the Enactment of the Anticorruption Law No.3/1971, 16 August 1970,[65]stressed that the president himself would lead the anticorruption movement. However, in reality political support from the political leaders was weak. For example, suspected corruption cases committed by *gubernur* or heads of provincial administrations, and *bupati* or heads of district governments were never exposed, or investigated.[66]

Therefore, commitment from the regime to combat corruption was poor. For instance, the government financial and technical assistance for farmers or *Bimas* corruption cases were

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[60] Article 17.
[61] Article 5.
[62] Interview with Situmorang, Head, East Jakarta Police District Office, 18 May 2006.
[63]Interview with AKBP Djamal, Deputy Head, Central Jakarta District Police Office, 2 June 2006.
[64]Interview with Agung Hendarto, Executive Director, the Indonesian Society for Transparency, 9 June 2006.
[65]See State Speech of the President of the Republic of Indonesia, 16 August 1970 on the enactment of the Anticorruption Law No.3/1971 in Directorate General for Legal Development, Ministry of Justice.
[66]Interview with FX Suhartono, Vice Head, High Prosecution Office, East Java, 15 August 2006.

not followed up.[67] Furthermore, in some corruption cases, only administrative punishment was imposed (Hamzah 1984:145). These cases showed that the regime had a weak political will to eradicate corruption, a factor which Liba (2002:39), a senior public prosecutor, believed to be an obstacle to effective law enforcement.

Implementation underperformance may be associated with what Lemarchand and Leggs (1972:151–52) called the political clientelism system that the New Order regime had developed.Under this corrupt system the relationship between Suharto and his subordinates, including the law enforcers, was personalised, affective, and reciprocal. It was in Suharto's political interest to develop a mutually beneficial relationship between him and the elite. Therefore, to maintain the political stability and integration of the regime and to achieve harmony among the elite, some corruption cases involving the elite were selectively not investigated. These political constraints, in the form of Suharto's informal oversight and control of the enforcement process, constrained the effective implementation of the Anticorruption Law.[68]

Under Suharto's militaristic rule, '...the army's accession to power and repression of its opponents helped to restore conditions favourable to patrimonialism...'(Crouch 1991:575). In this patrimonialistic structure of governance Suharto was the centre of power, controlling the activities of his subordinates including the law enforcers. By placing his military men in the law enforcement institutions, Suharto had effective control of the investigation and prosecution of corruption cases. This centralised power became a source of public sector corruption.[69]

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[67]Interview with Andi Ware Pasinringi, Judge, High Court, West Sumatra, 5 July 2006.
[68]See also Mazmanian and Sabatier (1989).
[69]Interview with Prof.Dr.Komariah Emong Sastrapradja, Professor of Criminal Law, Padjadjaran University, 30 May 2006.

After 32 years under the New Order rule, the country's problem of corruption had worsened. In 1995, Transparency International in its Corruption Perceptions Index (CPI) reported that from 41 countries surveyed, Indonesia was ranked the most corrupt country, scoring 1.94 out of 10. On 17 September 2007, the United Nations, through the Stolen Asset Recovery Initiative (StAR), even ranked former President Suharto, the founder and ruler of the New Order regime, as the most corrupt leader in the world (*Sinar Harapan* 2007; also see Robin Hodess et al. (eds.), 2004:13).

3. The institutional factor

The KUHAP, which structured the institutional framework for the enforcement process, had a major role in this type of failure factor. Its failure to restrict the discretion of the enforcers and structure the institutional relations between the criminal justice institutions provided opportunities for the enforcers to abuse their power. Other institutional factors such as a lack of commitment by the enforcers to combat corruption, which is an important factor for the refined top downers, might have also contributed to the implementation failure of the Anticorruption Law 1971. After being implemented for 27 years some defectiveness of the KUHAP can be identified. The defectiveness can be analysed and identified from the KUHAP itself and from the KUHAP in action, that is from the experiences and perceptions of the experts and enforcers. The following is the evaluation from Marwan Effendi, Director, Special Crime Directorate, Attorney General's Office, on the KUHAP defectiveness in structuring the enforcement process:

> The KUHAP, which was ever called 'the great creation of the nation', in fact, has many weaknesses after several years of its implementation. It has compartmentations and differentiations in its principles. These mean that investigation, prosecution, and court proceedings are not integrated, but separated. The problem is how to control the investigator. What if the police do not follow up the alleged crime reported by the public? The prosecutor cannot take over this investigation.[70]

[70] In an interview with me, 4 July 2006. Marwan Effendi was later promoted to Junior Attorney General for Special Crimes.

Therefore, the KUHAP did not meet the conditions suggested by the (refined) top downers: to be effective the implementation structure must be coherent and integrated. This problem of the disintegrated enforcement processes and the possibility for abuses by the enforcers was found from the beginning to the end of the enforcement processes. At the beginning of the process, the pre-investigator (*penyelidik*) may abuse his power to pre-investigate a criminal or corruption offence. One of the powers of the pre-investigator, in this case, the police investigator, was to receive and pre-investigate the public report and complaint about an alleged criminal offence.[71] Based on the order given by the investigator, he also had the authority to search and forfeit criminal evidence.[72] However, as Effendi questioned, 'what if the police do not follow up the alleged crime reported by the public?' or did not search and forfeit the alleged criminal evidence? The pre-investigator could use his subjective judgment about whether or not to follow up the report and forfeit the evidence. Under the KUHAP there were no provisions to control and punish the pre-investigator if he failed to do so. These particular discretionary powers might provide an opportunity for the pre-investigator to corruptly abuse the process. He might trade his powers with the suspect for his self-interest.

Other wide discretionary powers were given to the investigator. These powers were to:[73]

1. Receive the public report and complaint about an alleged criminal offence.
2. Arrest, detain, search a suspect and forfeit evidence.
3. Examine and forfeit documents.
4. Summon and examine a suspect and a witness.
5. Terminate the investigation of a criminal offence.

The use of these powers was subjected to the discretionary judgment of the investigator who could subjectively interpret the provisions of the KUHAP.These discretionary powers in

[71] See article 5 (1 (a1)).
[72] See article 5 (1 (b1)).
[73] See article 7 (1).

practice were open for abuses and corruption by the enforcers. Syaiful Aris, Director and lawyer of the Surabaya Legal Aid, East Java, observed this discretionary problem:

> The scope for the law enforcers' authorities is in fact not clear, depending on the interpretations of the law enforcers. For example, they may use the provisions in the law in order to detain the suspect, even though the suspected offender, according to this law, should not be put in custody.[74]

The provisions of the KUHAP for arresting a person were widely open to interpretation by the enforcers. The arrest was made against a person 'strongly suspected of committing a criminal offence based on sufficient preliminary evidence'.[75] However, what is meant by 'strongly suspected of committing a criminal offence', and 'sufficient preliminary evidence'? In practice, these depended on subjective judgment and interpretation by the enforcers.

Another discretionary power was the power of the investigator to terminate the investigation of a criminal offence. In reality, this power was prone to corruption and abuses by the enforcer and other actors in the enforcement process. The enforcer could do this by issuing a letter ordering the termination of an investigation or *Surat Perintah Penghentian Penyidikan* (SP3). However, to issue the SP3, the investigator had to have reasons determined by the KUHAP. He might terminate the investigation of a corruption offence if there was insufficient evidence or the alleged incident was not a criminal offence. However, who determined whether these conditions were met? Again, it was left to the subjective judgment of the investigator. Thus, the KUHAP provided the opportunity for the enforcers to play what Bardach called 'the implementation game', an integral part of the game of the court

[74] In an interview with me, 15 August 2006.
[75] Article 17.

mafia mentioned in the previous section. The SP3 was a discretion given to the enforcers, which then became a commodity in the corrupt enforcement market.[76]

The powers given to the prosecution were also prone to corruption and abuse by the public prosecutor. Among others, these powers were to:[77]

1. Receive and examine the investigation dossier submitted by the investigator.
2. Initiate a pre-prosecution (*prapenuntutan*) by requesting and guiding the investigator to complete the investigation if he thought the investigation dossier was incomplete.
3. Extend the detention period of a suspect requested by the investigator; detain and extend the detention of the suspect, and change the modes of such detention.
4. Formulate a charging document (*surat dakwaan*).
5. File the charging document to a court of law.
6. Prosecute the accused.
7. Terminate the prosecution of a criminal case for legal interest.
8. Carry out the order of a judge/s.

At the operational level some of these discretionary powers provided opportunities for the prosecutor to abuse the enforcement process. He might subjectively determine whether or not the investigation dossier was complete. Furthermore, he might subjectively judge when to further detain the suspect and extend or change the mode of such detention.

Like the investigator the prosecutor had the power to detain, extend the detention, and change the detention mode of the suspect or the accused. He could execute these powers if he reasonably believed that the offender would: a) abscond from the investigation or prosecution; b) destroy or conceal the evidence; and/or c) recommit a criminal offence.[78]The mode of detention could be changed into a) a state prison; b) a house; or c) a city detention

[76] Interview with Frans Winarta, lawyer, and Member of the Indonesia Law Commission, 26 May 2006.
[77] See article 14.
[78] Article 21 (1).

where the suspect or the accused resides.[79] However, the decision was again up to the subjective judgment of the prosecutor. At the operational level, the prosecution might corruptly trade his discretionary powers with the offender. The offender might choose which mode of detention he preferred, and this had a price. Thus, as argued by the bottom uppers, the street level actors might strategically interact to protect and advance their own interests and objectives, which in this case were pecuniary and corrupt. In effect, these strategic interactions might deflect the attainment of the formal policy objectives of the Anticorruption Law.

The other powers of the prosecution which were vulnerable to corruption and abuses were the powers to formulate a charging document or *surat dakwaan*, terminate the prosecution of a criminal case, and execute the decision of the judges. These powers, as will be shown in the next sections, became a source for corruption. The prosecutor and the accused, for instance, might corruptly conspire to formulate a weak charge to reduce the penalties or even acquit the accused.

Like the investigator, the prosecutor was also given the authority to close a criminal case. By issuing a letter closing the prosecution of a criminal case or *Surat Ketetapan Perintah Penghentian Penununtutan* (SKP3), the prosecutor might terminate the prosecution. However, to do this, three conditions had to be met: insufficient evidence, the prosecuted offence was not a criminal offence, or the case was closed for legal interest. The prosecutor might reopen the case if he had a new reason to prosecute the suspect.[80]

Whether or not to reopen the case depended on the subjective judgment of the prosecutor. These particular discretionary powers, like the others, again enabled the actors in the

[79] Article 22 (1).
[80] See article 140.

enforcement process to distort the enforcement process. By corruptly conspiring with the suspect or the accused, the prosecutor might opt to decide whether a case was a criminal one, the evidence was sufficient, or for legal interest the case should be closed. He might also extort from the suspect, threatening to reopen the case. Without legally structuring the enforcement process to strengthen the compliance of the local actors to the policy objective, as suggested by the refined top down theorists, the actors, in this case the prosecutor, the accused, and the defence lawyer, might corruptly distort the process to advance their own corrupt objective and interests, and subsequently divert the policy objectives of the Anticorruption Law.

At the judicial stage, the KUHAP was also defective in structuring the judicial process. The hierarchical structure of the judiciary was composed of district courts, appellate courts, and the Supreme Court. The higher court, based on the appeal from the defendant or the prosecutor, might modify or annul the decision of the lower court if it opined that the judge panel of the lower court did not apply or incorrectly applied the law to the tried case.[81]The outcomes of the decision of this higher court might reduce the penalties or even acquit the defendant. This judicial power may be important to correct the decision of the lower court or control the abuse of the judicial process by the actors at the lower level court. However, this power had a limit. The higher court could not review the lower court's decision acquitting the defendant from the prosecution (*putusan bebas murni*)[82], which might be the result of corrupt dealings between the judge, the prosecutor, and the defendant.

The opposite, however, may also happen. The higher courts, comprising high courts (*pengadilan tinggi*) and the Supreme Court, may also abuse their review powers. It is up to the subjective judgment and interpretations of the higher court's judge panel to decide

[81] See articles 87 and 88.
[82] See article 67.

whether or not the judge panel of the lower court had 'incorrectly applied the law' to the tried case. Unlike the judges in countries with the common law system, judges in Indonesia are not bound to previous decisions of courts. This may lead to inconsistent decisions by courts.

For the upper level courts, this subjective interpretation of the KUHAP may also widen their opportunities to subjectively interpret what is meant by 'incorrectly applied the law' since there are no precedents which may be applied to a particular case. Without a transparent decisionmaking process and accountability, this weakness may be abused by the actors in the judicial process. The judge panel of the higher courts, due to corrupt transactions with the defendant, may acquit him or reduce his punishment.

However, the judge cannot make a decision without meeting certain conditions set by the KUHAP: he must not punish the accused, unless he has two pieces of legitimate evidence, which means 'he reasonably believed' that the accused was guilty of committing the accused criminal offence.[83] The meaning of 'reasonably believed' was up to the subjective judgment of the judge. Therefore, the KUHAP still left room for judges to manipulate the judicial process. In practice, as will be shown in the next section, this defectiveness might be abused to advance the corrupt preferences of judges. This evidentiary problem and the subjective judgment of judges were problematic as a senior prosecutor experienced:

> There have been already many problems since the past [the New Order]. We need to revise the KUHAP. The problem in the KUHAP is in the evidentiary system, which requires two pieces of evidence and the judge's legal belief. [The provision on] the judge's legal belief should be revoked [as this was too subjective]. (Fadil Zumhana, Assistant Head, Division of Special Criminal Offences, High Prosecution Office, West Sumatra).[84]

[83] See article 183.
[84] In an interview with me, 6 July 2006.

In addition, the burden of proof was on the shoulders of the prosecutor to prove that the defendant was guilty of committing corruption or a criminal offence.[85] The KUHAP did not adopt a reverse burden of proof.

In investigating and prosecuting a secretive criminal offence such as corruption, these evidentiary rules can make it difficult to effectively detect and prosecute corruption offences. Since a corruption offence is committed secretly and for the mutual benefit of the actors conspiring in the offence, for instance in bribery, it is hard to prove the commission of corruption. The actors have mutual interest to cover up their evil undertakings. It will be more effective to adopt a reverse burden of proof.

There was lack of cooperation between the law enforcers.[86]On the contrary, they became rivals, making coordination of their enforcement activities more difficult. The prosecutor was now no longer able to control the use of powers by the police, making it easy for the police to abuse their power. Moreover, '...the internal control was not effective, did not really work...'.[87]

There was a lack of a hierarchical institutional integration which made coordination and collaboration in the implementation process difficult. This is a factor contributing to the implementation failure of a policy (Mazmanian and Sabatier 1989). 'The police see the prosecution as a separate institution. There is a strong *esprit de corps,* or institutional ego,

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[85] See article 66.
[86] Interview with Chuck Suryosumpeno, Head, Bandung City District Prosecution Office, 12 July 2006.
[87]Interview with Prof. Harkristuti Harkrisnowo, PhD, Professor of Criminal Law, the University of Indonesia, and Member of the Indonesia Law Commission, 7 June 2006.

among the law enforcers'.[88] Under the Old Order and at the beginning of the New Order regime, all police and prosecutors were under the jurisdiction of the court.[89]

Even though there was a pre-trial process against law enforcers who abused their powers, this was 'just a formality, which may be manipulated by the police. The pre-trial complaint was rarely won, as the police had full control of the process'.[90] If the law enforcer was tried in the pre-trial court, there were no legal sanctions placed on him. There were no effective controls for the abuse of their powers.[91]

Without effective control on the use of their powers, the street level enforcers often operated in 'a corrupted world of service' (Lipsky 1993:383), sometimes only promoting their personal interest. This constrained the law enforcement effectiveness (Liba 2002:32). One factor that might have induced the police to be corrupt was that 'if to become police they had to bribe, they [after becoming police] would be corrupt to pay the debt. …'.[92]

Not only the police abused their powers, 'many defence lawyers have become case brokers'.[93]For instance, a lawyer might conspire with the police, the prosecutor, and the trial judge to devise a weak indictment in order to acquit the accused.[94]

As a judge observed:

> When I was a judge at the district administrative court, I sometimes argued with the prosecutors. I hated their dishonest game…There was a frequent disharmony between the police and prosecutors. The fight was just about money [from the investigated case].[95]

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[88]Interview with Chuck Suryosumpeno, Head, Bandung City District Prosecution Office, 12 July 2006.
[89] Interview with Marina Sidabutar, Justice, the Supreme Court, 6 June 2006.
[90] Interview with Syaiful Aris, Director and lawyer, Surabaya Legal Aid, East Java, 15 August 2006.
[91]Interview with Syaiful Aris, Director and lawyer, Surabaya Legal Aid, East Java, 15 August 2006.
[92] Interview with a retired senior police officer, 13 June 2006.
[93]Interview with M. Eka Kartika, Vice Head, Bale Bandung District Court, former Head of Kuningan District Court, West Java, 12 July 2006.
[94]Interview with Andi Syahputra, Executive Secretary, Government Watch Jakarta, 21 July 2006.
[95] Interview with a Justice, the Supreme Court, 6 June 2006.

At street level the enforcers played a dishonest, corrupt game which deflected the attainment of the policy objective. They had wide discretion over the allocation of benefits and public sanctions and directly interacted with the parties in a corruption case, confirming what Lipsky (1993:381) has argued; they had a great opportunity to play the game. The KUHAP and the Anticorruption Law were defective in restricting and controlling the use of discretionary powers by the enforcers.

Since the problem of different perceptions between the law enforcers contributed to their poor performance, Marpaung (1992) conducted research investigating the nature of this problem. The following table shows how the police and the prosecutor differed in viewing the criminal process:

Table 4.3 **Different perceptions between the police investigators and prosecutors on the criminal process**

No	Police's perceptions	Prosecutors' perceptions
1	The prosecutor frequently gave unclear guidance. For example, he told the police to change X,Y,Z, but after we changed it he then told the police to change it into A, B, and C.	The police often did not correctly implement the guidance from the prosecutor; therefore we returned the investigation dossier to them back and back again. This wasted time.
2	The prosecution frequently did not understand that the investigation of general crimes was much more difficult than that of special crimes.	The police did not understand that the investigation of special crimes was much more difficult than that of general crimes and it needed special knowledge to investigate them.
3	The police had to be the principal investigator of crimes because we were responsible for the outcomes of the investigation.	The prosecution had to involve and participate in the investigation because our position was central and most responsible for the outcomes in the court.
4	The prosecutor frequently changed the charging articles of the law made by the police, weakening the outcomes and hard work of the police investigation.	The police frequently made a weak legal basis or charge for the investigation, weakening our position in the court. Therefore, we had to change the charge, for we were the most responsible in the court.
5	No one or institution had supervised the charging document unfiled or discontinued to the court by the prosecution, while the police could be pre-tried (*pra-peradilan*).	No one or institution could control the police if they did not return the investigation dossier to the prosecution. The number of unreturned investigation dossiers like this was thousands.
6	If the police were underperformed, the solution was to improve their performance, not change the system.	The underperformance of the police had to be backed up by a system that enabled the criminal process to be speedy and accurate.

Source: Adapted from Leden Marpaung 1992. *Proses Penanganan Perkara Pidana, bagian pertama, penyelidikan dan penyidikan*, Jakarta: Sinar Grafika, pp.76–7.

The reasons given by the prosecutors to return the investigation dossiers back to the police for completion or further investigation (pre-prosecution or *pra-penuntutan*) were:[96]

1. The applied criminal elements in the articles of the law for charging were incomplete.
2. Insufficient evidence.
3. Insufficient examination of witnesses and suspect.
5. Key witnesses were not questioned.
6. A person with potential to be a defendant was not included in the dossier.
7. The articles of the laws charged were not correct.
8. No arrest and detention warrants from court.

Therefore, both the police and the prosecutor have veto power to influence the criminal process, a factor which the top downers have argued as constraining the implementation effectiveness of a policy. The police can stop the investigation of a criminal case by not returning the investigation dossier to the prosecutor. On the other hand, the prosecutor can veto the criminal process by returning the investigation dossier to the police several times. In practice, the enforcers may corruptly sell these veto powers to the parties in a corruption case.

4. **The managerial factor**

The implementation failure of the Anticorruption Law 1971 under this category can be attributed to the dysfunctional management functions of the law enforcement institutions in managing the enforcement processes. This dysfunctionality can be tactical, functional or managerial.

Coordination between the enforcers in the enforcement process was a serious managerial problem. However, one of the sources of this coordination problem can be attributed to the failure of the KUHAP to hierarchically structure and integrate the enforcement process and

[96]See Mohammad 1996. *Koordinasi antara Penyidik dan Penuntut Umum Dalam Penyelesaian Perkara (suatu penelitian di wilayah pengadilan negeri Aceh Tengah)*, Tesis, Program Pascasarjana, Universitas Indonesia, p.100.

institutions, an important failure factor as argued by the refined top-down implementation theorists. Unlike the HIR, the KUHAP created a disintegrated rather than an integrated criminal justice system, fragmenting the activities of the investigation and the prosecution processes. Lack of coordination tended to make the enforcers reactive, not anticipative, in problem solving, which eventually created the enforcement difficulties.[97]

To tackle the coordination problem, the Supreme Court, the Attorney General's Office, and the National Police established a coordinating team called "MahKeJaPol" (*Mahkamah Agung, Kejaksaan, dan Kepolisian).*However, because of the independence issue of the court, the MahKeJaPol was deactivated. Moreover, according to the experience of a senior police officer, the approach of this team was more personalised than organisational:

> [The]Function of the MahKeJaPol was to coordinate the law enforcers, for example to discuss technical matters. It was created because of the coordination problem in the field. It was effective, but then it created a problem, as judges were independent. The approach, however, was more personal than institutional.[98]

The other problem, which badly affected the performance of the enforcers, was their inadequate salaries. President Suharto recognised this problem (Ministry of Justice 1971:48). The following table shows how the (regional) public servants were poorly paid:

Table 4.4 **Comparison of minimal monthly salary needs and official basic monthly incomes by classes of civil servants**

Type of regional official	Stated minimal monthly needs (average)	Official basic income (average)
Economic planners (54)	IDR 15,132	IDR 8,514
Higher level officials (157)	IDR 20,028	IDR 11,268
Lower level officials (146)	IDR 16,434	IDR 7,050
Sub district officers (226)	IDR 15,361	IDR 7,050

Source: Smith, T.M. 1971. 'Corruption, tradition and change,' *Indonesia*, 11(April):28.

[97]See also Long (2002:237).
[98]Interview with AKBP Djamal, Deputy Head, Central Jakarta District Police Office, 2 June 2006.

Under the Indonesian public service system the basic salaries of law enforcers were equal to other types of public servants including those of regional officials. Their basic salaries were determined according to the rank and duration of service. From the table we can see that the official average basic income of all types of regional officials were only half (51 per cent) of their stated minimal average monthly needs.

The officials were then asked to determine how large an increase in their salaries they would need to meet the basic needs of their families:

Table 4.5 **Responses of regional officials to the question: "How large an increase in salary would you need before you would decide to give up your extra-governmental jobs or before you could fulfill the needs of your family?"**

Class of civil servant	2 times or less	3 times	4 times	5 times	5+ times
Higher level officials (136)	35	48	23	16	14
Lower level officials (126)	34	39	22	14	17
Sub district officers (207)	55	57	39	31	25
Totals (469)	104	144	84	61	56
Percent	23.2	32.1	18.7	13.6	12.4

Source: Smith, T.M. 1971. 'Corruption, tradition and change,' *Indonesia*, 11(April): 29.

The table shows that 55.3 per cent of all classes of civil servants demanded an increase of two or three times their salaries before they would give up their extra-governmental jobs or before they could fulfill the needs of their families.

Judges were also poorly paid.[99] Therefore, 'the welfare of the law enforcers must be improved'[100], because 'it is unrealistic to expect poorly paid judges, prosecutors, and police' to combat corruption (Klitgaard 1998). To fulfil the needs of their families, the poorly paid

[99] Interview with Marina Sidabutar, Justice, the Supreme Court, 6 June 2006.
[100] Interview with Fadil Zumhana, Assistant Head, Division of Special Criminal Offences, High Prosecution Office, West Sumatra, 6 July 2006.

enforcers might have abused their powers, for example extorting the parties involved in a corruption case—corruption by need. As a result, this abuse of power might have eventualy deflected the attainment of the policy objectives.

The enforcers also had financial difficulties in meeting the operational costs of their enforcement activities. 'Their operational budget was limited to perform their duties effectively.'[101] Sometimes this difficult situation forced them to complement their limited operational budget by committing illegal activities such as corruption. '[T]he bottom level officials were acrobatic [to complement the limited resources and budget, sometimes by corruption]…'.[102] The lack of resources and limited budget forced the enforcers to prioritise the investigation of big criminal cases, excluding corruption cases; as a former senior police experienced:[103]

> The impediments for the law enforcement are, for example, lack of resources, limited investigation budget. Thus, sometimes there are cross-subsidies. For example, we first prioritised big cases such as murder than small cases. The problem is that the budget was given in the front, while the criminal offences were committed later after that.

The technology factor also had a role in impeding the implementation process. Poor technology and information systems slowed down the enforcement process. 'Our bureaucracy is still manually operated, therefore inefficient. Information technology system is not yet implemented. One legal case could take two or three months to complete.'[104]

Another important managerial problem was the poor skills of the enforcers in handling criminal cases such as corruption. Generally considered a human resources-related problem, this had, however, been identified as one of the 14 key factors that impeded the effective

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[101] Interview with Asep Rahmat Fadjar, Expert to the Indonesian Judicial Commission, former Executive Director of the Indonesian Society for Court Monitoring, 24 July 2006.
[102] Interview with Lieutenant General (retired) Koespramono Irsan, former Vice Chief (Deputy Operation) of the National Police, professor in the National Police Institute), 13 June 2006.
[103] Interview with Kombes Dr. Iza Fadri, Head, Legal Division, National Police Headquarter, 23 May 2006.
[104] Interview with informant B, 'street level' Head of District Prosecution Office B, 11 July 2006.

enforcement process in Indonesia (Liba 2002:31). Lopa (1991:93), the then Minister of Justice and Attorney General, also observed a lack of skills in law enforcement-related activities. For instance, some of the enforcers failed to correctly understand the Anticorruption Law 1971 (Hamzah 1991:17). This was evident when the Justices panel of the Supreme Court acquitting the defendant in State vs. Sabar Soediman corruption case annulled the decision of the Bandung District Court judges' decision due to the Bandung judges' incorrect understanding of the meaning and scope of 'extortion'.[105] This confirms what the refined top-down implementation theorists prescribed: that skillful implementing officials are an important factor for effective policy implementation.

Lack of specialisation in certain substantive law areas was also a key factor in the implementation failure of the Anticorruption Law 1971. For instance, one of the problems leading to different perceptions between the prosecutor and judges was that there was no specialisation among judges. A judge might see a corruption case more as a matter of a contract under civil law than consider it from a criminal perspective.[106]

The other managerial problem might have also contributed to the implementation failure. For example, '...some of the police did not have motivations to improve their skills and the number of the police was not enough to do the police jobs.'[107] Perhaps, this lack of motivation was because the enforcers were poorly paid. Therefore, '...we should consider improving the incentives for the law enforcers to better perform their duties in combating corruption...'.[108] This problem might also be associated with the failure of the enforcement

[105]See State vs. Sabar Soediman case, Supreme Court Decision Number 97 K/Kr./1973 annulling Bandung District Court Decision Number 23/Pid./1970.
[106]Interview with Dr. Marwan Effendi, SH., Director, Special Crime Directorate, Attorney General's Office, 4 July 2006.
[107]Interview with Situmorang, Head, East Jakarta Police District Office, 18 May 2006.
[108]Interview with Timbul Manulang, Head, Tenggarong Kutai District Prosecution Office, East Kalimantan, 27 July 2006.

leadership to communicate with and motivate subordinate enforcers to improve their skills. This leadership problem was one of the 14 major obstacles in the Indonesian poor performance of the law enforcement (Liba 2002:41).

Poor timing and strategy also had a major influence in effecting law enforcement (Ismail 1990:85). For instance, because of the slow process in deciding appeal cases the Supreme Court had issued Circuit Letter Number 4/1973 on Appeal or Cassation of Criminal Cases and Clemency to speed up the process (Soedirjo 1981:136). In a corruption case, in particular, timing is important since the suspect or accused may destroy the evidence or quickly transfer the stolen assets.

Development of a good strategy is also an important factor for effective policy implementation (Shergold 2004:4). The New Order regime adopted the wrong strategy by overemphasising the use of repressive approaches to control corruption. The use of repressive approaches only will not tackle the root causes of the corrupt opportunities. The regime should have adopted an integrated preventive, repressive and educational approach to effectively eradicate corruption.

5. **The societal factor**

Under the New Order regime, civil society was underdeveloped. People's participation in the governance process was weak. This weakened the role of social control in the enforcement of the Anticorruption Law.

In the New Order era, public participation in corruption eradication was not strong.[109] 'Our mouths were shut up'.[110] One anticorruption activist commented:

> One of the important factors in the eradication of corruption is the people participation. This participation was absent in the Suharto era. Not only the common people would be intimidated [in exposing a corruption case], but even the elites in the society would face the powerful official. For example, Mr. X [his real name was unidentified by the author] was kidnapped for 13 months without any reasons as he fought for the farmers...[111]

Formally, however, the president in his State Speech before the People's Consultative Assembly on 16 August 1970 stressed the important role of the people's participation in combating corruption.[112] Conversely, in reality under the New Order authoritarian regime no one could compete with the ruler. Critics of the regime would be viewed as a threat by the ruler, and therefore discouraged or intimidated. Civil societies and other forms of political forces, which are vital in the functioning of democracy and in controlling the government's integrity, were coopted and disabled.'All parties except three state-sanctioned amalgamated ones were banned. Independent labour unions, critical NGOs, and activist student groups were largely proscribed, although not obliterated...'(Weiss 2007: 34).

The People's Consultative Assembly through its Decision Number XI/MPR/1998 on Administration of the State Clean and Free from Corruption, Collusion and Nepotism, therefore, formally recognised that under the New Order regime social control, which was vital to form a clean government, was weak.[113]

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[109]Interview with FX Soehartono, Vice Head, East Java Province Prosecution Office, 15 August 2006.
[110]Interview with Abdul Rachim, Judge, District Court of Bekasi, West Java, 20 June 2006.
[111]Interview with Wawan E. Prasetyo, Anticorruption Activist, Bali Corruption Watch, 7 August 2006.
[112]See State Speech of the President of the Republic of Indonesia, 16 August 1970 in Directorate General for Legal Development, Ministry of Justice 1971, p.48.
[113]See Decision of the People's Consultative Assembly Number XI/MPR/1998 on Administration of the State Clean and Free from Corruption, Collusion and Nepotism.

To some extent, however, the public pressure was successful in forcing the government to meet the people's demand to combat corruption. The president in his State Presidential Speech at Plenary Cabinet Meeting on 30 January 1970 formally recognised that the proposed enactment of the Anticorruption Law 1971 was to meet the people's demand. However, this government's response usually took place after strong public pressure. The Anticorruption Bill was proposed after there was a massive student protest against the rampant corruption practices in the government. Thus, the changes in socioeconomic conditions, an important factor influencing policy implementation as argued by the refined top-down implementation theorists, had forced the regime to propose the Bill.

On the other hand, the change in economic conditions was used by the regime to discourage the people from controlling the government. Under the New Order regime, Indonesia had experienced high economic growth.' The people were silenced by the high economic growth, and therefore the unemployment was absorbed...'.[114] Moreover, the high economic growth had triggered high inflation, causing the real income of the public servants, which was already low, to fall further. To meet their basic needs in this difficult situation, therefore, they committed corruption, which had further widened the scope of rampant corruption. Saljo, a representative from *Golongan Karya* speaking before the Parliament on the government's Bill on Anticorruption, warned of this bad effect of inflation. The economic changes had weakened the support from the public officials, in particular the enforcers, to combat corruption.

The most serious problem, which might have constrained the implementation effectiveness of the Anticorruption Law, was that society was tolerant of corruption.[115] Even worse,

[114]Interview with Adnan T. Husodo, Deputy Coordinator, Indonesian Corruption Watch, July 2006.
[115]Interview with Prof.Dr Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of Anticorruption Law

former Vice President Muhammad Hatta famously said that corruption in Indonesia had been the culture of the people. 'Corruption was very difficult to combat because it had become the culture of the people. People encouraged it to happen'.[116] Liba (2002:36) observed that this cultural factor was one of the 14 obstacles to effective enforcement. '[D]ealing with endemic corruption requires sensitivity to the social contexts which nurture it…'(Lovell 2005:67).

There were other important social factors leading to implementation failure, for example, anticorruption values and honesty in families. 'A judge can be bribed or not, it depends on his value and education in his family…'.[117] Lack of practicing religion was also an important factor (Liba 2002:37).

All these social factors, therefore, made the deterrent effects of the anticorruption law enforcement marginal (Lopa 1994). Since the Indonesian society did not subject corrupt behaviour to shame, this behaviour flourished and tended to be internalised as a group's norm within the bureaucracies, a phenomenon which supported John Braithwaite's theory of reintegrative shaming (Larmour and Wolanin eds 2001).

F. Implementation as an integral function of the authoritarian political system

> "Corruption is closely linked to the social and political system…".[118]
> (Prof.DR Bagir Manan, Chief Justice and President of the Supreme Court, Professor of Administrative Law, Padjadjaran University)

1999, Delegate to United Nations Convention against Corruption, and Professor of International Criminal Law of Padjadjaran University, 12 June 2006.

[116]Interview with Heni Wahyu Puwarti, Prosecution Section Head, Yogyakarta Province Prosecution Office, 1 August 2006.

[117]Interview with Marina Sidabutar, Justice, the Supreme Court, 6 June 2006.

[118]In an interview with me, 21 June 2006.

The previous analyses of the factors viewed the implementation failure from microperspectives; this section analyses this failure from macroperspectives, that is, the implementation failure as an integral function of the New Order regime's authoritarian political system. Under this authoritarian political system, the implementation structure and process were defective in effectively implementing the Anticorruption Law 1971.

Constitutionally, such defectiveness can be attributed to the 1945 Constitution which opened the way for the authoritarian New Order regime to emerge. This executive-heavy constitution[119]centred the power on the president, and was, therefore, prone to abuse. Prof.Miriam Budiardjo, leading political scientist at the University of Indonesia and former Vice Chaiperson of the National Commission on Human Rights, supported this argument:

> The 1945 Constitution had conditioned the emergence of the authoritarian rule. During the Suharto rule, several articles of the Constitution were used to support the military regime, for example, abusing the principle on consensus for agreement [*musyawarah mufakat*]. All of these were based on the Constitution. These were the weaknesses of our constitution.[120]

The People's Consultative Assembly, through its Decision Number XI/MPR/1998 on Administration of the State Clean and Free from Corruption, Collusion and Nepotism, formally stated this centralised power. The Assembly further proclaimed that centralised power in the hands of the president eventually made the state institutions dysfunctional.

Under the authoritarian New Order regime, political institutions, which were vital to control the government abuse of power, had been co-opted. For example, Law Number 16/1969 on Structures and Status of the People's Consultative Assembly, the House of Representatives, and Regional Legislatures had given the president the power to appoint a significant number

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[119]See Konsorsium Reformasi Hukum Nasional and Lembaga Kajian dan Advokasi untuk Independensi Peradilan 1999. *Menuju Independensi Kekuasaan Kehakiman, position paper*, Jakarta: Indonesian Center for Environmental Law, p.19.

[120] In an interview with me, 17 June 2006.

of the members of the House of Representatives. Furthermore, under Law Number 8/1985 on Mass Organizations civil society organisations were co-opted under strict corporatist control of the regime, both organisationally and ideologically.

Administratively and organisationally, the Police Law 1961, the Prosecution Law 1961, the Court Law 1965, and the Judicial Power Law 1970 also gave the president or the executive branch of the government the power to tightly control these law enforcement institutions. Under the New Order authoritarian regime, therefore, the elite who tightly controlled the judiciary and enforcement agencies had the capacity to engage in corrupt activity with impunity.[121]

Under Suharto's authoritarian rule, public servants and politicians had strong incentives to engage in corrupt activities as the cost of committing these wrongdoings was lower than the benefits. As a result, 'in the Suharto era, the anticorruption measures were not effective because corruption occurred in the top level of government'.[122]

To promote and protect his power and economic interests, Suharto, as the holder of a single monopolist power, had the capacity to control his deviant agents and would selectively punish them (MacIntyre 2001).Thus, the regime would use the anticorruption measures as a political strategy to keep the ruler in power (Brata 2007c). In this political framework, therefore, 'it was impossible that the law enforcers were able or wanted to process the corruption cases if the effect [was] that they would be dismissed. It was because Suharto was so powerful. He had the capacity to control the corrupt activities.'[123]

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[121] See Goudie and Stasavage (1998:124).

[122]Interview with Prof.Dr.Mahfud MD, Member of Commission III of the House of Representatives, former Minister of Justice, former Minister of Defense, Professor of Constitutional Law, 1 June 2006.

[123]Interview with Adnan T. Husodo, Deputy Coordinator, Indonesian Corruption Watch, July 2006.

Under this centralised authoritarian regime, a patron-client relationship between the elite and their supporters then emerged.[124] As a result, the political system was prone to political corruption.[125]What was called 'purchase of loyalty' between key government officials and important figures of political parties frequently occurred, involving money politics. In this mode of corruption, the party figures gave their loyalty to the rulers; in return, the government officials granted them privileges and financial benefits. The purchase of loyalty also happened between key party figures and their lower officials or followers.

More importantly, in this patron-client relationship the enforcement institutions themselves, which were crucial in combating corruption in the public sector, were not immune to corruption. Corruption not only existed, it was chronic, and became known as the court mafia.[126] The way the court mafia operated, for instance, could be by negotiating the decision with the judges in the district and high courts who were in charge of trying a case, or by delaying the court proceedings, decision, or the notification of this decision to the parties. The field operator coordinated these operations with the police, prosecutors, and judges.[127]

Under the authoritarian regime, 'the military enjoys a monopoly over state coercive power…' (*The editors* 1998:180). This led to a substantial depoliticisation of the masses (Crouch 1979:576). The military was repressive, so no one might challenge the regime.[128] Suharto and the military effectively controlled the workings of the enforcement institutions

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[124]See Decision of the People's Consultative Assembly Number XI/MPR/1998 on Administration of the State Clean and Free from Corruption, Collusion and Nepotism.

[125]See Proceedings of Panel Discussion on Corruption and Development, organized by Student Council, the University of Indonesia, 10–12 August 1970.

[126] Interview with Andi Syahputra, Executive Secretary, Government Watch Jakarta, 21 July 2006.

[127]Interview with Asep Rahmat Fajar, Secretary General of the Indonesia Court Monitoring Society and Expert of the National Judicial Commission, 24 July 2006.

[128]Interview with Prof. Miriam Budiardjo, MA, Professor Emeritus of Political Science, the University of Indonesia, former Vice President of the National Commission on Human Rights, 17 June 2006.

through the influence of his military men. Therefore, in the New Order era, the formal structures of the anticorruption institutions came from the state[129], that is, from the regime. Under this defective implementation structure, the influence of the armed forces on the police performance was significant. Structurally, the chief of the armed forces might intervene in the investigation of criminal cases.[130] Andi Hamzah further described how the military had the power to control the police:

> The police force has been separated from the prosecution institution since the Sukarno (Old Order) era. It was called 'the Police Command' (*Angkatan Kepolisian*). Under the Suharto regime, this separation policy was continued, and the police were placed under the command of the chief of the armed forces. The chief of the armed forces did have the power to instruct the chief of the national police to stop criminal investigation.[131]

The military regime not only controlled the police institutionally, but also culturally. The police culture, Irsan said[132], became militaristic, meaning their thinking patterns were militaristic and they treated the wrongdoer as an enemy. The upper structure officials or commanders, he further said, always told the bottom level officials to execute their orders. Under the armed forces, the police were told to implement the militaristic 'Sapta Marga' doctrine, which obliged them to follow the commands of their superiors.[133]This defective implementation structure, Irsan said, '... influenced badly to the performance of the police'.

The prosecution was also placed under the control and influence of the authoritarian, militaristic regime. 'In 32 years, we were 'trapped' in a militaristic regime. From about 19 Attorney Generals, most of them were from the military, and the system implemented in the

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[129]Interview with Prof.Dr.Mahfud MD, Member of Commission III of the House of Representatives, former Minister of Justice, former Minister of Defense, Professor of Constitutional Law, 1 June 2006.

[130]Interview with Lieutenant General (retired) Prof. Koespramono Irsan, Operational Deputy to National Police Chief, 1 June 2006.

[131]Interview with Prof.Dr. Andi Hamzah, SH., Chief Legal Drafter/Head of the Legal Drafting Team of the Anticorruption Laws 1999 and 2001, and of the Revised Criminal Procedural Law, 24 May 2006.

[132]Interview with Lieutenant General (retired) Prof. Koespramono Irsan, Operational Deputy to National Police Chief, 13 June 2006.

[133] Interview with Situmorang, Head, East Jakarta Police District Office, 18 May 2006.

Attorney General's Offices was partly militaristic…'.[134] Under this military leadership, the culture of these offices became militaristic. 'Even though not purely militaristic, the culture did have effects on our institution'.[135] Suharto, as the supreme commander of the armed forces, and the ruling military elite in the government, had strong influence on the work of the prosecution. Under this military-like, top-down implementation structure and leadership, sometimes the prosecution '…received an 'instruction letter' [*katabeletje or surat sakti*] from the powerful in the central government [which, for example, told the prosecutor to stop the investigation and prosecution of a corruption case]. It was difficult to say no'.[136] As a result, this military-like implementation structure and process, which was also based on the corrupt patron-client relationship, was defective in effectively combating corruption.

Like the police and the prosecution, the court, based on the Court Law 1965, also gave the president or the executive branch of the government the power to tightly control the judiciary. Under this Law, the president or the Minister of Justice, on the advice of Chief Justice of the Supreme Court, had the power to appoint and dismiss judges.[137] Furthermore, the government, through the Minister of Justice, had the power to determine the salaries and allowances for judges.[138] Thus, '…in the New Order period, the welfare of the judges and the finance of the courts were administered by the Department of Justice. 'So our head was in the Supreme Court, but our stomach was in the Department of Justice…'. [139] The judges were not financially independent from the executive branch of the government, an institutional defectiveness which might be used by the executive to intervene in the trial of a corruption case, for instance. Moreover, '…from cultural perspectives, there must be a

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[134]Interview with Chuck Suryosumpeno, Head, Bandung City District Prosecution Office, 12 July 2006.
[135]Interview with Chuck Suryosumpeno, Head, Bandung City District Prosecution Office, 12 July 2006.
[136]Interview with a senior prosecutor, 19 June 2006.
[137] Article 3.
[138] Article 5.
[139] Interview with Fadhly Ilhamy, Judge, Jakarta High Court, 7 July 2006.

process [of changing the mental attitudes of judges]. This means the already rooted culture of dependency of the judges on the government must be changed. It was difficult.'[140]

On the advice of the Supreme Court, the Minister of Justice had the power to dismiss judges of district and high courts, for the reason, for example, of their incapability to perform duties.[141]Moreover, the Department of Justice had the key role in promoting judges of the district courts and the high courts.[142] In addition, on the advice of Chief Justice of the Supreme Court, the president might temporarily dismiss and relieve such dismissal of Justices of the Supreme Court.[143] In practice, however, this executive power of appointment and dismissal created problems:

> Many problems if the administration of the court [and career of the judges] was in the hands of two institutions. For example, in the promotion of a judge, the Department of Justice and the Supreme Court must first agree [the promotion]...The Department of Justice did not know the quality and behaviour of the judge...But, whether a judge might have been given a good house or travel overseas, it was in the hands of the Department of Justice...For the promotion and career of judges we had MahDep [a joint committee of the Supreme Court and the Department of Justice]. The decision was 50/50. But in practice, the Department of Justice had more power as they had the money....[144]

The president also had the power to intervene in the judicial process. In the case of his doing so, the judge panel, without making any decision, at once dismissed the decisionmaking process and publicly announced the president's intervening decision.[145]

In sum, under the New Order regime's authoritarian political system and leadership, the implementation structure and process to effectively enforce the Anticorruption Law 1971 were defective. As a result, they provided an opportunity for the elite and the enforcers to abuse the enforcement process, making the already chronic problem of corruption worse.

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[140] Interview with Dr. Artidjo Alkostar, SH., LLM, Justice, the Supreme Court, 6 June 2006.
[141] Article 10.
[142] Interview with Fadhly Ilhamy, Judge, Jakarta High Court, 7 July 2006.
[143] Article 12.
[144] Interview with Fadhly Ilhamy, Judge, Jakarta High Court, 7 July 2006.
[145] Article 23.

Instead of combating corruption, the regime's government and the enforcement institutions themselves faced a serious corruption problem, which disabled their capacity to combat corruption.

The People's Consultative Assembly, through its Decision Number 11/1998, then claimed that the centralised authoritarian political system and the practice of corruption, collusion and nepotism had made the state institutions dysfunctional. This eventually led to the collapse of the authoritarian New Order regime on 21 May 1998, ending the 32-year rule of President Suharto.

G. Conclusion

From the implementation outcomes, it was evident that the authoritarian New Order regime failed to achieve the policy objectives of Anticorruption Law 1971 to combat and reduce corruption in the public sector.The outcomes failed to meet the four evaluation criteria. First, the people still perceived rampant corruption in the public sector. Second, the recovered stolen state assets were not significant. Third, the public did not have confidence in the capacity and integrity of the criminal justice system to combat the endemic corruption. Finally, there were no significant changes in the anticorruption attitudes of the people, in particular public servants and law enforcers. On the contrary, based on the TI CPI, Indonesia under the New Order regime was always perceived as one of the most corrupt countries surveyed.

In general, the failure can be associated with the defective implementation structures and processes of effectively implementing Anticorruption Law 1971. By policy design, the Anticorruption Law 1971 failed to legally structure the implementation process, thus supporting the argument of the refined top-down implementation theorists. The failure factor

under the political category has shown that the regime failed to establish the political institutions and leadership conducive to effective implementation of the Anticorruption Law. Institutionally, the failure can be attributed to the defective institutional framework constraining the enforcement effectiveness of the Anticorruption Law. Under the managerial factor, the failure can be associated with the dysfunctional management functions of the law enforcement institutions in managing the enforcement processes. Whereas the failure under the societal factor category has demonstrated that under the New Order regime, civil society was underdeveloped, thereby weakening the role of social control in the enforcement of the Anticorruption Law.

From the macroperspectives, however, the implementation failure can be functionally attributed to the defective authoritarian political system and leadership of the New Order regime.Therefore, while the microperspectives of the refined top-down implementation model partly explains the New Order regime case, the macroperspective approach, which links the integral functional relationship between the implementation failure and the authoritarian political system of the New Order regime, broadens the understanding of this case.

Chapter 5
Implementation of the Anticorruption Law 1999 of the democratic Reform Order regime[146]

A. Introduction

This chapter evaluates the implementation effectiveness of Anticorruption Law Number 31/1999 in attaining its policy objective of combating corruption in the public sector under the democratic Reform Order regime. Because this is a comparative case study, the policy objective-related criteria employed in the evaluation of the implementation effectiveness of Anticorruption Law 1971 will also be applied in this evaluation.They are as follows:

1. Strong positive perceptions by the people of the decreasing level of corruption in the public sector.
2. Significant recovery of state assets losses.
3. Significant increasing public confidence in the capacity of the criminal justice system to combat corruption.
4. Strong anticorruption attitudes of the people, in particular, public servants.

The part of the central research question that will be investigated and answered in this chapter is: to what extent and for what reasons was the implementation of Anticorruption Law 1999 of the democratic Reform Order regime ineffective in achieving its legally mandated objectives? However, as the chapter has pre-judged that the implementation of the Anticorruption Law 1999 failed, it will focus more on the reasons contributing to this failure. It argues that defects in the implementation structures and processes were the primary explanatory factor for this failure.

[146]Parts of this chapter were presented at Indonesia Council Open Conference, Melbourne, 24 September 2007.

This chapter consists of six main parts. First, it describes the nature of the regime's democratic political system according to the reformed 1945 Constitution. Next, anticorruption measures the regime employed will be mapped. The implementation outcome of this 1999 Law is discussed in the next section. The factors contributing to the implementation ineffectiveness of the 1999 Law, which is the central focus of this chapter, will then be identified and examined.

The functional relationship between the democratic political system of the regime and implementation ineffectiveness of the 1999 Law will also be discussed, reflecting the macroperspective evaluation approach of the thesis.The chapter concludes by highlighting the most important research findings related to the implementation outcome and ineffectiveness factors of the 1999 Law, and discussing these findings in relation to the theories introduced in Chapter 2.The findings and analyses in this chapter will become an integral part of Chapter 6, which examines and compares case studies of the New Order regime presented in Chapter 4 and those of the Reform Order regime in this chapter.

B. The democratic political system: reforming the constitutional power structures and relations

Responding to changing societal developments and the political, democratic demands of reform movements, in particular those of students, the Reform Order regime amended the 1945 Constitution four times, in four years. At the beginning of the reformation movements, university students strongly voiced three demands: bring former President Suharto to justice, abolish the dual political and defence functions of the armed forces, and amend the 1945 Constitution (Alrasid 2004:183). The first amendments were enacted on 19 October 1999 under President Habibie. The second were adopted on 18 August 2000 under President Wahid; and the third and fourth amendments were passed on 9 November 2001 and 10

August 2002 under the presidency of Megawati Sukarnoputri. However, some political and societal factions still perceived problems in the reformed 1945 Constitution and proposed further amendments.

The amended 1945 Constitution significantly reformed the power structure and institutions of Indonesian governance. It affected the structure, relations, and institutions of the People's Consultative Assembly (MPR), President, House of Representatives (DPR), Supreme Court (MA), regional governments, and Supreme Auditor General (BPK).The amended Constitution also created new state powers, namely House of Regional Representatives (*Dewan Perwakilan Daerah*, DPD), Constitutional Court (*Mahkamah Konstitusi*, MK), and Judicial Commission (*Komisi Yudisial*, KY). However, it abolished the Supreme Advisory Council (DPA). Under this reformed Constitution, new detailed provisions on elections and human rights were now enacted.

The powers of the MPR were now reformed. This important state institution was composed of all members of DPR and DPD, whose all members were now directly elected.[147]All decisions of the MPR must be made by majority voting.[148] As representatives of the people, this state body has the power to make and amend the state's constitution.[149] The important power granted to this state organ is the power to impeach the president and/or vice president during their term of office. Impeachment must be[150] based on a proposal from DPR, on the grounds that the president and/or vice president have been convicted of committing treason, corruption, bribery, other serious crimes, or immoral acts, or they no longer met the constitutional requirements of their office.[151]

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[147] Article 2 (1), First Amendment.
[148] Article 2 (3).
[149] Article 3 (1), Third Amendment.
[150] Article 3 (3) Third and Fourth Amendment.
[151] Article 7A, Third Amendment.

The president holds the executive powers of the government.[152] The president and vice president have limited terms of office (five years) and may be re-elected, for only one additional five-year term.[153] The president has the right to propose a bill, including a bill on governmental budget[154], to the House of Representatives[155], and also has the power to enact government regulations.[156] The president is the chief commander of the armed forces.[157] Taking into account the advice from the Supreme Court, s/he has the power to grant clemency and rehabilitation to convicted offenders.[158] S/he also has the power to grant amnesty and abolition, considering first the advice from the House of Representatives.[159]

The people now directly elect the president and vice president[160], governors, mayors, and district heads through political party mechanism.[161] In practice, regional elections have resulted in completely new power structures and changed relations in regional politics, which often challenge the established traditional, *aliran*-[sectarian] based party politics (Tomsa 2006:1–2).

An important check to the powers of the president is that s/he has no power to freeze or dissolve the House of Representatives.[162] The powers of the president to establish, restructure, and liquidate state ministries are now under check by the parliament, requiring the president to formalise his or her policy through an act of the parliament.[163]

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[152] Article 4 (1).
[153] Article 7, First Amendment.
[154] Article 23 (2), Third Amendment.
[155] Article 5 (1), First Amendment.
[156] Article 5 (2).
[157] Article 10.
[158] Article 14 (1), First Amendment.
[159] Article 14 (2), First Amendment.
[160] Article 6A (1), Third Amendment.
[161] Article 6A (2), Third Amendment.
[162] Article 7C, Third Amendment.
[163] Article 17 (4), Third Amendment.

Under the political framework of the Reform Order governments, the House of Representatives (DPR) now has strong powers to check the powers of the executive branch of the government. DPR has legislative, budget, and supervisory powers.[164] In exercising its constitutional powers, DPR has the right to question the executive (*hak interpelasi, angket, and menyatakan pendapat*).[165] Members of DPR have the right to immunity, to question the government[166], and to propose a bill.[167]DPR and president must jointly agree to each proposed bill.[168] If the president does not approve the agreed bill, within 30 days it then effectively becomes law.[169]

The DPR has other important powers. It has the indirect power to impeach the president by proposing impeachment to the MPR if the president is proven guilty of constitutional crimes.[170] DPR also has the power to reject a bill on governmental budget proposed by the executive.[171] Due to this much stronger power of DPR, 'at the level of formal rules, there is simply no denying that the next president should have an immensely stronger hand in dealing with parliament…'(Slater 2004:78).

One of the constitutional state organs important in combating corruption in the public sector is the Supreme Auditor General (*Badan Pemeriksa Keuangan*, BPK), which has constitutionally existed since Sukarno's Old Order regime. Members of this body are elected by DPR, taking into account the opinions and recommendations of DPD.[172] The leadership of this body is elected from and by BPK's members.[173] It has the power to audit the use and

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[164] Article 20A (1), Second Amendment.
[165] Article 20A (2), Second Amendment.
[166] Article 20A (3), Second Amendment.
[167] Article 21, First Amendment.
[168] Article 20 (2), First Amendment.
[169] Article 20 (5), Second Amendment.
[170] Article 7B (1), Third Amendment.
[171] Article 23 (2), Third Amendment.
[172] Article 23F (1), Third Amendment.
[173] Article 23F (2), Third Amendment.

management of state finance.[174] This audit body is accountable to DPR, DPD, and DPRD (Regional Representative Councils, *Dewan Perwakilan Rakyat Daerah)*.[175]

Under the Reform Order regime, the powers of the judiciary have also undergone significant reforms. The reformed Constitution declares that judicial power is an independent power to enforce laws and administrate justice.[176] The judicial powers are held and exercised by the Supreme Court (*Mahkamah Agung*, MA) and its subordinate courts including general and specialised (military, religious, and administrative) courts, and by the Constitutional Court (*Mahkamah Konstitusi*, MK).[177]

Candidates for Justices of the Supreme Court are proposed by the Judicial Commission to the House of Representatives for approval.[178] The Chief Justice and Vice Chief Justices of the Supreme Court are elected from and by Justices of the Supreme Court.[179] The Supreme Court has the powers to examine the decisions of subordinate courts and review legislation against laws.[180] Junior Chief Justice Kamil explains the relations between the Supreme Court and the lower courts, as follows:[181]

> Theoretically, the Chief Justice of the Supreme Court may intervene in the judicial matters of the lower courts. The Judicial Power Law 1999 has prevented this intervention. The Law states that the Supreme Court is the highest judicial supervisory body. It may instruct, warn, and guide the lower courts and their judges. However, the Law stipulates that supervision must not reduce the independent autonomy of judges. According to this Law, the Supreme Court has supervisory powers in two areas: technical and nontechnical.The technical supervision covers all judicial matters starting from judicial administration; while nontechnical ones deal with the conducts of judges.

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[174] Article 23E (1), Third Amendment.
[175] Article 23E (2 and 3), Third Amendment.
[176] Article 24 (1), Third Amendment.
[177] Article 24 (2), Third Amendment.
[178] Article 24A (3), Third Amendment.
[179] Article 24A (4), Third Amendment.
[180] Article 24A (1), Third Amendment.
[181] In my interview with Iskandar Kamil, Junior Chief Justice, Criminal Division, the Supreme Court, 29 June 2006.

Two newly created constitutional institutions which are important in anticorruption and Indonesia governance are the Judicial Commission (*Komisi Yudisial*, KY) and Constitutional Court (*Mahkamah Konstitusi*, MK). Members of the Judicial Commission are appointed and dismissed by the president based on approval from the House of Representatives.[182] The Judicial Commission is an independent body and has the power to propose the appointment of Justices of the Supreme Court and other powers to protect the integrity of judges.[183] However, the Supreme Court and the Judicial Commission have different interpretations on the authority of the Judicial Commission:

> The Judicial Commission has the authorities in two fields: recommend the appointment of Justices of the Supreme Court and protect the honour of judges. However, the Commission then interpreted the protection of judges' honour to include the handling of court cases. The Supreme Court opposed that. The Commission then proposed an act to the DPR to extend its powers.[184]

The Supreme Court, the House of Representatives, and the president each propose three candidates for Justices of the Constitutional Court.[185] The Chief Justice and Vice Chief Justices of the Constitutional Court are elected from and by its Justices.[186] As the first and final instance court, the Constitutional Court has the power to review laws which are against the Constitution. To guard the Constitution, this court is equipped with the power to check the use of the executive powers.

The Constitutional Court has power to decide constitutional disputes between state bodies; dissolve political parties; and try electoral disputes.[187] In the impeachment process initiated by the House of Representatives, this court is obliged to decide alleged constitutional crimes committed by president and/or vice president.[188]

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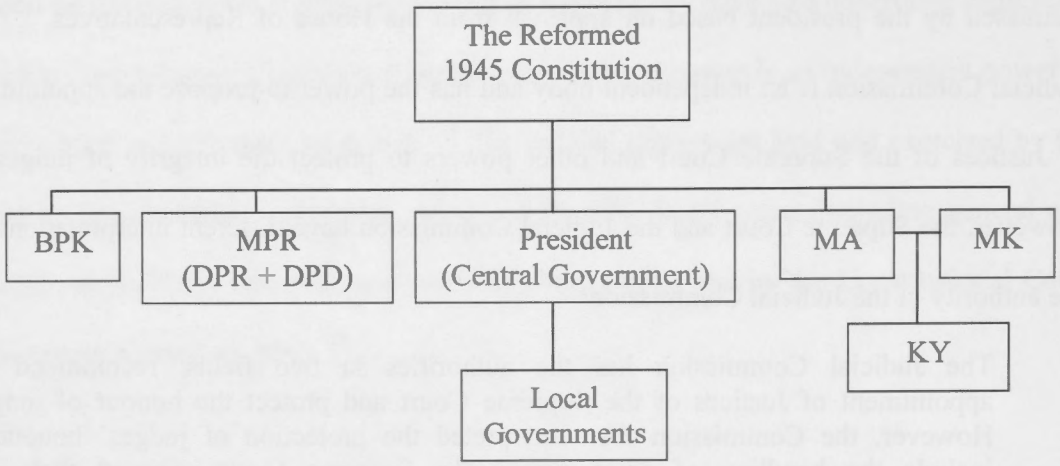
[182] Article 24B (3), Third Amendment.
[183] Article 24B (1), Third Amendment.
[184] In an interview with Iskandar Kamil, Junior Chief Justice, Criminal Division, the Supreme Court, 29 June 2006.
[185] Article 24C (3), Third Amendment.
[186] Article 24C (4), Third Amendment.
[187] Article 24C (1), Third Amendment.
[188] Article 24C (2), Third Amendment.

The following reflects the constitutional structure of the state organs based on the amended 1945 Constitution:

Figure 5.1 **Reformed constitutional structure of the state organs**



BPK, *Badan Pemeriksa Keuangan* (Auditor General)
MPR, *Majelis Permusyawaratan Rakyat* (People's Consultative Assembly)
DPR, *Dewan Perwakilan Rakyat* (House of Representatives)
DPD, *Dewan Perwakilan Daerah* (Regional Representative Council)
MA, *Mahkamah Agung* (Supreme Court)
MK, *Mahkamah Konstitusi* (Constitutional Court)
KY, *Komisi Yudisial* (Judicial Commission)

Important human rights provisions, crucial for people's participation in combating corruption, are stipulated in the amended Constitution. Every person has freedom of association and expression.[189] The right to legal protection, justice, and equality before the law are guaranteed.[190] Every person has the right to communicate, obtain, own, process, and disseminate information.[191] He or she must also have fair and equal access to justice.[192] Every person also has the right not to be tortured or tried *post factum* based on retroactive law[193], and is free from fear[194] and discrimination.[195]

[189] Article 28E (3), Second Amendment.
[190] Article 28C (1), Second Amendment.
[191] Article 28F, Second Amendment.
[192] Article 28H (2), Second Amendment.
[193] Article 28I (1), Second Amendment.
[194] Article 28G (1), Second Amendment.
[195] Article 28I (2), Second Amendment.

However, as Budiardjo has observed, even though 'the Reform government has institutionalised democratic constitutional framework, democracy takes time to mature. The West took hundred years for democracy'. [196]

C. Anticorruption measures

Mapping the history of anticorruption measures of the Reform Order regime.[197] Responding to the people's demands, the Reform Order regime adopted anticorruption policies directed at creating a clean government which implements good governance principles. Under the administration of President Habibie (1998–1999) notable anticorruption measures were adopted. In 1998, shortly after the resignation of President Suharto, the regime staged a plenary session of the People's Consultative Assembly (MPR) which ended with the promulgation of the Assembly's Decision Number XI/MPR/1998, demanding the creation of a good and clean government, free of corruption, collusion, and nepotism (*Korupsi, Kolusi dan Nepotisme* or KKN). The administration implemented this Decision through the enactment of Law Number 28/1998 on Clean Government. The vital Anticorruption Law Number 31/1999, which revoked Anticorruption Law Number 3/1971, was subsequently introduced.

Abdurrahman Wahid's administration (1999–2001) also took crucial steps towards combating corruption. Based on Presidential Decree Number 127/1999 the president formed the Commission on State Officials' Asset Audit. A presidential decree regarding a standardised audit of state officials' assets, dated 13 October 1999, was then enacted. In 2000, Wahid also promulgated Presidential Decree Number 44/2000 establishing the

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[196] In an interview with Prof. Miriam Budiardjo, MA, Professor Emeritus of Political Science, the University of Indonesia, former Vice President of the National Commission on Human Rights, 17 June 2006.

[197] See also Tempointeraktif. 'Pemberantasan Korupsi dari Masa ke Masa' 25 October 2004, www.tempointeraktif.com.

National Ombudsman Commission. A joint anticorruption task force was formed under Government Regulation Number 19/2000. However, Yahya Harahap, former Justice of the Supreme Court and a defendant in a bribery case who was later released, filed a judicial review to the Supreme Court against the authority and establishment of the joint anticorruption task force. This task force, which investigated Harahap's case, was then dissolved by the Supreme Court.

On 7 July 2000, a decree of the Director General for Administrative Affairs of the Department of Justice and Human Rights was issued, appointing a preparatory team to establish an anticorruption commission as mandated in Anticorruption Law Number 31/1999.

Further anticorruption measures were taken by Megawati Soekarnoputri's government (2001–2004). In 2001, Law Number 20/2001, modifying Anticorruption Law Number 31/1999, was promulgated. This introduced the reverse burden of proof in the case of gratification to public officials. On 18 December 2003 the government signed the United Nation's Anticorruption Convention.

In 2002, Act Number 30/2002 was enacted to establish a powerful anticorruption commission. This Act stipulated that the commission had to be established one year after this Act came into force. On 21 September 2003, the president issued Presidential Decree Number 73/2003 on the Formation of a Committee for the selection of the commissioners of this commission. On 6 December 2003, the Committee nominated 10 candidates to the president, whom the president then proposed to the House of Representative. A law commission of this House finally elected five candidates as commissioners.

President Susilo Bambang Yudhoyono (2004–2007) put the fight against corruption at the top of his policy agenda. Yudhoyono was the first president directly elected by the people under the reformed 1945 Constitution in 2004. At his inauguration he declared that in 100 days of his government the main program would be to combat corruption. At the end of 2004, he formed a team to hunt corruptors fleeing the country. In 2005, he issued Presidential Instruction Number 5/2005 instructing government agencies to speed up efforts to combat corruption.

Based on Presidential Decree Number 11/2005,Yudhoyono established an anticorruption team to coordinate the enforcement agencies in their efforts to combat corruption.Within one year of his administration, the president delivered 35 anticorruption speeches, while the vice president delivered 11.That was almost one anticorruption speech a week, on average (Masduki 2005).

In summary, the Reform Order regime tended to employ legal formal approaches to combating corruption. However, such interventionist legal approach alone is not enough since 'transforming corruption from an endemic to an incidental problem will require a major change in social, political, and organizational culture that cannot simply be legislated into existence' (Lovell 2005:67).

D. Implementation outcomes of the Anticorruption Law 1999

As analysed in Chapter 3, the policy objective of Anticorruption Law 1999 was to eradicate corruption in the government in order to advance the state's economy and development. Because this study employs the refined top-down implementation evaluation approach, it will measure the implementation outcomes against the policy objective of this Law. The

evaluation question that will be answered is, to what extent did the implementation of the Law achieve the policy objective of eradicating corruption in the public sector?

The implementation of the 1999 Law will be judged as effective if its outcomes satisfactorily meet the objective of this Law. As a comparative study, the implementation outcomes of this Law, to some extent, will be measured against the implementation outcomes of the Anticorruption Law 1971. Full comparative evaluations will be discussed in Chapter 6.

The study in Chapter 4 has prejudged that the New Order regime failed to implement Anticorruption Law 1971. This failure can be seen from the regime's poor performance in meeting the four evaluation criteria, and from the country's low ranking in the Transparency International's Corruption Perceptions Indexes (CPI). From the TI's first published CPI in 1995 until the collapse of the New Order regime in 1998 Indonesia was ranked as one of the most corrupt surveyed countries. In 1998, the country ranked 80 out of 85 countries surveyed, with CPI score of 2.0. Did this poor governance condition change under the Reform Order regime?

General examinations. This study has used several approaches to appraise the implementation performance of Anticorruption Law 1999. One was a survey which asked the respondents to judge the implementation effectiveness of this Law. From a total of 253 respondents surveyed, 85 per cent judged that implementation of this Law failed in combating corruption. Respondents were then requested to rank the implementation failure of this Law under four different presidents of the Reform Order regime. The following is a summary of their response:

Table 5.1

Comparison of the perceived implementation failure ranking of four presidents of the Reform Order governments (most to least failed)

Presidency	Ranking
Abdurrahman Wahid	1
Habibie	2
Megawati	3
Susilo Bambang Yudhoyono	4

The governments of the Reform Order regime faced uneasy political challenges. Two of the four presidents were impeached. Appointed by President Suharto, shortly after his resignation on 21 May 1998, President Habibie was forced to resign after the People's Consultative Assembly (MPR) rejected his accountability progress report on 19 October 1999 (*Indonesia Daily News Online*, 19 October 1999). Lev (*Tempointeraktif*, 30 May 1998) previously suggested that Habibie step down since he was part of the New Order regime and the people did not trust his government. Furthermore, Lev observed Habibie himself was practicing nepotism. Even though the Habibie administration enacted Anticorruption Law 1999, the people could not hope for much from his government as it inherited the New Order regime's corrupt government.

Elected by the MPR to replace Habibie, Abdurrahman 'Gus Dur' Wahid was also forced to resign. Accused of involvement in the *Buloggate* and *Bruneigate* bribery cases and blamed for poor government performance by DPR, the president ended his term of office through an impeachment process in a special plenary session of the MPR. The bribery cases made the people and anticorruption activists believe that the president did not have a strong commitment to combating corruption.

The administration under President Megawati was also accused of not seriously fighting corruption. In some cases, prosecution and courts released corruption suspects. One notable example of this was a highly publicised corruption scandal involving the misuse of the liquidity assistance from the Central Bank (BLBI cases). Under the 'Master of Settlement and Acquisition Agreement' (MSAA), suspects in BLBI cases would be released from criminal liability if they paid their debts. 'Easily they released the robbers of the BLBI, and then put the burden to pay the debts on the people…'(*Jawa Pos* 2004).

Respondents perceived Yudhoyono's administration as the least failed government in enforcing the Anticorruption Law 1999. The number of prosecuted and jailed corruptors was largest under this administration. Several big corruption cases were prosecuted, and the corruptors were imprisoned. For example, Minister of the Religious Affairs and Minister of Maritime and Fisheries Affairs under the Megawati government, Governor of Aceh, Central Bank Governor, former Chief of National Police, Chief of the National Electoral Commission, prosecutors, members of the DPR and regional parliaments, and several regional heads were jailed. However, most of these cases were not the accomplishment of the executive government, but the achievement of the Anticorruption Commission, which was an independent body.[198] The following are detailed examinations of the anticorruption policy performance measured against the four effectiveness criteria:

1. Public perceptions on bureaucratic corruption reduction

Internationally, Indonesia had a very poor reputation in terms of corruption (World Bank 2003).The table below charts Indonesia's standing from 1998 to 2007 as determined by expert assessments and opinion surveys. Indonesia was ranked as one of the most corrupt countries in the list:

[198]Interview with Saldi Isra, anticorruption activist, Coordinator of West Sumatra Awareness Society, 6 July 2006.

Table 5.2 **Corruption Perceptions Indexes 1998–2007 (Indonesia—the Reform Order regime)**

Period	Number of countries surveyed	Ranking of Indonesia	CPI score	Standard deviation/ Confidence range	Survey used
1998	85	80	2.0	0.9	10
1999	99	96	1.7	0.9	12
2000	90	85	1.7	0.8	11
2001	91	88	1.9	0.8	12
2002	102	96	1.9	0.6	12
2003	133	122	1.9	0.5	13
2004	145	133	2.0	1.7 – 2.23	14
2005	158	137	2.2	2.1 – 2.5	13
2006	163	130	2.4	2.2 – 2.6	10
2007	179	143	2.3	2.1 – 2.4	11

Source:Adapted from Transparency International's Corruption Perceptions Indexes (CPI) 1998–2007.http://www.transparency.org/policy_research/surveys_indices.The CPI gathers data from sources that span the last two years; for example, for the CPI 2007 this includes surveys from 2006 and 2007. The CPI measures the perceptions of the frequency and/or size of bribes.

The table shows that the 'best' CPI score of the Reform Order regime, 2.4, was achieved under President Yudhoyono in 2006; whereas, the worst score, 1.7, was in 1999 during the era of President Abdurrahman Wahid. However, as indicated in this CPI, overall the performance of the Reform Order regime in controlling corruption was poor.

Unlike under the New Order regime where power was centralised, under the Reform Order regime power was decentralised and dispersed to many political actors and regional governments. As a result, corruption was decentralised, uncontrollable, and new forms of corruption emerged (*Tempointeraktif,* 4 November 2004). The Habibie Centre identified 20 forms of corruption including misappropriation and misuse of regional budgets by regional heads and members of regional parliaments (*Tempointeraktif,* 4 November 2004). In Central Java, corruption cases reported by the public, mass media, and anticorruption nongovernment organisations had increased by 156 per cent in 2005 compared to those

reported in 2004. According to Abhan Misbah from the Central Java Anticorruption Committee, the large number of reported corruption cases indicated the huge amount of state finance losses incurred. However, these reported cases, he said, were only a small proportion of the real corruption activities in the society (*Suara Merdeka,* 12 December 2007).

Unlike under the New Order regime, 'now in the Reform Order era tried corruption cases are relatively many. In the Supreme Court itself in 17 months there have been about 160 tried cases'.[199] According to Padmanegara[200], there was a quite significant improvement in anticorruption enforcement, particularly under the Yudhoyono administration. However, to conclude this section, Budiardjo has observed:

> The fact that corruption has not yet been able to eradicate is not a simple thing; that corruption cannot be eliminated in short time. If said that corruption has become more widespread, that is true, especially in the end of the Suharto era and after the reformation. But, it cannot be said because of the reformation... [201]

2. Recovery of the state assets losses[202]

In its Corruption Outlook 2008 (www.menkokesra.go.id, 22 January 2008), Indonesian Corruption Watch (ICW), a leading non-government anticorruption organisation, reported that the government had not yet been able to devote its maximum capacity to combating corruption, particularly recovering state asset losses. According to ICW's record from the Financial Report and Accounting Directorate of the Department of Finance, from 2006 to 15 May 2007, the recovered amount deposited into the state's account was only IDR 18.6 billion. This respresented only 0.002 per cent, which was far from the amount of the unpaid compensation of IDR 8 trillion in corruption cases in Jakarta alone.

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[199]Interview with Prof.Dr. Bagir Manan SH.,McL, Chief Justice and President of the Supreme Court, Professor of Constitutional Law, Padjadjaran University, 21 June 2006.

[200]Interview with Lieutenant General Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.

[201]Interview with Prof. Miriam Budiardjo, MA, emeritus Professor of Political Science, the University of Indonesia, former Vice President of the National Commission on Human Rights, 17 June 2006.

[202] See additional data on the recovery rate of the state assets losses in the Appendices C, D, and E.

ICW further reported that in fiscal year 2004 the Attorney General's Office had failed to recover the unpaid compensation in corruption cases. Furthermore, from the detected 82 corruption cases in the period 1998 to 2007, 23 cases involved misuse of government budgets and 27 cases dealt with government project mark-up. Of these two major corruption forms, only small percentage, IDR 863 billion, had been recovered.

In some cases under President Yudhoyono there was a moderate improvement in terms of recovering stolen state assets. This was due, in particular, to the establishment of an *ad hoc* anticorruption team led by the Attorney General, whose members were from the police, prosecution, government auditors, and relevant experts.[203] This team, which was intended to overcome coordination and communication problems between law enforcement agencies, coordinated the efforts of the enforcers in investigating corruption cases. In two years, the team processed 72 corruption cases. From these, 39 had been pre-investigated, 13 investigated, 11 prosecuted, two appealed, and seven decided by courts. The team also supervised the handling of corruption cases by the provincial police and prosecution offices. From 208 corruption cases handled by the regional enforcement offices, 141 had been pre-investigated, 26 investigated, 25 prosecuted, 15 appealed, and one executed. The team claimed that they had recovered stolen state assets to the value of IDR 3.950 trillion, comprising IDR 3.946 trillion at central level and IDR 4.105 billion at regional level. However, the Anticorruption Team was dissolved in June 2007 as its mandate had expired.

Data from the Attorney General's Office on the recovery rate of state finance were dissatisfying, however.[204] For example, from January to December 2001, the Attorney

[203]See *Antara* 2007. 'Pemerintah bubarkan Timtas Tipikor', http://www.antara .co.id/print, 12/01/2008.

[204]**Source**: Special Criminal Investigation Directorate, Attorney General's Office of Indonesia, January 2002 and January 2003.

General's Office could only recover IDR 1.198 trillion or 4.18 per cent from the state assets losses valuing IDR 28.630 trillion.

The performance of the enforcers in terms of the monetary outputs in corruption cases settled by courts was also disappointing.[205] For instance, in the period from January to November 2005, from the total of IDR 4.7 trillion the government was only able to recover the state losses of IDR 10.3 billion.[206] Moreover, in some instances, deposited monies were far less than actual recovered amounts.

The Anticorruption Commission, which was independent from the executive government, performed better than the Attorney General's Office in recovering state assets losses. For instance, in 2006 this commission successfully recovered the state assets losses valuing IDR 12.8 billion or 46 per cent.[207] Nevertheless, since this commission was independent from the executive government, we cannot fully attribute its performance to that of the executive government.

In sum, even though the ad hoc anticorruption team had shown improved achievement, in terms of the recovered state losses criterion the enforcers of the regime's executive government, particularly the Attorney General's Office, did not perform as expected. The amount of state assets losses recovered was insignificant. In some cases, however, the performance of the Anticorruption Commission in recovering the stolen money was quite promising.

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[205]These monetary outputs consisted of fine, expenses of court's proceedings, auctions of forfeited properties, money forfeited and restituted.

[206]**Source**: adapted from Special Criminal Investigation Directorate, Attorney General's Office of Indonesia, February 2006.

[207] See KPK Annual Report 2006:4.12.

3. Public confidence in the capacity of the criminal justice system

> "Many defence lawyers have become case brokers [to bribe the police, prosecutors, and judges]. Not only the lawyers, but also the police, the prosecutors, and the judges have also been reluctant to reform themselves."
> (Informant A, local level Head of District Court A)[208]

Responses to the survey of this study and the poor ranking of Indonesia in the TI's CPI may have indicated a lack of confidence in the capacity of the criminal justice system to combat corruption. However, as previously indicated, Yudhoyono's government was perceived more positively than other administrations.

In its annual final report for 2007, *Kompas*, a leading daily newspaper in Indonesia, reported this low confidence, particularly in the capacity and integrity of the prosecution to combat corruption (*Kompas,* 21 December 2007). This was especially the case when the prosecution dealt with popular big corruption cases such as the Central Bank's liquidity cases. The paper reported that the public frequently staged mass demonstrations, showing that 'they did not believe in the prosecution'.

Under the Reform Order regime the people's lack of confidence in the integrity and capacity of the enforcers to control corruption might be attributed to the 'court mafia' in the Indonesian criminal justice system. A lawyer shared his own experience about the court mafia:

> The common languages used anywhere when we are handling the cases in the prisons, courts, police and prosecution offices are the same—money [extortion or bribery]. They create the conditions so that we have to bribe them. The persons who give the bribes will get better facilities or services. In courts, the clerks play the active role [for facilitating corruption]. For example, yesterday when I handled a case, a clerk [in a district court] approached me informing that the decision from the Supreme Court had arrived, and told me, without any shame, that 'if you have money, give it to me…'.[209]

[208] In an interview with me, 12 July 2006.
[209] Interview with a lawyer, 30 June 2006.

However, as Wawan of Bali Corruption Watch observed, since the establishment of the Judicial Commission the integrity of the courts, and therefore the confidence of the people in the judiciary, had somewhat improved.[212] The court mafia was now more careful in their operations. For example, when the judge panel was questioned by the Judicial Commission in the Leslie case (an Australian model charged with drug abuses in Bali) this had an indirect effect on the behaviour of other judges in Bali, causing them to be more careful in deciding their cases.

The people also had a lack of confidence in the capacity of the police to fight corruption due to the systematic corruption within the police. To some extent this was motivated by greed. 'Institutionally, [some of] the police are poor, but personally they are rich'.[213] Need also triggered corruption. A former high-ranking police officer shared his experience:

> The police had to be corrupt because of their needs, thus corruption by need. They did it for personal need, or for their institutions—thus, institutional corruption by need—to cope with lack of financial resources. For instance, there was a report to me that my officer extorted [money from] someone. When I asked the officer, he said that the money was used to pay the school expenses of his child in a high school. [214]

Yudhoyono's administration adopted anticorruption measures, which might have slightly improved public confidence in the regime's commitment to fighting corruption. An example of this was the presidential decree instructing government agencies to speed up corruption eradication measures in their own organisations.[215] Moreover, as Isra observed[216], from a quantitative measure, the Reform Order regime prosecuted more corruption cases than the New Order regime. The Yudhoyono administration, Isra said, prosecuted more corruption cases than the governments of the other presidents of the Reform Order regime. This could

[212]Interview with Wawan E. Prasetyo, Anticorruption Activist, Bali Corruption Watch, 7 August 2006.
[213] Interview with a lawyer, 15 August 2006.
[214]Interview with a former high-ranking police officer, 13 June 2006.
[215]Interview with Abdul Taufieq, Assistant Head, Special Crime, South Sulawesi Provincial Prosecution Office, 14 August 2006.
[216]Saldi Isra, anticorruption activist, Coordinator of West Sumatra Awareness Society, 6 July 2006.

be seen from the numbers of Yudhoyono's permissions to investigate high public officials. 'However, for the people this is not enough'.[217]

The source of the people's lack of confidence in the capacity of the enforcement agencies in combating corruption may also be attributed to the relatively small number of investigated corruption cases which were completed, as the table below demonstrates:

Table 5.3 **Investigation of corruption cases by all High Prosecution Offices in Indonesia (2001 – 2005)** [218]

Year	Total number of cases received for investigation	Followed up for prosecution	Discontinued investigation (SP3)	Completely investigated cases for prosecution (%)	Incomplete/ pending investigated cases (%)
2001	1,154	204	17	221 (19)	933(81)
2002	1331	498	25	544 (41)	787 (59)
2003	1384	467	71	539 (39)	845 (61)
2004	1367	492	37	529 (39)	838 (61)
2005	1384	447	17	463 (33)	921 (66)
Total	6,620	2,108	167	2,296 (35)	4,324 (65)

Source: Adapted from Special Criminal Investigation Directorate, Attorney General's Office of Indonesia, 2001–2005.

The table shows that in the period from 2001 to 2005, from a total of 6,620 corruption cases, the investigators could only complete the investigation of 2,108 cases or 32 per cent. Conversely, in the same period investigators discontinued the investigation of 167 cases or 2.5 per cent and released the corruption suspects.[219] Of these discontinued investigations, the Megawati administration contributed the largest number, 71 cases.

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[217]Interview with Kahar Al Bahri, Coordinator, Working Group 30, East Kalimantan, 26 July 2006.

[218]See year by year data in Appendices F – J.

[219]The investigation of the cases was discontinued for some reasons such as for insufficient evidence, legal interest, not criminal offences. However, in some cases, this discontinued investigation of corruption cases was as the result of the court mafia operations, in particular the corrupt practices by the investigating police or prosecutors.

4. Changes in anticorruption attitudes

Berek learnt that 'the attitudes of bureaucrats have not changed much'.[220] The difference was that, 'under the New Order regime, corruption was centralised, under the table, in particular in the issuance of licenses; now, it is decentralised, above the table'.[221] For example, 'after the bribery case in the Supreme Court was detected[222], corrupt enforcers now change their phone numbers every two weeks to avoid phone interceptions by the Anticorruption Commission'.[223] In 2007, several prosecutors were punished and dismissed, due to corrupt attitudes and practices. This included the Head of Papua's Provincial High Prosecution Office, Lorens Serwowora (*Kompas,* 21 December 2007).

As reported in the Final Annual Note 2007 of the Indonesia Transparency Society (MTI 2007) there were good and bad outcomes in the efforts to eradicate corruption. For instance, local bureaucratic reforms in 180 regional governments such as in Jembrana, Sragen, Bontang, Semarang, Sidoardjo, Riau, and Gorontalo were able to change the slow, expensive and corrupt bureaucracies. The MTI further reported that many local government officials, for example in Depok, Bekasi, Banten, Kendal, Purwakarta, Serang, Jember, Sleman, Kendari, Sumenep, Mentawai, Kudus, Mamasa, Pelalawan, and Muaro Jambi, had been investigated and prosecuted for corrupt attitudes and practices. Moreover, thousands of local bylaws had been identified as corrupt, and the central government had annulled 151 of them. In addition, at the end of 2007 at central government level, the Department of Finance found irregularities totalling IDR 1,097 trillion in 1,737 government bank accounts owned

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[220]Interview with Fridolin Berek, Executive Director, Bandung Institute of Governance Studies, 13 July 2006.

[221]Interview with Situmorang, Head, East Jakarta Police District Office and Agus, Vice Head, East Jakarta Police District Office, 18 May 2006.

[222]This case was known as 'Harini Case', where Mrs.Harini, a lawyer and former judge of the Yogyakarta High Court, was suspected of bribing the Justices of the Supreme Court.

[223]Interview with Frans H. Winarta, lawyer, and Member of the Indonesia Law Commission, 26 May 2006.

by several government departments and agencies. The MTI contended this showed that the preventive and repressive anticorruption measures had been working.

Padmanegara commented on the effect of the measures on public servants,

> Now there is a significant indication that public officials in charge of managing the government's finance are afraid to make mistakes. In the past, public officials competed to be a committee head of a government project tender. Now they are afraid; as a result, some tenders for government projects are not implemented. We see positive sides from this, that is, they are afraid to break laws and damage the state finance.[224]

However, this change in the attitude of the public officials had a negative side. Many government officials refused to be appointed as a public project manager. They were afraid of facing the prosecution. For example,

> Yogyakarta Governor told me that he sent his 50 officials to anticorruption courses. From this, only 11 passed the course even though the failed officials were actually smart. They said they intentionally failed themselves, as they did not want to be project leaders.[225]

As a result, many government projects were delayed or not implemented. Thus, to some extent, the anticorruption measures made the government ineffective. This was problematic as the eradication of corruption was a means by which to achieve a clean, effective and accountable government, not an end in itself (Brata 2007c).

The improved anticorruption attitudes of government officials, however, in most cases, were symbolic, not substantial. For example, at central government level in some cases the recruitment and promotion of officials was still based on nepotism (Brata 2009). At the regional level, 'in West Java Province, corruption in the recruitment of public servants also occurred'.[226]

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[224]Interview with Lieutenant General Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.

[225]Interview with Prof.Dr. Mahfud MD, Member of Commission III of the House of Representatives, former Minister of Justice, former Minister of Defense, Professor of Constitutional Law, 1 June 2006.

[226]Interview with Fridolin Berek, Executive Director, Bandung Institute of Governance Studies, 13 July 2006.

E. The implementation failure factors of Anticorruption Law 1999

As with the factors contributing to the implementation failure of Anticorruption Law 1971, those responsible for the implementation ineffectiveness of Anticorruption Law 1999 can be categorised into five types: policy design, political, institutional, managerial, and societal factors. This section will examine and explain how these various factors have contributed to the implementation ineffectiveness of Anticorruption Law 1999. The functional associations between the democratic political system of the Reform Order regime and the implementation ineffectiveness of the Anticorruption Law 1999, which is central to the argument of the thesis, will receive particular attention in the next section.

1. The policy design factor[227]

This section will assess to what extent policy design of Anticorruption Law 1999 contributed to the ineffective implementation of this Law. As this study mainly employs a (refined) top-down implementation evaluation approach, the following three prescribed conditions for effective implementation of public policy suggested by the refined top-down implementation theorists (Sabatier 1986a), will be examined: First, clear and consistent policy objectives; second, adequate causal theory underlying a policy; and third, an implementation process legally structured to enhance compliance by implementing officials and target groups. This section will assess whether the policy design of the Anticorruption Law 1999 met these three necessary conditions.

I argue that even though there were some improvements in the policy design of Anticorruption Law 1999, the defective Criminal Procedure Code or the KUHAP still controlled the enforcement process of this Law. Due to some defects in the policy design of

[227] See more detailed analysis of the policy design of the Anticorruption Law 1999 in the Appendix B.

the KUHAP and, to some extent, Anticorruption Law 1999, the enforcement structures and processes were dysfunctional.

a. Policy objectives of the Anticorruption Law. The implied policy objective of the Anticorruption Law 1999, as read from its title 'Corruption Criminal Offense Eradication', is to eradicate corruption. In the preamble of this Law the lawmakers reasoned that corruption had to be eradicated as it had damaged the country's economy and impeded national development. They added that to 'create a just and prosperous Indonesian society, we must continue on increasing the efforts to prevent and eradicate crimes in general, particularly criminal offences of corruption'. By preventing and eradicating corruption the lawmakers believed that state assets losses and crises could be avoided or overcome, the country's economy improved, and as a result, national development would be promoted.

Anticorruption Law 1999 was also intended to meet legal social needs and control corruption more effectively and efficiently. This Law was enacted in response to the people's aspirations to combat corruption. It should be noted that this Law was made in 1999, in the middle of economic and political crises, one year after President Suharto had resigned. Corruption had been seen by the people, particularly student activists, as one of the contributing causes of the crises. Formally, this Law implemented the People's Consultative Assembly's Decision Number XI/MPR/1998 on Administration of the State Clean and Free from Corruption, Collusion and Nepotism, which was a response to students' demands for clean government.

Thus, the policy objective of Anticorruption Law 1999 was to reduce corruption in order to advance national development and create a prosperous Indonesian society in the long term. Therefore, in terms of meeting the condition prescribed by the refined top-down

implementation theorists that the objective of a policy should be clear and consistent (Sabatier 1986:23), we may judge that the policy objective of Anticorruption Law 1999 met this condition. However, Mazmanian and Sabatier (1989) argued that the sucessful implementation of a policy or program is associated with the tractability of the social problem being dealt with, therefore, the implementation of Anticorruption Law 1999 would have had a greater potential for failure as the endemic corruption and corrupt attitude problems being targeted were complex and difficult.

b. Causal theory of the Anticorruption Law. The refined top-down implementation modelists believe that implementation of a policy will be effective if that policy has an adequate causal theory, that is it contains a theoretical assumption that if X is done in time Y it will result in Z (Parson 1989). There are arguably three implied causal theories in the preamble and elucidation of Anticorruption Law 1999. First, a prosperous and just Indonesian society would be realised if the efforts to prevent and combat crimes, particularly corruption, were intensified and strengthened. Is this particular theory adequate? To some extent, it is. Researchers have discovered that corruption is positively correlated with poverty and income inequality, reduced total investment, lowered GDP, inefficient government expenditure, misallocations of the public resources, and degraded institutional quality (Lambsdorf 1999). Extensive research on corruption by the World Bank in the political and economic transitions of post–communist states in Eastern Europe and the former Soviet Union confirmed these negative consequences (World Bank 2000).

However, corruption may be just one of the many factors which may be negatively associated with a high economic growth and prosperous society. For example in Indonesia under Suharto's New Order regime, the country experienced exceptionally high economic growth even though corruption was widespread. Protected foreign investment and

'controlled', tolerated corruption by the regime were believed to be the reasons for this (MacIntyre 2001).

The second causal 'theory' of the lawmakers can be assumed from the elucidation of the Anticorruption Law 1999 as follows:

> In order to achieve the objective of preventing and eradicating corruption more effectively, this Law contains criminal provisions, which are different with those of the previous Law [Anticorruption Law 1971]; they are minimum special criminal punishment, higher fine, and death sentence. Furthermore, this Law also incarcerates those corrupt convicts who cannot pay the compensation to the state.

Becker (1968) argued that a potential offender will be deterred from committing corrupt conduct or a criminal offense if he anticipates that his action would be easily detected and severely punished. The imposition of a special criminal punishment and death sentence may add to the deterrent effect, making corruption what Pope called 'high risk and low reward undertaking' (TI Newsletter 1995).

However, as Rose-Ackerman (1999:53) has argued, severe punishment will also make the potential corrupt offender act rationally. He or she would seek a high return by demanding a larger bribe. To overcome this problem she suggested that the punishment should be tied to the size of the payoffs.To some extent the lawmakers of Anticorruption Law 1999 met Rose-Ackerman's prescription; this Law imprisons corruptors who cannot repay the damage incurred by the state. The Law stipulates that the length of the substitute sentence will depend on the size of the incurred damage; the lawmakers equate one year's imprisonment with IDR 50 million unpaid fines (Hamzah 2005:112).

Assuming their third causal theory, the lawmakers reasoned that Anticorruption Law 1999 was intended to replace the Anticorruption Law 1971 in order to prevent and combat all forms of corruption more effectively. For this purpose, the lawmakers defined corruption in

every possible way so that any form of illicit enrichment would be illegal and punished.[228] Therefore, they defined corruption as an illegal act, both in a formal and substantial sense. This means the lawmakers not only punished an act of corruption as defined in the Law, but also corrupt conduct which was socially unacceptable or against unwritten social norms.

Therefore, to some extent, Anticorruption Law 1999, met the requirement for effective anticorruption legislation as prescribed by Pope (1999b), who suggested covering all forms of corruption in a definition. However, Pope also warned that too much reliance on anticorruption law enforcement would not effectively combat corruption. Excessive legal remedies might provide opportunity for abuse of power and further corruption. Moreover, the enforcement measure is problematic as this approach assumes that enforcers are clean or immune to corruption (Manion 2004:22).

As Atmasasmita observed, the problem was more about implementation of the Anticorruption Law, not the Law itself.[229] Corrupt enforcers were part of the problem.[230] Therefore, replacing Anticorruption Law 1971 with Anticorruption Law 1999 would not effectively solve the endemic corruption problem.'Most countries have laws prohibiting bribery, with severe penalties prescribed for infractions by corrupt politicians and officials,

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[228]Professor Andi Hamzah, chief of the legal drafter team on the anticorruption law, said that in the new draft anticorruption law the provision on enriching other people as an element of corruption stipulated in the Anticorruption Law 1999 will be removed. This removal, he said, is consistent with the United Nations Convention against Corruption. In the new draft law a reverse burden of proof will be adopted. However, if the defendant and the prosecution cannot prove the legitimate sources of the defendant's assets, he will only be punished by confiscating his assets, not imprisoned (*Suara Merdeka,* 12 December 2007).

[229]Prof.Dr Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of Anticorruption Law 1999, Delegate to United Nations Convention against Corruption, and Professor of International Criminal Law of Padjadjaran University, 12 June 2006.

[230]Interview with Major General (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006.

and clear guidelines for how public servants should behave. Yet their effect is often minimal' (Eigen1996:161–62).

c. Implementation structure and process of the Anticorruption Law. Refined top-down implementation theorists, such as Sabatier and Mazmanian, stressed the importance attached to the legal structuring of the implementation process. A legally structured implementation process will ensure the compliance of implementors and other stakeholders with implementation standards or norms. The policy should also structure the implementation network, that is the implementation interactions and activities among the stakeholders in the implementation process.

I argue that Anticorruption Law 1999 was defective in legally structuring its implementation process. To some extent, however, it was better than that of Anticorruption Law 1971. It had corrected some of the defects in the policy design of Anticorruption Law 1971. Its most significant contribution was its mandate for the lawmakers to enact an act creating an independent anticorruption commission.[231]

Anticorruption Law 1999 contains not only substantive provisions, but also stipulates provisions on how this Law had to be enforced. However, the statement that 'investigation, prosecution, and trial of corruption criminal offences must be executed according to prevailing criminal procedural laws, except this Law determines otherwise'[232]was problematic. In most cases the Criminal Procedure Code or the KUHAP, with its previously noted deficiencies, structured the implementation process of the Law, including most of the powers and duties of the enforcers.

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[231]See article 43.The anticorruption commission had to be established within two years after the Anticorruption Law 1999 came into force.
[232] See article 26.

Thus, in most cases the implementation of Anticorruption Law 1999 was constrained by the similar problems faced by Anticorruption Law 1971, for example the unchecked use of discretionary powers by enforcers and a disintegrated criminal justice system. The KUHAP was defective in meeting the refined top-down theorists' prescriptions. It failed to hierarchically integrate the implementing agencies and allowed the use of unchecked veto power between the enforcers.

One of the loopholes in the KUHAP was the discretionary power of the investigator to discontinue the investigation of a corruption case, called SP3. This power, Winarta observed, then became a commodity in the corruption market.[233] For example, as Gandhi, former Chief of the Government Audit Board, observed, a corruption case that was legally prepared for the court proceeding by the Board's legal expert may be closed, through the issuance of a SP3, by the investigating prosecutor (*Media Transparansi* 1999).

A lawyer, based on his experience in litigation, offered this description of how the enforcers played with their discretionary powers:

> According to law, the investigating police or prosecutor has to give the confiscated money to the court, but in practice, they did not want to. The police also did not return the money to the guarantor if asked. All these happen because the discretion given to the police and the prosecution. According to the KUHAP, a suspect may be detained if he will escape or destroy the evidence. However, the police may say, 'I need to detain you'. That is legal. The problem is, there is no clear limit and scope for that discretion. For example, why has no one been detained in the big corruption case in the State Secretariat even though the officials have been declared as suspects? On the other hand, in small corruption cases, the suspects were detained. Thus, the discretion opens for playing games or abuses. This discretion must be limited.[234]

These discretionary powers might have constrained effective enforcement of Anticorruption Law 1999. These powers gave the enforcers and other stakeholders in the implementation

[233]Interview with Frans Winarta, lawyer, and Member of the Indonesia Law Commission, 26 May 2006.
[234]Interview with a lawyer, 30 June 2006.

network the opportunity to play what Bardach (1977) called an 'implementation game'. Since the KUHAP was weak in detecting and checking the use of the discretionary powers, the enforcers, particularly at street level, then misused these powers to advance their personal corrupt preferences. In effect, as the bottom uppers have argued, their corrupt personal activities deflected from the attainment of the policy objective of Anticorruption Law 1999.

Thus, the Anticorruption Law 1999, which adopted the defective KUHAP to operate in its enforcement, did not adequately meet the refined top downers' requirement—that is, constraining the deflecting preferences and powers of the implementers and other stakeholders, and legally structuring the implementation process for them to comply (Sabatier 1986:24).

The policy design of the laws governing the powers of the enforcers, Police Act Number 2/2002, Prosecution Act Number 16/2004, and Anticorruption Commission Act Number 30/2001, also influenced the implementation effectiveness of Anticorruption Law 1999. Based on these Acts, and the KUHAP, under the Reform Order regime three enforcement institutions—the police, the prosecution, and the Anticorruption Commission—had the power to investigate corruption cases.

These overlapping authorities caused institutional conflict between the police and the prosecution. In part, the motivation behind this power struggle was that investigative power would provide an opportunity to exploit corruption cases, known as 'wet cases', as a source of income. Prof. Sahetapy described this as 'like two cats fighting for meat' (*Hukum Online,* 13 February 2008). The conflicts created institutional egoism, making cooperation and coordination difficult. The lack of hierarchical organisational integration confirmed what the

refined top downers prescribe: the successful implementation of a policy is partly contingent on the ability of a statute to hierarchically integrate implementing organisations.

The Anticorruption Law 1999 partly solved the problem of the disintegrated and uncoordinated effort of the enforcers. The elucidation of this Law stated, '...if there is a corruption case which is difficult to prove, a joint task force coordinated by the Attorney General can be established...'. A coordinated joint task force such as the Corruption Eradication Team (*Timtas Tipikor)* under President Yudhoyono's administration, and the Anticorruption Joint Task Force under President Wahid's administration proved quite effective in improving the performance of the enforcers in combating corruption. However, the joint task forces were not instutionally permanent. President Yudhoyono dissolved *Timtas Tipikor* as its term of existence had expired, and the Supreme Court, based on a judicial review filed by Yahya Harahap, former Justice of the Supreme Court and defendant in a bribery case investigated by the Anticorruption Joint Task Force, dissolved this Task Force.

Another policy design 'improvement' contained in the Anticorruption Law 1999 was what was known as the 'balanced or limited reverse burden of proof' (*pembuktian terbalik yang terbatas atau seimbang*). This was not a genuine reverse burden of proof since the prosecutor still had the obligation to prove that the accused was guilty of committing the corrupt offence.[235] Moreover, as Atmasasmita observed, '...up to now, no judge has used it. The judge did not know how to use this procedure. The Law is not clear in this issue'.[236]

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[235]In interview with Prof.Dr.Andi Hamzah, SH., Chief Legal Drafter/Head of the Legal Drafting Team of the Anticorruption Laws 1999 and 2001, and of the Revised Criminal Procedural Law, 24 May 2006. Prof. Hamzah told me that actually he and late Prof. Baharuddin Lopa, former Minister of Justice and Attorney General, proposed reverse burden of proof in the pure sense in the Anticorruption Bill 1999, where the accused will be automatically charged guilty of committing corruption offence if he cannot prove the legitimate sources of income in the tried case. However, he said, the House of Representatives had slightly changed the phrase into what was now known as limited reverse burden of proof.

[236]Interview with Prof.Dr Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of Anticorruption Law

Another problem related to the policy design of Anticorruption Law 1999 was the provision concerning state financial damage. This provision encouraged different perceptions on the matter among the enforcers.[237] Suhartono shared his experience in this issue:

> The term 'may' [damage state finance] in the Anticorruption Law 1999 helps the prosecutors to prove corruption offences. The problem is that we often have different perceptions with judges on the scope and meaning of 'state financial damage', for example [their different perceptions] in the corruption cases of Neloe [Mandiri Bank], BLBI [Central Bank's liquidity assistance], and Akbar Tandjung [former Speaker of the DPR]. All the defendants in these cases had been acquitted. The judges might have freely applied the laws, whether the state finance law or the state treasury law.[238]

One of the causes of the different perceptions, in this case and other issues, can be attributed to the continental Europe judicial system adopted in Indonesia. In this system, unlike judges in the common law system where precedents prevail, judges in the Indonesian system have no obligation to follow what previous judges have decided on similar cases. Consequently, there are no 'objective', consistent standard decisions on the same legal issues, causing variations in law implementation outcomes.

To some extent, Anticorruption Law 1999 was adequate in legally structuring the implementation process to ensure the compliance of stakeholders to the implementation

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1999, Delegate to United Nations Convention against Corruption, and Professor of International Criminal Law of Padjadjaran University, 12 June 2006.

[237]Another example of the defective policy design of the Anticorruption Law 1999, which had caused different perceptions among the enforcers and therefore might have opened the opportunities for the enforcers to play the implementation game, was the term 'unlawfulness' as an element of a corruption act. In this matter, Heni Wahyu Puwarti, Prosecution Section Head, Yogyakarta Province Prosecution Office, in an interview with me on 1 August 2006, said, 'frequently we have different perceptions with the judges, usually in the application of article on 'unlawfulness'.This happened because the Anticorruption Law opens for such different perceptions.'

[238]Soehartono, Vice Head, East Java Province Prosecution Office, in an interview with me on 15 August 2006. He shared his own experience that the prosecutor and an expert witness can also differ in their perceptions on the scope and meaning of 'state financial damage':

> The obstacle in investigating corruption is on proving it. For example, the defense lawyer may bring an expert witness in the process. The witness may disagree on the application of the legal definition of state financial damage [*kerugian negara*] mentioned in the Anticorruption Law 1999. For instance, when investigating the Bank Mandiri [state owned bank] case, an expert witness argued that there was no state financial damage. All the government money has been invested in the bank and the position of the government is just like other share holders. Thus, the government must be treated like the other share holders. The expert argued that the provisions on state financial damage of the Anticorruption Law 1999 cannot be applied in this case. Thus, there were different perceptions between the expert and the investigator.

standard in that process, a condition for effective implementation as prescribed by the refined top downers. For example, any person who intentionally obstructed the investigation, prosecution, and trial of corruption cases was punishable by imprisonment and/or fine.[239] Moreover, the Law also punished those wrongdoers and their assistants who concealed and destroyed the seized exhibits. Furthermore, it sentenced not only the offender, but also those persons who attempted, assisted, and conspired to commit corrupt offences.[240]

A positive outcome of the policy design of Anticorruption Law 1999, as a result of the workings of the democratic political system of the Reform Order regime, was the provision for the people to participate in the implementation process of the Law. The Law stated, 'the people may participate and have the right and obligation in the prevention and eradication of corruption'.[241] Refined top downers such as Sabatier and Mazmanian have argued that the effective implementation of a policy or program may be affected by the extent to which a statute structurally influences the participation of actors outside the implementing agencies. Indeed, as Padmanegara and Puwarti noted[242], most of the suspected corruption offences which were reported to the police and the prosecutor came from the people.

A further policy design defect in Anticorruption Law 1999, which constrained the effective implementation of this Law, was the time given to defendants, which in practice was misused to escape from the enforcement process. For example, the defendants used requests for medical treatment and filed for sentence delay or legal appeals as a tactic for escaping punishment (*Republika,* 16 February 2007).

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[239] Article 21.
[240] Article 15.
[241] Article 41 (1 and 3).
[242] Interview with Lieutenant General Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006, and Heni Wahyu Puwarti, Prosecution Section Head, Yogyakarta Province Prosecution Office, 1 August 2006.

The requirements to get permission to investigate high-ranking public officials and examine the bank accounts of corruption suspects also impeded effective implementation of the Anticorruption Law. As Puwarti noted, such action took time and in some cases gave suspects the chance to destroy the evidence.

In conclusion, although there were some improvements in the policy design of Anticorruption Law 1999, it did not fully meet one of the three conditions for effective implementation as prescribed by the refined top downers; the policy design of this Law was defective in legally structuring the implementation process in order to enhance the compliance by the enforcers and other stakeholders. This could be attributed to the defective KUHAP, the criminal procedure code which governed the enforcement of this Law. Poorly defined discretion of the enforcers and a disintegrated criminal justice system are factors by which the KUHAP contributed to the ineffective attainment of the policy objective of the Anticorruption Law 1999.

2. The political factor

> "Many factors have impeded the reform process. We were 32 years under the New Order regime; that influence cannot be changed spontaneously. Now there is a constitutional framework for reform. For instance, the Constitutional Court has functioned, checking the powers of the president and the parliament. This is a good thing. …". (Prof.Miriam Budiardjo, leading political scientist, the University of Indonesia, former Vice Chaiperson of the National Commission on Human Rights)[243]

Under the Reform Order regime some political reforms did influence the implementation effectiveness of the Anticorruption Law 1999. Civil societies now democratically scrutinised the implementation of this Law.The police had been institutionally separated from the armed forces. The judiciary had won its long battle; it was now 'truly' independent from the

[243] In an interview with me, on 17 June 2006.

Department of Justice or the executive. However, the reformed political institutions and leadership were still not conducive to facilitating effective implementation of the Law.

The democratic political structure of the Reform Order regime was essentially an antithesis to the authoritarian power structure of the New Order regime. Instead of concentrating the power in the president, the power was now effectively dispersed to other branches of the government. New democratic institutions and processes, ensuring political accountability and functional checks and balances, had been put in place. For the first time in the country's history the president was directly elected by the people, and he or she could be impeached for committing high crimes such as corruption.This was a vital factor in anticorruption measures. Al Rasyid described this political reform:

> ...Theoretically[under the reformed Constitution 1945], the president can be impeached; but in practice it will be difficult... In the past [under the New Order regime], the House of Representatives was just [composed of] 'yes men'; now, it is powerful...The new thing in the amended 1945 Constitution is the institution of the Constitutional Court....It is true that the 1945 Constitution was designed so that the power was concentrated in the hands of the president. Now [under the amended 1945 Constitution] such a concentration of power does no longer exist.

However, the reformed political framework was also prone to abuse of power. The direct elections of the president and regional heads with reformed multiparty mechanisms were costly to run. Ma'arif, Deputy to the Speaker of the House of Representatives, stated that, '...now everything needs capital. For instance, to become a district head and a member of the parliament, the candidate must go through political party mechanisms and sometimes it needs money [for money politics or as contribution to political party]'.[244] Instead of defending the public interest, the new party mechanism, with its strong influence and sometimes corrupt interests of the political parties and their leaders in the recruitment and promotion of political candidates, had forced the candidates to advance their corrupt

[244]Interview with Zaenal Ma'arif, Deputy Speaker, House of Representatives, 19 June 2006.

interests and those of their parties. Therefore, Ma'arif argued, 'there is a problem with the political recruitment…'.

Based on the Partial Reform Model (Hellman 1998), the economic and political reforms in Indonesia have also been corruptly influenced and constrained by corrupt conglomerates, the short-term winners of reforms.The signing of the Master of Settlement and Acquisition Agreements (MSAA) by President Suharto in 1998 and its implementing policy under Presidential Decree Number 8/2002 by President Megawati (*The Jakarta Post,* 13 August 2002) were a notable example of the successful influence of the short-term winners in policymaking. Under this policy, the government legally released the 'black' banking conglomerates from criminal prosecution if they paid the debts. These banks had borrowed, and in some cases misused, huge amounts of money from the Central Bank to bolster their liquidity amid massive runs during the 1997 economic crisis.

Such corrupt interests had constrained the progress of political and economic reforms in Indonesia:

> Why have our political and economic reforms slowly progressed? Political and economic reforms are essentially about changing the rules of the game. In the process of changing these rules, many different, conflicting interests compete to promote and protect their interest. In the case of Indonesia, unfortunately, the corrupt interests seem to have effectively influenced and distorted the reform process (Brata 2009d).

Other cases also showed how the political commitment and support from the political leaders, an important factor for effective policy implementation as prescribed by the refined top downers, were weak and unsupportive in combating corruption. For example, under the Habibie administration, the final section of the Anticorruption Law 1999 did not stipulate a transitional provision governing the investigation, prosecution, and trial of corruption offences committed before this Law came into effect on 16 August 1999. Some accused the regime of intentionally omitting this. As a result, due to the legal principle of

nonretroactivity, corrupt acts, committed before the Anticorruption Law 1999 came into force, could not be prosecuted.[245]

Presidents Wahid and Yudhoyono were also accused of lacking commitment to support efforts to combat corruption. Instead of fighting corruption, Wahid himself was suspected of involving in the Bulog corruption case and was finally impeached by the People's Consultative Assembly. Yudhoyono was accused by some anticorruption organisations, notably Indonesian Corruption Watch (*Detikcom,* 11 April 2008)[246],of practising discriminatory anticorruption law enforcement.

The most notable achievement of the Reform Order regime was the establishment of the Anticorruption Commission or *Komisi Pemberantasan Korupsi* (KPK). KPK was a powerful anticorruption in Asia (Brata 2007b). Compared to 15 anticorruption commissions in Asia (see Quah 2008), only the KPK, based on its constituting Act Number 30/2002, has the power to prevent, investigate, and prosecute corruption cases. According to article 53 of this Act, the KPK also has its own special anticorruption court.

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[245]The Anticorruption Law 1999 was then changed by the Anticorruption Law 2001 to include a transitional provision which punished corrupt acts, done before the coming into force of the Anticorruption Law 1999, by the Anticorruption Law 1971. See article 43A of the Anticorruption Law 2001.

[246]Yudhoyono, who had influence upon the Attorney General's Office, has been criticized for not detaining Aulia Pohan, the father-in-law of his son, in the Central Bank's bribery case. In this case, the Bank, based on the meeting and agreement by the Bank's Governing Board (of which Pohan was a member and had attended the meeting), had bribed several members of Commission IX of the House of Representatives to 'ease' the Bank's banking liquidity assistance (BLBI) case. In the meeting on 3 June 2003, the Board's members had agreed to use IDR 100 billion from the Bank's Indonesia banking development foundation—IDR 31.5 billion for the members of the Commission and the rest for smoothing the legal process involving the Bank's former Governor in the BLBI case, in which some portions of the money were used to bribe the enforcers (*Koran Tempo,* 27 May 2009). In this case, some members of the Board, including the Bank's governor, Burhanuddin Abdulah, had been detained, except Pohan and Anwar Nasution. After strong pressures from anticorruption civil societies, in 2008 the Anticorruption Commission, an agency independent from the government, not the Attorney General's Office, finally detained Pohan but not Anwar Nasution, now the President of the National Finance Audit Board (*BBC Indonesia Com* 2008).

As a newly established powerful anticorruption commission, the KPK showed promise (KPK's Annual Reports 2006–2008). Intending to rectify public distrust and underperformance of the dysfunctional conventional enforcement institutions such as the police and the prosecution, the Commission successfully prosecuted several big corruption cases and recovered assets. Among notable high-ranking public officials prosecuted and imprisoned by the KPK were Megawati's Ministers of Maritime and Fishery, and Religious Affairs, the Central Bank's Governor, members of the national and regional parliaments, a former chief of the National Police, and several provincial and district heads of governments.

The establishment of the KPK was not truly the realisation of the government's commitment to combating the country's endemic corruption (Masduki 2005). Politically motivated to rectify its poor public image and stay in power through the general elections in 1999, the Habibie regime, described as part of the Suharto's kleptocratic regime, first initiated the idea of establishing this commission. The International Monetary Fund also proposed such an establishment. In 2003 under the Megawati regime, and based on its constituting Act Number 30/2002, the KPK began operation.

Political support from the political leaders, in particular the executive, the House of Representatives, political parties, and the conventional enforcement institutions, was weak. According to the refined top downers, weak political support will constrain effective implementation of a policy. Since its creation the KPK has faced severe attacks from every direction: organisational, constitutional, political, legal, and internal. The objective of these attacks was to dissolve or at least weaken the KPK. Organisationally, in 2005 the KPK was the lowest in per capita expenditure, only US$ 0.08, among nine anticorruption commissions

in Asia (Quah 2009). Moreover, for several months in its early operation, the commissioners did not get paid.[247]

The KPK had also been challenged constitutionally. For instance, based on a judicial review filed by convicted corruptors in the Electoral National Commission corruption case led by Nazaruddin Sjamsuddin, the Constitutional Court annulled article 53 of Anticorruption Commission Law 30/2002 which stipulated the legal basis for the establishment of the anticorruption court (*Detikcom,* 19 December 2006). The Court ruled that within three years of its decision or on 19 December 2009 the government had to enact a separate law for anticorruption courts; if the government failed to do so, all corruption cases would be tried in general courts.

At the time of writing (August 2009), a separate act on anticorruption courts had not been enacted by the House of Representatives. It was most likely that the House intentionally delayed such enactment. The delay, Isra suspected, was an effort by the House to weaken the KPK (*Tempointeraktif* 2009). This observation has been shared by anticorruption civil societies including Indonesia Corruption Watch (ICW). ICW and several anticorruption activists urged the president to enact government regulation in lieu of an act on anticorruption courts.[248]

Legally and politically, through the political process in the government and the House of Representatives, the KPK had also been severely attacked. Hendarto observed the following:

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[247]Interview with Major General (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006.

[248]Under Article 22 of the reformed 1945 Constitution, the president, in emergency situation, has the right to enact government regulation in lieu of an act, which has an equal power to an act, without firstly going through the legislative process in the House of Representatives. However, such a government regulation must be agreed by the House in its next session.

> The Anticorruption Commission was originally designed to prosecute corruption cases in the New Order regime; but some, including the drafters of the Anticorruption Law 1999, opposed the adoption of retroactive principle...One of the draft provisions [of the Anticorruption Law 1999] changed by the House of Representatives was the provision on reverse burden of proof.[249]

Thus, confirming Doig's observations on the performance of anticorruption commissions in developing countries (1995:160), the KPK's efforts were negated by the corrupt and political influence.This commission was not established within the necessary climate of political and legal support. The political leadership and commitment were still not strong enough for the commission to achieve its formal objective of controlling corruption.

Credit was given to President Yudhoyono. The first directly elected president, he placed combating corruption at the top of his government's policy agenda. In his first year of office, he issued Presidential Order Number 5/2004 instructing government agencies to speed up anticorruption measures in their own offices. The Attorney General's Office also prosecuted several high officials. In 2007, some forms of bureaucratic reforms had been pursued, notably in the Department of Finance, the Supreme Court, the Attorney General's Office, Ministry of Adminstrative Reforms, and the State Audit Board (MTI 2007). 'Now, the government has political will to combat corruption. However, it is still difficult as the corruption problem is complex and chronic'.[250]

The Reform Order regime had, and would continue to face extreme difficulties in combating corruption. It had not only inherited the corrupt political and criminal justice system and bureaucracies of the New Order regime, but also its corrupt politicians, bureaucrats, and enforcers. Having benefited from the status quo system, the corrupt officials and enforcers

[249]Interview with Agung Hendarto, Executive Director, the Indonesian Society for Transparency, 22 May 2006.
[250]Prof.Dr. Komariah Emong Sastrapradja, Professor of Criminal Law, Padjadjaran University, 30 May 2006.

had an incentive to preserve the corrupt pre-reform structure (see Goudie and Stasavage 1998:126).

Even though the Reform Order regime adopted some anticorruption measures, the commitment of the regime's political leaders and bureaucrats to readily implement the anticorruption measures was seriously in doubt. Ruki said that the KPK's recommendations on preventive anticorruption measures had not been adequately responded to by government agencies.[251]Therefore, Ma'arif observed that, 'we have laws and rules; however, their implementation depends on the willingness of the elites....'.[252] Moreover, '...until now there is no equality before the law. It is evident, for instance, when we were investigating or questioning a member of the House of Representatives, we are required to get a permission [from the president] to do that'.[253]

In the final analysis, the political conditions were not conducive to the effective implementation of Anticorruption Law 1999. Even though to some extent the regime had reformed the political system, the persons steering the system were mostly the corrupt political leaders, bureaucrats, and enforcers of the New Order regime. As a result, the regime could not expect much political support from them in the battle against corruption. This constrained effective implementation of Anticorruption Law 1999, a political factor that has been identified by the refined top downers.

[251]Interview with Major General (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006.
[252]Interview with Zaenal Ma'arif, Deputy Speaker, House of Representatives, 19 June 2006.
[253]Interview with Agoes Dwi Listijono, Vice Head, East Jakarta Police District Office, 18 May 2006.

3. The institutional factor

> "In Indonesia, combating corruption is difficult because all sectors of the government have been systematically corrupted and dysfunctional. Therefore, a conventional approach to fighting it cannot be implemented. There is a need to devise an emergency measure, a 'Caesarean operation'. Many law enforcers cannot properly enforce the anticorruption laws since they themselves are corrupt. As the existing law enforcement institutions have been corrupt, it will be more effective to create a new institution [to fight corruption]."
> (Prof.Dr. M. Mahfud MD, former Minister of Justice, and Defence, Member of Commission III of the House of Representatives, Professor of Law)[254]

Under this category, the ineffective implementation of the Anticorruption Law 1999 is associated with the reformed, but still defective institutional framework of the Reform Order regime. Even though the criminal justice system had been reformed, for example, the institutional separation of the police from the armed forces, the judiciary from the Department of Justice, and the creation of the Anticorruption Commission and commissions of the police and the prosecution, the defective Criminal Procedural Code or the KUHAP still governed the institutional enforcement relations and enforcement process of the 1999 Law. Moreover, the actors controlling the reformed institutions were mostly corrupt officials, enforcers, and leaders of the New Order regime. Therefore, institutionally the implementation structure and process were inadequate and could not effectively enforce this Law.

Under the New Order regime the police force was hierarchically integrated with the armed forces. As a result, as Irsan and Jamal experienced[255], the commanders of the armed forces could intervene in the internal affairs of, and investigations done by the police. In some cases, these interventions, as Djamal observed, weakened the performance of the police.

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[254]In an interview with me on 1 June 2006.

[255]Interview with Lieutenant General (retired) Prof. Koespramono Irsan, Operational Deputy to National Police Chief, 13 June 2006; and with AKBP Djamal, Deputy Head, Central Jakarta District Police Office, 2 June 2006.

In the reformation era, the powers and duties of the police were significantly reformed. This was achieved under Police Act Number 2/2002, which came into force on 8 January 2002 under President Megawati. The lawmakers considered Police Act Number 28/1997, which revoked Police Act Number 13/1961, was no longer meeting the changing democratic paradigms. In governing the police, the Police Act 1997 referred to State Defence and Security Act Number 20/1982, where the police force was structurally an integral part of the armed forces. In the elucidation of the Police Act 2002, the lawmakers stated that the structural integration of the police into the armed forces had made the character of the police militaristic, which in turn influenced the behaviour and performance of the police.

The lawmakers had then taken into account the paradigmatic shift in the constitutional arrangements, which structurally separated the police from the armed forces. Under article 30 of the reformed Constitution 1945 and Decision Number VI/2000 of the People's Consultative Assembly on Separation of the Armed Forces and the Police, the police force was institutionally separated from the armed forces. Thus, the Police Act Number 2/2002 formally solved the institutional structural problem. However, Zumhana, a senior public prosecutor, criticised this Act, which in practice had created new institutional problem:

> The police with their Police Act 2002 have gone one step further [in accumulating their powers], claiming that they now have the power to investigate all criminal offences, including corruption. However, if we read in the Criminal Procedure Code, there are special public official investigators. There is no single investigator. Thus, the Police Act 2002 is inconsistent with the Criminal Procedure Code.[256]

Manan added that, 'in investigating corruption cases, it is not clear the boundaries between the investigative powers of the police, prosecutors, and the anticorruption commission'.[257] Based on their respective acts, the police, the prosecution, and the Anticorruption Commission all assumed that they had the power to investigate corruption cases.

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[256]Interview with Fadil Zumhana, Assistant Head, Special Crime Division, West Sumatra Province Prosecution Office, 6 July 2006.

[257]Interview with Prof.Dr. Bagir Manan SH.,McL, Chief Justice and President of the Supreme Court, Professor of Constitutional Law, Padjadjaran University, 21 June 2006.

Mazmanian and Sabatier (1989) have argued that this lack of coherent implementation structure and hierarchical integration of the implementing agencies would constrain the effective implementation of a policy. In reality, these overlapping investigating powers instigated institutional conflicts, particularly between the police and the prosecution. It also gave enforcers the opportunity to corruptly exploit a case being investigated. Therefore, there should be one single agency responsible for such investigation (see Hood 1976).

Under the Reform Order governments, the powers and duties of the prosecution had also been reformed. The constitutional reforms demanded such reform. The statute reforming the powers and duties of the prosecution is Prosecution Act Number 16/2004. In its preamble and elucidation, the lawmakers emphasised that the reformed Constitution had brought fundamental changes in the constitutional system of government, in particular the reformed powers of the judiciary. The enactment of the Prosecution Act 2004, the lawmakers stated, was to meet changing popular democratic demands and needs. The Prosecution Act 2004, they proclaimed, was aimed at strengthening the prosecution as a government institution which was free from the influence of the government and other forms of intervention. The Attorney General was responsible for fair and independent prosecution, and was accountable to the president and the House of Representatives.[258]

The Attorney General was a state official appointed and dismissed by the president.[259] It would therefore, be unrealistic to expect the prosecution to be independent from the interventions and influence of the president or executive. Some legal cases had upheld this notion. For example, the West Sumatra High Prosecution Office did not detain 43 members of West Sumatra Legislature involved in a budget corruption case, even though the Supreme Court had rejected their appeals (*Tempointeraktif,* 27 September 2005). Isra suspected that

[258] Article 37.
[259] Article 19.

political parties in Jakarta had intervened in this case. In the case of Akbar Tandjung, a Speaker of the House of Representatives and President of Golkar Party charged with misusing Logistics Board's nonbudget fund, Winarta (*Kompas*, 9 March 2002) suspected that the ruling powers intervened in his detention.[260]

Under the Reform Order regime the powers and duties of the judiciary also experienced significant reforms. The act reforming the judicial powers and duties of the courts is Judicial Power Act Number 4/2004, replacing Judicial Power Act Number 14/1970 which had been amended by Judicial Power Act Number 35/1999. In the preamble of this 2004 Act, the lawmakers stated that the reformed Constitution 1945 had significantly changed the powers and institution of the judiciary, emphasising the judicial independence of the courts. According to the reformed Constitution, the lawmakers further stated, the judicial power was an independent power, exercised by the Supreme Court, its subordinate courts, and by Constitutional Court, to uphold the law and justice. All interventions in judicial matters by any person or institution other than the judicial authorities were illegal and would be punished.[261]

To protect the judiciary from the executive's intervention, the organisation, administration, and finance of the Supreme Court and its subordinate courts were placed under the power and control of the Supreme Court.[262] However, institutional independence of the courts will not solve the entire institutional problem; the most important thing is how to change the mentality of the judges, as Alkostar observes:

> From the institutional perspectives, what we got from the one roof [the organizational, administrative, and financial power transfer from the Department of Justice to the Supreme Court] is that we are now more independent. However, from the mentality

[260] During the legal process of Tandjung's case, Megawati of Indonesia Democratic Party of Struggle was the president.
[261] Article 4 (3 and 4).
[262] Article 13 (1).

> perspectives of judges, we need more time to change. To rid the judges from the New Order regime mentality takes long process. [263]

Institutional independence of the courts in administrative and financial matters can be dangerous if the mentality of the judges is still corrupt. The Supreme Court now has full administrative control over its subordinate courts and their resources and this could be another source of corruption. 'They are now uncontrollable'.[264] Furthermore, the newly created Judicial Commission was powerless to supervise the behaviour of judges. For this reason, Muqoddas, the Chief Commissioner of the Judicial Commission, demanded more power so that the commission not only could recommend placing sanctions on misbehaving judges, but also implement such recommendations (*Tempointeraktif* 2005).

The corrupt mentality of the judges worked against reform in the judiciary. Even though there was a blueprint for the Supreme Court reform, Soekotjo reported, 'up to now there are no significant changes in the Supreme Court'. He further stated, 'I am afraid the reform forces in the Supreme Court collide [with the pro status quo forces]. Several Justices want the status quo, meaning they are silently fighting against the reform, as may be seen from their court decisions'.[265]

Another problem, impeding effective implementation of Anticorruption Law 1999, was the defective Criminal Procedure Code or KUHAP. This code governed the implementation process of the 1999 Law. The KUHAP was defective in that it gave wide discretion to the enforcers, creating a disintegrated criminal justice system, and opening different perceptions among the enforcers.

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[263] Interview with Dr. Artidjo Alkostar, SH., LLM, Justice, the Supreme Court, 6 June 2006.
[264] Interview with Major General (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006.
[265] Interview with Soekotjo Soeprapto, Commissioner, Judicial Commission, former Commissioner of Public Officials' Asset Audit Commission, 24 July 2006.

In fact, corruption itself was a contributing factor to anticorruption ineffectiveness. For instance, Brigadier General Police Samuel Ismoko was punished with 20 months' imprisonment by the South Jakarta District Court. He was convicted of accepting a bribe when he was investigating a corruption case in Bank Nasional Indonesia, a state-owned bank. However, the Jakarta High Court (*Suara Merdeka,* 12 December 2007) reduced his sentence to 15 months. The involvement of Ismoko, an anticorruption law enforcer, in a bribery case, and the reduction of his punishment, which many anticorruption activists had opposed, would certainly constrain the effective attainment of the anticorruption policy objective.

Corruption in Indonesia has been endemic and has infected all sectors of life including the law enforcement sector. The enforcers themselves are an integral part of this problem. Ruki, Chief Commissioner of the Anticorruption Commission and former police general, observed that corruption problem in the enforcement sector was even more serious than that in other sectors of the government:

> If the spread of corruption has been overarching and entering all the walks of life, in which the law enforcers are part of the corrupt sectors, even more corrupt, combating corruption is difficult…Power tends to corrupt. The law enforcers have the powers and authorities [to investigate, prosecute, and punish the corrupt behaviours], which sometimes cannot be controlled. The law enforcement is part of the problem …There is judiciary corruption by the judicial apparatus, starting from the police, prosecutors, judges, and lawyers. It has already happened in Indonesia. I myself have truly seen and witnessed it.[266]

Thus, as Manion contended (2004:23), in a setting of endemic corruption the enforcement approach that targets combating and changing the corrupt behaviour is problematic.

Corrupt enforcers and institutions were unfortunate conditions the Reform Order regime inherited from the New Order regime. To some extent, corruption in the enforcement sector

[266]Interview with Police Major General (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006.

was organised, which was well-known as 'mafia peradilan' or court mafia.[267] 'We see the court mafia is organized, coordinated and [conducts] systematic corrupt acts involving more than one person. They are well organized. This mafia badly affects the law enforcement'.[268] By organising corrupt activities among the actors involved in the enforcement process of a criminal or corruption case—for example the suspect, the defendant, the lawyer, the case broker, the police, the prosecutor, the judge, and the prison officer—this mafia effectively corrupted and distorted the enforcement process. By selling the enforcement decisions these actors, who were mostly the enforcers at street level, deflected the achievement of the policy objective of the Anticorruption Law, therefore confirming the arguments of the bottom uppers' theory.

It had been strongly perceived by the people that the enforcers had no commitment to enforcing the anticorruption law. Instead, many of these enforcers were involved in committing corrupt acts. This highlighted the refined top downers' argument that to

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[267]Asep Rahmat Fajar, Secretary General of the Indonesia Court Monitoring Society and Expert of the Judicial Commission, in an interview with me on 24 July 2006, comparatively described how the court mafia operated under the New Order regime and the Reform Order regime:
'At the macro level, the court mafia is not organised, but at the micro level, I believe, this informal organisation does exist. For example, at the top level there is a boss who has the power to coordinate the corrupt operations. There are field operators who seek cases, suspects, or defendants to be mediated with the law enforcers. At the bottom level, there are the police, prosecutor, and judge who have the power to take the corrupt decision. However, this mafia is difficult to prove as the operations are not transparent or closed. The corrupt patterns of this mafia do not change much from those during the New Order. For instance, the patterns in the court can be to negotiate [with] the judges in the district and high courts who will try the case and to delay the court proceedings, decision, or the giving of this decision to the parties. The field operator coordinates these operations with the police, prosecutors, and judges. There are some differences, however. In the past, they comfortably played with big cases, but now they are afraid. Thus, now they play with small cases such as land disputes and divorce. In the past, the bribe money might be transferred to the bank accounts of the law enforcers. Now they are afraid to do that as the transfer may be traced by the Financial Transaction Reports and Analysis Centre (PPATK). Therefore, they transact the bribe money 'cash and carry'. As the KPK [the Anticorruption Commission] may intercept their conversations, they do this transaction overseas. Thus, they well adapt to the changing system'.
[268]Interview with Hermawanto, public lawyer, Legal Aid Institute, Jakarta, 30 June 2006. Hermawanto gave the Probosutedjo case—alleged bribery in the Supreme Court—as an example of court mafia involving the coordinating effort between Probosutedjo's lawyer and a clerk of the Court in the case. (Probosutedjo was a step-brother of former President Suharto who was found guilty of committing corruption by the Supreme Court of the Reform Order regime).

effectively implement a policy the implementing officials must have commitment to implementing such a policy (Sabatier 1986:23).

Transparency International Global Corruption Barometer 2004–2007 showed that the judiciary and the police of the Reform Order regime were among the top five sectors which were perceived by the respondents to be affected by corruption. Moreover, internationally, the Indonesian judiciary and police were perceived to be more corrupt than those in the total sample average of all countries surveyed:

Table 5.4 **National institutions and sectors: corrupt or clean? — Indonesia**

To what extent do you perceive the following sectors in this country to be affected by corruption (1: not at all corrupt 5: extremely corrupt)	**2004 (Total sample average of all countries surveyed)**	**2005 (Total sample average of all countries surveyed)**	**2006 (Total sample average of all countries surveyed)**	**2007 (Total sample average of all countries surveyed)**
Political parties	4.4 (4.0)	4.2 (4.0)	4.1 (4.0)	4.0 (4.0)
Legislature/parliament	4.4 (3.7)	4.0 (3.7)	4.2 (3.7)	4.1 (3.6)
Legal system/judiciary	4.2 (3.6)	3.8 (3.5)	4.2 (3.5)	4.1 (3.4)
Police	4.2 (3.6)	4.0 (3.6)	4.2 (3.5)	4.2 (3.6)
Business/private sector	3.7 (3.4)	3.5 (3.4)	3.6 (3.6)	3.1 (3.5)
Tax authorities	4.0 (3.4)	3.8 (3.4)	3.4 (3.3)	3.6 (3.3)
Customs	4.3 (3.3)	4.0 (3.3)	-	-
Media	2.6 (3.3)	2.4 (3.2)	2.8 (3.3)	2.5 (3.3)
Medical service	3.0 (3.3)	2.7 (3.2)	3.0 (3.1)	2.8 (3.2)
Education system	3.2 (3.1)	3.0 (3.0)	3.3 (3.0)	3.0 (3.0)
Registry and permit	3.7 (3.0)	3.5 (2.9)	3.6 (2.9)	3.8 (3.0)
Utilities	3.1 (3.0)	3.0 (3.0)	2.9 (3.0)	3.1 (3.1)
Military	3.3 (2.9)	2.9 (2.9)	3.3 (3.0)	3.0 (2.9)
NGOs	2.4 (2.8)	2.4 (2.8)	2.9 (2.9)	2.8 (2.9)
Religious bodies	1.8 (2.7)	2.1 (2.6)	2.3 (2.8)	2.2 (2.8)

Source: Adapted from Transparency International Global Corruption Barometer 2004–2007.

As Rudini, former Minister of Home Affairs of the New Order said, laws would be difficult to implement as the enforcers were dishonest and the courts could be bought (*Media Transparansi* 1999). The judicial system, which has an important role in limiting corruption

(Goudie and Stasavage 1998:124), was dysfunctional. Moreover, the political parties and the legislatures, two political institutions vital to checking the abuse of power by the executive, had been perceived as the most corrupt institutions. Therefore, Rudini added, 'we need an iron hand to wipe out corruption practices. If he [the enforcer] is not clean, [he] will not be able to [fight corruption]'.

In summary, even though the institutional implementation framework of the Reform Order regime had been improved it was still defective in effectively framing the implementation structures and processes of Anticorruption Law 1999. The regime had institutionally reformed the police, the prosecution, and the judiciary, emphasising their independence from the executive interventions. However, the defective Criminal Procedural Code or the KUHAP largely still governed the operation of the regime's criminal justice system and had failed to meet one condition for effective implementation as prescribed by the refined top-down implementation theorists such as Sabatier (1986b); the KUHAP had failed to legally structure the implementation processes of Anticorruption Law 1999 in order to enhance compliance by the implementing officials. Moreover, the regime had inherited corrupt enforcement institutions and enforcers from the New Order regime. Therefore, there was no commitment or incentive to combat corruption. This was contrary to one of the refined top-down implementation theorists who prescribe the need for committed implementing officials in order to effectively implement a policy or program.

4. The managerial factor

There were various management constraints which impeded effective implementation of Anticorruption Law 1999. Slamet Riyanto, Inspectorate General of the Ministry of Religious Affairs (*Suara Merdeka* 2007), contended that anticorruption efforts had so far been constrained by several factors such as a lack of management in following up audit findings,

weak coordination between auditors and enforcement officers, poor information technology support, inadequate skills of auditors, and an ineffective reward and punishment system.

Another factor contributing to the underperformance of the enforcers was inadequate salaries.[269] It was unrealistic to expect underpaid police, prosecutors, and judges to curb corruption (Klitgaard 1998). However, 'the adequacy of salary actually depends on us [the enforcers' life styles]. Thus, it depends on the morality of the officer'.[270]

Inadequate operational budget was another serious management problem. One police officer complained that 'sometimes we have to seek other financial sources to supplement the operational costs'.[271] In some cases, they had to become involved in corrupt acts such as extorting money from drivers in traffic cases, to supplement the insufficient operational budget. 'Can you imagine the law enforcers are only given an operational budget of IDR 2 1/5 million per corruption case?' Atmasasmita added.[272] Yusuf described this financial difficulty:

> When I was Head of the Bogor District Prosecution Office, I had to overcome the problem of limited operational budget. In the Bogor office, the budget was allocated to prosecute 120 cases annually, one case four million rupiah. In practice, the cases were more than 300. Thus, I had to creatively use the budget. Here [in South Jakarta District], the allocation is 250, but in reality the cases can be more than 500.[273]

Atmasasmita argued that the unsatisfactory performance of the Anticorruption Commission or KPK in its early activities might also be attributed to inadequate financial resources.

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[269]Interview with Marina Sidabutar, Justice, the Supreme Court, 6 June 2006.
[270]Interview with Yusrida, Director, Criminal Policy Directorate, Department of Justice and Human Rights, 29 June 2006.
[271]Interview with informant C, bottom level Head of the District Police Office C, 2 June 2006.
[272]Interview with Prof.Dr Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of Anticorruption Law 1999, Delegate to United Nations Convention against Corruption, and Professor of International Criminal Law of Padjadjaran University, 12 June 2006.
[273]Interview with M. Yusuf, Head, South Jakarta District Prosecution Office, former Head of Bogor City Prosecution Office, 19 June 2006.

As was the case under the New Order regime, most anticorruption activists and organisations in the Reform Order regime perceived the enforcement agencies and the enforcers as corrupt. Therefore, they demanded enforcement reform. However, there were no incentives to implement such reform. Moreover, there was a lack of leadership to lead this reform, as Syahputra observed.

> The law enforcers have no incentives to reform themselves, for they benefited from the status quo system. For example, the reform in the Supreme Court, there are internal forces against pro reform. The key determining factor is in the leadership of the Chief Justice of the Supreme Court, and it seems that he does not yet want such reforms. For instance, the recent adoption of a policy by the Supreme Court allowing judges to receive gifts indicates that the Supreme Court does not yet have the willingness to reform itself...Same as the police and the prosecution. The internal reform in the police, I observed, is a matter of like and dislike. Actually, the reforms in the law enforcement agencies were initiated in 1999, but up to now, there is no significant progress.[274]

The lack of human resource management in enforcement agencies was another factor contributing to the ineffective implementation of the Anticorruption Law 1999. For example, the recruitment of judges in some cases was not based on competence, but on nepotism. 'If you check the judge recruitment, you will know how many of the newly recruited whose fathers are judges'.[275] Moreover, the number of police was not enough to do the work.[276]

Incompetent enforcers were another problem. For instance, in some corruption cases 'we returned the investigation dossier to the police because the police were wrong in understanding and applying laws and did not provide enough evidence'.[277] The existence of unskilled officers contradicted the requirement suggested by the refined top-down implementation theorists that competent implementers were needed to implement a public

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[274]Interview with Andi Syahputra, Executive Secretary, Government Watch Jakarta, 21 July 2006.
[275]Interview with Soekotjo Soeprapto, Commissioner, Judicial Commission, former Commissioner of Public Officials' Asset Audit Commission, 24 July 2006.
[276]Interview with AKBP Djamal, Deputy Head, Central Jakarta District Police Office, 2 June 2006.
[277]Interview with Lambok Sidabutar, Special Crime Section Head, West Java Province Prosecution Office, 11 July 2006.

policy or program effectively. Ironically, 'some of the police officers did not have motivations to improve their skills'.[278]

Coordination was also a problem in the anticorruption enforcement. The KUHAP, which created the disintegrated criminal justice system, largerly contributed to this problem. By allowing the compartmentalization of the enforcement agencies,[279]the KUHAP made coordination and cooperation among the enforcers more difficult. Suhartono, a senior prosecutor, described how this problem constrained the investigation of a corruption case:

> Sometimes the people or NGOs reported suspected corrupted offences both to the police and the prosecutor. When we were starting to investigate the case, the police had already investigated it. The police had seized the evidence. We did not know the police had investigated the case. The police, however, did not yet submit the investigation dossier to us. Therefore, we tried to coordinate with them, but in practice it was difficult. We, then, gathered other evidence as sometimes we had difficulty in getting the evidence from the police.[280]

Under the Reform Order regime, the police, the prosecution, and the Anticorruption Commission, based on their respective laws, all had the authority to investigate a corruption case. In some cases, the enforcer, corruptly motivated, tended not to cooperate and coordinate with the other enforcers in the investigation of a corruption case. For some enforcers corruption cases were a source of extortion.

During the Abdurrahman Wahid administration a team called *Tim Gabungan Pemberantasan Korupsi* (Anticorruption Joint Team) or TGPTK was established. However, in a judicial review the Supreme Court dissolved this team after it had tried to investigate a bribery case involving three Justices of the Supreme Court. This dissolution, Masduki said

[278]AKBP Djamal, Deputy Head, Central Jakarta District Police Office, 2 June 2006.
[279]Interview with Dr. Marwan Effendi, SH., Director, Special Crime Directorate, Attorney General Office, 4 July 2006.
[280]Interview with FX Soehartono, Vice Head, East Java Province Prosecution Office, 15 August 2006.

(ICW 2003:ix), showed that the Supreme Court had no commitment to combating corruption within its own institution.

The lack of effective control on the use of power by the enforcers can also be a constraining factor in anticorruption enforcement. The KUHAP was weak in checking the use of this power. The strong powers of police are the sources of corruption. No institution should be allowed to act freely without any functional control. The phenomenon of the court mafia is an indication that internal institutional control in the enforcement agencies was dysfunctional.

A lack of technology also slowed anticorruption measures. For instance, 'our bureaucracy is still manually operated, therefore inefficient. Information technology system is not yet implemented. One legal case could take two or three months to complete [proceed to the court]', a senior prosecutor complained.[281] The technology constraint was also one of the reasons the Anticorruption Commisson had not yet investigated corruption in the police force.[282]

In sum, several managerial factors constrained the effective implementation of the Anticorruption Law 1999. Essentially, however, the ineffective implementation of this Law can be attributed to the collapse of the management functions in the enforcement process. The implementation of the Law was defective in seven management functions known as Luther Gulick's POSDCORB: *P*lanning, poor planning within and among the enforcement agencies; *O*rganising, fragmented organisation structure or disintegrated criminal justice system; *S*taffing, nepotism in the recruitment of the enforcer and incompetent enforcers;

[281]Interview with Chuck Suryosumpeno, Head, Bandung City District Prosecution Office, 12 July 2006.
[282]Amin Sunaryadi, Commissioner and Vice Chairman, the Indonesia Anticorruption Commission, 6 June 2006.

*D*irecting, the lack of leadership in the enforcement agencies; *C*oordinating, the lack of coordination between the police and the prosecutors; *R*eporting, control and monitoring failure of the enforcement processes; and *B*udgeting, the lack of financial resources for the enforcement activities.

5. The societal factor

Underdevelopment of civil society and weak participation by the people in the governance process contributed to the ineffective implemention of the Anticorruption Law 1999. These conditions weakened the role of social control in the implementation of this Law. According to the refined top-down implementation modelists, for implementation to be effective, interest groups and sovereigns must support such implementation. Moreover, changes in socioeconomic conditions, the modelists argued, do not undermine such public and political support.

Under the democratic Reform Order regime public participation in the governance and anticorruption enforcement processes had gained momentum. Some genuine forms of public interest groups or civil societies started to develop. The people were empowered to scrutinise the enforcement process. However, such public participation was still not meaningful enough to have a positive contribution to the implementation of Anticorruption Law 1999.

Formally, the regime, through the Anticorruption Law 1999 itself[283], had given the public the opportunity to participate in the prevention and eradication of corruption. The public also had the opportunity to influence anticorruption policymaking. The Indonesian Corruption Watch (ICW), for example, was invited to be a member of the government team

[283] Article 41 para (1) of the Anticorruption Law Number 31/1999 stating: 'The people can participate in helping the effort to prevent and combat corruption'.

drafting the new anticorruption law. However, it withdrew its membership as it opposed the team's decision to abolish the anticorruption court. The ICW and academics then proposed a counter anticorruption law draft to the House of Representatives, retaining the anticorruption court and its *ad hoc* judges (*Suara Merdeka,* 16 February 2007).[284]

Under the Reform Order regime, the people had freedom of expression and information. As a result, they had better knowledge of corruption and its negative effect on society. This motivated them to participate in the fight against corruption. The table 5.5 below shows how the people perceived corruption's impact on political life, the business environment, and personal life.

Table 5.5 **Corruption's impact on political life, the business environment, and personal life — Indonesia**[285]

Year	Impact of corruption		
	Political life	**The business environment**	**Your personal and family life**
2004	3.2	3.1	2.6
2005	3.3	3.2	2.5
2006	3.4	3.2	2.9

Source: Adapted from Transparency International Global Corruption Barometer 2004–2006.

Thus, from 2004 to 2006 the survey respondents perceived that political life was the sector most affected by corruption. This phenomenon might be associated with the introduction of

[284]In the Indonesian legal system, a corruption case can be tried in a common court or in a special anticorruption court—a new court established by Anticorruption Law Number 31/1999. Only corruption cases prosecuted by the KPK go to the anticorruption court, whereas those prosecuted by the Attorney General Prosecutor go to the common court. The people, as can be seen from Transparency International Global Corruption Barometer 2003, perceived the common courts to be corrupt—many corruptors had been acquitted. On the other hand, according to Kresna Menon, a judge of the Anticorruption Court, since 2004 the Anticorruption Court had decided on 103 corruption cases; all corrupt defendants were found guilty, only two cases were discontinued due to the respective death and insanity of the defendants. 'No defendant was released, because the prosecutor has convincing and sufficient evidence'. The total amount of stolen assets recovered up to May 2009 was IDR 549.8 billion (*Tempointeraktif,* 3 July 2009).

[285] The respondents were asked, "some people believe that corruption affects different spheres of life in this country. In your view, does corruption affect…", and requested to rank 1 to 4 (1: not at all; 4: to a large extent).

a democratic political system in 1999 and the decentralisation policy in 2001.The multiparty system and direct elections of president, region heads, and regional and national legislators, in which more than 40 parties competed for powers in the 1999 and 2004 elections, had been costly to run and created opportunities for political corruption. Money politics and prosecution of corrupt bureaucrats, legislators, and politicians, perhaps due to the high unemployment rate and weak democracy, have since been common.

The public had an important role in the fight against corruption. Padmanegara showed how corruption investigators relied on the people to report instances of corruption:

> Corruption investigation depends on the people. Will they want to report alleged corruption or not? For example, the people in West Sumatra were active in reporting the corruption case in the regional parliament. Nevertheless, people in other regions may be not so active or brave enough to report corruption.[286]

Without active civil society or public participation in the fight against corruption the implementation of the government anticorruption program will be ineffective. Nepal had already demonstrated this unfortunate outcome (Panday 2000:35). Therefore, as the refined top-down implementation theorists have prescribed, strong support from civil societies or interest groups in policy implementation is required for implementation to be effective.

The public's anticorruption attitude, as a result of public awareness-raising and civil society capacity-building, is vital in the fight against corruption (Eng 2000:73). However, in Indonesia, 'the society is tolerant of corruption'.[287]According to John Brainwaithe's reintegrative shaming, without subjecting corrupt attitudes to social shame, corruption would flourish (Larmour and Wolanin 2001). Moreover, without social pressure to enforce

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[286]Interview with Lieutenant General Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.

[287]Interview with Prof.Dr Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of Anticorruption Law 1999, Delegate to the United Nations Convention against Corruption, and Professor of International Criminal Law of Padjadjaran University, 12 June 2006.

anticorruption law, enactment of the law would be insufficient (Phongpaichit 2000:1–3). Under the Reform Order regime, some public pressure was politically and economically motivated. 'We of course face political and public pressure, for example from non government organisations. Some politicians used NGOs and paid the unemployed to influence us for their own purposes'.[288]

As Prasetyo observed, people had different motivations for joining anticorruption organisations. Some were truly motivated to combat corruption, while others wanted to be popular or protect their personal or political interests.[289] Some NGOs were economically motivated. To influence the anticorruption enforcement process, corrupt politicians used and financially backed mass demonstrations. Sidabutar further complained how he, as a corruption investigator, faced politically motivated public pressure:

> Quite often, when we were investigating corruption cases we were pressured [by particular group demonstrations]. Today came the group pro with the suspected corrupt public official, later the other contra group came to our office, sometimes vandalized the office. They justified their actions by referring to freedom of information and expression. It happens everywhere. There were political interests [in such mass demonstrations].[290]

In the Reform Order regime era, changes in socioeconomic conditions, which transformed the corrupt authoritarian New Order regime to a democratic and promarket governance, strengthened political support and public participation in the battle against corruption, a condition which the refined top-down implementation theorists prescribe as conducive to effective policy implementation.

However, the economic crisis that led to high inflation and a high unemployment rate constrained the measures against corruption. The real income of public servants, which was

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[288]Interview with Timbul Manulang, Head, Tenggarong Kutai District Prosecution Office, East Kalimantan, 27 July 2006.
[289]Interview with Wawan E. Prasetyo, Anticorruption Activist, Bali Corruption Watch, 7 August 2006.
[290]Interview with Lambok Sidabutar, Special Crime Section Head, West Java Province Prosecution Office, 11 July 2006.

already inadequate, further decreased, forcing bureaucrats to commit more corrupt acts to meet their basic needs.

The other impediment to anticorruption implementation was that, 'people are afraid to report it [suspected corruption] as they do not want to be involved in the case.'[291] Winarta added that corruption was still a serious problem in the democratic reform era as there was no whistle blower act.[292] Moreover, one person once complained, saying, 'I reported the case, but what is my reward?'[293]

In short, under the Reform Order regime the people now had freedom of expression and opportunities to support, control, and participate in the battle against corruption. As the interviewed enforcers reported above, the public participation and support had a positive role in the implementation of the Anticorruption Law 1999. However, there were some civil society movements who were economically and politically motivated to oppose corruption.

F. Implementation as an integral function of the political system of the democratic reform governments

Under the reformed 1945 Constitution significant changes in the country's political structure and power occurred. The people now elect the president and all regional leaders directly. The term of office for the president is limited to two periods (each for five year term). The state has adopted a multiparty system. 'Proliferation of the political parties is the main difference,.... In the past, the government was executive heavy, but now it is legislative

[291]Interview with Musram Amin and Efriandi Aziz, Anticorruption Unit, West Sumatra Province Police Office, 7 July 2006.
[292]Interview with Frans Winarta, lawyer, and Member of the Indonesia Law Commission, 26 May 2006.
[293]Interview with Yusrida, Director, Criminal Policy Directorate, Ministry of Justice, 29 June 2006. To overcome this reward problem President Yudhoyono then issued Presidential Instruction Number 5/2005, instructing the Minister of Justice to make a decision to reward people who report alleged corruption.

heavy [the parliament has more powers].'[294] The dual functions of the armed forces, in politics and defence, have been abolished. The people and the media have now gained freedom of expression.The country has a constitutional court and a regional representative council. The regions have autonomy in government. 'One of the most striking trends in contemporary Indonesia is the increasing localisation of politics' (Tomsa 2006:81). The judiciary is now independent of the executive and the police organisation is institutionally separated from the armed forces.

On the negative side, the transition to the democratic political system of government did not significantly improve the implementation effectiveness of Anticorruption Law 1999 or reduce public sector corruption. To some extent, the criminal justice system was reformed; however, some elements of the corrupt authoritarian New Order regime's political structure and its corrupt political actors and enforcers maintained effective control and influence on the enforcement of this Law.

Comparatively, the efforts to combat corruption, and the difficulties and outcomes in transitional Indonesia, were similar to those experienced by transitional democratic countries such as Mexico and other Latin American countries. In Mexico, as Morris learned (1999:623–43), the patterns of political corruption were inherently linked to the nature of its political system. Following the electoral defeat of the Institutional Revolutionary Party of the corrupt President Carlos Salinas, the country experienced structural democratic changes to its political system. However, having learned from the difficulties experienced by other Latin American countries in strengthening the rule of law, designing functional institutions, and in curbing corruption, Morris believes that the positive effects of the country's democratic institutional changes on reducing corruption might remain theoretical prospects.

[294]Interview with Prof.Harkristuti Harkrisnowo, PhD, Professor of Criminal Law, the University of Indonesia, and Member of the Indonesia Law Commission, 7 June 2006.

As previously indicated in Indonesia's TI CPI, the country's transition from the authoritarian New Order regime to the democratic Reform Order regime did not significantly reduce its endemic corruption. Rais had attributed this problem to the formal, not substantial, democratic reform, and to the corrupt and difficult link between the Reform Order regime and the New Order regime:

> The creation of clean and good governance is our difficult homework. We must know that our democracy now is not real democracy. We still have dominant feudalism mentality. We only have formal democratic system, but our mentality is still old one. The checks and balances mechanism is not functional. This problem has to be settled first…Now corruption eradication by SBY [President Yudhoyono] is just theatrical, only cosmetic, because he only combats corruption at the bottom to middle levels.On the other hand, he lets some corrupt conglomerates walk away. Thus, the problem is in the leadership. SBY is Suharto's duplicate, part of the New Order. In the past, he was a regional army commander. Thus, he will have no courage to take legal actions to Suharto's corruption cases. [295]

Thus, one of the problems influencing the implementation effectiveness of the Anticorruption Law 1999 was that, 'the people in the government are the old actors of the New Order'.[296] For example, as Rais further said, the KPK was part of the New Order regime, as its chief commissioner was a police general. The same situation existed with Ginanjar, speaker of the Regional Representative Council.They successfully fought against the reform movement.

Due to the problem of inheriting the New Order regime's corrupt bureaucracy, leaders of the Reform Order regime, including President Yudhoyono, had limited power to control corruption effectively. Pope (1999b) had observed this phenomenon in the successes and failures of past anticorruption measures in various countries. 'The mentality of our public officials has become corrupt, because they are accustomed to corrupt practices. What has

[295]Interview with Prof.Dr. Amien Rais, former Speaker of the People's Consultative Assembly, former President of National Mandate Party, former presidential candidate, and the leading figure in the reform movement, 1 August 2006.

[296] Interview with Nurcholis Hidayat, public lawyer, Jakarta Legal Aid Institute, 22 June 2006.

been happening now is actually the continuation from the past [the corrupt New Order regime].'[297]

It is not surprising that, based on the TI Global Corruption Barometer 2006, the majority of the respondents opined that the governments of the Reform Order regime had not seriously tried to combat corruption.[298] Moreover, under the Reform Order regime, 'corruption is not controllable. Political fragmentation is wide; no political power is dominant, controlling everything. And new powers emerge everywhere.'[299] Based on TI's Bribe Payers Index 1999, of 33 per cent of respondents who stated that corruption had increased, 18 per cent perceived multiparty elections as the main factor contributing to the increase in corruption in the country.

Political reform had failed to create good government. 'In general terms, *good government* is an essential precondition for *good governance*...' (Doig 1995:151). The political reform had not addressed the important issue of the actors controlling the government. The corrupt politicians, bureaucrats, and enforcers of the New Order regime still had effective control over the running of the Reform Order regime.

Bahri observed[300]that the political process strongly influenced the legal process in corruption cases. Therefore, he believed that even though President Yudhoyono had clear anticorruption policies, their implementation would fail to break the chains between these two processes.

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[297]Interview with Adnan T. Husodo, Deputy Coordinator, Indonesian Corruption Watch, 2006.
[298] **Source**: http://www.ti.or.id/researchsurvey/117/.
[299]Interview with Adnan T. Husodo, Deputy Coordinator, Indonesian Corruption Watch, 2006.
[300]Interview with Kahar Al Bahri, Coordinator, Working Group 30, East Kalimantan, 26 July 2006.

Under the Reform Order regime the military, a powerful group in Indonesian politics, were also not fully committed to combating corruption. In Indonesian politics, the military's support has a crucial role for effective government. However, 'until now corruption in the military institutions has never been touched.'[301] A former senior prosecutor further described how although corruption had infected the military since the New Order regime, the wrongdoers were immune to corruption criminal charges:

> Systemic corruption in Indonesia may be traced historically. After the country's independence, some forms of military business emerged. These had become sources of corruption. They did not pay taxes and easily got the loans from the bank. No one had courage to request the military to pay their debts. These practices were continued in the New Order regime. Until now, these [corrupt] military bussineses are difficult to bring to an end. [302]

The institutional separation of the police from the military, however, had a positive effect. As Padmanegara said, 'the corruption cases we investigate are many, especially after we were separated from the armed forces.'[303] He further said the police were now directly under the president, and were expected to be neutral, and not suffer intervention by others. However, the question arises: how could then the police be free and protected from the corrupt interest and influence of the president?

The Reform Order regime made significant institutional achievement by strengthening the implementation structure of the Anticorruption Law. This achievement was the establishment of KPK, which was a powerful independent anticorruption commission (Brata 2007b). The KPK has preventive, investigative, and prosecuting powers. It has jailed several top figures including ministers, governors, politicians, bankers, and businesspersons.

Therefore, it is not surprising that many, including corrupt politicians, bureaucrats, businesspersons, and even conventional enforcers, have tried hard to weaken and abolish the

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[301] Interview with a lawyer, 22 June 2006.
[302] Interview with a former senior prosecutor, 24 May 2006.
[303] Interview with Lieutenant General Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.

KPK. They have employed various methods to achieve their purpose. For example, they used the reformed democratic House of Representatives to change Anticorruption Law 1999 and abolish anticorruption courts. Another method was to select and install commissioners with the mission to weaken the KPK internally (Brata 2008a).[304] Ironically, under the democratic political system of the Reform Order regime they might also use the Constitutional Court, a newly democratic institution, to review the constitutionality of Anticorruption Law 1999 and the powers of the KPK. Soehartono said, 'the annulment of the substantial unlawfulness provisions by the Constitutional Court was the big winning day for corruptors.'[305] Syahputra further observed:

> Corruptors have been trying to legally oppose the existence of the KPK. They are also questioning the constitutionality of the Anticorruption Act and the KPK Act. The legality of phone interceptions and the taking over of the investigation power by the KPK have also been questioned as this, they argue, is against the Police Act.[306]

The transition to democratic governance, however, did not truly refom the governance of the enforcement sector. With some adaptation, the court mafia still controlled the investigation, prosecution and trial of corruption cases. Corruption itself therefore had made the implementation structure and process ineffective in enforcing the Anticorruption Law. An anticorruption activist described how corruption had infected the implementation process, from the beginning to the end of the process:

> Here, in East Kalimantan Province there are some patterns of corruption among the enforcers. The police, for example, play in the manipulation of the investigation dossier. They may offer the suspect three articles to be charged, from the least to the most severe one. The suspect is asked to choose. His option has its own price. Then at the prosecution stage, the prosecutor may arrange witnesses, from those who will prove the charge to those that will weaken it. The defendant again may select the options. In the court, judges may play with their discretion whether or not to summon a person to be a witness in the court. The defendant may negotiate it. The judges may also bargain the court decisions. We once conducted a research in the prison. Almost

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[304]The Commissioners of the KPK were selected through political process in Commission III of the House of Representatives, whose some of its members were suspected corruptors or could be the potential targets of the KPK.

[305]Interview with FX Soehartono, Vice Head, East Java Province Prosecution Office, 15 August 2006. Based on the provision concerning the substantial unlawfulness of corruption acts in the Anticorruption Law 1999, the judge can still punish the corrupt defendant even though his corrupt act is not defined in the written laws, but is socially unacceptable.

[306] Interview with Andi Syahputra, Executive Secretary, Government Watch Jakarta, 21 July 2006.

> all the prisoners had experienced such a bargaining, from small cases such as road accidents to big cases such as drug abuses and corruption.[307]

The people were pessimistic about the ability of the democratic Reform Order government to eliminate corruption. The popular rhetoric is 'how can we combat corruption if the broom to clean the floor itself is not clean?'Manion (2004:23) has argued that in a setting of endemic corruption where the government was unreliable in terms of enforcing laws and an integral part of the corruption problem, not an outside player, the interventionist measures targeted at changing the corrupt behaviour were problematic.

In the final analysis, the transformation to the democratic political system of the Reform Order regime did not make the implementation of Anticorruption Law 1999 effective. The implementation structure and process was still defective. The big mistake the Reform Order regime made was that they did not replace the corrupt politicians, bureaucrats, and enforcers of the New Order regime who steered and controlled its government and law enforcement process.

G. Conclusions

Based on the analysis in this chapter, the Reform Order regime performed badly in terms of implementing and achieving the policy objective of Anticorruption Law 1999. The implementation of this Law failed to satisfactorily meet the four evaluation criteria. First, the public perceived that public sector corruption was still widespread. Second, the amount of recovered state losses was insignificant; however, the performance of the KPK in this criterion was quite promising. Third, due to irregularities, including the court mafia, the public still lacked confidence in the integrity and capacity of the criminal justice system to curb corruption, even though the Yudhoyono administration somewhat improved its performance in this regard. Lastly, although there were some positive changes in the

[307]Interview with an anticorruption activist, 26 July 2006.

anticorruption attitudes, in general, the Reform Order regime did not make significant progress in changing public officials' and enforcers' attitude to corruption.

The factors constraining the implementation effectiveness of Anticorruption Law 1999 were then analysed and identified. These have been categorised into five factors: policy design, political, institutional, managerial, and societal factors. In policy design, the Law was defective and did not fully satisfy one of the three conditions for effective implementation as prescribed by the refined top downers. That is, it failed to legally structure the implementation process to enhance the compliance of the enforcers and other stakeholders. The regime had also failed to create political conditions conducive to successful implementation and give political support to implement the Law effectively.

In terms of the institutional factor, even though some improvement in institutional framework had been made, the defective Criminal Procedural Code, the KUHAP, still ruled the implementation structure and process of the regime's criminal justice system, leading to the implementation ineffectiveness of the Law. In terms of the managerial factor the implementation ineffectiveness of the Law can be attributed to the collapse of the management functions in the enforcement process. Some slight progress was made in the battle against corruption under the Reform Order regime. This can be attributed to the people's participation in preventing and controlling corruption, the societal factor.

Another critical issue is whether there was a functional relationship between the democratic political system of the Reform Order regime and the implementation of the Anticorruption Law. The study found that there was. Ironically, on the one hand, the democratic governance change provided an opportunity for the people to participate in the prevention and eradication of corruption; but on the other hand, it opened new and dispersed opportunities

for abuse of power. Moreover, the democratic transformation did not much help in reducing corruption since it did not attack the most serious problem in the Indonesian criminal justice system, 'the court mafia'. Moreover, the corrupt politicians, bureaucrats, and enforcers of the New Order regime still effectively controlled the reformed governments.

Chapter 6
Comparing the implementation failure of the two regimes' Anticorruption Laws[308]

A. Introduction

This chapter will comparatively examine the findings in Chapters 4 and 5. The argument central to that comparison is that the implementation of Anticorruption Law 1971 of the authoritarian New Order regime and Anticorruption Law 1999 of the democratic Reform Order regime, to some extent, failed in attaining their formal objectives of eradicating corruption in the public sector, and defects in the implementation structures and processes of both regimes' political systems were the primary explanatory factor for implementation failure. As the implementation structures and processes of the authoritarian political system of the New Order regime were inherently more defective than those of the democratic political system of the Reform Order regime, the implementation of Anticorruption Law 1971 had a higher degree of failure.

Employing the theoretical and empirical uselfulness of the analytical and prescriptive framework of Sabatier and Mazmanian's refined top-down implementation model, the chapter will first comparatively evaluate the implementation outcomes of both Anticorruption Laws. It will then comparatively examine the implementation factors contributing to the implementation failure of these Laws, a critical topic of the thesis.

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[308]This chapter has been in some parts presented at GovNet International Conference, ANU 2006: Transformations in Governance: Capacity Building in Australia and the Asia/Pacific Region 29 November to 1 December 2006, Australian National University, Canberra; and at the 2008 Conference of the Asia-Pacific Governance Institute and International Public Management Network: The Many Faces of Public Management Reform in Asia-Pacific: Moving Ahead Amidst Challenges and Opportunities in Emerging Markets, 7-9 July, 2008, Bangkok, Thailand.

Among these factors, the chapter will then discuss how the different political systems of both regimes contributed to this failure.

The chapter concludes by discussing the implementation factors that were most influential in terms of the degree of difference in the implementation failure of the Anticorruption Laws.

B. The implementation outcomes of the Anticorruption Laws

Analyses of Anticorruption Law 1971 in Chapter 4 and Anticorruption Law 1999 in Chapter 5 showed that both Laws had similar policy objectives, that is, eradicating public sector corruption in order to promote the country's economy and development; however, neither was successful. Specifically, implementation failed to meet the four policy objective-derived effectiveness criteria. First, the implementation of these Laws failed to change the people's negative perceptions of the increasing level of corruption in the public sector. Second, the amount of state asset losses recovered was not significant. Third, the public still did not have confidence in the capacity and integrity of the criminal justice system to combat corruption. Finally, the anticorruption law implementation did not significantly change the corrupt attitudes of people, in particular public servants. However, in general, the performance of the Reform Order regime in implementing Anticorruption Law 1999 was better than that of the New Order regime in enforcing the Anticorruption Law 1971.

General evaluations. This study found that from 253 respondents surveyed, 98 per cent judged the implementation of the New Order's Anticorruption Law 1971 failed and 85 per cent felt that implementation of Anticorruption Law 1999 of the Reform Order regime was ineffective. However, the respondents perceived the extent of the implementation failure of the two regime's Anticorruption Laws differently as the following table shows:

Table 6.1 **Comparison of the degree of the anticorruption law implementation failure of the New Order regime and the Reform Order regime**

Responses	Frequency	%
The New Order has higher failure	108	43
The Reform Order has higher failure	18	7
Both regimes have equal failure	127	50
Total	253	100

The table shows that 43 per cent of respondents indicated that the enforcement of the New Order's Anticorruption Law 1971 had a higher degree of failure than that of the Reform Order's Anticorruption Law 1999. Only seven per cent felt that implementation of Anticorruption Law 1999 was higher than that of Anticorruption Law 1971. It is worth noting however that 50 per cent judged that both regimes had an equal level of implementation failure.

The respondents were then asked to rank the degree of the failure according to the five presidencies responsible for implementing the Anticorruption Laws.[309] The table below shows the result:

[309] The respondents were asked the following question:
Which presidency do you think has the highest level of the anticorruption law implementation ineffectiveness or failure? (Please rank 1 to 5, with 1 means has the highest level of the anticorruption law implementation ineffectiveness or failure, while 5 has the lowest level of the anticorruption law implementation ineffectiveness or failure.
(.....) President Suharto
(.....) President Habibie
(.....) President Abdurrachman Wahid
(.....) President Megawati Sukarno Putri
(.....) President Susilo Bambang Yudhoyono

Table 6.2 **Comparison of the perceived implementation failure ranking of the five presidents of the New Order and Reform Order regimes (most to least failed)**

President	Ranking
Suharto	1
Abdurrahman Wahid	2
Habibie	3
Megawati	4
Susilo Bambang Yudhoyono	5

At the two extremes, the respondents perceived the anticorruption law enforcement under Suharto's authoritarian New Order regime as the most failed and that under Susilo Bambang Yudhoyono's administration as the least failed

Suharto's authoritarian regime, instead of combating chronic bureaucratic corruption, was involved in various corrupt practices and had become an integral part of the corruption problem. Characterised by its patron-client economic governance (Muhaimin 1990:7–8) and centralised power, which the Reform Order regime's People's Consultative Assembly's Decision Number XI/MPR/1998 on Clean Government recognised as causing 'the disfunctionality of both the highest and high institutions of the state', the regime's corrupt authoritarian rule laid the ground for public discontent (*BBC News,* 25 March 2004). Suharto was ranked as the most corrupt leader in the world by the United Nations, and his corrupt regime was suspected of embezzling state assets with an estimated value of between US$ 1.5 billion and US$35 billion (Robin Hodess et al. (eds.), 2004: 13). On 21 May 1998, the 1997–1998 Asian financial crisis and 'people power' forced him to resign, ending the corrupt authoritarian New Order regime and beginning the era of the democratic Reform Order regime.

Since its establishment and the enactment of Anticorruption Law 1999, the Reform Order regime has prosecuted many corruption cases, including big corruption cases such as those involving Central Bank governors, ministers, members of regional and national parliaments, regional governors, and district heads. However, the respondents perceived the anticorruption achievement of the Reform Order regime, including that of President Yudhoyono's administration[310], as still insignificant.The following is an evaluation of the performance of both regimes in implementing the Anticorruption Laws.

1. Public perceptions on bureaucratic corruption reduction

On 10–12 August 1970, one year before the enactment of Anticorruption Law 1971, the Student Council of the University of Indonesia organised a discussion panel on corruption and development.[311]This discussion took pace four years after the New Order regime had come to power. The panellists were prominent academics, economists, lawyers, and activists such as Emil Salim, Adnan Buyung Nasution, Nono Anwar Makarim, Fuad Hasan, Arief Budiman, Kuncaraningrat, and SB Judono. The panel discussed the economic, socio-political, and legal issues of corruption and anticorruption. They particularly debated the extent, causes, and effects of corruption and control measures.

In terms of the magnitude of corruption, the majority of the panellists discussing the economy and corruption agreed that they had no data by which to measure it. This problem was attributed to the main characteristic of corruption: secrecy. In terms of whether the intensity of corruption had increased or decreased, most members of the panel opined that,

[310]Some anticorruption organisations and observers, including Indonesian Corruption Watch, and the author (*Vivanews* Online, 2010), have noted that systematic efforts to weaken the Anticorruption Commission have taken place during the Yudhoyono administration. Some of these efforts were the enactment of Anticorruption Court 2009, which placed the respected existing anticorruption court under the corrupt general courts, and criminalisation of the use of the Anticorruption Commission's authorities by the police in the Anggodo bribery case, which then was used as a reason to detain two of the five commissioners.

[311]See Proceedings of Panel Discussion on Corruption and Development, organized by Student Council, the University of Indonesia, 10–12 August 1970.

there was also no pre-determined means of measurement. However, by using the achieved price stability and the increased public opposition to corruption as an indicator, some panellists agreed that, compared with Sukarno's Old Order regime, the intensity of corruption had decreased.

However, the panellists, including Adnan Buyung Nasution, Oemar Senoadji, Ismail Sunny, Suardi Tasrif, and Yap Tiam Hien, discussing law and corruption disagreed on the intensity and volume of corruption. They had different opinions as follows:

1. Corruption was more pervasive and chronic, and was even described as a monster;
2. There was indeed a corruption problem, but its intensity was the same as that during the Old Order era, thus, it was not necessary to describe it as a monster;
3. The corruption problem, regardless of its intensity and whether or not it was 'like a monster', is real. The important thing was that it had to be eradicated.

The majority of this panel, however, was of the opinion that corruption had not been reduced. Moreover, through its speaker, Saljo, Golkar in its comments on the government's Anticorruption Bill before the parliament on 4 September 1970 observed that, 'it is a fact that corruption is widespread, and the forms of illegitimate self-enrichment damaging the state's finance have been more varied.' Citing Muhammad Hatta, former Vice President and Prime Minister under the Old Order regime, Golkar confirmed that corruption had been institutionalised and become the culture of the people.

As corruption is committed secretly, and for example, in a bribery case, the parties have a mutual interest not to disclose their corrupt act, many corruption cases go undetected and unreported. As a result, it is difficult to know the actual number of corruption incidents in the public sector under either regime. To assess the effectiveness of the anticorruption law

enforcement it is necessary to rely on the public's perception of the extent of corruption reduction.

Data from Transparency International's CPI, which especially measures the frequency and/or size of bribes, can be used to indirectly indicate public perceptions of bureaucratic corruption reduction, in particular bribery. The following table, again acknowledging the methodological limitations of the CPI[312], indicates how both regimes in the period 1995 to 2007 failed to change the public's poor perceptions of the country as one of the countries perceived to be most corrupt among those surveyed:

Table 6.3 **Corruption Perceptions Indexes 1995–2007 (Indonesia—the New Order regime and the Reform Order regime)**[313]

Period	Number of countries surveyed	Ranking of Indonesia	CPI score	Standard deviation/ Confidence range	Survey used
1995	41	41	1.94	0.26	7
1996	54	45	2.65	0.95	10
1997	52	46	2.72	0.18	16
1998	85	80	2.0	0.9	10
1999	99	96	1.7	0.9	12
2000	90	85	1.7	0.8	11
2001	91	88	1.9	0.8	12
2002	102	96	1.9	0.6	12
2003	133	122	1.9	0.5	13
2004	145	133	2.0	1.7–12.23	14
2005	158	137	2.2	2.1–2.5	13
2006	163	130	2.4	2.2–2.6	10
2007	179	143	2.4	2.1–2.4	11

Source: Adapted from Transparency International's Corruption Perceptions Indexes (CPI) 1995 – 2007. http://www.transparency.org/policy_research/surveys_indices.

[312]See the methodological explanations of CPI in Transparency International website http://www.transparency.org/policy_research/surveys_indices.

[313]The CPI gathers data from sources that span the last two years; for example, for the CPI 2007 this includes surveys from 2006 and 2007. The CPI, using misuse of public office for private gain as a definition of corruption, measures the public perceptions on the extent of public sector corruption, in particular the frequency and/or size of bribes. The scale used in the CPI ranges from 0 to 10, with 0 means perceived to be highly corrupt and 10 to be highly clean.

The table shows that both regimes from 1995 to 2002 were perceived to be in the top ten of the most perceived corrupt countries in the list. Even though in the period 2003 to 2007 the country under the Reform Order regime, especially during Yudhoyono's administration[314], was no longer in the top ten of the most perceived corrupt countries its CPI scores in all the periods were still under 3, indicating that in all the periods the respondents perceived the country to be highly corrupt. However, this was possibly because of more countries entered in the surveys.

In addition to data from surveys such as the above Transparency International's CPI and the survey conducted in this study, testimonies from competent and relevant persons are another method used to indicate the extent of corruption or to evaluate the impact of anticorruption law enforcement on controlling the public sector corruption which was prevalent in both regimes.

According to Manulang, Head, Tenggarong Kutai District Prosecution Office, East Kalimantan[315], under the New Order regime corruption was centralised in the central government, but under the Reform Order regime it became part of the local governments and parliaments. As Hamzah had observed[316], this was due to the 'radical' decentralisation policy of the Reform Order regime which meant local governments and legislatures had more autonomy and powers. Moreover, he learned, 'now we have many political parties. Thus, we have a lot of political corruption'. For example, as Amin and Aziz have witnessed,

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[314]However, according to Hong Kong-based Political and Economic Research Consultancy or PERC's survey in 2010, the country, run by Yudhoyono's second term administration, was again ranked as the most corrupt country, scoring 9.07 of 10, as perceived among Asia Pacific countries included in the survey. See Http://nasional.kompas.com/read/2010 assessed on 8 March 2010 or in PERC website.

[315] In an interview with me on 27 July 2006.

[316]Interview with Prof.Dr. Andi Hamzah, SH., Chief Legal Drafter/Head of the Legal Drafting Team of the Anticorruption Laws 1999 and 2001, and of the Revised Criminal Procedural Law, 24 May 2006.

'corruption in the use of the regional parliament budgets happen all over Indonesia. It was rare in the New Order era'.[317]

Moreover, Djaswardhana observed, even though under the Reform Order regime the police had investigated more corruption cases than they had under the New Order regime, he questioned why, despite the country now having complex anticorruption laws and the Anticorruption Commission, in the Reform Order era corruption is still pervasive and widespread. He further said,

> Every day, corruption takes place. For example, we see many public servants do time corruption [not using working hours as expected], misuse government facilities such as official cars, and do not come to their offices without legitimate reasons. These happen everywhere.[318]

Not only parliamentary and bureaucratic corruption, under the Reform Order regime judicial corruption had also become more chronic and wilder. Prasetyo, anticorruption activist from Bali Corruption Watch, also observed that even though the country now had the Judicial Commission, judicial corruption was still widespread. [319] 'The Judicial Commission is unable to control it'. Moreover, Ma'arif, Deputy Speaker of the House of Representatives said 'we have to acknowledge that there is no significant bureaucratic reform'.[320]

As Padmanegara observed, under the Reform Order regime, in particular under the Yudhoyono administration[321], the police, especially after they were separated from the armed forces, had investigated more corruption cases. However, he argued, 'the fact that

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[317]Interview with Musram Amin and Efriandi Aziz, Anticorruption Unit, West Sumatra Province Police Office, 7 July 2006.

[318]Interview with Kombes Djaswardhana, Director, Criminal Investigation Division of West Java Province Police Office, former Investigator of the Indonesia Anticorruption Commission, 11 July 2006.

[319]Interview with Wawan E. Prasetyo, anticorruption activist, Bali Corruption Watch, 7 August 2006.

[320]Interview with Zaenal Ma'arif, Deputy Speaker, House of Representatives, 19 June 2006.

[321]Interview with Lieutenant General Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006. He was then appointed as Vice Chief of the National Police.

under the New Order era there were only few corruption cases prosecuted does not mean there was not much corruption'.

On the other hand, Padmanegara believed, due to the problem of not knowing the actual volume of corruption or the 'dark number', the fact that under the Reform Order regime many corruption cases had been investigated and prosecuted did not mean the anticorruption law enforcement had been effective. This phenomenon, therefore, has reinforced what Larmour and Wolanin (2001:xv-xvii) have argued: that the interventionist approach has many limitations since 'most crime and even more corruption go undetected, unreported and hence unrestored'. In other words, the interventionist approach cannot resolve the problem of the 'dark number'.

However, in spite of the difficulty in knowing the actual reduction in the volume of public sector corruption during the governments of both regimes, the data and information have indicated that the anticorruption law enforcement under both regimes failed to change the poor public perception on bureaucratic corruption reduction. This is despite the fact that in general, the Reform Order regime, especially during Yudhoyono's administration, performed better than the New Order regime in this regard.

2. Recovery of the state assets losses

The data on this second criterion have shown that the performance of both regimes in recovering state assets losses due to corruption was very poor. As has been elaborated in Chapter 4, under the New Order regime, Djojohadikusumo observed (*Media Indonesia,* 14 November 1996) from 30 per cent financial leakage in development budget[322], equivalent

[322]Soetardjo Soeryoguritno, Vice Chairperson of the Commission II of the House of Representatives, suspected that the financial leakage was due to corruption or misuse of public office, indicating

with IDR 23.4 trillion of the country's 1995/1996 IDR 78 trillion development budget (Bird 1996:17) or 4.3 per cent of its 1996 IDR 532.6 trillion GDP (EIU Country Report 1998:5), this regime could only recover a very small proportion. For example, data from the Attorney General's Office for the period 1977 to 1981 show that from a total of approximately IDR 137.4 billion, the amount recovered by the prosecution was around IDR 39.8 billion (29 per cent).[323] Quoting a national newspaper Lopa (1992:58) estimated the recovery rate was only 10 to 15 per cent.

The judgment on the New Order regime's performance in implementing the Anticorruption Law 1971 and in recovering the state assets losses will be more meaningful if we weigh the monetary outcomes of implementation, the monetary value of the lost and recovered state finance, against the comparison of the estimated 30 per cent financial leakage to the country's annual budget revenue. In fact, compared with the perceived rampant public sector corruption and the financial leakage, the total state's monetary losses of IDR 137.4 billion were indeed very small.

If we calculate the 30 per cent financial leakage from the country's budget revenue in 1978/1979, which was IDR 5,301.6 billion (Rosendale 1980:12), the total financial leakage was IDR 1,590.4 billion. However, it was IDR 2,631 billion if we weigh the leakage against the country's GDP in 1977, which was IDR 8,770 billion (Garnaut 1979:23). Therefore, the five-year total of detected stolen assets of IDR 137.4 billion was only 8.6 per cent, and the five-year total of recovered assets of IDR 39.8 billion was around 2.5 per cent of the estimated financial leakage of IDR 1,590.4 billion in 1978/1979. This is far below the 29 per cent five-year total of recovered assets claimed by the Attorney General's Office.

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rampant corruption, dysfunctional supervision functions, and weak anticorruption law enforcement (*Media Indonesia,* 14 November 1996).

[323] See in Hamzah (1984:169).

Compared to the monetary outcomes of the implementation of the New Order regime's Anticorruption Law 1971, the state assets losses recovered by the Reform Order regime was not much different. For example, in its Corruption Outlook 2008[324]Indonesian Corruption Watch (ICW), the leading non-government anticorruption organisation, reported that from 1998 to 2007, 82 corruption cases had been prosecuted. Of these, 23 involved the misuse of government budget and 27 dealt with mark-up in government procurement. However, from these two major forms of corrupt activities, the Attorney General's Office could only recover IDR 863 billion.

The ICW's report contrasts sharply with what Basrief Arief, Vice Attorney General, claimed: 'from IDR 6.7 trillion of the state assets losses, until April 2006 we have recovered IDR 2.7 trillion'.[325]That is, approximately 40 per cent. If we weigh the total value of recovered assets, IDR 863 billion, against the total value of stolen assets, IDR 6.7 trillion, this asset recovery rate is actually only 12.8 per cent.

ICW's record from Financial Report and Accounting Directorate of the Department of Finance showed that from 2006 to 15 May 2007 recovered state assets were merely IDR 18.6 billion. If we weigh this amount against the amount of corruption case-related unpaid compensation in the same period, in Jakarta's jurisdiction only, which was IDR 8 trillion, it was only 0.002 per cent. ICW further reported that in 2004 fiscal year, the Attorney General's Office failed to recover the unpaid compensation.

In some cases, however, the Reform Order regime, especially through the performance of the *ad hoc* Anticorruption Team established by the President Yudhoyono's administration, performed better than the New Order regime had in recovering state assets. In two years the

[324] See in www.menkokesra.go.id, 22 January 2008, or in ICW's website www.antikorupsi.org.
[325] In an interview with me on 26 June 2006.

Anticorruption Team had processed 72 corruption cases and supervised 208 others handled by the regional enforcement offices. From these 280 corruption cases settled by the courts, the team claimed that they had recovered state assets totalling IDR 3.950 trillion, which consisted of IDR 3.9 trillion at central level and IDR 4.1 billion at regional level.

The Anticorruption Commission showed promising performance in recovering state asset losses.[326] In 2006, for instance, from losses valued at approximately IDR 27.7 billion settled by the Anticorruption Court, the Commission had recovered roughly IDR 12.8 billion (46 per cent) and deposited it into the State's Treasury account.

However, data from the Attorney General's Office show a poor performance by the Reform Order regime's enforcers in recovering state assets.[327] From January to December 2001 that office was only able to recover approximately IDR 1.2 trillion (4.2 per cent) of stolen assets totalling around IDR 28.6 trillion. From January to November 2005 the recovery rate had drastically decreased to around IDR 10.3 billion (0.21 per cent) from a total of IDR 4.7 trillion of assets stolen. [328]

The fact that the recovery rate of stolen state assets was very low shows the difficulty in recovering these assets from covert crime such as corruption. 'It is not easy to recover the stolen money,' as Made told me his experience.[329] The recovery effort will be even more difficult when dealing with state assets stolen by dictators (Brata 2008b). These assets are more likely to have been laundered through international investment and financial

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[326] See KPK Annual Report 2006: 4.12.

[327] **Source**: Special Criminal Investigation Directorate, Attorney General Office of Indonesia, January 2002 and January 2003.

[328] **Source**: adapted from Special Criminal Investigation Directorate, Attorney General Office of Indonesia, February 2006.

[329] Interview with Major Police Made, Anticorruption Unit Head, Bali Province Police Office, 8 August 2006.

mechanisms and recovery will face complex legal and political difficulties. For example, the Reform Order regime has failed to recover the enormous assets which, the United Nations and many believe, were stolen by Suharto and laundered through Swiss banks.

In conclusion, in general we may judge that the performance of the New Order regime and the Reform Order regime in recovering the state's assets stolen by corruptors was unsatisfactory. The recovery rate was under 50 per cent. However, in most cases the enforcers of the Reform Order regime performed better than those of the New Order regime.

3. Public confidence in the criminal justice systems

The apparent failure of both regimes to reduce corruption and recover stolen state assets might have influenced the low confidence of the people in the integrity and capacity of the regimes' criminal justice systems to fight public sector corruption.

This low confidence can be attributed to the poor performance of the enforcers in settling corruption cases. For example, in the period from 2001 to 2005, from a total of 6,620 corruption cases received by all High Prosecution Offices in the country, only 2,108 cases (32 per cent) progressed to the courts. Moreover, the investigation and prosecution of 167 cases was discontinued and the suspects were released.[330] Furthermore, Masduki reported (*Kompas,* 17 November 2005) that in the one-year period until October 2005, thus during the Yudhoyono administration, from 450 completed corruption cases the prosecutors discontinued 15 or 3.3 per cent of cases. The majority of the prosecuted cases, he said, involved petty corruption, however. In this period, only one big corruption case, the Bank Mandiri case, went to the court. This achievement, he believed, if compared to the

[330]See Investigation of corruption cases by all High Prosecution Offices in Indonesia (2001–2005) from Special Criminal Investigation Directorate, Attorney General Office of Indonesia, 2001–2005.

supporting resources owned by the prosecution offices, was far under their maximum capacities.

In the entire country, Masduki noted, there were 30 high prosecution offices, 353 district prosecution offices, and 102 sub district prosecution offices, which were supported by at least 6,000 prosecutors and 15,000 other employees. On average, therefore, he said, one prosecution office completed only one corruption case per year. According to Soeprapto, 'there is a willingness of the enforcers to combat corruption. However, their desires to corruptly benefit from the cases are much stronger'.[331] Therefore, 'the people's confidence in the law enforcement institutions is very low now,' Bahri said.[332]

Soeprapto further observed in the same interview:

> Now corruption eradication is only on the paper, just a discourse. Here in Jakarta we have the Supreme Court, the Judicial Commission, the National Police, and the Attorney General, but the court mafia are still operating. This means they are not afraid.

The phenomenon of court mafia, involving judicial corruption or the selling of laws and legal process by the police, prosecutors, judges, and lawyers, existed during the New Order regime, and continued to exist during the Reform Order regime. This likely encouraged the lack of public confidence in the capacity, commitment and integrity of the enforcers to combat corruption. It is worth noting that the acronym for the Criminal Procedure Code or KUHAP ***Kasih Uang HAbis Perkara*** or 'give them the money and your legal case will be well settled' came into being to describe the court mafia and express the low public confidence in the capacity and integrity of the enforcers to combat corruption and respect due process of law.

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[331]Interview with Soekotjo Soeprapto, Commissioner, Judicial Commission, former Commissioner of Public Officials' Asset Audit Commission, 24 July 2006.

[332]Interview with Kahar Al Bahri, Coordinator, Working Group 30, East Kalimantan, 26 July 2006.

From the above data and evaluation, we can judge that in terms of the third criterion, the New Order regime and the Reform Order regime failed to significantly improve public confidence in the capacity and integrity of the criminal justice system or enforcers to combat public sector corruption.

4. Changes in anticorruption attitudes

There were no significant changes in anticorruption attitudes, especially those of public officials and the enforcers, in either regime. Generally, public officials were still tolerant of corruption. In many cases they even engaged in various forms of corrupt activities.

According to a survey of 1,000 respondents conducted by the Centre for the Study of Development and Democracy in Jakarta in February 1998, two and half months before the New Order regime collapsed 78 per cent believed that when dealing with government bureaucracies bribing was difficult to avoid (Snape 1999:590). Bribing public officials, and conversely, officials accepting bribes, were common practices.

The corrupt attitudes of the New Order regime's bureaucrats and enforcers did not change much when they went to work for the governments of the Reform Order regime. As has been shown in Chapter 5 this is indirectly indicated in the country's Corruption Perceptions Indexes in the period from 1995 to 2007, which defined corruption as the misuse of public office for private gain. The CPI scores never rose above 3. The difference is that under the New Order regime corruption was centralised, but under the Reform Order regime it was decentralised. Therefore, the pattern of corrupt activities changed; they were more open.

To understand how the corrupt attitudes of both regimes' public officials changed, we need to know how these attitudes had themselves manifested in the different patterns of real

corrupt activities. For example, some legal cases show the real examples of the patterns and nature of corruption in the public sector of the New Order government. In the case of State vs. Abdoel Djalil, the Supreme Court, upholding the decision of Pati District Court, convicted the defendant of misallocating the government budget which deviated from its intended purpose, thus breaking article 415 of the Penal Code.[333] In State vs. Soetopo, Magelang District Court sentenced the defendant, Soetopo, a tax officer, for illegally benefiting himself and the tax payer Oei Kok Ham by manipulating the tax calculation from IDR 120,000 to IDR 240,000.[334]

Mr. Andi Ware Pasinringi, Judge of West Sumatra High Court, shared his experience of trying a corruption case involving various modes and patterns of corruption:

> In the past [during the New Order era], I tried corruption cases involving a project on public guidance and education [BIMAS] and other public projects. The project was not finished, but [was] reported to have been completed, thus a false report. Fraudulent reports on transportation allowance have long occurred since the past, ...Also corruption in the granting of bank credits to small businesses [*Kredit Industri Kecil*–KIK]. The entrepreneurs, bank officials and local bureaucrats colluded to make corrupt dealings. The bureaucrat gave the recommendation for the entrepreneur to the bank. The entrepreneur got a credit of IDR 300 million IDR 200 million for him, while the other IDR 100 million were distributed to the bank official and the bureaucrat.[335]

Other forms of collusive, corrupt relations between public officials and businesses involved fraudulent acts to illegally enrich corruptors. For example, in the case of State vs. Wiyono (*Tempo* Magazine, 12 May 1990), the convict Wiyono, Head of Export Division of the Tanjung Priok Custom Office, was found guilty of forging export certificates for the benefits of some exporters which financially damaged the state by IDR 43 billion.

From 1970 to 1976, the corrupt attitudes and activities of public servants were chronic. To address this problem, President Suharto issued Presidential Instruction Number 9/1977 on

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[333]See State vs. Abdoel Djalil, Supreme Court Decision Number 72 K/Kr/1956, upholding Pati District Court Decision Number 2/Pid/1952.

[334] See State vs. Soetopo, Magelang District Court Decision Number 1/Pid/1968.

[335] In an interview with me, 5 July 2006.

Law and Order Operation, *Operasi Tertib* (OPSTIB).This instruction identified and targeted patterns or modes of corruption which had occurred in the public sector. These are as follows[336]:

1. The illegal taking of some proportion of the salaries and pensions of public officials by the person in charge of the officials' agency.
2. Extortion in the recruitment and promotion of public officials by the recruiting and promoting agency.
3. The illegal taking of money from public officials' transport allowance by the person in charge of the payment in the officials' agency.
4. The inflated prices of goods and services in government procurement.
5. Extortion in the granting of government licenses, for instances licenses for businesses, trade, work, building, and the issuance of a passport. The president had observed that these corrupt activities occurred in almost all of the government licensing agencies.
6. Extortion by the officials of the state payment office or treasury in the paying out of routine and development budget proposals from other government officials and agencies.
7. Extortion in the importation of goods, particularly by custom officers.
8. Extortion and illegal taking of tax revenues by tax officers.
9. Formal 'taxing' or money collection by agencies in the central and regional governments, by the use of bylaws that contradicted higher laws.
10. Extortion or money collection by state-owned banks in the granting of loans or credit.

From the above patterns another form of corrupt activity, what Phongpaichit (2000) called 'policy corruption', also occurred. In this corrupt activity, the local governments corruptly conspired with the legislatures to enact bylaws (*Peraturan Daerah* or Perda) that 'justified' the executive's right to 'tax' the people. This was, in fact, illegal as these bylaws broke higher laws. Thus, the law itself can be corrupt (Philp 1997:25), promoting the corrupt intent of the lawmakers and power elites.

Under the Reform Order regime, the corrupt attitudes of public officials manifested in different patterns to those of the New Order regime. Differences can be seen in the patterns

[336] See also Soedjono (1977).

of some forms of corrupt dealings, particularly state capture and policy corruption. Under the New Order regime, when powers were centralised in the hands of the president or central government, cases of state capture in the central government were more common. A notable example of this was the suspected corrupt and nepotistic making of a presidential decree to facilitate a corporation owned by Tommy Suharto, son of former President Suharto, in the purchase and sale monopolisation of agricultural commodities. Another suspected form of state capture was the policy to bail out many insolvent banks during the monetary crisis in 1997/1998, when some of the bankers were suspected of embezzling trillions of rupiah in cooperation with several high officials in the Central Bank.

Under the Reform Order regime, policy corruption involving corrupt dealings between the executives and the legislatures in regional governments was more common. Due to the 'radical' regional autonomy policy, public officials and members of regional parliaments had more powers and therefore more opportunities for corruption. The attitudes of regional public officials and members of regional parliaments were more corrupt than those of their counterparts in the New Order regime.

The most serious negative side effect of anticorruption law enforcement was the persisting problem of the court mafia under both regimes. The court mafia, which involved chronic judicial corruption and 'organised crime' in the country's criminal justice system, not only captured the enforcers at the operational level, but also seized the decision makers at the top level of the enforcement institutions (Brata 2010b).

Under the democratic Reform Order regime the patterns of the court mafia had slightly changed, as Fajar observed:

> From the constraint perspectives, the patterns of judicial corruption have now changed. We have got much information reporting that judges now play [accept bribes] in small corruption cases unexposed by the public. For example, from our research when monitoring the courts, judges have[been] involved in corruption deals in the evening proceedings of corruption cases which were not monitored by NGOs…even there were several corruption cases brought in to the evening trials [instead of in the morning]. The judges now prefer to dealing with small corruption cases but safe.[337]

If this chronic problem of court mafia was not seriously overcome by the government, the people's confidence in the enforcement institutions, even in the government and the state, would be much further weakened (Brata 2010b). As a result, street justice, where the people act as both prosecutor and judge, would be used as an alternative way of seeking justice. In fact, in many criminal cases this 'hard' justice method has already been openly practised, for instance the burning and killing of a suspected robber or thief by the angry people.

In some cases, extensive anticorruption law enforcement by the Reform Order regime was not without 'positive' outcomes. As has been evaluated in Chapter 5, to some extent, the attitudes of public officials changed. For example, Padmanegara observed [338], under the New Order government public officials competed to be manager of a government project as this post offered a lucrative source of self-enrichment through corruption. In contrast, under the Reform Order regime, as Vice Attorney General Basrief Arief learned[339], officials were afraid to be appointed project leader of public procurement. They feared prosecution. Thus, Arief continued, 'there are deterrent effects.'

Nevertheless, the changing attitudes of public servants can be counterproductive. To some extent, the government's anticorruption interventionist approach produced an unintended impact. It weakened the government's effectiveness in carrying out strategic development

[337]Interview with Asep Rahmat Fajar, Secretary General of the Indonesia Court Monitoring Society and Expert of the Judicial Commission, 24 July 2006.
[338]Interview with Lieutenant General Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.
[339]In an interview with me, 26 June 2006.

projects. For instance, 'some public officials complained of not being able to work as their time was wasted in answering the inquiries by law enforcers.'[340] Moreover, Padmanegara observed, many tenders for public projects were not realised.[341] In addition, the fear of being prosecuted prohibited high-ranking government officials from making important decisions, and government banks were hesitant to grant loans.[342]' Therefore, the annual government budget of IDR 53 trillion was returned to the government,' Mahfud told me, referring to the 2005 government budget.[343]

In summary, both regimes failed to satisfy the four evaluative criteria. By employing the effectiveness criterion of the refined top-down implementation theorists, this study has shown that the anticorruption implementation measures of both regimes were unsuccessful in achieving the policy objectives of Anticorruption Laws 1971 and 1999. The anticorruption interventionist approaches did not achieve what the policymakers wanted, that is, to reduce or control the serious corruption problem in the country's governance.

However, compared to the anticorruption law implementation failure of the New Order regime, the anticorruption law enforcement measures of the Reform Order regime showed somewhat 'promising' outcomes. Because of a fear of being prosecuted, many public servants were now afraid to be involved in corrupt activities. Nonetheless, different surveys showed that the public still believed that endemic corruption persisted under the Reform Order regime's governments. Some even believed that it was more serious.

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[340]Interview with Basrief Arief, Vice Attorney General, 26 June 2006.
[341]Interview with Lieutenant General Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.
[342]Interview with Prof.Dr.Andi Hamzah, SH., Chief Legal Drafter/Head of the Legal Drafting Team of the Anticorruption Laws 1999 and 2001, and of the Revised Criminal Procedural Law, 24 May 2006.
[343] Prof.Dr. Mahfud MD, Member of Commission III of the House of Representatives, former Minister of Justice, former Minister of Defence, Professor of Constitutional Law, 1 June 2006. He is now Chief Justice and President of the Constitutional Court.

This finding is consistent with a part of the central argument which states that: the implementation of Anticorruption Law 1971 of the authoritarian New Order regime and that of Anticorruption Law 1999 of the democratic Reform Order regime did, to some extent, fail in achieving the formal objectives of combating corruption in the government sector. However, the evaluation outcomes have shown that the implementation performance of Anticorruption Law 1999 of the democratic Reform Order regime was better in controlling the endemic bureaucratic corruption.

The important question we have to ask, therefore, is what factors contributed to this failure? That central question will be examined in the following sections.

C. The implementation factors of the Anticorruption Laws

The implementation failure of Anticorruption Law 1971 of the authoritarian New Order regime and Anticorruption Law 1999 of the democratic Reform Order regime can be attributed to various factors. However, as this paper has argued, defects in the implementation structures and processes of both Anticorruption Laws were the key explanatory factor. As shown in Chapters 2, 4 and 5, the factors can be classified into five types: policy design, political, institutional, managerial, and societal factors. This section will compare these implementation failure factors according to this factor typology. It will comparatively assess and explain how they contributed to the different degree of implementation failure of the Anticorruption Laws.

1. The policy design factors

Under this factor category, the implementation failure of Anticorruption Laws 1971 and 1999 was attributed to the defective policy designs of these Laws. This study will especially focus on examining to what extent the policy design of Anticorruption Laws 1971 and 1999

fulfilled the three policy design-related conditions for effective policy implementation as prescribed by the refined top-down implementation theorists (Sabatier 1986:23). Thus, it will examine the following three questions:

1. Are the policy objectives of the Anticorruption Laws clear and consistent?
2. Are the causal theories underlying the Anticorruption Laws adequate?
3. Are the implementation processes of the Anticorruption Laws legally structured to enhance compliance by the law enforcers and target groups?

I argue that the policy designs of the Anticorruption Laws were defective and did not fully meet the above three conditions. To some extent, the sources of this defectiveness can be attributed to the attitudes, perceptions and approaches of the lawmakers in treating the endemic, chronic corruption not as an extraordinary crime, but just like other ordinary crimes. They adopted the defective Criminal Procedural Code or KUHAP and other ordinary criminal procedures as stipulated in the Anticorruption Laws to investigate, prosecute and try corruption cases. As a result, the policy designs of the Anticorruption Laws constrained the effective enforcement of these Laws and prevented the achievement of their policy objectives.

a. Policy objectives of the Anticorruption Laws. Refined top-down implementation theorists, such as Sabatier, prescribe that for effective implementation a policy must have a clear and consistent policy objective. For these theorists the overall focus is how we can steer the implementation system to achieve this formal objective. Therefore, the extent to which policy implementation achieved the policy objective is used as a criterion to evaluate effectiveness.

It is important to evaluate and compare how the policy objectives of Anticorruption Laws 1971 and 1999 were formulated. Are they clear and consistent? In this evaluation, however, the objections of the bottom uppers, such as Elmore, who stated that the emphasis on 'clear and consistent policy objectives' are unrealistic, should also be considered.

As analysed in Chapters 4 and 5, the policy objectives of Anticorruption Laws 1971 and 1999 can be implied from the identical titles of these Laws: 'Eradication of Corruption Criminal Acts'. Thus, the objectives of both Laws are to eradicate corruption which is a form of criminal activity.

A more complete comparison can be made by an analysis of the preambles of the Laws. In the preamble of Anticorruption Law 1971 the lawmakers stated:

> Considering:
> a. that corrupt acts damage state finance/state economy, and impede national development;
> b. that the Law Number 24/1960 on Investigation and Prosecution of Corruption, due to social developments, was no longer effective to attain the intended impact, therefore must be repealed.

The lawmakers did not clearly state the objective of Anticorruption Law 1971. However, through enacting and enforcing this Law they intended to control corruption as this evil act had caused the state financial losses and harmed the economy. In the longer term they believed that this criminal act would impede the progress of the country's national development.

Even though it was also implied in its preamble, the formulation of the policy objective of Anticorruption Law 1999 was somewhat clearer than that of Anticorruption Law 1971:

> Considering:
> a. that corrupt criminal acts have adversely affected state finance or state economy, and constrained national development, therefore these acts must be eradicated in

order to create a prosperous and just society based on Pancasila [the five principles of the state philosophy] and the 1945 Constitution;

b. that the adverse effects of the corrupt criminal acts which have occurred not only damaged state finance/economy but also impeded the smooth advancement and continuity of national development which demands high efficiency;
c. that the Law Number 3/1971 on Eradication of Corruption Criminal Acts is no longer congruent with the development of the legal needs of society, and therefore must be replaced with a new act on eradication of corruption criminal acts to be more effective in preventing and eradicating corruption criminal acts.

Thus, more broadly formulated, the long-term policy objective of Anticorruption Law 1999 was to make the people prosperous and just. Therefore, reducing or combating corruption was an intermediate goal, a means of attaining the long-term objective of this Law.

To attain this long-term objective, the lawmakers acknowledged that corruption in the public sector had to be combated as it had an adverse effect on state finance and the economy and had constrained the advancement and sustainability of the country's national development. Moreover, to be more effective in preventing and combating corruption Anticorruption Law 1999 was enacted to replace Anticorruption Law 1971, which no longer kept up with the dynamic legal needs and demands of society.

Anticorruption Laws 1971 and 1999 had almost similar policy objectives. Both had medium and long-term objectives. In the medium term their objectives were to eradicate corruption; whereas, in the long term their intended impact was to advance the country's national development in order to create a just and prosperous Indonesian society.

The objective to eradicate corruption, as can be understood from the titles of these Laws 'Eradication of Corruption Criminal Acts', however, reflects a mission that is 'unrealistic'. This kind of objective will be almost impossible to achieve. There will be always both opportunities for corruption and the evil human intent to create and exploit them. We can only control or reduce it.

An anticorruption policy should not be designed to attain a zero level of corruption. Some political economists, such as Rose-Ackerman (1978), even believe that an optimum level of corruption is arguably good for economic development. Moreover, due to the problem of 'dark number' (the actual volume of corruption is not known), it is extremely difficult to know when the volume of corruption has actually been reduced. Therefore, due to the nature of corruption, using eradication or reduction of corruption as an indication of successful anticorruption implementation is inherently problematic.

In anticorruption reforms, 'the overall objective must be to change the general perception of corruption from a 'low-risk, high-profit' activity to a 'high-risk, low-profit' activity…'(Eigen 1996:161–2). Forming an accountable, effective and efficient government, not eradication or reduction of corruption itself, should become the policy objective of an anticorruption policy (Brata 2007c).

The policy objectives of the Anticorruption Laws were interpreted and perceived differently by the law enforcers. This shows that the objectives, to some extent, had not been made clear. This is because the policy objectives had not only been stated implicitly but also formulated in the preamble, instead of being clearly stated in a separate article. Moreover, the policy objectives of the Anticorruption Laws 1971 and 1999 were inherently inconsistent and conflicting in nature. The lawmakers aimed not only at eradicating corruption in the most efficient and effective way, they also aimed to reduce it while respecting due process of law and the human rights of corruption suspects and the accused.

Although the lawmakers of Anticorruption Laws 1971 and 1999 recognised the destructive impact of corruption on human rights, the wellbeing of the people, and functioning of the state, they still perceived corruption as an ordinary crime. Therefore, the lawmakers of the

Anticorruption Law 1971 adopted conventional methods of anticorruption enforcement. For example, when addressing the plenary meeting of the *Gotong Royong* House of Representatives on the Anticorruption Bill 1971 on 28 August 1970, the Minister of Justice rejected the use of the reverse burden of proof procedure in a corruption case since this method contradicted the 'non-self incrimination' principle.

Conventional enforcement procedures were still employed although the lawmakers of the Anticorruption Law 1999 introduced what they called 'limited or balanced reverse burden of proof'. Under this method, as stipulated in article 37, the defendant had the right, not the obligation, to prove that he was not guilty of committing a corrupt act. However, the burden of proof was still on the prosecutor to prove his accusation against the defendant. It was not legally reversed to the defendant. In practice, therefore, this enforcement method is another version of conventional enforcement techniques, not truly a reverse burden of proof enforcement approach.

In the final analysis, the policy objectives of Anticorruption Laws 1971 and 1999 did not fully fulfil the refined top-down implementation theorists' conditions for effective implementation. They were not clearly and explicitly stated, problematic, certainly unattainable, and inherently inconsistent.

b. Scope and definitions of corruption. The lawmakers of Anticorruption Laws 1971 and 1999 had similar reasons for enacting these Laws. Anticorruption Law 1971 was introduced because of policy design defectiveness in Anticorruption Law 1960, and Anticorruption Law 1999 replaced Anticorruption Law 1971, which had constrained efficient and effective enforcement in combating corruption.

This section will assess the adequacy of Anticorruption Laws 1971 and 1999 in terms of the scope and definition of corruption. I argue that to adapt to the dynamic social norm changes of what should be socially acceptable attitudes and ethics for public officials or power holders, an anticorruption law should not limit itself to preventing and combating particular forms of corrupt activities and behaviour; it must be open and flexible enough to deter and punish new forms of corrupt activities, both petty and grand corruption.

The lawmakers of Anticorruption Laws 1971 and 1999 indeed realised that corruption in the public sector had become more varied, sophisticated and complex. To assess whether these Laws were adequately designed to combat more sophisticated forms of corruption, it is necessary to understand the nature and extent of the corruption problem in Indonesia. It is also important to know how corruption had developed, and which practice had the most damaging effect on the country's economic development.

Early in the era of the New Order rule Smith (1971:22) researched the effect of particular types of corruption on the economic development of the regime. Below are his findings:

Table 6.4 **Responses of 54 provincial economic planners to the question: 'What kind of corruption is most damaging to economic development?'**

Type of target identified	Planners noting kind	
	Number	Per cent
Monetary corruption (including commissions)	28	55
Corruption of time [eg. come late to office]	14	28
Misuse of government authority or position	14	28
All kinds of corruption	9	18
'Stealing' or unauthorised use of government equipment and materials	9	18
Corruption at high levels	4	8
Other kinds of corruption	5	10

Source: Smith, T. M.,1971. 'Corruption, tradition and change,' *Indonesia*, 11 (April):22.

According to 55 per cent of the respondents, monetary corruption was perceived as the most damaging type of corruption in terms of economic development. This type of corruption, for example, the giving of commissions in government procurement and projects, was directly related to the economic activities of the government and the private sector. Interestingly, only 8 per cent perceived corruption at high levels as damaging to economic development.

From the analysis of various corruption patterns and activities investigated and prosecuted by the High Prosecution Offices in all 27 provinces in Indonesia, the typology, patterns, and locations of the corruption offences can be identified as follows:

Table 6.5 **Typology of corruption**

Typology	Patterns of corruption (*modus operandi*)		Locations of the offences (*locus delicti*)[344]
	Forms	**Modes**	
Autogenic corruption	Embezzlement	Illegal takings of money or property under an official's control or influence	1,3,5,7,9,10,11,12,13,16,18 20,21,22,23,24,26,27
	'Ghost' payments	Payment to someone who was non existent	9,10,16
Forced corruption	Extortion	Use of direct or indirect threats by an official in a position of influence to someone in a position of need, for payment or personal gains	2
Semiautogenic corruption	Deceptive payments	Payment to someone which had no legal right for such payment or gains	9,10,16
Two-party transactive corruption	Conspirative corrupt dealings	Corrupt biddings, price inflation and deflation in the government procurement and projects	2,3,4,5,6,7,8,9,10,11,13,14, 15,16,18,20,21,22,23,24,25, 26,27
		Corrupt transactions, dealings or agreement such as in the granting of credits	1,2,3,9,12,15,18,27
Multi-party transactive systemic corruption	Fraudulent projects or procurement activities	Unnecessary projects or activities and deceptive degraded qualities in the planning, design, procurement, and implementation of a project involving the whole organisation or unit	2,3,4,5,6,7,8,9,10,11,13,14, 15,16,18,20,21,22,23,24,25, 26,27

As the table 6.5 shows, from its various forms and modes corruption can be classified into several types. The first type, autogenic corruption, has the same meaning as Alatas' (1990) use of the term. This type, for instance embezzlement and 'ghost' payments, generally

[344] 1.Aceh, 2.North Sumatra, 3.West Sumatra, 4.Riau, 5.South Sumatra, 6.Jambi, 7.Bengkulu, 8.Lampung, 9.DKI Jakarta, 10.West Java, 11.Central Java, 12.Yogyakarta, 13.East Java, 14.Bali, 15.West Nusatenggara, 16.East Nusatenggara, 17.East Timor, 18.West Kalimantan, 19.Central Kalimantan, 20.South Kalimantan, 21.East Kalimantan, 22.North Sulawesi, 23.Central Sulawesi, 24.South Sulawesi, 25.South East Sulawesi, 26.Maluku, 27. West Papua.
In constructing this typology, the author has analysed the reports of the investigation and prosecution of all High Prosecution Offices in Indonesia, 8th July 1983 (see Hamzah 1984:163–8).

involves only one party. In 'ghost' payments, the corrupt official creates nonexistent or false names and the money is stolen by paying the 'ghost' payees. Two or more public officials may be involved; for example, the official and his subordinate, but no transaction in terms of influencing the official for mutual illegal benefit is made. This type of corruption was found in almost all the jurisdictions of High Prosecution Offices, 18 of the 27 offices.

In forced corruption, the corrupt official uses his power to forcibly extort the user of public services who may be private actors or other government officials. There is no voluntary transaction or agreement from the user. He has no option but to pay benefits to this official. Only one High Prosecution Office reported the investigation and prosecution of this type of corruption.

Semiautogenic corruption involves the corrupt payment of salaries or pensions to a person or persons who have no legal rights to such payment. This corrupt conduct is semiautogenic because the corrupt official takes the initiative in the corrupt dealing. The person receiving the money did not necessarily use the public service or influence the official to abuse his office. He only voluntarily agreed to let the official use his identity to allow such payment, for his and the official's benefit. The autogenic character of this corrupt conduct is that in some cases the person did not know that the official had used his identity for an illegal payment. Three High Prosecution Offices, DKI Jakarta, West Java, and East Nusatenggara, reported the occurrence of this kind of corruption.

In a two-party transactive corruption, two parties, generally a public office holder and a private actor, voluntarily agree to abuse public office for their mutual benefit. This type of corruption, for example, is by corrupt bidding for government contracts and corrupt approval in the granting of bank loans. The two parties, for instance, a government project

leader and a private contractor, voluntarily manipulate trade for their mutual gain in a conspiratorial manner. Almost all High Prosecution Offices, 25 of the 27 offices, registered incidents of this corruption type.

Multi-party transactive systemic corruption involves a whole organisation, division or unit in the corrupt activities. Thus, this type of corruption is systemic. In the case of fake government projects or activities, for example, the top officials and their subordinates in the organisation know the projects or activities are fake or unnecessary. They create the project to enable them to use the unspent or existing budget for personal gain. The private company, contractor or actor sometimes is also fake or owned by the project leader or the top official. Thus, the parties are multiple actors: the project leader, other public officials in the organisation, and the private actors. Under the New Order regime's economic development this type of corruption occurred in almost all the regions, 26 of the 27 provincial administrations.

Soedjono (1977:41) observed and identified some long-standing forms of corruption known as *pungutan liar* or *pungli* ('illegal taxing'), which have long been prevalent in Indonesia. He classified this into three types:

a. Criminal types of *Pungli*, among others:
    1. State financial corruption.
    2. Tax and custom fraud.
    3. Extortion.
    4. Bribery.
b. Criminal types of *Pungli* which were legally difficult to prove, among others:
    1. Commissions in banking credit grants.
    2. Commissions in public project biddings.
    3. Service 'payment' in license grants and rank promotion.
    4. Illegal takings or *pungli* of public servants' salaries.
    5. Illegal takings or *pungli* of transport allowances.
    6. Illegal takings or *pungli* in transport control.
c. *Pungli* by provincial and district governments, which were not based on by-laws or *Peraturan Daerah*, but only used executive decisions.

Using executive decisions or policy for illicit personal gain (state capture) was one of the corruption patterns during the New Order era. For example, Suharto granted a monopoly power to his son Tommy Suharto to purchase clove products from farmers. The Attorney General's Office of the Reform Order administration then alleged Tommy Suharto had corruptly used liquidity assistance from the Central Bank to the value of IDR 1.7 trillion.

Under the Reform Order regime, although different forms of corruption have occurred, in general the patterns are almost similar to those of the New Order regime, as the table 6.6 below shows:

Table 6.6 **Corruption patterns as investigated by Special Criminal Investigation Directorate of Attorney General's Office (Reform Order regime, January – December 2002)**

Case	Position of Suspect	Patterns (*Modus operandi*)
1 – 22	Bankers, entrepreneurs, Central Bank's executives	Misuse and/or embezzlement of the Central Bank's loans for settling claims in bank rush during the monetary crises (mega corruption)
23	Entrepreneur	Company X as appointed company in industrial reforestry had falsely reported the plantation of 193,500 hectares, instead of 118,000 hectares as it really was, thus incurring the state finance loss of IDR 151 billion
24	Chairman of co-operatives	Embezzlement of money owned by Indonesia Distribution Cooperatives
25	Project executive	Embezzlement of project funds for highway (road) development
26	Entrepreneur	Misuse of bank's loan facility for the restructuring of company Z
27	Entrepreneurs, SOC executive A	Misuse of project funds owned by state oil company in the oil distribution in Java
28	Entrepreneur	Misuse of bank's loan facility
29	Former minister X	Corrupt dealings by breaching the standard, agreed contract for oil drilling
30	Former minister Y	Corrupt dealings by breaching the standard, agreed contract for oil drilling
31	Entrepreneur, SOC executive A	Corrupt dealings by breaching the standard, agreed contract for oil drilling
32	SOC executive B	Fraudulent uses of chemicals in the state oil exploration
33	Project executive	Marking up of prices in the electrical supplies by a private natural gas company
34	Former President of Indonesia (Suharto)	Corrupt and nepotistic making of presidential decree and instruction to ease corporation B in the purchase and sale monopolisation of agricultural commodity X
35	Unknown	monopolisation in the purchase and sale of agricultural commodity X
36	Unknown	Misuse of capital allocation for the purchase of agricultural commodity X by Cooperative C
37	Former Secretary General of Ministry of Transportation, Managing Director of company L	Abuse of power in the making of a contract for helicopter owned by Ministry of Forestry by company L
38	Entrepreneur	Illegality in the settlement of liability fund claims by bank M
39	Former minister Z	Illegality in the settlement of liability fund claims by bank M
40	SOC executive C	Embezzlement in the allocation of public officials' retirement fund
41	SOC executive E	Misuse of fund in the fee payment paid by company M
42	SOC executive D	Misuse of public office in the issuance of lending paper by SOC D
43	Supreme Court Clerk	Bribery in the handling of Cassation case in the Supreme Court
44	Unknown	Irregularity in the sale of airplanes owned by SOC F

Source: Adapted from Special Criminal Investigation Directorate, Attorney General's Office of Indonesia, February 2003.

The typology of corruption in the table 6.6 ranges from autogenic to multi-party transactive systemic corruption. As police investigators told me, 'some forms of corruption have the same patterns as those in the New Order era, for example, the marking up or down of the

price in the sale and purchase of goods for the government'.[345] However, bigger corruption cases involved high-ranking government officials. As the table shows, ministers and even the president were investigated.

The amounts of stolen money involved were bigger than those under the New Order regime. For example, in the BLBI mega corruption case involving several executives of the Central Bank and bankers, the state asset losses were more than IDR 600 trillion. Emongpradja said, 'the source of corruption is the same, from the state budget; however, now corruption is decentralised'.[346]

These patterns of corruption encompass almost all the corrupt activities, from bribery to kickbacks, which, according to Jeremy Pope (in Williams and Doig 2000), should be stipulated in an anticorruption law. Having considered these various forms of corruption and their negative impact on the country's national development, the lawmakers of Anticorruption Laws 1971 and 1999 defined corruption in such a way as to include these various, sophisticated and complex forms or *modus operandi,* which led to the manipulation of the state's finance and economy.[347]

Article 1 para 1 (a) of Anticorruption Law 1971 stipulates punishment for 'any person who unlawfully enriches himself or others, or a corporation, which directly or indirectly damages to the state's finance and or economy, or reasonably known or foreseen by him that his act damaged to the state's finance and or economy'. The lawmakers of Anticorruption Law 1999 adopted this article and imported it into article 2. However, the phrase 'which

[345]Interview with three anonymous anticorruption police investigators, East Kalimantan Province Police Office, 25 July 2006.
[346]Interview with Prof.Dr. Komariah Emong Sastrapradja, Professor of Criminal Law, Padjadjaran University, 30 May 2006. She was then elected as Justice of the Supreme Court.
[347] See the elucidations of the Anticorruption Laws 1971 and 1999.

indirectly damages' was deleted because, as Hamzah argued (2005:107), the criminal law system of the country did not recognise the indirect effect of a criminal act.

If the criminal justice system acknowledged indirect effects, Hamzah contended, this would mean it acknowledged Von Buri's theory on criminal causation, which argues that all causes, including indirect ones, are the causes of an effect. For anticorruption policy implementation, such considerations will make proving a corrupt act more complicated and unfair. For example, the parents of a convicted corrupt public official could also be blamed because they had failed to instill in him moral integrity and honesty.

A similar key criminal element in the definitions of corruption stipulated in the Anticorruption Laws is the word 'unlawfulness', or *melawan hukum,* meaning against or contradicting the law. Under these Anticorruption Laws, the scope of this legal concept had been extended to include against both the written and unwritten laws.

In my view, this particular definition of 'unlawfulness' is progressive, open, and adaptable to the dynamic, changing social definitions of corruption. It overcomes the biases introduced by the common limited definition of corruption that excludes 'acts which are either not covered by law or are legally ambiguous' (Scott in William 2000:58–9). The wider, more encompassing definition of corruption will certainly help the enforcers attain the policy objectives of the Anticorruption Laws more effectively by deterring, detecting, and punishing new forms of corrupt undertakings. Thus, to some extent the lawmakers have met one of the conditions prescribed by the refined top-down implementation theorists: that is, to legally structure the implementation process to detect and punish new forms of corruption which may occur in the future.

Some have questioned this broader definition of corruption. 'However, in terms of legal certainty, it is less certain,' as Judge Silaen told me.[348] He further said, 'this is like a 'rubber' provision, creating a legal uncertainty as local norms may be different between regions.' Consequently, this legal uncertainty had created disparity and inconsistency in judicial decisions and punishment. For example, Judge Rachim told me[349], there were some instances where judges gave different verdicts and penalties in similar corruption cases. The judges mostly subjectively decided what was socially acceptable. For the bottom-up implementation theorists, this may provide opportunities for the enforcers at the bottom level to play what Bardach (1977) called 'the implementation game' in order to advance their corrupt personal interests.

Defective implementation structure and decision disparity, such as that mentioned above, can in fact be attributed to the country's adoption of the continental legal system. Unlike the precedent-based common law system which has standard judicial decisions, under the continental law system there are no standard verdicts since judges are not bound to follow what previous judges in similar corruption cases have decided.

Both Anticorruption Law 1971 and Anticorruption Law 1999 contained a clause referring to the effect of illegal enrichment and misuse of office on the state's finance and or economy. However, the lawmakers of Anticorruption Law 1999 changed the formulation of article 1 (a) in Anticorruption Law 1971 by deleting the word 'must' and inserting the word 'may' (*may* result in damage to the state's finance and or economy), thus changing it from substantive criminal act or *delik materiil* to formal criminal act or *delik formiil*.

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[348] Interview with Henri Silaen, Judge, East Kalimantan High Court, 26 July 2006.
[349] Interview with Abdul Rachim, Judge, District Court of Bekasi, West Java, 20 June 2006.

Djaswardhana further clarified the dissimilarity between the Anticorruption Laws 1971 and 1999:

> The difference, however, is on the provisions concerning state financial damages. The 1971 Law required that the damages had to be concrete. The 1999 Law, however, requires the prosecutor to only prove the potential damages incurred by the state due to corruption. Thus, the 1999 Law adopts formal law of evidence [*delik formiil*]. This means that the defendant may be punished even though there was no concrete state financial loss, as long as his corrupt act meets the elements of crime in the law. But in practice, judges almost always asked the prosecutor to prove that the damage was concrete.[350]

This 'liberal' definition of the effects of corruption has scared many businesses and decision makers, which in turn, may have made the government ineffective, as Hamzah had observed:[351]

> I am afraid, however, that the recent aggressive anticorruption measures have become contraproductive. Now, state-owned banks are reluctant to grant credits, and high-ranking officials are afraid of making strategic decisions. They feel uncertain, and are scared of being arrested. In banking business, non-performance loans are normal, but the bankers are anxious of being suspected of committing corruption. This is because article 2 of the Anticorruption Law 1999 adopts wide definitions and scope of corruption. Under this article, even though the state has not yet incurred financial loss due to alleged corruption, the alleged official may be arrested and punished.

Another policy design defect that might have impeded effective implementation of Anticorruption Laws 1971 and 1999 was that the definitions of illicit enrichment and misuse of office were tied to the damage to the state's finance and economy as a key criminal element. The prosecutor must prove that such corrupt acts have resulted in or will potentially cause damage to the state's finance and economy. To prove illicit enrichment and misuse of office only is legally insufficient for the judge to punish the accused.

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[350]Interview with Kombes Djaswardhana, Director, Criminal Investigation Division of West Java Province Police Office, Former Investigator of the Indonesia Anticorruption Commission, 11 July 2006.

[351]Interview with Prof.Dr. Andi Hamzah, SH., Chief Legal Drafter/Head of the Legal Drafting Team of the Anticorruption Laws 1999 and 2001, and of the Revised Criminal Procedural Law, 24 May 2006.

The definition should not be rigidly tied to state financial damages. For example, 'in common law system, corruption is defined as acts against duties of public offices, nothing to do with state financial damages', Winarta said.[352] Therefore, for effective implementation of the Anticorruption Laws, the lawmakers should adopt legally simple definitions of corruption such as 'the misuse of office for unofficial ends' (Klitgaard 1997:500), or simply 'abuse of public trust for private gain' as I have proposed. To punish the defendant it should be legally sufficient for the prosecutor to prove that the defendant has misused his office for pivate gain, without further proving whether his corrupt act has damaged the state's finance and economy.

In practice, the phrase 'damage to the state's finance and or economy' was interpreted by most law enforcers as being limited to public office holders as legal subjects who can inflict such damage through misuse of office. However, by failing to acknowledge the words *any* person the enforcers missed the opportunity to combat chronic corruption in the private sector.[353]

Thus, even though Anticorruption Laws 1971 and 1999 covered and punished most forms of corruption described by Pope[354], the way these Laws limited the scope and definitions of corruption caused difficulties in enforcing them, and negatively impacted on the policy objectives of reducing corruption. The policy designs were defective in legally structuring their implementation processes to effectively combat corruption, a condition which contradicted the refined top-down implementation theorists' prescriptions.

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[352]Interview with Frans Winarta, lawyer, and Member of the Indonesia Law Commission, 26 May 2006.

[353]Interview with Frans Winarta, lawyer, and Member of the Indonesia Law Commission, 26 May 2006.

[354]See article 1 of the Anticorruption Law 1971 and articles 2, 3, 6 – 12 of the Anticorruption Law 1999, which had included and combated most forms of corruption as suggested by Pope.

c. Causal theories of the Anticorruption Laws. According to the refined top-down implementation modelists a policy must have adequate causal theory about what should be done to produce an intended outcome. Parson (1989) explained this as a policy should adequately assume that theoretically an outcome Z will be produced if X is done in time Y. This section will comparatively assess the adequacy of the causal theories assumed in Anticorruption Laws 1971 and 1999.

As explained in Chapters 4 and 5, the lawmakers of Anticorruption Laws 1971 and 1999 had almost similar causal theories that can be assumed in designing and enacting these Laws. First, as can be read in the preambles and elucidations of the Laws, using Parson's cause and effect theoretical assumption, if corruption is eradicated through enforcing these Laws (causal factor X), a prosperous and just Indonesian society would be realised (effect Z).

Most research has supported the adequacy of this theory. For example Lambsdorf (1999) and World Bank (2000), show that corruption has a negative correlation with economic development or positive correlation with poverty and income inequality.

However, a minority of authors and experts in the debate have challenged these findings. Samuel P. Huntington, for example, argued that in a condition when red tape or bureaucratisation has become a serious governance problem, 'grease money' or corruption may overcome bureaucratic impediments, which in turn will speed up economic development. Moreover, having examined the Indonesian case under the New Order regime, MacIntyre (2001) found that even though the country was faced with endemic, widespread corruption, it could still achieve high investment and economic growth. He concluded that the regime's protection of foreign investment and controlled tolerant attitude of corruption contributed to this high economic growth.

The lawmakers' assumptions that corruption can be eradicated through merely enforcing anticorruption laws are theoretically inadequate. Such an interventionist approach cannot overcome the root causes of the corruption problem. So far, the government of both regimes has had the tendency to excessively use the enforcement approach in combating corruption (Brata 2007). Analogous with a person mopping rainwater from the floor, the government has so far only cleaned it without fixing the broken roof which is the source of the rain (corruption). Moreover, according to Pope (1999), too much reliance on a repressive approach may lead to further abuse of power, repression, and corruption. Therefore, it was time for the government to combine the repressive with a preventive approach, putting more emphasis on the use of preventive measures.

The second causal theory the lawmakers of Anticorruption Laws 1971 and 1999 had assumed, was that they saw the problem as primarily defective policy designs of previous anticorruption laws. Therefore, to combat corruption more effectively they replaced Anticorruption Law 1960 with Anticorruption Law 1971, and Anticorruption Law 1971 with Anticorruption Law 1999. They did not see that the problem was essentially in the implementation of the Anticorruption Laws. Prof. Harkrisnowo argued, 'the anticorruption laws are not perfect, but ok. The main problem is their enforcement'.[355]

Lastly, the lawmakers of Anticorruption Laws 1971 and 1999 theoretically assumed that the prevention and control of corruption would be more effective if punishment for such an evil

[355]Interview with Prof.Harkristuti Harkrisnowo, PhD, Professor of Criminal Law, the University of Indonesia, and Member of the Indonesia Law Commission, 7 June 2006. In interviews with me other interviewees shared similar opinions. 'The existing legislation is fine, the problem is in its implementation,' as Hendarto observed. Professor Seno Adji even contended, 'the anticorruption policy design is good, the problem is in its implementation. This happens, however, in all sectors'. He further observed that, among ASEAN countries, Indonesia was perhaps the country that had most frequently changed its anticorruption law, but corruption in this country was still pervasive. Similarly, Professor Mahfud said, 'the anticorruption laws are fine, but the law enforcers are the problem'.Thus, even though we change the laws the corruption problem is still chronic'.Therefore, Lieutenant General Police Padmanegara had acknowledged, 'we are trying to improve that [the enforcement problem]'.

act was increased. To overcome this shortcoming in the previous Anticorruption Law 1960, the Minister of Justice in his Government Address on the Anticorruption Bill 1971 before *Gotong Royong* House of Representatives on 28 August 1970 increased the punishment to a maximum life sentence or 20 years incarceration and/or fine of IDR 30 million. A similar change was made in Anticorruption Law 1999; in certain circumstances, capital punishment and a higher fine of IDR 1 billion were even imposed.

The question then is, is it theoretically adequate to assume crimes or corruption will be deterred and reduced if we increase the punishment for such a criminal act? Experts have different views on this issue. Rose-Ackerman (1996:1), for example, believed that, 'government policy can reduce corruption by increasing... the penalties levied on those caught'. Moreover, Becker (1968) contended if a potential criminal (or corruptor) knew that his criminal or corrupt intent would be easily detected and severely punished, he would be deterred from committing such an evil act. However, 'coping with corruption is usually not a simple matter of enforcement...' (Eigen 1996). Basrief Arief, Vice Attorney General, said, 'corruption is very complex phenomenon. We should not see it from law enforcement only, but also view it from social and economic aspects. We must approach it in a comprehensive way and deal with it proportionally'.[356] Therefore, Lovell (2005:67) argued, a major cultural change, which cannot simply be legislated into existence, in society, politics, and organisations, would be needed to transform corruption from an endemic to an incidental problem.

It is also questionable whether punishment by death penalty, as contained in Anticorruption Law 1999, will deter or reduce corruption. The imposition of capital punishment in criminal justice system has always been a controversial legal issue. Some countries which have been

[356]In an interview with me, 26 June 2006.

perceived to be relatively 'clean' from corruption according to their TI CPI, for example Denmark, Australia, and New Zealand, do not have capital punishment for corruptors. On the other hand, countries such as China, Indonesia, and Vietnam, which impose the death penalty in their legal system, have been perceived as highly corrupt according to their TI CPI. Moreover, when considering capital punishment the lawmakers should also consider whether such a punishment conforms to international human rights; that is, the right to life.

Despite the lawmakers having similar theoretical assumptions that increased penalties would deter or reduce corruption, they applied those assumptions differently. Under the New Order regime, the lawmakers of Anticorruption Law 1971 imposed the same maximum punishment, life sentence and/or IDR 30 million, to all forms of corruption as stipulated in article 1 paragraphs (1) and (2) of the Law. There was no minimum penalty. The lawmakers of Anticorruption Law 1999 imposed different sentences for different forms of corruption. To curb corruption more effectively, the lawmakers stated, 'there are minimum special criminal punishment, higher fine, and death sentence. Furthermore, this Law also incarcerates those corrupt convicts who cannot pay the compensation to the state.'Thus, there were legally formulated minimum and maximum punishments, starting from one year's imprisonment to death sentence and/or fines ranging from IDR 50 million to IDR 1 billion.

This varied approach to sentencing agrees with what Rose-Ackerman (1999:53) has suggested. She contends that having anticipated the fixed severely increased punishment without tying it to the size of the payoffs, such as stipulated in Anticorruption Law 1971, a potential corruptor will act rationally by demanding a high return. As a result, she argues, such fixed indifferent punishment will not only reduce the level of corruption, but ironically

also increase the size of the demanded bribes. Therefore, Rose-Ackerman advised, punishment should vary in proportion to the size of the payoffs.

In the final analysis, in terms of meeting the prescriptions of the refined top-down implementation theorists concerning the adequate theory of a policy, not all theoretical assumptions of the lawmakers of Anticorruption Laws 1971 and 1999 were adequate. At a minimum, their assumed policy theories are questionable. However, considering Rose-Ackerman's suggestions, the lawmakers of Anticorruption Law 1999 had a more adequate sentencing policy theory.

d. Implementation structures and processes of the Anticorruption Laws. Policy design, as the refined top-down implementation theorists have suggested (Sabatier 1986b:23), can also reinforce the implementation effectiveness of a policy or program by legally structuring its process to enhance compliance by implementing officials and target groups. Thus, the theorists attached real importance to the legal structuring of an implementation process. To make coordination and collaboration in the implementation process more effective, the theorists further prescibed that the policy or a statute can also be designed to hierarchically integrate implementing organisations, both within units and among agencies.

This section comparatively examines the extent to which the policy designs of Anticorruption Laws 1971 and 1999 met these conditions. It assesses how the powers of the enforcers were legally structured to effectively enforce these Laws and prevent the enforcers from abusing the enforcement process.

1. The powers of the implementing agencies. To combat corruption more effectively and efficiently, the Anticorruption Laws granted certain powers to the enforcers to investigate, prosecute, and try corruption cases. However, if these Laws did not specifically grant and

regulate the use of such powers, the existing, relevant laws would govern the scope and application of these enforcement powers. In practice, this means that the defective Criminal Procedural Code or KUHAP would, to some extent, legally structure the implementation of these powers. This caused a serious problem in the country's criminal justice system, particularly in anticorruption law enforcement, under both the New Order regime and the Reform Order regime. The defective KUHAP gave the enforcers wide and relatively unchecked discretionary powers. This kind of discretionary power structure provided opportunities for the enforcers to abuse and corrupt the enforcement process. Robert Klitgaard (1988) stated that corruption occurred due to monopoly, discretion and lack of accountability in the policy or decisionmaking process. His formula was that Corruption = Monopoly + Discretion – Accountability or C = M + D – A. This is what was causing the weak anticorruption law enforcement of both the New Order regime and the Reform Order regime. The KUHAP created opportunities for corruption by reinforcing factors M and D, while weakening factor A.

The KUHAP created a corruption market which operated from the beginning to the end of the enforcement process. The wide discretion given to the enforcers made corruption possible in: the reporting phase of a suspected corruption; the decisionmaking to determine who would be the suspect and witness of a corruption case; the detention phase; the issuance of a letter of instruction to stop investigating and prosecuting a criminal case (by both the police, SP3, and the prosecutor, SKP2); the choosing and selling of a charge article by the enforcers; the weakening of a charge brought by the prosecutor; sentencing; the release of a suspect or a defendant; and the facilities and privileges given to the prisoners. These opportunities for corruption and abuse of power by law enforcers then contributed to the emergence of a phenomenon popularly known as the 'court mafia' or *mafia peradilan,* a serious, destructive, persisting problem in the law enforcement of Indonesia. The court

mafia is a symptom of a more fundamental and complex problem: the institutional, structural and moral pathology in the law enforcement process (Brata 2010b).

The KUHAP failed to structurally design accountability and control mechanisms which could effectively limit and control the use of such discretionary powers by the law enforcers. This was contrary to the prescriptions suggested by the refined top-down implementation theorists. Pre-trial mechanisms were weak. Internal and external controls of the law enforcement process were dysfunctional. This can be seen in the bribery case involving the prosecutor Urip Tri Gunawan.[357]

In terms of requesting financial information, however, Anticorruption Laws 1971 and 1999 had different requirements. Anticorruption Law 1971 required the Minister of Finance to give permission to investigators, prosecutors, or judges to require a bank to disclose the financial information or bank account of a suspect within 14 days (maximum) of a request from the Attorney General or the Supreme Court. Anticorruption Law 1999 required the governor of the Central Bank to give permission for similar information within three days of a request.

Thus, Anticorruption Law 1999 was better in limiting the time for granting permission. This was important because time is crucial when investigating a corruption case. The suspect can quickly transfer or launder money gained through corruption if he has enough time. However, if the Minister of Finance or the Governor of the Central Bank did not give

[357]Urip Tri Gunawan, the prosecutor who led, but then discontinued the investigation of a mega corruption BLBI case, was arrested by the Anticorruption Commission's investigators soon after he had received the bribe from Ms. Arthalyta Suryani, a confidant of Mr. Syamsul Nursalim, a suspect in this case who hid in Singapore. The Anticorruption Court sentenced Gunawan to 20 years' imprisonment and punished Suryani by five years in prison. However, the Supreme Court reduced Suryani's sentence to four years, which then ignited public anger. From the tape record publicly disclosed by the Commission, many believed that the Deputy Attorney General for Special Crimes, Kemas Yahya Rahman, and Deputy Attorney General for General Crimes were also involved in this case.

permission within the required period there was no sanction against them. From the refined top-down implementation theorists' perspectives, the policy design of these Laws was not effective enough to force the authorities to comply with the implementation process of the Anticorruption Laws. Moreover, permission should not be required as the time involved in gaining it slows down the implementation process.

To some extent, Anticorruption Laws 1971 and 1999 did meet the refined top-down implementation modelists' suggestions for effective implementation.These Laws had legally structured the implementation process to force the parties involved in a case to comply with the rules governing that process or be punished. This applied to those who intentionally did not provide required information, gave fake information, and/or obstructed justice in the investigation, prosecution and trial of a corruption case.

Anticorruption Laws 1971 and 1999 also punished the enforcers who abused their powers in investigating a corruption case. The Laws sentenced those who forcibly and illegally obtained a confession or information; entered a house, room, or places of others, and ordered a person to show them letters, documents, post and telegraphic materials, or goods, or confiscated them; or instructed telecommunication officials to disclose phone conversations. Anticorruption Law 1999 penalised them more severely with a minimum one-year to maximum six-year imprisonment and/or a minimum IDR 50 million to maximum IDR 300 million fines. Anticorruption Law 1971 punished the enforcers with a six-year imprisonment and/or IDR 4 million fines at maximum. There was no minimum sentence.

Thus, from the perspectives of the refined top-down implementation theorists the Anticorruption Laws were consistent with their prescriptions in these matters. Therefore, these Laws, by design, should have limited the 'playing field' for the enforcers and other actors to play the 'implementation game' and advance their personal interests. To some

extent, the Laws constrained what bottom uppers, such as Elmore (1982), described as strategic deflecting interactions between the actors at the street level. However, in reality, as Aris[358] observed, appeals to punish the enforcers who abused their powers in the investigation process frequently failed since they had full control over the process, and monitoring of their powers was weak.

Under the New Order regime the internal control mechanisms of the police, the prosecution, and the judiciary were powerless and dysfunctional due to corruption and President Suharto's control and intervention. Through his military men, Suharto could use these mechanisms to protect and promote his political and economic interests. Under the Reform Order regime, the powers and authority of the newly created Police, Prosecution, and Judicial Commissions were also weak as they had no power to sanction or punish unethical enforcers.

2. The specific criminal procedures. According to the refined top-down implementation theorists, a policy can be designed to legally structure the implementation process. Consistent with this view, the lawmakers of the Anticorruption Laws 1971 and 1999 had legally structured the enforcement process of these Laws. Having considered the special characteristics of corruption, and the difficulty in investigating, prosecuting, and trying a corruption case, the lawmakers had designed the Laws to ease, simplify, and speed up the proving of a corruption case. The complexity of proving a corruption case can be understood from the investigative experience of senior prosecutor Suryosumpeno:

> The proving of a corruption case is very complex because the offender is usually a smart person. When he was committing corruption, no one knew that he was a criminal. His criminal act was known much later, thus it is difficult to collect the evidence. [It is] Impossible [that] a corruption case can be prosecuted in two months.[359]

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[358] Interview with M. Syaiful Aris, Director and public lawyer, Surabaya Legal Aid Institute, 15 August 2006.

[359] Interview with Chuck Suryosumpeno, Head, Bandung City District Prosecution Office, 12 July 2006.

As has been stressed in Chapters 4 and 5, simplicity and timing are crucial in investigating and prosecuting a corruption case. Having learned from experience, the lawmakers corrected and improved policy design defects which had constrained the effective implementation of previous laws. This practice supports what the hybrid implementation theorists have argued. They see implementation as an adaptation and evolution (Parsons, W. 1995).

However, the lawmakers of Anticorruption Laws 1971 and 1999 still saw endemic and systemic corruption in Indonesia as an ordinary crime.Therefore, the criminal procedures in these Laws which governed the investigation, prosecution, and trial of a corruption case were basically ordinary procedures.They generally adopted the Criminal Procedure Code or KUHAP, which was designed to process and combat ordinary crimes. For example, the Minister of Justice who also drafted Anticorruption Law 1971 rejected the use of reverse burden of proof as a method of proving a corruption case as this contradicted the non-self incrimination principle and human rights of the suspect and the accused. Instead, Anticorruption Law 1999 introduced a 'balanced or limited reverse burden of proof' *(pembuktian terbalik yang terbatas atau seimbang)* which was basically the same as the ordinary method. The prosecutor still had an obligation to prove that the accused was guilty of committing the corruption. Thus, the onus of proof was still on the prosecutor, not reversed to the accused.[360]

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[360]The Anticorruption Law Number 20/2001 amending the Anticorruption law 1999 then to some extent introduced reverse burden of proof. However, this reverse method is still limited to gratification cases where, unless otherwise proved on the contrary by the receiver, any gratification given to a public official is presumed as a bribe if such gratification was related to his office and against his duty. However, the prosecutor still has the burden to prove the guilt of the accused if the value of such gratification is below IDR 10 million. The reasons to introduce this limited version of reverse burden of proof were because the lawmakers of the Anticorruption Law 2001 had now seen endemic and systemic corruption in Indonesia as an extraordinary crime which demanded extraordinary law enforcement. However, even though 'the Anticorruption Law 2001 adopted limited reverse burden of proof, up to now no judge used it. The judge did not know how to use this procedure. The Law is not clear in this issue,' as Prof. Dr. Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of Anticorruption Law 1999, Delegate to United Nations Convention against

Even though the rules of evidence of Anticorruption Laws 1971 and 1999 were basically the same and mostly governed by the rules of evidence of the KUHAP, the scope of Anticorruption Law 1999 was wider than that of Anticorruption Law 1971.[361] 'The Anticorruption Law 1999 is like a fishing trawler, wider in scope than the Anticorruption Law 1971,' Pasinringi argued.[362]Anticorruption Law 1999 is broader in terms of defining corruption and the actors in corrupt transactions, and in punishing corrupt behaviour. Therefore, the fishing net of Anticorruption Law 1999 can catch more 'fishes' (corruptors).

In a country such as Indonesia, where corruption is widespread and systemic and its forms are varied, a 'bigger fishing net' is necessary to effectively curb more varied forms of corruption and corruptors. Moreover, as Manulang observed, 'proving corruption is difficult. Corruptors are white collar people and well educated. For example, a corrupt officer will quickly destroy or conceal the evidence'.[363] Furthermore, 'the offender,' Djaswardana learned, 'will always justify his actions by manipulating the evidence'.[364]

To achieve the policy objectives of Anticorruption Laws 1971 and 1999, the lawmakers used many methods to recover state assets losses and punish corruptors. One was trying a corruption case without the presence of the accused or *in absentia* court proceedings. This kind of proceeding is nonexistent in the trial of other serious crimes (Hamzah 1991: 12). In corruption cases, an *in absentia* trial is crucial to bring a corrupt person to justice since a

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Corruption, and Professor of International Criminal Law of Padjadjaran University, explained to me in an interview, 12 June 2006.

[361]Interview with Kombes Djaswardhana, Director, Criminal Investigation Division of West Java Province Police Office, former Investigator of the Indonesia Anticorruption Commission, 11 July 2006.

[362]Interview with Andi Ware Pasinringi, Judge, West Sumatra High Court, 5 July 2006.

[363]Interview with Timbul Manulang, Head, Tenggarong Kutai District Prosecution Office, East Kalimantan, 27 July 2006.

[364]Interview with Kombes Djaswardhana, Director, Criminal Investigation Division of West Java Province Police Office, former investigator of the Indonesia Anticorruption Commission, 11 July 2006.

corruptor has a tendency to hide in an effort to escape prosecution and trial. This was evident in the BLBI cases which involved the embezzlement and misuse of liquidity money from the Central Bank during the monetary crisis in 1997–1998. The accused flew to Australia and Singapore to escape trial.

The lawmakers of Anticorruption Laws 1971 and 1999 had also formulated another important provision to recover the state assets. Under these Laws, even if the accused died during the trial, the prosecutor still had the legal standing to confiscate forfeited evidence and recover, through civil proceedings, stolen state assets. Furthermore, under Anticorruption Law 1999 the prosecutor can file a civil case to recover state financial damage even though the court had acquitted the accused.

These civil proceedings will certainly increase the probability of detecting and recovering state assets. They will cause corruption to be, what Peter Eigen called, 'high risk and low profit undertakings'. However, without close scrutiny and supervision, the use of these civil legal powers will give the enforcers more opportunity to corruptly play the implementation game or abuse their gained civil powers.

The lawmakers of Anticorruption Laws 1971 and 1999 had further legally structured the enforcement process to overcome the coordination problem in the investigation of a corruption case which is a serious problem in the country's criminal justice system. Under Anticorruption Law 1971 the Attorney General, as the highest prosecutor, was authorised to coordinate the investigation of a corruption case if the corrupt act was jointly committed by a military officer and a civilian public servant. Anticorruption Law 1999 gave the Attorney General the power to establish a joint task force to investigate and prosecute a difficult corruption case which involved cross-sectional cases, was done using sophisticated

technology, or was committed by high state officials such as ministers or members of legislatures.

From the perspective of the refined top-down implementation theorists 'policy designed' enforcement coordination is useful to hierarchically integrate the enforcement agencies in their effort to combat corruption. Moreover, by appointing the Attorney General as the sole official responsible for such coordination, accountability in the anticorruption enforcement process will be improved. The relatively good performance of the anticorruption teams whose members were from the police, the prosecution, the government auditors, and experts under President Suharto of the New Order regime and Presidents Abdurrahman Wahid and Yudhoyono of the Reform Order regime were examples of this designed enforcement coordination. However, policy design also created an obstacle which seriously constrained the effective implementation of Anticorruption Law 1999 and the fight against 'big fish' corruption. Sidabutar related his personal experience of this problem when investigating a corruption case:

> The other constraint is the requirement for us to seek a permission to investigate certain public officials. Even now, based on the new regional autonomy laws we must seek a permission from a district head to question a village head. The problem is that while we are waiting this permission the evidence has already gone or been destroyed. This is because of the chaotic regional policies which seem to protect certain regional public officials. This is reform euphoria. For example, when a district prosecutor investigated a corruption case in district [X] the village head did not want to be pre-investigated as he said the investigator was required to get permission.[365]

Legally, such permission must be requested and obtained by the investigator before investigating other high-ranking officials such as a *bupati* or district head, a *gubernur* or provincial head, a minister, or a parliamentarian. In practice, permission was delayed or given for political interests. Therefore, as anonymous police officers told me, 'there is no equality before the law. To question and investigate a certain high-ranking public official,

[365]Interview with Lambok Sidabutar, Special Crime Section Head, West Java Province Prosecution Office, 11 July 2006.

and to detain him, we must seek separate permission. The police in all regions face this obstacle'.[366] Sometimes, the giving of such permission was politically motivated.

Under the authoritarian New Order regime the government had systematically controlled and restricted public participation. However, under the democratic Reform Order regime the government legally recognised the rights and obligations of the people in the prevention and control of corruption. Thus, while Anticorruption Law 1971 did not formally provide opportunities for the people to participate in the anticorruption measures, Anticorruption Law 1999 promoted and protected the right of the people to seek, obtain, and provide information on a suspected corrupt offence and get a response from the law enforcers regarding the progress of reported corruption offence within 30 days, and to participate in the anticorruption movement. The public, as Lieutenant General Police Padmanegara recognised, played a strategic role in the fight against corruption.[367] Many corruption cases were investigated and prosecuted as a result of reports from the people.[368] This opening for public participation will also strengthen the accountability and transparency of the anticorruption process which will force the enforcers and other actors in a corruption case to comply with the rules of the enforcement process. This situation, according to the refined top-down implementation theorists, is favourable for effective policy implementation.

Despite some improvements made by the lawmakers of Anticorruption Law 1999, this Law contained a serious flaw. Anticorruption Law 1971 had provided a transitional provision; however, Anticorruption Law 1999 did not contain a ruling on the investigation, prosecution

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[366]Interview with three anonymous anticorruption police investigators, East Kalimantan Province Police Office, 25 July 2006.

[367]Interview with Lieutenant General Police Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.

[368]Interview with Heni Wahyu Puwarti, Prosecution Section Head, Yogyakarta Province Prosecution Office, 1 August 2006.

and trial of corruption committed before it came into force on 16 August 1999.[369] This controversial, confusing legal situation provoked debate among legal experts and lawyers. Some argued that Anticorruption Law 1999 could not be enforced retroactively. In other words, the probability of detecting corruption which occurred prior to 16 August 1999, and punishing corruptors, was zero. This condition contradicted the policy objectives of this Law.[370]

In the final analysis, the policy designs of both Anticorruption Law 1971 and Anticorruption Law 1999 were defective. The lawmakers saw and approached corruption as an ordinary crime. However, by increasing the probability of detecting corrupt acts, punishing the corruptors, and recovering stolen state assets, Anticorruption Law 1999 had a better policy design, which may explain why the Reform Order regime had better performance in enforcing the anticorruption law and curbing corruption.

2. The political factors

Under this type of implementation failure factor the implementation failure of Anticorruption Laws 1971 and 1999 can essentially be attributed to the failure of the New Order regime and the Reform Order regime to set up political institutions and leadership which were supportive of and conducive to the effective enforcement of these Laws. From the perspective of the refined top-down implementation theorists, this political factor is particularly associated with the political support of policy objectives and enforcement of these Laws by interest groups and sovereigns. The theorists will also see to what extent socioeconomic changes have undermined such political support.

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[369]Some anticorruption observers and activists suspected that the Habibie government, which proposed the Anticorruption Bill, had intentionally not formulated such transitional provisions to protect high officials of the New Order regime and their cronies from prosecution.

[370] Article 43A of the Anticorruption Law Number 20/2001 then fixed this situation. It ruled that corruption offences committed before the Anticorruption Law 1999 came into effect or during the New Order regime would be examined according to the Anticorruption Law 1971.

During the New Order regime and the Reform Order regime socioeconomic changes influenced the political support to eradicate endemic corruption in the country. Historically, the enactment of the Anticorruption Laws had been forced by large-scale socioeconomic changes which strongly demanded that the regimes take actions to overcome the chronic corruption problem in the country.

Responding to public pressure, President Suharto, in his State Presidential Speech at Plenary Cabinet Meeting on 30 January 1970, stated that although his administration had inherited the chronic corruption which existed under Sukarno's Old Order regime, the government was committed to combating endemic corruption in the public sector. Moreover, Suharto ensured that he himself would lead the anticorruption movement.

All political parties, in particular Suharto's Golongan Karya, gave support to the government to eradicate corruption. Saljo, a member of the House of Representatives from Golongan Karya, in her response to the Government's Anticorruption Bill, stated that, 'it is a fact that corruption has [been] widespread, and the forms of illegitimate self-enrichment damaging the state's finance have been more varied'. Therefore, she urged, the enactment of this Bill was imperative to combat corruption which had long been a chronic and serious problem. However, political commitment and political support did not materialise into concrete actions. Despite the chronic and pervasive corruption problem, only a few corruption cases were investigated and prosecuted.[371] For example, Suhartono, a senior prosecutor, said the New Order regime rarely exposed and investigated suspected corruption

[371]Interview with Prof.Dr. Andi Hamzah, SH., Chief Legal Drafter/Head of the Legal Drafting Team of the Anticorruption Laws 1999 and 2001, and of the Revised Criminal Procedural Law, 24 May 2006.

cases which involved *gubernur* or heads of provincial administrations and *bupati* or heads of district governments.[372]

After several years in power, the commitment of the New Order regime to combat corruption had weakened. With the emphasis on maintaining political stability and power, this regime instead used corruption issues as a political strategy to selectively punish its undisciplined political leaders or followers. Corruption cases which would endanger political stability were not exposed. For instance, several *Bimas* corruption cases which involved the embezzlement of government financial assistance for farmers were closed.[373] Furthermore, in some corruption cases, the regime only imposed administrative punishment on suspected officials (Hamzah 1984:145).

More importantly, the enforcement institutions themselves had a weak commitment to fighting endemic corruption. These agencies, which were crucial in combating corruption in the public sector, were not immune to corruption; in fact corruption in these institutions was even more serious. This became known as the court mafia or judicial corruption.[374] As a result, these institutions were an integral part of the corruption problem, not the solution.

The weak political commitment and support from the political leaders eventually made the corruption problem in the country worse. For example, in 1995 Transparency International in its Corruption Perceptions Index ranked the country as the most corrupt country, scoring 1.94 of 10. Moreover, the United Nations, through the Stolen Asset Recovery (StAR) Initiative, even named former President Suharto, the ruler of the New Order regime, the

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[372] Interview with FX Suhartono, Vice Head, High Prosecution Office, East Java, 15 August 2006.
[373] Interview with Andi Ware Pasinringi, Judge, High Court, West Sumatra, 5 July 2006.
[374] Interview with Andi Syahputra, Executive Secretary, Government Watch Jakarta, 21 July 2006.

most corrupt leader in the world (*Sinar Harapan,* 9 October 2007; see also Robin Hodess et al. (eds.), 2004: 13).

Under the Reform Order regime political support for the anticorruption reform had also been influenced by large-scale socioeconomic changes. However, these changes, which were triggered by the monetary crisis in 1997, were more radical than those under the New Order regime. They could even be classified as revolution or people power. Thus, under the Reform Order regime revolution was used as a people-centric, bottom-up anticorruption measure to not only replace the New Order regime, but also change its corrupt authoritarian political system with a clean democratic government. Formally, most political factions accommodated the people's demands. For example, through its Decision Number XI/MPR/1998 on Administration of the State Clean and Free from Corruption, Collusion and Nepotism, the People's Consultative Assembly or MPR, the highest constitutional body of the state, supported the people's demands to establish a clean government free from corruption, collusion and nepotism.

Similar to the New Order regime, the political support from the political leaders of the Reform Order regime also became weak or did not materialise as concrete measures. One of the notable examples was the creation and existence of the Anticorruption Commission or KPK. Instead of gaining strong political support, the KPK from its creation experienced severe legal and political attacks from many directions. These attacks, which were intended to weaken and dissolve the KPK, came from political leaders, lawyers, parliamentarians, corruptors, conglomerates, and conventional law enforcers.

The KPK, which according to its constituting Act Number 30/2002 began operation in 2003 under the Megawati administration, was not truly a result of the political will of the

sovereigns to combat corruption (Masduki 2005). Politically motivated, this agency was created to rectify the poor public image of Habibie's regime, and more as a result of the International Monetary Fund's recommendation. I call this 'internationalism', that is, anticorruption measures and pressures systematically organised by international financial organisations and donor countries to reform, to some extent by economic and political forces and influences, the corrupt government and political system of a country into a more democratic and clean governance.

As has been explained in Chapter 5, while granted the powers of prevention, investigation, and prosecution, KPK, which is a powerful anticorruption agency (Brata 2007b), had also been internally weakened by corrupt political powers. For example, a counter anticorruption strategy was to select commissioners who had a hidden agenda to weaken or disable the KPK (Brata 2008a). Many believed that the choice of Major General Police (retired) Taufiqurahman Ruki, and Antasari Azhar, former prosecutor and Director for General Crime Affairs of the Attorney General's Office, whose moral integrity was in doubt, by the government selection committee and the House of Representatives was an example of this strategy.

Ironically, the corrupt political powers also used the country's new democratic mechanisms to constitutionally challenge the powers and existence of the KPK. As opposed to the Supreme Court of the New Order regime which had no power to constitutionally review an act of parliament, the newly created Constitutional Court of the Reform Order regime could review the constitutionality of such an act. Therefore, for example, those convicted in the Electoral National Commission corruption case appealed to the Constitutional Court to annul article 53 of the Anticorruption Commission Law 30/2002, which was a constituting article of the Anticorruption Court (*Detikcom,* 19 December 2006).The Constitutional Court

annulled article 53 and ordered the government to enact a separate constituting act for the Anticorruption Court. After a long delay, in late 2009, the government finally passed an act on anticorruption courts which liquidated and integrated the Anticorruption Court, a court which has been respected for its integrity and record of never acquitting defendants, into and under the corrupt general courts. This was another big defeat for the anticorruption movement.

As has been examined in Chapters 4 and 5, neither the bureaucracies of the New Order regime nor those of the Reform Order regime seriously supported bureaucratic reform. For example, in general government agencies did not positively respond to the KPK's recommendations to reform and rectify their corrupt bureaucratic systems.[375]

A lack of commitment on the part of enforcers is also a contributing factor in combating corruption. This condition, according to the refined top-down implementation theorists, is not favourable for effective implementation. Due to this lack of commitment, the Central Java Anticorruption Committee asked the Head of the Central Java High Prosecution Office to warn his subordinates in some district prosecution offices who were not serious in investigating an alleged corruption case in text book procurement (*Suara Merdeka,* 12 December 2007). In addition, the blueprint for reform in the Supreme Court, in particular the proposal for reforming its information management system, was not implemented[376], '...because the Supreme Court does not want to implement it'.[377]

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[375]Interview with Major General Police (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006, and Prof.Dr Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of Anticorruption Law 1999, Delegate to United Nations Convention against Corruption, and Professor of International Criminal Law of Padjadjaran University, 12 June 2006.
[376]Interview with Dr. Artidjo Alkostar, SH., LLM, Justice, the Supreme Court, 6 June 2006.
[377]Interview with Agung Hendarto, Executive Director, the Indonesian Society for Transparency, 9 June 2006.

The phenomenon of court mafia in the New Order regime's criminal justice system, which continued to exist in the criminal justice system of the Reform Order regime, further showed the weak commitment of the enforcement agencies to combat corruption. Under these unfavourable conditions, therefore, 'no matter how well a statute or other basic policy decisions structure the formal decision process, the attainment of legal goals is unlikely if implementors are not committed to achieving those goals' (Mazmanian and Sabatier 1989).

Like the enforcement process under the New Order regime, the enforcement process under the Reform Order regime was also not immune from the political interventions of the sovereigns. Under the New Order regime, for example, since the police organisation was institutionally under the armed forces, the commanders of the armed forces could stop police from investigating a criminal case.[378] Political interventions also existed under the Reform Order regime. For instance, even though the Supreme Court had punished members of the West Sumatra legislature for committing corruption, the prosecutor did not execute the Court's decision. Isra observed that this was political. Since the Attorney General came from the Star-Moon Party, Isra said it was most likely the execution of the Court's decision had been intervened in, and compromised by certain political parties.[379]

The social political conditions under the Reform Order regime were more conducive to anticorruption enforcement than those under the New Order regime. This explains the better performance of the Reform Order regime in anticorruption law enforcement. The country's 1945 Constitution had been reformed, functioning checks and balances mechanisms between state branches were in place and there was better protection of the civil and political rights of the people. The people now had the right to information, to form associations, and to

[378]Interview with Lieutenant General Police (retired) Prof. Koespramono Irsan, former Operational Deputy to National Police Chief, 13 June 2006.
[379]Interview with Saldi Isra, anticorruption activist, Coordinator of West Sumatra Awareness Society, 6 July 2006.

participate in the governmental process. Moreover, the press now had the freedom to express their opinions. However, the people, as indicated in the TI's CPI and other governance surveys, still perceived the regime, in particular its law enforcement agencies, as corrupt.

3. The institutional factors

The implementation failure of Anticorruption Laws 1971 and 1999, according to this type of factor, can be associated with the defective institutional framework which was not conducive to the effective enforcement of these Laws. The problems of a defective institutional framework are varied. The important ones in the case of these Laws are the defective Criminal Procedural Code or KUHAP, institutional power conflicts among the enforcement agencies, institutional problems of the KPK, and institutional corruption in the enforcement agencies. Essentially the problem lay in the defective implementation structures and processes to effectively implement these Laws.

As has been examined in Chapters 4 and 5, the New Order regime and the Reform Order regime both had a similar source of institutional defectiveness: the defective KUHAP. This code legally structured the implementation process of Anticorruption Laws 1971 and 1999. Even though both Laws specifically regulated the enforcement process, the KUHAP governed the investigation, prosecution and trial of the anticorruption law enforcement process. Instead of structuring an integrated criminal justice system, the KUHAP had structured a disintegrated process in the investigation, prosecution, and trial of a corruption case. There was a lack of hierarchical functional integration of the police, the prosecution, and the judicial institutions in the enforcement process. This, according to the refined top-down implementation theorists, is not conducive for effective implementation of a policy.

Under the KUHAP, the wide discretionary enforcement powers of the police, the prosecution, and the judicial institutions were structurally disintegrated, which in practice

provided opportunities for the enforcers, in particular those at street level, to corruptly abuse their powers. Under an earlier Dutch criminal procedural code the police were institutionally under the supervision of the prosecution, making it difficult for them to abuse their investigative powers, Hamzah told me.[380] Moreover, under this Dutch code a judge had the authority to control the use of powers by the prosecutor, such as correcting the legal formulation of a charging document (*surat dakwaan*).[381]

Such disintegrated implementation structure and process had also allowed different legal perceptions among the enforcers on the applications of Anticorruption Laws 1971 and 1999 and other laws related to a corruption case. For example, due to different perceptions, the judge panel of a corruption case could reject a charging document if it was legally incorrect or weak. Under both regimes this institutional problem, to some extent, had been overcome by creating an anticorruption team or task force whose members were the police, the prosecutors, and government auditors. However, this team was usually *ad hoc* or temporary and was charged with investigating and prosecuting specific corruption cases.

Another key institutional problem was institutional power conflict among the enforcement agencies. These particular conflicts made coordination and cooperation in the anticorruption law enforcement more difficult, a situation which was unfavourable for effective implementation of the Anticorruption Laws. Under the New Order regime, the conflict was between the police and the prosecution. One of the sources of this conflict was the transitional provision in article 284 (2) of the KUHAP, which stipulated:

> Within two years after this Act is ratified, all criminal cases shall be processed according to this Act, with the tentative exceptions to the special provisions on the criminal procedures as stipulated in certain laws, until these laws are changed and or revoked.

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[380]Interview with Prof.Dr. Andi Hamzah SH., chief drafter of Indonesia's Convention-based new anticorruption act, former chief drafter of the Anticorruption Laws 1999 and 2001, retired senior public prosecutor, and criminal law professor, 22 May 2006.

[381]Interview with Marina Sidabutar, Justice, the Supreme Court, 6 June 2006.

In practice, the police and the prosecutor interpreted this provision differently. The police thought that they had power to investigate corruption cases. On the other hand, the prosecution claimed that only the prosecution had power to investigate special crimes including corruption.

The transitional provision was also a source of institutional conflict under the Reform Order. A high-ranking enforcer shared his view on this:

> After two years of the transitional period since the enactment of the KUHAP in 1981 the prosecutor was formally expected to stop investigating corruption cases. But until now they continue investigating corruption cases as these are 'wet' cases. The police also wanted to investigate corruption cases. When the KPK begun operating, only the national police headquarter investigated corruption cases, then provincial police offices, and now district police officers also investigated these cases.[382]

However, the Reform Order regime had made the institutional conflict worse. The source of these conflicts was because the KPK, the police, and the prosecution all had the powers to invesitigate a corruption case (Brata 2009h). Law Number 30/2002 of the KPK granted such powers to the KPK, while Law Number 2/2002 of the Police gave the police the power to investigate 'all criminal cases', and for the prosecutor, said Judge Kartika, it was 'Prosecution Act Number 16/2004 that granted the prosecution the power to investigate special criminal cases, including corruption'. Moreover, a corruption case could also be tried at the Jakarta-based Anticorruption Court (*Pengadilan Tipikor)* or at a general district court. Thus, there was no single agency responsible for the enforcement of Anticorruption Law 1999, a condition the top downers believe is not favorable for effective implementation of a policy (Gunn in Parsons 1995:465-6). A corruptor may manipulate such institutional defectiveness to his benefit, as Prof. Senoadji jokingly described:

> Now, there is dualism in the anticorruption law enforcement. The corruption cases that were investigated by the police or the prosecutor will be tried by the general courts, while those investigated by the KPK will be tried by the anticorruption court. Their criminal legal procedures are different. Thus, there is a joke among corruptors. They say we should take benefits from these institutional conflicts and the enforcement

[382]Interview with a high-ranking enforcer, June 2006.

> dualism. To get lenient sentence, we go to the police or the prosecutor, not the KPK. Therefore, there is discriminatory enforcement. For example, the KPK cannot issue a SP3 [a letter to stop the investigation of a corruption case] to a suspect, but the police or the prosecutor can.[383]

This defective, disintegrated implementation process was the cause of the notable, controversial case of the criminalisation of the KPK's authorities by the police (Brata 2009h).[384] The KPK commissioners, Chandra M. Hamzah and Bibit S. Riyanto, were arrested and detained by the police. By law such detention was authorised as the police, the prosecutor, and the KPK all had the legal powers to investigate, arrest, and detain high-ranking officials or chiefs of any enforcement agencies who were suspected of committing corruption.

The above example shows how the power structure can be vulnerable to manipulation through the use of an engineered legal scenario to enable high officers of one enforcement agency to legally take revenge on high officials of another enforcement agency.

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[383] Interview with Prof. Indriyanto Seno Adji, SH., Professor of Criminal Law, the University of Indonesia, Legal Drafter of Anticorruption Laws 1999 and 2001, 24 May 2006.

[384] In this case, the police investigators suspected Hamzah and Riyanto of receiving bribes and abusing their wiretapping authority in handling a corruption case involving the procurement of a forestry technology in the Department of Forestry by Masaro Company owned by Anggoro Widjoyo, who escaped from the KPK's investigation and hid in Singapore. Following the arrest and detention of the two commissioners by the police, President Yudhoyono, based on article 32 (2) of the KPK Law Number 30/2002, issued a presidential decree to temporarily dismiss the suspected commissioners. The public angrily protested such detention. More than one million facebookers staged a campaign on Facebook demanding the enforcers free the detained commissioners. During their detention the commissioners filed an appeal to the Constitutional Court to review article 32 (1c) of Law Number 30/2002, which states that a commissioner of the KPK can be dismissed because he has become an accused in a criminal case, as this article contradicted the 1945 Constitution and the presumption of innocence principle. They were successful in their appeal. During this appeal hearing, the Constitutional Court publicly disclosed a tape provided by the KPK recording conversations between Anggodo Widjoyo, brother of Anggoro Widjoyo, his lawyer, a high-ranking prosecutor, and a business woman. From these conversations, it was clear that the detention had been planned and engineered; the record also disclosed a plan to kill Hamzah and the suspected involvement of Lieutenant General Police Susno Duadji, Chief of the National Police Investigation Board, in the engineered criminalisation and detention of the commissioners.
President Yuhoyono then formed a presidential team, called Tim 8, to investigate the case. Having found no sufficient evidence, the team then recommended the president stop the investigation and prosecution of the commissioners and free them. The president then publicly and impliedly 'instructed' the Attorney General and the National Police Chief to follow the team's recommendation and free the commissioners. The following day the Attorney General issued SKP3, discontinuing the prosecution and freeing the suspected commissioners.

Furthermore, such power structure may also open possibilities for the chiefs of these three enforcement institutions to bargain or mutually agree not to legally process grand corruption cases committed by them or their cronies such as 'black' conglomerates and evil politicians. Hence, this defective power structure may be abused by corruptors, 'black' conglomerates, and evil politicians to weaken these three enforcement agencies, as the case of the arrest of the KPK's commissioners shows.

Despite much public appreciation for its performance, the KPK and its institutional problems, to some extent, have constrained and will impede the effective implementation of the Anticorruption Law 1999. However, the KPK's appreciated performance was one of the reasons the Reform Order regime had better anticorruption law enforcement than the New Order regime. Under the New Order regime there was no separate, independent anticorruption commission or agency which was 'free' from political intervention or other forms of partiality. Suharto and his military men effectively influenced and controlled the criminal justice system. As a result, the regime's enforcement agencies were unable to effectively combat corruption.

As also stipulated in the preamble of the KPK Act 30/2002, 'the KPK was created because the conventional law enforcement institutions were not effective in combating corruption'.[385] Colonel Police Fadri observed[386], 'KPK is more effective because the investigator and the prosecutor are under one roof. In the conventional law enforcement, there is fragmentation, both the police and the prosecutors have the authority to investigate corruption cases'. Representing a miniature of an integrated criminal justice system in

[385] Interview with Major General Police (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006.
[386] Interview with Kombes Dr. Iza Fadri, Head, Legal Division, National Police Headquarter, 23 May 2006.

anticorruption enforcement, the KPK had, to some extent, overcome the problem of the disintegrated, corrupt and defective anticorruption enforcement of the New Order regime.

KPK is powerful. 'It has the powers to intercept phone conversations without a warrant from the court and to arrest high-ranking public officials without permission from their superiors...'.[387] These enormous powers can be beneficial for effective anticorruption law enforcement; however, the use of such powers can also be dangerous if KPK operates in a weak accountability framework (Brata 2007b). Skidmore (1996:118) warned about this potential danger when analysing the Hong Kong Independent Commission against Corruption (ICAC):

> Since its founding, Hong Kong had been troubled with corruption. Eventually, corruption became so serious as to threaten some of the basic institutions of society...Although its powers are enormous, ICAC [Hong Kong] by and large has operated within the restraints set for it. Nevertheless, its existence is a potential danger. Its powers could be abused even in a society characterized by moderation and the rule of law...

Control of the use of power by the KPK, however, has not been adequately designed. In fact, several anticorruption observers and NGOs, notably ICW, and legal experts such as Prof. Atmasasmita and Dr. Nasution, have criticised the KPK for inadequately using its powers. The KPK, for example, has been criticised for conducting discriminative investigation in several corruption cases such as that involving Aulia Pohan, the father-in-law of President Yudhoyono's son.

To prevent the KPK from abusing its enormous powers control mechanisms, both internal and external, should be adequately institutionalised. An effective accountability framework would stop the KPK's enforcers from 'playing the implementation game' or corruptly

[387]Interview with Prof. Dr Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of Anticorruption Law 1999, Delegate to United Nations Convention against Corruption, and Professor of International Criminal Law of Padjadjaran University, 12 June 2006.

distorting the enforcement process, a condition which, according to the refined top-down implementation theorists, is not favourable for effective policy implementation.

In order to prevent abuse of powers by the KPK potential forms of abuse must be identified. There are three forms which KPK Law Number 30/2002 did not cover (Brata 2008a). First, performance of discriminative investigation and prosecution. Second, not following up the public report which presents strong legal evidence on the commission of corruption. Third, not taking over the investigation and prosecution of a corruption case from the police investigator and the prosecutor even though there are strong legal bases for such a takeover. Therefore, it is now time for the KPK to have an external independent commission or inspector.

The last key institutional problem which might have constrained the effective implementation of Anticorruption Laws 1971 and 1999 is chronic and systemic institutional corruption in the enforcement organisations of the New Order regime and the Reform Order regime. The phenomenon of court mafia or *mafia peradilan* in the criminal justice system of the New Order regime, which continued under the Reform Order regime, had systematically and seriously weakened the capacity, integrity, and quality of the enforcement institutions in their battle against corruption. The continuing existence of court mafia shows that the commitment of the Reform Order regime and its enforcers is still not strong enough to combat such endemic corruption, a condition which is contrary to belief of the refined top-down implementation theorists.

Some anticorruption analysts and NGOs observed that under the Reform Order regime the court mafia has even become worse. However, Syahputra observed that 'the corruption

patterns in the law enforcement institutions are still the same as those in the New Order…'.[388] Fajar further noted:

> The corrupt patterns of this mafia do not change much from those during the New Order. For instance, the patterns in the court can be to negotiate [with] the judges in the district and high courts who will try the case and to delay the court proceedings, decisions, or the giving of this decision to the parties. The field operator coordinates these operations with the police, the prosecutors, and the judges. There are some differences, however. In the past, they comfortably played with big cases….[389]

A lawyer added,

> Now the law enforcers are careful in committing their corrupt crimes. The police investigator can act as a mediator in a criminal case. To withdraw a report, the reporter should give money to him. The prosecutor may negotiate the charge and the punishment with the parties in the case, depending on how much money he gets. The judge may corruptly benefit from the decision he made; the court clerk has a role to liaison the parties.[390]

Analytically, the existence of the court mafia cannot be separated from a bureaucratic, institutional pathology, which I called 'kleptobureaucracy', in the government and enforcement bureaucracies of the New Order and Reform Order regimes (Brata 2009f).[391] Kleptobureaucracy is a form of bureaucracy led and controlled by klepto or thief bureaucrats. Under this type of bureaucracy, the recruitment and promotion of bureaucrats are not based on their competencies and moral integrity, but are mainly based on their loyalties to protect and support the established corrupt bureaucratic system. If they oppose or threaten the existence of this system, they will be forced out.

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[388]Interview with Andi Syahputra, Executive Secretary, Government Watch Jakarta, 21 July 2006.

[389]Interview with Asep Rahmat Fajar, Secretary General of the Indonesia Court Monitoring Society and Expert of the Judicial Commission, 24 July 2006.

[390]Interview with a lawyer, 22 June 2006.

[391]Sebastian Pompe (2005: 412-15) in his study on Indonesia's Supreme Court and judiciary found that by the early 1980s the problem of judicial corruption within the Indonesian judiciary had become so serious, forcing the government to stage a special anticorruption operation specifically targetted at the judiciary. This so called *Operasi Tertib*/OPSTIB operation uncovered "such massive networks of judicial corruption that around this time the term "judicial mafia" [court mafia] first emerged…". In addition to professional cultural changes, he attributed the causes of the country's judicial corruption rise to the Supreme Court's internal structure such as the large size of the Court, the serious problem of internal coordination and guidance, and the nearly absolute autonomy of the various Supreme Court's chambers. The policy design defects of the Criminal Procedure Code/KUHAP, which opened corruption market from the beginning to the end of the enforcement process, however, can be attributed as one of the most significant factors to the court mafia (Brata 2009f).

The situation will become more dangerous if kleptobureaucracy worsens, a situation which I termed 'bureaucratic mafia' (Brata 2009f). Bureaucratic mafia is a form of organised crime where a superior or leader in an organisation or agency, particularly a public one, acts as a coordinator in a corrupt criminal offence, and members or subordinates of this organisation perform as operators in the corrupt activities. The benefits of their corrupt undertakings are then distributed proportionally, according to their role and position in the organisation. The suspected corruption case of Gayus Tambunan is a clear example of the existence of court mafia, kleptobureaucracy and bureaucratic mafia.[392]

According to Prof. Amien Rais[393], 'our law enforcement is truly part of the problem'. As a result, an anticorruption activist observed, 'many corruptors failed to be punished because the law enforcers are corrupt'.[394] In this unfortunate condition, it is unrealistic to expect much from the enforcers in terms of combating corruption. A popular Bahasa phrase which reflects this view is, *tidak mungkin membersihkan lantai dengan sapu yang kotor*, meaning 'it is impossible to clean the floor with a dirty broom'.

> Coping with corruption is usually not a simple matter of enforcement, for the casualties of corruption often include the integrity system itself. A society may be plagued by corrupt judges, lawyers, prosecutors, police officers, investigators, and auditors; and, above all, corrupt political leaders who see the judicial system not as a check on their own power, but as a tool for perpetuating it.
> (Eigen 1996:161–62)

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[392]Disclosed by Lieutenant General Police Susno Duadji, former Head of the National Police's Criminal Investigation Board, in a hearing with Law Commission III of the House of Representatives in early 2010, this case has shocked the country. Duadji, as a whistle blower, had indicated that in the handling of this case there was court mafia involving lawyers, and middle and high-ranking enforcers in the police, the prosecution, and the court. He found suspicious, huge money in bank accounts of Gayus Tambunan, low ranking tax examiner, amounting about IDR 25 billion. The enforcers then investigated, prosecuted, and tried Tambunan. However, the Tangerang district court acquitted him. Suspected of corruptly engineering the case and receiving bribes from Tambunan, several police officers, prosecutors, lawyers, and judges have been investigated, and some of them detained. Several of Tambunan's bosses in the tax office have also become suspects in this case. Ironically, in 10 May 2010 the National Police arrested General Susno Duadji for allegedly receiving a bribe from Syahril Djohan, a suspected case broker, in the Arawana case.

[393]Interview with Prof.Dr. Amien Rais, former Speaker of the People's Consultative Assembly, former President of National Mandate Party, former Presidential Candidate, 1 August 2006.

[394] Interview with an anticorruption activist, 21 July 2006.

The Reform Order regime indeed undertook a number of reforms. This explains why this regime had better anticorruption law enforcement performance. For example, the national police organisation, based on Police Law Number 2/2002, was institutionally separated from the armed forces. The judiciary, according to article 13 Judicial Power Act Number 4/2004, was freed from the administrative, financial, organisation control and interventions of the Department of Justice. Moreover, the lawmakers of Prosecution Act 16/2004 expected the prosecutors to be independent in exercising their authority. Furthermore, to control the enforcers' use of powers, the Reform Order regime also created commissions of the police, the prosecution, and the judiciary. The power and authority of these commissions, however, were weak. They have authority only to recommend punishment to the unethical enforcers. In other words, there was no effective legal control to the use of power by the enforcers.[395]

In the final analysis, the New Order regime and the Reform Order regime faced a relatively similar institutional problem: defective implementation structures and processes that constrained the effective enforcement of Anticorruption Laws 1971 and 1999; hence they failed in combating corruption. However, the anticorruption law enforcement performance of the Reform Order regime was better as the enforcement accountability framework had been reformed. However, the Reform Order regime still faced serious problems of institutional pathologies which disabled its enforcement agencies; this regime inherited the problems of court mafia, kleptobureaucracy, and bureaucratic mafia.

4. The managerial factors

Under this type of factor, the implementation failure of Anticorruption Laws 1971 and 1999 is associated with the breakdown of management functions in the enforcement process of these Laws. Referring to Luther Gulick's POSDCORB management functions, the New

[395]Interview with M. Syaiful Aris, Director and public lawyer, Surabaya Legal Aid Institute, 15 August 2006.

Order regime and the Reform Order regime both failed to adequately *P*lan, *O*rganise, *S*taff, *D*irect, *C*oordinate, *R*eport, and *B*udget the enforcement of these Anticorruption Laws. In particular, the regimes failed to provide a competent and sufficient number of enforcers, a condition which contradicted the prescriptions of the refined top-down implementation theorists.

The first management breakdown was the failure of the regimes to strategically plan the anticorruption law enforcement and the fight against corruption. The issue was about choosing which anticorruption strategy should be prioritised to combat endemic corruption. As can also be understood from the preambles and elucidations of Anticorruption Laws 1971 and 1999, both regimes had placed more emphasis on employing a repressive or curative approach than preventive and educational approaches.

Unlike the New Order regime, the Reform Order regime learned the importance of preventive and educational approaches in combating corruption. This can be seen from its enactment of the Decision of the People's Consultative Assembly Number XI/MPR/1998, which was then reinforced by Law Number 28/1999. Moreover, intending to reduce the opportunities for corruption, the Reform Order regime to some extent improved the accountability and transparency in its governmental and enforcement processes. However, several anticorruption activists and NGOs still believed these preventive measures were not comprehensive enough.

Compared to the New Order regime, the Reform Order regime planned its anticorruption enforcement activities more strategically. Based on Presidential Instruction Number 5/1999, it was compulsory for government institutions, including the enforcement agencies, to have a strategic plan (*rencana stratejik, renstra),* setting out the vision, missions, programs,

planned strategies, and performance targets of their organisations. The KPK's vision, for example, is 'to realize Indonesia free from corruption'.

In their *renstra*, the enforcement agencies placed corruption eradication as the top priority. For example, 'the Supreme Court instructed the lower courts to prioritise the trial of corruption cases'.[396] Similarly, the top priority of the police:

> Related to corruption control, the policy of the national police is clear. It is particularly stipulated in the Police Act Number 2/2002, which has empowered the police to investigate all types of crimes, including corruption offences. There are three policy priorities of the national police: fighting terrorism, corruption and drug abuses, including corruption within the police. Some of these policies are in the forms of the chief of the national police's policies, instructing the police forces to handle corruption cases, both those were reported by the public and NGOs or those were detected by the police....[397]

From my personal observations as a government official and key drafter of my office's strategic plan, several government departments, particularly my office, were not committed or serious about formulating and implementing their strategic plans. There was no effective reward and punishment system in this policy. Moreover, for the prosecution offices, 'before the Yudhoyono's administration, there were no performance targets,' said Abdul Taufiq.[398]

The second management failure was a lack of effective organisation of anticorruption law enforcement. One of the main sources of this problem was the KUHAP, which had failed to hierarchicaly structure, organise, and integrate the enforcement process and institutions. Another source of the problem was the relevant laws governing and organising the workings and institutions of the police, the prosecution, the judiciary, and the KPK. Under these laws, all the enforcement organisations had the power to investigate corruption cases. Therefore,

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[396]Interview with Andi Ware Pasinringi, Judge, West Sumatra High Court, 5 July 2006.

[397]Interview with Lieutenant General Police Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006. President Yudhoyono later appointed him as Vice Chief of the National Police.

[398]Interview with Abdul Taufieq, Assistant Head, Special Crime, South Sulawesi Provincial Prosecution Office, 14 August 2006.

no single enforcement agency was responsible for the attainment of the objectives of the Anticorruption Laws. This constrains the effective implementation of a public policy. The disintegrated implementation and organisation structures of the enforcement process and institutions also made coordination and cooperation among the anticorruption enforcement agencies more complicated and difficult. However, under the Reform Order regime, the existence of the KPK, together with the investigative anticorruption powers of the other enforcement agencies, added to the complexities of anticorruption enforcement.

The third management function defect is related to the human resources management of the anticorruption enforcement activities. The problem ranged from quality, for example, the knowledge and skills in anticorruption law enforcement; to quantity, the number of anticorruption enforcers. For the refined top-down implementation theorists, skillful implementing officials were an important condition for effective policy implementation (Sabatier 1986b:23).

The staffing problem can be traced to the very beginning of the human resources management process, the recruitment of the enforcers. It was public knowledge that since the New Order regime, in many cases, recruitment was based on nepotism and corruption. There was a price for positions. For example, as Suprapto, a Commissioner of the Judicial Commission, observed, 'if you check the judge recruitment, you will know how many of the new recruitees whose fathers are judges'.[399]

A more worrying problem was that the best law graduates were not interested in applying to be low-paid judges. As Winarta, a lawyer, noted, 'here, the best law graduates go to the law

[399]Interview with Soekotjo Soeprapto, Commissioner, Judicial Commission, former Commissioner of Public Officials' Asset Audit Commission, 24 July 2006.

firms, do not become judges. This is worrying. We need smart judges'.[400] Furthermore, under the Reform Order regime, controversially the KPK, as Ruki said[401], could only recruit its investigators and prosecutors from the police and the prosecution, which most people perceived as corrupt.[402]

The corrupt recruitment practices demonstrated that the competency and integrity of enforcers were not too important. For example, the existence of court mafia, kleptobureaucracies, and bureaucratic mafia, in both the New Order regime and the Reform Order regime, showed that the competencies and moral integrity of the enforcers had not become a primary consideration in the recruitment and promotion of the enforcers. Loyalties to the leaders of court and bureaucratic mafia were more important. Meritocracy had no place. The enforcers had no incentive to be honest, to perform well or to upgrade their skills. Furthermore, training and education for prosecutors was not effective.[403]

While the New Order regime faced the problem of incompetent enforcers (Lopa 1991:93), for instance some incorrectly understood Anticorruption Law 1971 (Hamzah, 1991:17), under the Reform Order regime, 'some police officers do not know how to investigate corruption as they just begun to investigate corruption recently', Purwati observed.[404] For the prosecutors, Suryosumpeno urged, 'the human resources in the prosecution offices must upgrade their skills and education…'.[405]

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[400] Interview with Frans Winarta, lawyer, and Member of the Indonesia Law Commission, 26 May 2006.

[401] Interview with Major General Police (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006.

[402] The KPK investigators arrested S, KPK's own police investigator, on the spot when he was extorting a suspect in a corruption case.

[403] Interview with Lambok Sidabutar, Special Crime Section Head, West Java Province Prosecution Office, 11 July 2006.

[404] Interview with Heni Wahyu Puwarti, Prosecution Section Head, Yogyakarta Province Prosecution Office, 1 August 2006.

[405] Interview with Chuck Suryosumpeno, Head, Bandung City District Prosecution Office, 12 July 2006.

Not only the quality, but the quantity of enforcers also constrained the effective implementation of the Anticorruption Laws. For example, the Head of the South Jakarta District Prosecution Office told me, '...in here, there are not enough prosecutors in the anticorruption section, as most of them are absorbed in the general criminal section'. The police faced a similar problem, as Colonel Police Djaswardhana observed:

> The constraints in enforcing the anticorruption law are poor quality and quantity of human resources, lack of knowledge. Here, we have five anticorruption units. Each unit has five persons, thus total 25 officials. The police and population ratio in Indonesia is 1:1,500; in West Java 1:2,000. Ideally, the ratio, according to international standard, should be 1:250.[406]

Another problem of management was in leading the anticorruption enforcement process. Enforcement leadership was weak. Under the New Order regime and the Reform Order regime this was one of 14 major constraints impeding effective law enforcement (Liba 2002:41). For example, 'the worst in the Reform era is the Megawati's government policy which pardoned megacorruptors in the Central Bank's liquidity assistance corruption cases. Thus, the problem is the weak leadership,' a lawyer opined.[407]

The different anticorruption performance of the New Order regime and the Reform Order regime can also be explained by their failure to effectively coordinate the enforcement process. Gunn (in Parsons 1995:465–6) suggested that for effective policy implementation there must be perfect communication and coordination between the implementing agencies or implementors.

As has been explained in Chapters 4 and 5, under both the New Order regime and the Reform Order regime, the KUHAP failed to hierarchically structure and integrate the

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[406]Interview with Kombes Djaswardhana, Director, Criminal Investigation Division of West Java Province Police Office, former Investigator of the Indonesia Anticorruption Commission, 11 July 2006.

[407]Interview with a lawyer, 22 June 2006.

enforcement processes and institutions. This made communication, coordination, and cooperation among the enforcers more complicated and difficult. Ironically, coordination and cooperation did exist in the court mafia. However, these corrupt coordinated enforcement efforts worked against the policy objectives of the Anticorruption Laws.

To resolve this coordination problem, the New Order regime and the Reform Order regime took some initiatives to coordinate the enforcement process. However, these were *ad hoc* and temporary, not systematic and comprehensive. For example, to coordinate enforcement efforts, the New Order regime formed several anticorruption teams such as the Corruption Eradication Team, Law and Order Team (*Tim Opstib),* and 'MahKeJaPol' (*Mahkamah Agung, Kejaksaan dan Kepolisian)*, which coordinated the enforcement efforts of the Supreme Court, the Attorney General's Office, and the National Police. The Reform Order regime took more coordinated measures to enforce the Anticorruption Law 1999. For instance, 'now, we have a MOU with the prosecution to coordinate corruption investigation. In the past, we did not have that one,' said Amin and Azis, senior police anticorruption investigators.[408] In addition, to avoid 'institutional arrogance and 'fights' in investigating corruption cases'[409], this MOU was signed to:

> Prevent the returning back of the investigation dossier by the prosecutor to the police, the National Police Headquarters and the Attorney General's Office have made a Memorandum of Understanding (MOU). This then was followed up by MOUs between Heads of Provincial Police and Heads of Provincial Prosecution Offices. But not all the enforcement jurisdictions in Indonesia have made this kind of MOU. This agreement was also intended to prevent different perceptions and duplications in the investigations between the police and the prosecutors. With this MOU, we inform the prosecutor soon after we start investigating a corruption case, vice versa.[410]

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[408]Interview with Musram Amin and Efriandi Aziz, Anticorruption Unit, West Sumatra Province Police Office, 7 July 2006.

[409]Interview with Lieutenant General Police Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.

[410]Interview with three anonymous anticorruption police investigators, East Kalimantan Province Police Office, 25 July 2006.

With an almost similar purpose, the Reform Order regime also established *Timtas Tipikor,* an anticorruption team consisting of the police, the prosecutors, and the government auditors. Importantly, the KPK was charged to coordinate and supervise the enforcement activities of other enforcement agencies.[411] Moreover, the police and the prosecutors staged case exposés (*gelar perkara)* which sometimes invited a judge, said Senior Police Jamal.[412] However, '...judges have been reluctant to participate in the case exposé. They say they are independent'.[413]

The anticorruption enforcement failure of the New Order regime and the Reform Order regime can also be attributed to the defective managerial function of reporting or monitoring the enforcement process. The mechanisms to internally and externally control the enforcement process had collapsed. Functioning internal institutional control (Huberts 1998) and outside monitoring by independent organisations (Eigen 1996:162) are key factors for successful policy implementation.

The KUHAP had again contributed to this control problem. By failing to strictly limit and control the discretionary powers of the enforcers, the KUHAP provided opportunities for the enforcers to corruptly abuse their powers. Thus, corruption itself had degraded and weakened the capacity and integrity of the enforcement agencies to control the use of such powers.

Although the authoritarian New Order regime had militaristic top-down enforcement organisations, it still failed to enforce Anticorruption Law 1971. This was because its leaders had no commitment to combat corruption and corruption itself had collapsed the army-like

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[411] See article 6 a and b of the KPK Act 30/2002.
[412] Interview with AKBP Djamal, Deputy Head, Central Jakarta District Police Office, 2 June 2006.
[413] Interview with FX Soehartono, Vice Head, East Java Province Prosecution Office, 15 August 2006.

enforcement structure. This phenomenon contradicted what Christopher Hood (1976) had prescribed that 'ideal implementation is a product of a unitary 'army'-like organization, with clear lines of authority'. The underdevelopment and repression of civil societies had further made external, social enforcement control not function as expected.

The Reform Order regime had slightly better control enforcement mechanisms than the New Order regime. It had multiplied, and to some extent, reformed its internal and external control machineries.The police were now supervised by the Police Commission; the prosecutors were watched by the Prosecution Commission; and the judges were scrutinised by the Judicial Commission. The KPK also had the power to supervise the police and the prosecutors in investigating and prosecuting corruption cases. Moreover, many more functional anticorruption NGOs now watched and controlled the anticorruption enforcement process.

The last management failure was inadequate budgeting for the enforcement process and activities. More specifically, the New Order regime and the Reform Order regime both failed to provide enough money to adequately finance enforcement operations, provide enforcement technologies, and pay the enforcers. It is important that policy or program implementation should be supported by adequate resources made available at any phase (Gunn in Parsons 1995:465–6). This limited operational budget constrained the effective enforcement of the Anticorruption Laws 1971 and 1999. In fact, as Ruki told me[414], as can be shown in its State Policy Guidelines or GBHN the New Order regime did not prioritise law enforcement and development as its policy priority. On the other hand, under the

[414]Interview with Major General Police (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006.

Reform Order regime, 'the Central Planning Bureau did not give enough money for the law enforcement,' said Atmasasmita.[415]

In the case of the KPK, 'our operational budget is limited', Ruki, chief commissioner of the KPK, complained.[416] 'Since its creation, the KPK only processed 300 alleged corruption cases, from 13,000 cases reported. The main reason, they said, is lack of resources', Syahputra observed.[417] The blueprint for the judiciary reform was not implemented as the government did not provide adequate financial resources. For the police, 'the lower level police officers were not given adequate resources...,' Sunaryadi told me.[418] Due to the lack of operational budget, '...sometimes we have to seek other financial sources to supplement the operational costs,' said a senior police officer.[419] In some cases, the police were forced to illegally finance operations, by, for example, extorting funds from motorists.

Access to technology also impeded the effective implementation of Anticorruption Laws 1971 and 1999. Formally, the New Order regime, through the People's Consultative Assembly's Decision Number II/MPR/1983 on State Policy Guideline, acknowledged this. For example, Irsan, a high-ranking police officer, told me that when he was Head of East Java Provincial Police Office many district police officers still used old, manual typewriters.[420]

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[415]Interview with Prof.Dr Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of Anticorruption Law 1999, Delegate to United Nations Convention against Corruption, and Professor of International Criminal Law of Padjadjaran University, 12 June 2006.
[416]Interview with Major General Police (retired) Taufiqurahman Ruki, Chief Commissioner of the Indonesia Anticorruption Commission, 5 June 2006.
[417]Interview with Andi Syahputra, Executive Secretary, Government Watch Jakarta, 21 July 2006.
[418]Interview with Amin Sunaryadi, Commissioner and Vice Chairman, the Anticorruption Commission, 6 June 2006.
[419]Interview with Informant C, bottom level Head of the District Police Office C, June 2006.
[420]Interview with Lieutenant General Police (retired) Prof.Koespramono Irsan, former Operational Deputy to National Police Chief, 13 June 2006.

A similar situation existed under the Reform Order regime. 'The other obstacles are lack of facilities such as computers…'.[421] Suryosumpeno, a senior prosecutor, added that because his office manually processed investigations, it could take two to three months to investigate and prosecute one criminal case.[422] Hendarto observed, 'the Supreme Court must reform its information management system…'.[423]

The New Order regime and the Reform Order regime also had a limited budget to pay their public servants and enforcers. As shown in Chapter 4, based on Smith's findings (1971:28), under the New Order regime the basic monthly income of regional public officials[424], both high and low-ranking officials, on average only met half of their minimal average monthly needs. In order to survive, many government officials, including enforcers, took outside jobs. The findings further showed that the majority of the officials said they would not take on extra jobs if their salaries were increased two or three times.[425]

The low salary of public officials was also perceived as the cause of chronic corruption in law enforcement agencies. A former high police official spoke of the police need to be corrupt to complement their inadequate salaries and meet their basic needs, what was called corruption by need:

> The police officers had to be corrupt because of their needs, thus corruption by need. They did it for their personal needs, or for their institutions, thus, institutional corruption by need to cope with the lack of financial resources. For instance, there was

[421]Interview with Heni Wahyu Puwarti, Prosecution Section Head, Yogyakarta Province Prosecution Office, 1 August 2006.
[422]Interview with Chuck Suryosumpeno, Head, Bandung City District Prosecution Office, 12 July 2006.
[423]Interview with Agung Hendarto, Executive Director, the Indonesian Society for Transparency, 9 June 2006.
[424]Under the public employment system of the New Order regime and the Reform Order regime the police, the prosecutor, and the judges were part of this system, and their basic monthly salaries therefore were similar to the low salaries of the other public servants.
[425] I myself was paid around IDR 80,000 (or around US $ 40, for US$ 1= IDR 2,000) a month when starting working as a public servant in 1993 (under the New Order regime); in 2010 (under the Reform Order regime), after 17 years, my basic salary was only around IDR 2,300,000 (or around US$ 270, for US$ 1= IDR 8,500). The basic salaries for all public servants, including the law enforcers such as (Supreme Court) judges and the police, in the same level and year of service were the same.

> a report to me that my officer had extorted [money from] someone. When I asked him, he said that the money was used to pay the school expenses of his child in a high school.[426]

Moreover, 'salaries for Justices of the Supreme Court are low, thus encouraging them to accept gratification. Their salaries should be around IDR 50 million,' Winarta suggested.[427] However, Major Police Made believed that the adequacy of salaries relatively depended on the lifestyle of the enforcers.[428] For example, Yusrida believed that, as has been shown in the arrest of the KPK's highly paid police investigator who had received a bribe, a high salary does not guarantee that the enforcers will not commit corruption.[429] Fortunately, under the Reform Order regime, in particular Wahid's and Yudhoyono's administrations, the salaries of public servants were slightly increased.

In summary, the failure of the New Order regime and the Reform Order regime to effectively enforce the Anticorruption Laws 1971 and 1999 can be partly attributed to their failure to manage the enforcement process and activities. They failed to implement the management functions of *P*lanning, *O*rganising, *S*taffing, *D*irecting, *C*oordinating, and *B*udgeting (POSDCORB) for the enforcement process and activities. However, the Reform Order regime performed better in this regards, particularly concerning the P, S, D, C, and B.

5. The societal factor

Under this factor category the failed performance of the New Order regime and the Reform Order regime can be explained by the extent to which the public participated in the governmental and enforcement processes. Compared to the New Order regime, under the

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[426]Interview with a retired senior police officer, June 2006.
[427]Interview with Frans Winarta, lawyer, and Member of the Indonesia Law Commission, 26 May 2006.
[428]Interview with Major Police Made, Anticorruption Unit Head, Bali Province Police Office, 8 August 2006.
[429]Interview with Yusrida, Director, Criminal Policy Directorate, Department of Justice and Human Rights, 29 June 2006.

Reform Order regime civil societies were better developed and had better opportunities to participate in and scrutinise governance processes. Socioeconomic changes under the Reform Order regime, to some extent, strengthened interest groups or civil societies' support for the anticorruption law enforcement. This explains why the Reform Order regime had better anticorruption law implementation performance.

The first factor which influenced the development of civil societies and their participation in and support for the anticorruption law enforcement was the regimes' policy and political framework. Under the authoritarian New Order regime, which was obsessed by political stability and high economic growth, its policy and political framework was inherently anti-civil societies and social control. As Robison (1981:29) noted, '...far from providing channels for political participation by the major social groups, the New Order has chosen to repress and exclude them'.

While limiting the number of political parties, the New Order regime also largely prohibited, but did not eliminate, critical NGOs, activist student and independent labour organisations (Weiss 2007:34).This military-dominated regime engineered 'a substantial depoliticization of the masses,' (Crouch 1991:576). Under the New Order regime, 'our mouths were shut up...', judge Rachim observed.[430]As a result, social support, control, and participation which were crucial to effectively enforce Anticorruption Law 1971 and form a clean government, were lacking.

As has been examined in Chapter 5, in contrast to the policy and political framework of the New Order regime, that of the democratic Reform Order regime opened up opportunities for civil societies or interest groups to influence the governance and enforcement processes. The

[430]Interview with Abdul Rachim, Judge, District Court of Bekasi, West Java, 20 June 2006.

reformed 1945 Constitution had granted and protected the political and civil rights of the people. Moreover, the People's Consultative Assembly, through its Decision Number XI/MPR/1998, had recognised the important role of the people in the forming of clean government and the functioning of democracy. Furthermore, article 3 of Law Number 28/1999 on Administration of the State Clean and Free from Corruption, Collusion and Nepotism stipulated that the state and government must be administered according to transparency and accountability principles. Article 9 (1) of this Law stated that the people had 'the right to seek, obtain, and give information about the administration of the state'. More importantly, in contrast to Anticorruption Law 1971, Anticorruption Law 1999 provided opportunities for the people to participate in the prevention and eradication of corruption. The Presidential Instruction Number 5/2005 even rewarded people who reported suspected corruption cases.

In contrast to the weak public participation under the New Order regime, the people under the Reform Order regime had an improved role in participating in the governance and enforcement processes, a condition which, according to the refined top-down implementation theorists, is favourable for effective policy implementation. As the Reform Order regime gave the people freedom of information and expression, corruption cases in the enforcement process would be publicly disclosed, Aris told me.[431] Padmanegara observed, 'corruption investigation depends on the people'.[432] 'It was difficult to detect corruption if the people did not report it', Puwarti told me.[433]

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[431]Interview with M. Syaiful Aris, Director and public lawyer, Surabaya Legal Aid Institute, 15 August 2006.
[432]Interview with Lieutenant General Police Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.
[433]Interview with Heni Wahyu Puwarti, Prosecution Section Head, Yogyakarta Province Prosecution Office, 1 August 2006.

In contrast to the underdevelopment of civil societies in the New Order regime, under the Reform Order regime many anticorruption NGOs and public interest groups emerged, such as ICW, TII, MTI, Bali Corruption Watch, and GeRAK. They were active in participating in the anticorruption law enforcement process. However, not all civil society organisations or interest groups had a vision to form a clean, democratic government. Several were politically and economically motivated. 'Sometimes, for personal and political motives, a public official engineered a report to police to victimise the other public official'.[434]

Under the Reform Order regime the political actors can be divided into two categories: the status quo and the pro *reformasi* (Brata 1999:104 –5):

> The status quo groups are composed of institutions and persons who wanted to maintain the New Order's economic policy and political system; they were monopolistic businesses, policymakers in the bureaucracy who involved in the corruption practices, the military who wanted to maintain the *Dwi Fungsi* ABRI policy, and the majority of members of the Parliament who wished to maintain their membership in this institution. Pro *reformasi* groups were represented by students... the majority of the new political parties, some 'liberal' officials in the bureaucracy and in the armed forces, and some democrats in the Parliament.

The pro status quo group will understandably struggle against reform movements. To some extent, this group has been successful, for example by weakening the KPK and delaying and obstructing bureaucratic and enforcement reforms.

The most important social factor which worked against the effective enforcement of Anticorruption Laws 1971 and 1999 was the weak anticorruption attitudes of the people. Even though those under the Reform Order regime were better informed about the causes and effects of corruption, generally, 'the society is tolerant of corruption', Atmasasmita

[434]Interview with three anonymous anticorruption police investigators, East Kalimantan Province Police Office, 25 July 2006.

complained.[435] Hatta, former vice president, famously said that corruption had become the culture of the people.

Since the New Order regime era there have been cynical acronyms and popular sayings, showing the weak anticorruption attitudes of the people, public servants, and the enforcers. For example, UUD stands for *Ujung-Ujungnya Duit* or 'at the end the money is the answer'; *jujur, kamu hancur* or 'being honest, you are destroyed'; *cari yang haram saja susah, apalagi yang halal* or 'a religiously unacceptable job is difficult to find, it will be more difficult for a religiously acceptable job'; and, KUHAP for *Kasih Uang Habis Perkara* or 'give the enforcer the money, and your case will be settled'.[436]

As has been explained in Chapters 4 and 5, under both regimes the country's low TI CPI scores and the phenomenon of the court mafia, which involved the supply and demand sides of corrupt undertakings, highlighted the poor anticorruption attitude of the people, the bureaucrats, and the enforcers. To combat corruption effectively constituency groups must change their attitude and direct resources toward policy goals (Mazmanian and Sabatier 1989) and, Berek urged, 'there must be an anticorruption attitude in the society'.[437]

In summary, the social conditions of the New Order regime and the Reform Order regime were not conducive to effective enforcement of Anticorruption Laws 1971 and 1999. However, the improved development, role and anticorruption attitudes of the Reform Order

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[435]Interview with Prof.Dr Romli Atmasasmita, former Director General of Legislation and Director of National Legal Development Board of Ministry of Justice, Legal Drafter of Anticorruption Law 1999, Delegate to United Nations Convention against Corruption, and Professor of International Criminal Law of Padjadjaran University, 12 June 2006.

[436]UUD originally stands for *Undang-Undang Dasar* or Constitution; while, KUHAP or Criminal Procedural Code for *Kitab Undang-Undang Hukum Acara Pidana*.

[437]Interview with Fridolin Berek, Executive Director, Bandung Institute of Governance Studies, 13 July 2006.

regime's civil societies and people probably contributed to the better anticorruption implementation performance of this regime.

D. The implementation as an integral function of the authoritarian and democratic political systems

Unlike previous sections which analyse the anticorruption implementation failure from 'microperspectives', this section will examine the failure from 'macroperspectives', that is, the functional relationship between the anticorruption law implementation failure and the political systems of the authoritarian New Order regime and the democratic Reform Order regime. However, this does not mean that the microarguments in the previous sections are analytically disintegrated from the macroarguments in this section. The many changes in the microanalysis, such as strengthened anticorruption legislation, more transparency, and more active civil society which led to the slight improvement are part of the move towards more democracy.

However, this section will particularly examine the effect of the political system or regime change on the anticorruption law enforcement effectiveness. It will discuss the thesis question: assuming the influence of a political system on policy implementation, how did the different political systems of the two regimes affect and contribute to the implementation failure of Anticorruption Laws 1971 and 1999? The thesis argues that among various factors, defects in the implementation structures and processes of the authoritarian political system of the New Order regime and those of the democratic political system of the Reform Order regime was the primary explanatory factor for the implementation failure of Anticorruption Laws 1971 and 1999. However, since the implementation structures and processes of the authoritarian political system of the New Order regime were inherently more defective than those of the democratic political system

of the Reform Order regime, the degree of the implementation failure of Anticorruption Law 1971 of the New Order regime was higher.

The failure of the authoritarian New Order regime to enforce Anticorruption Law 1971 can be attributed to its defective constitutional framework. The political accountability and checks and balances mechanisms were too weak to effectively control the anticorruption law enforcement process. The 1945 Constitution, which established a unitary state with a presidential system of government, had granted strong powers to the president or executive to govern, which in reality, had turned the regime into an authoritarian and corrupt government. In other words, the defective 1945 Constitution had reinforced the emergence of the authoritarian political system of the New Order regime, which then had enabled the rulers to abuse their powers (Brata 2009a). In such a presidential system of government powers were centralised in the president or central government (Brata 2009). The People's Consultative Assembly, through its Decision Number XI/MPR/1998, stated that such concentrated powers had ultimately made the state institutions dysfunctional. 'When corruption becomes systematic and undermines the rules of the game, it cripples institutional performance' (Klitgaard 1997:500).

Under the 1945 Constitution the president was not directly accountable to the people, but to the People's Consultative Assembly or MPR, the highest body of the state. MPR, not the people, directly elected the president and had the power to impeach him or her, as for example, in the cases of Presidents Habibie and Wahid. Based on a recommendation from the House of Representatives or DPR, the MPR can impeach the president for breaking the 1945 Constitution or the State Policy Guidelines.

According to Law Number 16/1969 on Structures and Status of the People's Consultative Assembly, the House of Representatives, and Regional Legislatures, the president appointed

a significant proportion of the MPR membership. Similarly, this Law gave the president the power to control the DPR, whose members were automatically members of the MPR and some of them were directly appointed by the president. One of DPR's functions was to supervise the law implementation by the executive. As a result, MPR and DPR had been disabled and could not control the use of the executive or president's powers effectively. Moreover, there was no constitutional court to check the use of the legislative powers by the president and the DPR; the Supreme Court, whose president and justices were appointed by the president, had no power to review acts of the parliament or DPR. Furthermore, there was no meaningful political competition since the regime had limited the number of political parties and co-opted them. Under the New Order regime the president's political accountability was weak, and checks and balances mechanisms were dysfunctional.

Under the Reform Order regime the 1945 Constitution was reformed to democratise the authoritarian New Order regime's political system. By protecting and promoting the political and civil rights of the people to participate in the governmental processes, the democratic political system of the Reform Order regime was essentially an antithesis to the authoritarian political system of the New Order regime. Instead of concentrating power in one branch of government, it had now been dispersed and 'balanced' among the branches of government. Thus, Prof. Alrashid said, the concentration of power in the hands of the president no longer existed.[438]

Unlike the unlimited term of office under the New Order regime, the term of office of the president under the Reform Order regime was limited to two five-year terms.[439] This prevented the abuse of power by the president. More importantly, under the New Order

[438]Interview with Prof.Dr Harun Alrashid SH, Emeritus Constitutional Law Professor of the University of Indonesia, former Advisor to President Abdurrahman Wahid, 17 May 2006.
[439]Article 7, First Amendment of the Reformed 1945 Constitution.

regime the president was elected by the MPR, but under the Reform Order regime the people directly elected the president.[440] Public accountability including accountability in combating corruption was now necessary. The president was no longer directly accountable to the MPR.

The amended 1945 Constitution also reformed the powers of the MPR. Acting as the highest body of the state under the New Order, MPR, under the Reform Order regime, this was no longer the case. The MPR became a joint body of the state, comprising of all members of the DPR and the House of Regional Representatives or DPD who, were directly elected by the people[441], again, ensuring public accountability.

One of the MPR's important constitutional powers was to impeach the president and/or vice president during their term of office.[442] Based on the investigation and recommendation of the DPR, the MPR might impeach them if found guilty of committing constitutional crimes such as corruption and bribery.[443]Under the New Order regime, there had been no such constitutional crimes as a constitutional basis for impeachment. However, under the reformed 1945 Constitution, '...theoretically, the president may be impeached, but in practice it will be difficult...thus the impeachement article is a dead letter'.[444]

The reformed 1945 Constitution also empowered DPR. Such empowerement had been made possible since, unlike the president under the New Order regime who had the power to appoint members of the DPR, all members of the DPR were now directly elected by the

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[440] Article 6A (1), Third Amendment.
[441] Article 2 (1), First Amendment.
[442] Article 3 (3) Third and Fourth Amendment.
[443]Article 7A, Third Amendment.
[444]Interview with Prof.Dr Harun Alrashid SH, emeritus Constitutional Law Professor of the University of Indonesia, former Advisor to President Abdurrahman Wahid, 17 May 2006.

people.[445] This strengthened their accountability to the people. Prof.Alrashid opined that under the New Order regime, 'DPR was just 'yes men', a rubber stamp of the government; now it is powerful'. Prof. Harkrisnowo added, 'in the past, the government was executive heavy, but now it is legislative heavy'.[446] The DPR exercised its new constitutional powers. For example, based on the recommendations of the DPR after exercising its supervisory powers[447], the MPR impeached Presidents Habibie and Wahid.

For the first time since the New Order regime, several members of the DPR used their rights to propose bills such as the Antimonopoly Bill (Brata 1999). Furthermore, the appointment of high-ranking law enforcement officials such as Chief of the National Police, the Attorney General, Justices of the Supreme Court, Commissioners of the KPK and the Judicial Commission had to go to the fit and proper tests in DPR. In budgeting:

> DPR not only exercises its legislative power, but also holds executive powers, that is by too far intervening in the determinations of organisation, function, program, activities, and types of government expenses—a function which should be the sole and full authority of the president as the chief executive officer of the government…(Brata 2009b)

The reformed 1945 Constitution also created new constitutional bodies which were crucial in anticorruption reform; for example, the Constitutional Court and the Judicial Commission. Unlike under the New Order regime where no court had the power to review the constitutionality of a law, under the Reform Order regime the Constitutional Court had the power to annul an unconstitutional law.[448] Moreover, unlike the New Order regime which had no external body to guard and protect the dignity of judges, under the Reform Order regime the Judicial Commission was authorised to promote, guard, and protect the

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[445]Article 19 (1), Second Amendment.
[446]Interview with Prof.Harkristuti Harkrisnowo, PhD, Professor of Criminal Law, the University of Indonesia, and Member of the Indonesia Law Commission, 7 June 2006.
[447] Article 20A (1), Second Amendment.
[448]Ironically, several corruptors cleverly attempted to weaken the anticorruption movement through the Constitutional Court. In some cases they were successful, for example in the annulment of article 53 on special anticorruption court of the KPK Act Number 30/2002, based on the appeal from Prof.Syamsudin, a former President of the Electoral Commission and a corrupt convict.

dignity, honour, and attitudes of judges.[449] It also had the power to select and propose the appointment of Justices of the Supreme Court to the DPR.[450]

The reformed 1945 Constitution also strengthened the accountability and democratic process of regional governments. In contrast to the New Order regime where heads of regional governments were elected by the co-opted regional parliaments, under the Reform Order regime through multiparty mechanisms and elections, heads of regional governments were directly elected by the people.[451] The people also elected all members of the regional parliaments.[452] This reformed accountability framework is conducive to combating corruption since the people will not re-elect regional heads and parliamentary members who did not support the anticorruption movement or were involved in corruption cases.

More importantly, unlike the New Order regime's 1945 Constitution which did not have separate parts and articles on human rights, the reformed 1945 Constitution did. It protected the civil, economic, political, and economic rights of the people.[453] Important rights for combating corruption were: freedom of association and expression[454]; the right to legal protection, justice, and equality before the law[455]; the right to communicate, obtain, own, process, and disseminate information[456]; the right not to be tortured and be tried after the

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[449]Article 24B (1) of the reformed 1945 Constitution. In some cases, the Judicial Commission had recommended the Supreme Court to sanction several unethical and corrupt judges who had acquitted corrupt defendants, such as in the case of Gayus Tambunan, a tax examiner. In this case, Muhtadi Asnun, Chief of the Judge Panel of the Tangerang District Court, had acknowledged to the Judicial Commission that he had received a bribe of IDR 50 million from Tambunan. Based on the recommendation from the Judicial Commission, the Supreme Court had then temporarily dismissed Judge Asnun. However, the power of the Judicial Commission was weak since its power was only to recommend, not punish an unethical judge—a complaint which was raised by Mr. Busro Muqodas, Chief Commissioner of the Judicial Commission.

[450]Article 24A (3) of the reformed 1945 Constitution.

[451] Article 18 (3), Second Amendment.

[452] Article 18 (4), Second Amendment.

[453] See Part XA.

[454] Article 28E (3), Second Amendment.

[455] Article 28C (1), Second Amendment.

[456] Article 28F, Second Amendment.

fact or *post factum* based on retroactive law[457]; and freedom from fear[458] and discrimination.[459]

Foreign actors, however, were believed to have played an important role in reforming the political system. Fadli Zon, Executive Director of Institute for Policy Studies, claimed that foreign elements had sponsored the amendments of the 1945 Constitution and liberal legislation to protect their interests. The constitutional amendments, he said, were a foreign agenda and foreign actors were even involved in the making of the amendments (*Antara* 2007). Many political leaders of the New Order regime, the pro status quo elites who still controlled the Reform Order governments, opposed the constitutional reformation.

The level of democracy under the Reform Order regime was still not mature enough to effectively counter the abuse of power. It was in the transitional process towards a more accountable political system and a full-fledged democracy. Furthermore, the problem of state capture had corruptly distorted the reform process and resulted in slow progress.

Like other authoritarian political systems of many developing countries, the authoritarian political system of the New Order regime relied on the military to protect its political interests and power. Lane (in Aspinall 1995:22) said that the military '...has become increasingly an instrument carrying out general policies...'. The regime 'uses military force to rule...' (Aspinall 1995:22). Similar to the development of capitalism in the third world, the economic capitalism of the New Order regime had also resulted in a military bureaucratic state (Robison 1978:17). Therefore, '...all strategic institutions and positions

[457] Article 28I (1), Second Amendment.
[458] Article 28G (1), Second Amendment.
[459] Article 28I (2), Second Amendment.

were controlled and held by the military members…' Suryosumpeno said.[460] Playing a 'dual civil and military function', the military bureaucrats, especially in the central bureaucracies, were '…critical actors in maintaining the Suharto regime…' (MacDougall 1982:89).

Thus, it is no wonder that the president or the executive branch of the government, based on Police Law 1961, Prosecution Law 1961, Court Law 1965, and Judicial Power Law 1970, had strong powers to tightly control the law enforcement agencies administratively and organisationally. The president was at the top of the enforcement structure and had the ability to control the enforcement process.

Under the New Order regime, the police were a power instrument of the rulers. As has been explained in Chapter 4, according to Police Act Number 13/1961 which was revoked by Police Act Number 28/1997, and State Defense and Security Act Number 20/1982, the police were institutionally integrated into the armed forces. Organisationally, therefore, the police were under the control and command of the chief commander, who, constitutionally, was the president, and the commander of the armed forces. Therefore, as senior police officer Djamal observed, '…structurally, the superiors in the military could order the subordinate commanders of the police and intervene in the investigation matters…'.[461] Aris added, 'the police needed an agreement to investigate a case from their commanders'.[462] Colonel Police Fadri explained how such a defective implementation structure had turned the police militaristic and had badly affected their performance:

> It was difficult to place the national police under the command of the chief of the armed forces. This had bad effects to the performance of the national police. The chief saw the function of the police from security approaches. That time the security

[460] Interview with Chuck Suryosumpeno, Head, Bandung City District Prosecution Office, 12 July 2006.
[461] Interview with AKBP Djamal, Deputy Head, Central Jakarta District Police Office, 2 June 2006.
[462] Interview with M. Syaiful Aris, Director and public lawyer, Surabaya Legal Aid Institute, 15 August 2006.

approaches were dominant. The law enforcement function was subordinated under the security approaches.[463]

In contrast, the Reform Order regime exerted civilian control over the military and freed the enforcement agencies from the military's interventions and control. For example, '...President Wahid immediately took a series of measures to exert civilian control over the military and rein in the army', and appointed Sudarsono, as the country's first civilian Minister of Defence since the 1950s (*The editors* 2000:126). After the separation, Padmanegara said, the police were able to investigate more corruption cases.[464] However, under the democratic political system of the Reform Order regime the police were still part of the executive branch of government. Moreover, Police Law 2002 gave the president the power to appoint and dismiss the Chief of the National Police. Even though there was now the Police Commission to oversee police conduct, its power was weak. It only had the power to make recommendations, Aris added. Furthermore, Aris opined, without effective control unethical conduct by police would increase.

Similarly, under the authoritarian political system of the New Order regime the prosecution was placed under the control and influence of the president. Prosecution Act Number 15/1961 and Prosecution Act Number 5/1991 gave the president the power to appoint and dismiss the Attorney General. These Laws further gave the executive the power to control the prosecution, both organisationally and financially. Constituting a part of the executive branch of the government, the prosecution was not independent from the interventions and influence of the president or the executive. 'Unlike judges, we are not independent,' Manulang said.[465]

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[463]Interview with Colonel Police Dr. Iza Fadri, Head, Legal Division, National Police Headquarter, 23 May 2006.

[464]Interview with Lieutenant General Police Makbul Padmanegara, Head, Criminal Investigation Board, National Police Headquarter, 27 June 2006.

[465]Interview with Timbul Manulang, Head, Tenggarong Kutai District Prosecution Office, East Kalimantan, 27 July 2006.

The prosecution was also put under the military control of the regime. Suharto controlled the prosecution by appointing his military men to lead the Attorney General's Office. From a total of 19 Attorney Generals, most were military generals.[466] Moreover, Suryosumpeno said, the regime had also introduced a partly militaristic system and culture in the prosecution organisation. This had a negative effect on the prosecution's performance. Like the police, the prosecution was not immune to the political interventions of the powerful. A senior prosecutor compared how under the New Order regime and the Reform Order regime, the political elites had tried to intervene in the workings of the prosecution:

> Generally, the constraints for the law enforcement in the New Order and in the Reform era are not different. However, during the New Order we sometimes received an 'instruction letter' [*katabeletje* or *surat sakti*] from the powerful in the central government. We found it difficult to say no. But, when we prosecuted a case in X case [involving an influential person in the country] I said no to the RI 1's [popular name for President Suharto] request. Now, such political interventions are rare. They [the influential people] now send a person to influence the enforcers.[467]

Thus, under the Reform Order regime political intervention in the enforcement process still existed, but not as frequently as under the New Order regime. Anticorruption activists, for example Isra[468], suspected that in certain corruption cases the political elites had intervened in the prosecution process. These elites, he believed, had intervened in the budget corruption case involving 43 members of the West Sumatra Legislature during the Wahid administration, in the Akbar Tandjung's Logistics Board's non-budget fund case during the Megawati government, and in the Century gate case under the Yudhoyono rule.

Even though Prosecution Act 2004 was designed to free the prosecution from political intervention, in practice such intervention could not be avoided. This is because it was still part of the executive branch of the government, and the Attorney General was appointed and

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[466]Interview with Chuck Suryosumpeno, Head, Bandung City District Prosecution Office, 12 July 2006.
[467]Interview with a senior prosecutor, 19 June 2006.
[468]Interview with Saldi Isra, Anticorruption Activist, Coordinator of West Sumatra Awareness Society, 6 July 2006.

dismissed by and accountable to the president. However, the accountability of the Reform Order regime's Attorney General was better than that of the New Order regime as he or she was also accountable to the House of Representatives.[469]

The failure in enforcing Anticorruption Laws 1971 and 1999 can also be explained by examining how the authoritarian political system of the New Order regime and the democratic political system of the Reform Order regime affected the workings of the judiciary. Under the authoritarian New Order regime, 'the judiciary...has traditionally functioned more as an arm of the government than as an independent entity', (Mackie and MacIntyre 1994:22). As in the other enforcement agencies, Suharto placed his military men, mostly graduates from the Military Law Academy, to lead the Supreme Court. Legally, Court Law 1965 and Law Number 14/1970 on the Basic Principles of the Judiciary gave the president and the executive the powers to intervene and control the judiciary. The judiciary was open to political intervention from the powerful as its judges were, based on the advice of Chief Justice of the Supreme Court, appointed and dismissed by the president[470] and promoted by the Minister of Justice.[471]Moreover, '...the welfare of the judges and the finance of the courts were administered by the Department of Justice...' Judge Ilhamy told me. [472] The Department of Justice had the power to decide the judges' salaries and allowances.[473]Judge Kartika observed,

> Under the New Order regime, the administrations and resources of the courts were administered by the Ministry of Justice. We administratively depended on the ministry...even often the rotations and promotions of the judges were influenced and determined by the ministry.[474]

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[469] Article 37 of the Prosecution Act 2004.
[470] Article 3 of the Court Law 1965.
[471] Article 10 of the Court Law 1965.
[472]Interview with Fadhly Ilhamy, Judge, Jakarta High Court, 7 July 2006.
[473] Article 5 of the Court Law 1965.
[474]Interview with M. Eka Kartika, Vice Head, Bale Bandung District Court, former Head of Kuningan District Court, West Java, 12 July 2006.

Under the democratic political system of the Reform Order regime the judiciary was independent and institutionally separated from the executive branch of the government. Based on Judicial Power Act Number 4/2004 which replaced Judicial Power Act Number 14/1970, the Supreme Court had the power to control its own and lower courts' organisation, administration, and finance.[475] Moreover, it had more power to control the career of judges, as Judge Ilhamy further said:

> In the reform era, there is a new rule for the appointment for Justices of the Supreme Court. The appointment may be proposed by the Chief Justice of the Supreme Court and the Judicial Commission to the President. Career judges, lawyers, and academics may be recommended as candidates. Now the Supreme Court determines the job rotations of judges.

The 2004 Act even punished all kinds of intervention in judicial matters, except when by the judicial authorities.[476] However, the judiciary was still not immune from political intervention, for example in the case of Suharto's trial. Winarta told me[477], 'in the corruption case of former President Suharto, the National Law Commission has several times advised the government that there must be due process of law, not political'. Hence, due to Suharto's sickness, the court never tried him. 'No legal system on the earth prohibits a sick person to be tried', Winarta added.

Aris opined, 'now, the judges are uncontrollable as they think they are only responsible to the Chief Justice of the Supreme Court'. Yusrida added, 'who will supervise it [the judiciary]? There will be an *esprit de corps* to protect their colleagues. The Chief Justice of the Supreme Court now has the strong power'.[478]Therefore, this situation worsens the

[475]Article 13 (1) of Judicial Power Act Number 4/2004.
[476]Article 4 (3 and 4).
[477]Interview with Frans Winarta, lawyer, and Member of the Indonesia Law Commission, 26 May 2006.
[478]Interview with Yusrida, Director, Criminal Policy Directorate, Department of Justice and Human Rights, 29 June 2006.

systemic judicial corruption, which started in 1970 (Pompe 2005:111), particularly 'after President Suharto managed the judiciary in a militaristic way.'[479]

'Corruption is closely linked to the social and political system', Chief Justice Manan believed.[480] Prof.Emongpradja observed, 'our government system is prone to corruption'.[481] The authoritarian political system of the New Order regime and the democratic political system of the Reform Order regime, to some extent, had created the opportunities for corruption, a governance condition which was not favourable for enforcing the Anticorruption Laws 1971 and 1999. The findings of the thesis support this argument—most respondents, 236 or 93 per cent, agreed that the most fundamental factor of the implementation failure of the New Order's Anticorruption Law 1971 and that of the Reform Order's Anticorruption Law 1999 was attributed to the corrupt, defective government systems and institutions.

President Suharto blamed his regime's corrupt conditions on the chronic corruption problem inherited from the Old Order regime. In his State Presidential Speech at Plenary Cabinet Meeting on 30 January 1970, he observed:

> The objective factors triggering the corrupt undertakings are those conditions inherited from the Old Order, such as: maladministration in all sectors; the extensive economic monopoly power by the state; weak integrity of the government institutions, law enforcers, and judicial officials; unclear and ambiguous duties, authorities, and responsibilities; weak supervisory functions, etc.

In a patrimonial state such as that under the New Order regime, 'the ruler's power depended on his capacity to win and retain the loyalty of key sections of the political elite' (Crouch 1991:572). The New Order regime had also been described as a political clientelism system

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[479]Interview with Prof.Dr. Mahfud MD, Member of Commission III of the House of Representatives, former Minister of Justice, former Minister of Defence, Professor of Constitutional Law, 1 June 2006.

[480]Interview with Prof.Dr. Bagir Manan SH., McL, Chief Justice and President of the Supreme Court, Professor of Constitutional Law, Padjadjaran University, 21 June 2006.

[481]Interview with Prof.Dr. Komariah Emong Sastrapradja, Professor of Criminal Law, Padjadjaran University, 30 May 2006. She was later elected as Justice of the Supreme Court.

where Suharto reciprocally exchanged his political powers and influence with his 'clients' or subordinates (Lemarchand and Leggs 1972:151). 'There was a general pattern of patron-client', Prof. Miriam Budiardjo observed.[482] To win such loyalty and exchange powers, Suharto used corruption as a political strategy. Thus, (selectively) enforcing anticorruption was just a matter of political pragmatism. The regime and its political leaders were not truly committed to combating corruption. This lack of commitment was the most important factor contributing to the failure of anticorruption policy implementation (Brata 2010c).

The democratic political system of the Reform Order regime also faced the problem of inheriting corrupt, criminal justice and political systems and bureaucracies. As Husodo observed, the chronic corruption problem of the Reform Order regime had been the continuation of the New Order regime's endemic corruption problem.[483] For example, the Reform Order regime still implemented the patronage or spoils system in the recruitment and promotion of public officials, including enforcers, which in most cases were not based on the integrity and competencies of the officials, but on nepotism and corrupt motives (Brata 2009f).

Slamet Riyanto, Inspector General of the Ministry of Religious Affairs, argued that the corrupt political system and structure of Indonesia resulted in apathy, permissiveness and people's tolerance of corruption (*Detikcom,* 8 July 2007). The people saw corrupt behaviour as normal. This was an unfavourable governance condition which needed to be fixed by anticorruption educational approaches (Brata 2009e). Moreover, a disappointed Prasetyo observed[484], 'after the reform, some public figures who we expected to combat corruption,

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[482]Interview with Prof. Miriam Budiardjo, MA, emeritus Professor of Political Science, the University of Indonesia, former Vice President of the National Commission on Human Rights, 17 June 2006.
[483]Interview with Adnan T. Husodo, Deputy Coordinator, Indonesian Corruption Watch, 2006.
[484]Interview with Wawan E. Prasetyo, Anticorruption Activist, Bali Corruption Watch, 7 August 2006.

now after joining the government they are the same as the other corrupt public officials. They have been absorbed by the corrupt system and powers'.

As the Reform Order regime not only took over the corrupt bureaucracies and criminal justice and political systems of the New Order regime, but also its corrupt bureaucrats, enforcers and political leaders, it is understandable that corruption was extremely difficult to combat.[485] Instead of heeding Wang An Shih's (Chinese reformer) philosophy (AD 1021–1086) (in Larmour and Wolanin (eds) 2001:xiv), which argued that corruption occurred due to the combined causes of bad systems and bad people, the Reform Order regime only reformed its political system, but did not replace the people who ran it.

E. Conclusions

From the analysis in this chapter we conclude that just as the authoritarian New Order regime failed to implement Anticorruption Law 1971 and achieve its objective of reducing corruption in the public sector, the democratic Reform Order Regime, to some extent, also failed to enforce Anticorruption Law 1999 and attain its objective of eradicating the public sector corruption. The enforcement of both Anticorruption Laws failed to meet the four evaluation criteria. First, enforcement failed to significantly change the people's negative perception of the endemic corruption in the public sector. Secondly, the law enforcers of both regimes failed to significantly recover stolen state assets. Third, they had also failed to considerably improve the low public confidence in the integrity and capacity of the criminal justice system to combat corruption. Finally, the implementation of Anticorruption Laws 1971 and 1999 failed to alter the tolerant attitude of the people and public servants to corruption.

[485]Interview with Nurcholis Hidayat, public lawyer, Jakarta Legal Aid Institute, 22 June 2006.

However, compared to the performance of the law enforcers of the New Order regime that of the law enforcers of the Reform Order regime in implementing Anticorruption Law 1999 and in combating corruption, particularly under Yudhoyono's administration, was somewhat better. In some cases, the people perceived a slight reduction in public sector corruption. Even though it was still under 50 per cent, the recovery rate of stolen state assets under the Reform Order regime was slightly improved. Moreover, the performance of the law enforcers of the Reform Order regime in combating corruption, in particular that of the Anticorruption Commission or KPK, somewhat enhanced public confidence in the integrity and capacity of the criminal justice system in fighting corruption.

The analysis has shown that many factors contributed to the implementation failure of Anticorruption Laws 1971 and 1999. These factors can be grouped into five categories: policy design, political, institutional, managerial, and societal factors. Most significantly, the New Order regime and the Reform Order regime faced a similar serious governance problem which impeded the effective implementation of Anticorruption Laws 1971 and 1999; that is, the problem of court mafia.

Defects in the implementation structures and processes appear to be the main explanatory factor for the implementation failure of Anticorruption Laws 1971 and 1999. However, the inherent shortcomings of the authoritarian political system of the New Order Regime worsened the problem, which explains why the New Order Regime had a greater degree of failure in combating corruption.

Chapter 7 Conclusions[486]

This last chapter concludes the thesis. It begins by summarising the case studies. The implementation outcomes of Anticorruption Laws 1971 and 1999 are highlighted, and then the implementation factors relating to each Law, especially those explaining the different implementation outcomes, are emphasised. Following this, the defective implementation structures and processes which impacted on the implementation outcomes of the Anticorruption Laws will be stressed. This chapter then revisits a central argument of the thesis: the implementation of the Anticorruption Laws as the integral function of the political systems of the authoritarian New Order regime and the democratic Reform Order regime. The chapter then highlights the most influential factor(s), especially those factors determining the different outcomes.

The chapter then reflects on the theoretical significance and implications of this study. Limitations of the study are then underlined, and finally an agenda for further research is proposed.

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[486]The author is determined to publish the thesis in a book so that civil society, policy researchers, anticorruption law practitioners, government and law students, and the policy community can learn and benefit from the findings, analyses, explanations, and ideas in this study. Some ideas of this study have actually been nationally and internationally published online, and in papers, journals, and books such as in *Tempo* Magazine, *the Jakarta Post*, *Koran Tempo*, *Vivanews online*, *Jurnal Negarawan*, *Jawa Pos*, *Pikiran Rakyat, Media Indonesia*, and in an international book published in Research in Public Policy Analysis and Management, Volume 18, Emerald Group Publishing Limited UK; Prof. Jon S.T. Quah, leading anticorruption expert in Asia, is one of the authors in this book. Several online anticorruption articles of mine, based on this study, have become one of the most-read articles—see www.infokorupsi.com. Moreover, my article titled 'Court Mafia and Social Revolution' has been uploaded in '1,000,000 Facebookers Movement on Fighting the Court Mafia', and the other titled 'Saving the Anticorruption Commission', uploaded in '1,000,000 Facebookers Movement on Supporting Bibit-Candra' (two Commissioners of the Anticorruption Commission/KPK who were arrested by the police). I can only hope that my writings have been useful for them and the readers.

A. About the case studies

This study has comparatively investigated, evaluated, and explained the implementation failure of the anticorruption laws of the authoritarian New Order regime and the democratic Reform Order regime of Indonesia, in the period from 1971 to 2007.

The central argument of the study has been confirmed. This study found that to some extent the implementation of the New Order regime's Anticorruption Law 3/1971 and the Reform Order regime's Anticorruption Law 31/1999 failed in attaining the policy objectives of eradicating corruption in the government. However, the implementation of the Reform Order regime's Anticorruption Law 1999 has a lesser degree of failure.

The study has also confirmed that the political systems of the authoritarian New Order regime and the democratic Reform Order regime had a role in contributing to the implementation failure of Anticorruption Laws 1971 and 1999. In particular, this study has shown that defects in the implementation structures and processes of the authoritarian political system of the New Order regime and those of the democratic political system of the Reform Order regime were the primary explanatory factor for the implementation failure of both Anticorruption Laws.However, since the implementation structures and processes of the authoritarian political system of the New Order regime were inherently more defective than those of the democratic political system of the Reform Order regime, the degree of the implementation failure of Anticorruption Law 1971 was higher than that of Anticorruption Law 1999.

Therefore, this study has achieved its research objectives, which were (1) to comparatively evaluate the extent to which the implementation of Anticorruption Law 1971, operating under the authoritarian political system of the New Order regime, and Anticorruption Law

1999 under the democratic political system of the Reform Order regime failed to attain their policy objectives, and (2) to explain the contributing factors for policy implementation failure.

B. The implementation outcomes of the Anticorruption Laws

Methodically framed by the evaluative approach of the refined top-down implementation model, which uses effectiveness as its criterion, this study has comparatively evaluated the implementation performance of the authoritarian New Order regime's Anticorruption Law 1971 and the democratic Reform Order regime's Anticorruption Law 1999. The effectiveness criterion was divided into four sub-criteria: public perception of bureaucratic corruption reduction; recovery of state assets losses; public confidence in the criminal justice systems; and changes in anticorruption attitudes.

Chapters 4, 5, and 6 of this study have shown that the implementation of Anticorruption Laws 1971 and 1999 failed in attaining their legally mandated objectives of eradicating corruption in the public sector. There was no significant reduction in corruption, and the public still perceived rampant and systemic corruption in public agencies. The law enforcers of the two regimes also largely failed to recover state assets stolen by corruptors. Furthermore, the public distrusted the capacity and integrity of the criminal justice system to combat corruption. The existence of the court mafia phenomenon demonstrated that the law enforcers were an integral part of the corruption problem. Lastly, the public, the law enforcers, and public officials, were generally still tolerant of corrupt practices and attitudes.

Chapter 6 has shown that, especially under President Yudhoyono, the Reform Order regime had a somewhat better performance in controlling corruption in the public sector. More corruption cases were prosecuted; and therefore, more stolen state assets recovered. The

government's success meant that in some instances, for example in government procurement, government officials were now afraid of becoming government project managers; they feared prosecution. However, this did not radically change people's opinions. They still perceived chronic and pervasive corruption in the Reform Order regime's government; some even felt that corruption was more rampant under this regime.

C. The factors contributing to the implementation failure

This study has found that many factors contributed to the implementation failure of Anticorruption Laws 1971 and 1999. Basically, these factors can be classified into five categories: policy design, and political, institutional, managerial, and societal factors. In Chapter 6, these were comparatively examined with the result that some were found to have contributed to the implementation failure of both Anticorruption Law 1971 and Anticorruption Law 1999; whereas some others pertained to only one of these Laws.

1. The policy design factors

The policy design factor refers to the defective policy designs of Anticorruption Laws 1971 and 1999 and other related legislation intended to effectively combat corrupt practices in the government sector. Details of those factors follow:

Implementation factors common to both Laws:

1. The lawmakers still perceived and treated corruption as an ordinary crime.
2. The policy objectives of Anticorruption Laws 1971 and 1999 were not clearly stated, and theoretically problematic: to 'eradicate' corruption assumed zero corruption, which is unattainable.
3. Formulation of the definitions and scope of corruption undertakings and the criminal procedures to combat them created difficulties in enforcing the Anticorruption Laws, and thus, in controlling corruption in the public sector.
4. The way the lawmakers formulated substance and procedural anticorruption laws created an opening for multiple intrepretations and different perceptions among the enforcers.
5. Not all causal policy assumptions of the lawmakers were theoretically adequate.

6. The lawmakers failed to clearly limit and legally control the use of discretion by the law enforcers.
7. The KUHAP, as a criminal procedural code, in practice greatly constrained effective implementation of the Anticorruption Laws.

The factors explaining the somewhat better implementation performance of Anticorruption Law 1999 of the Reform Order regime:

1. By widely defining corrupt activities and the actors committing such misconduct, and by varying the type of sentencing, including imposing minimum penalties, Anticorruption Law 1999 had a better probability of detecting corrupt acts, punishing the perpetrators, and recovering stolen state assets.
2. Even though, generally, the lawmakers of Anticorruption Law 1999 still perceived and treated corruption as an ordinary crime, to some extent and in some cases, they treated corruption as an extraordinary crime; for example, by the use of *pembalikan pembuktian yang seimbang* or balanced reverse burden of proof in gratification.
3. The policy objective of the Anticorruption Law 1999 is slightly clearer.
4. Anticorruption Law 1999 has more effective rules of evidence.
5. By imposing minimum different penalties and tying the amount of fines to the length of imprisonment, the Anticorruption Law 1999 has more adequate sentencing policy theory.
6. Anticorruption Law 1999 has harsher and more varied sanctions.
7. In general, Anticorruption Law 1999 had a better policy design.

2. The political factors

The implementation failure of Anticorruption Law 1971 and 1999 was attributed to the failure of the New Order regime and the Reform Order regime to structure political institutions and leadership which were supportive of and favourable for effective enforcement of these Laws. These are listed below:

Implementation factors common to both Laws:

1. Large-scale socioeconomic political changes and conditions influenced the enactment of Anticorruption Laws 1971 and 1999, and their enforcement.
2. The political will, commitment, and support from political leaders or sovereigns were too weak to effectively enforce Anticorruption Laws 1971 and 1999.

3. The real anticorruption reform and movement did not come from the top or the state, but was demanded by the actors such as civil societies and university students at the bottom level.
4. There was weak political accountability framework.

The factors explaining the somewhat better implementation performance of Anticorruption Law 1999 of the Reform Order regime:

1. Socioeconomic and political conditions under the Reform Order regime were more conducive to enforcing the Anticorruption Law 1999.
2. The anticorruption movement under the Reform Order regime had international influence, for example, the International Monetary Fund.
3. The political will, commitment, and support from the political leaders or sovereigns of the Reform Order regime were stronger, but still too weak to effectively enforce the Anticorruption Law 1999.
4. Checks and balances mechanisms were in place.
5. The force and influence from civil societies for anticorruption reform were stronger and more significant.

3. The institutional factors

Under this type of factor, the defective institutional framework restrained and distorted the implementation process of both Anticorruption Laws. However, as can be seen from the lists below, several factors enabled the law enforcers of the Reform Order regime to perform better than those of the New Order regime. Notwithstanding, the public still perceived the Reform Order regime as corrupt. This was partly due to the fact that this regime had inherited corrupt bureaucrats, enforcers, politicians, and the problems of court mafia from the New Order regime.

Implementation factors common to both Laws:

1. The criminal procedural code, in particular the KUHAP, which legally structured the enforcement process was ineffective to implement the Anticorruption Laws.
2. The criminal justice system which governed the investigation, prosecution, and trial of a corruption case was disintegrated.

3. There was a lack of hierarchical, functional integrated control over the police, the prosecution, and the judiciary in the implementation process of the Anticorruption Laws.
4. There was power competition and institutional egoism among the law enforcement agencies.
5. The existence of chronic, complex and serious systemic institutional corruption in the law enforcement agencies popularly known as *mafia peradilan* or court mafia, systematically, institutionally, and seriously disabled the institutional capacity and integrity of the enforcement agencies to effectively implement the Anticorruption Laws.
6. There was weak law enforcement accountability.
7. The same corrupt political leaders, enforcers, and bureaucrats operated under both regimes.
8. Crime deterrents were weak.
9. There was wide and uncontrolled use of enforcement discretion.
10. Sanctions were lenient.
11. Corruption was perceived as an ordinary crime.
12. Incentives for the corrupt enforcers, political leaders, and bureaucrats to combat corruption were weak.

The factors explaining the somewhat better implementation performance of Anticorruption Law 1999 of the Reform Order regime:

1. Better accountability framework of the enforcement organisations and process.
2. More independent organisations of the police, the prosecution, and the judiciary.
3. More external control by the newly established commissions of the police, the prosecution, and the judiciary.
4. Functional and appraised performance of the independent, powerful Anticorruption Commission or *Komisi Pemberantasan Korupsi*/KPK.

4. The managerial factors

Under this type of implementation factor the enforcement failure of Anticorruption Laws 1971 and 1999 can be associated with the collapse of management functions in enforcing these Laws. By applying Luther Gulick's POSDCORB management functions, this study has shown that the law enforcers of the New Order regime and the Reform Order regime

failed to properly *P*lan, *O*rganise, *S*taff, *D*irect, *C*oordinate, *R*eport, and *B*udget the enforcement process of these Laws. A summary of the relevant management factors affecting implementation follows:

Implementation factors common to both Laws:

1. The failure of the regimes to strategically and effectively plan the enforcement of Anticorruption Laws 1971 and 1999.
2. Much more reliance on an interventionist approach to combat corruption rather than a preventive approach.
3. The failure to effectively and efficiently organise the enforcement processes and agencies.
4. A lack of quantity and quality of resources.
5. Incompetent, corrupt, and uncommitted law enforcers.
6. Poorly paid enforcers.
7. Poor leadership of the enforcement agencies.
8. A lack of cooperation, communication and coordination among the anticorruption law enforcers.
9. Failure to report or monitor the enforcement process.
10. The non-existence, or collapsed internal and external control of the enforcement process, as shown by the court mafia phenomenon.
11. The enforcement process and activities were inadequately budgeted or financed.
12. No single enforcement agency was responsible for combating corruption; the police, the prosecution, and the Anticorruption Commission all had the power to investigate corruption cases.

The factors explaining the somewhat better implementation performance of Anticorruption Law 1999 of the Reform Order regime:

1. Preventive and educational approaches had, to some extent, been implemented.
2. Better strategic plan of its enforcement activities.
3. Better internal and external control of the enforcement mechanisms.
4. The power of the KPK to supervise the anticorruption law implementation in other enforcement agencies.
5. The enforcement activities were more adequately resourced.

5. The societal factor

The public have a vital role in combating corruption. Under this factor typology, the failure of the New Order regime and the Reform Order regime to effectively implement Anticorruption Laws 1971 and 1999 can be attributed to the failure of these regimes to promote and protect the civil and political rights of the people and provide opportunities for them to participate in government and enforcement processes However, this study has found that the Reform Order regime, which moved to a democratic political system, did employ some positive social factors which encouraged public participation and were conducive to curbing corruption, as the list below shows.

Implementation factors common to both Laws:

1. Generally, the people, public officials, and enforcers were tolerant of corruption and corrupt behaviour.
2. Socioeconomic conditions, for example, high inflation and poor economic conditions, were not favourable for effective enforcement of Anticorruption Laws 1971 and 1999.
3. Social and moral sanctions on corrupt conduct were lenient or absent.
4. To some extent corruption had become the culture of the people.
5. The people were poorly educated about the nature of corruption and its destructive impact on their lives.

The factors explaining the somewhat better implementation performance of Anticorruption Law 1999 of the Reform Order regime:

1. There was better promotion and protection of civil and political rights of the people.
2. There was better and wider opportunities for the public and civil societies to participate in the governmental and enforcement processes.
3. Civil societies and public interest groups had proliferated significantly.
4. The people began to realise the destructive effects of corruption on their lives.
5. The people had better access to public information.
6. Society started to punish corruptors socially and morally.
7. Information about corruption cases and their investigations, prosecutions, and trials became more widely available.

D. The defective implementation structures and processes

This study found that defective implementation structures and processes were the key factor explaining implementation failure of Anticorruption Laws 1971 and 1999. Thus, the central argument has been supported. This study also confirmed the argument of the refined top-down implementation theorists that to be effective, an implementation process must be legally structured to enhance compliance by implementors and target groups.

Defects in the implementation structures and processes of both Laws can mainly be attributed to the Criminal Procedural Code, the KUHAP, which governed the implementation process of Anticorruption Laws 1971 and 1999. The KUHAP, and other legislation that framed the implementation structures and processes of these Laws, for example, Police Law, Prosecution Law, and Court Law, created a disintegrated criminal justice system. As a result, the implementation structure was fragmented, creating institutional power conflicts between the law enforcement agencies and making communication, cooperation, and coordination between the enforcers more difficult.

The disintegrated criminal justice system, coupled with the wide, poorly defined, and unchecked discretion of the enforcers, provided more opportunity for the enforcers to play what Bardach called the 'implementation game' by corruptly abusing their powers. This and strategic interactions by the enforcers and actors at the bottom level deflected the enforcement activities from attaining the objectives of Anticorruption Laws 1971 and 1999. This has also confirmed the argument of the bottom uppers that strategic interactions between actors at street level can deflect the attainment of policy objectives.

The problems caused by the KUHAP led to the formation of the court mafia. The court mafia was a serious, complex and chronic problem in Indonesia (anticorruption) law

enforcement. It was also one of the key factors contributing to the failure of Anticorruption Laws 1971 and 1999.

E. The implementation as an integral function of the authoritarian and democratic political systems

From a macroprespective, this study has shown that the implementation failure of Anticorruption Laws 1971 and 1999 was a result of the defective political system of the authoritarian New Order regime and the democratic Reform Order regime. As Chapter 6 has shown, the authoritarian political system of the New Order regime was inherently more defective than the democratic political system of the Reform Order regime. This is why Anticorruption Law 1971 of the New Order regime had a higher degree of implementation failure. Under the New Order regime, the 1945 Constitution granted significant powers to the president which facilitated the formation of the authoritarian government of the New Order regime. As a result, acting like a Javanese King *(Raja Jawa)* with almost absolute power, President Suharto and his regime were able to turn the government into an authoritarian and corrupt government. This supports Lord Acton's argument that 'power tends to corrupt, and absolute power tends to corrupt absolutely'.

Under the authoritarian New Order regime, the legislature and the judiciary were *(de facto)* subordinate to the control and influence of the president or executive, which in turn disabled the power checks and balances mechanism between the branches of the government. By institutionally placing the police organisation under the armed forces and his command as chief commander of the armed forces, and by appointing military men as Attorney General and Chief Justice of the Supreme Court, President Suharto effectively intervened and controlled the enforcement process of Anticorruption Law 1971. With corruption working to their advantage, there was no incentive for the sovereigns or political leaders to support the

effective enforcement of Anticorruption Law 1971. Moreover, the people were disabled from participating in the government and enforcement processes since their civil and political rights were not adequately promoted and protected.

The democratic Reform Order regime was more effective in enforcing Anticorruption Law 1999 because for the first time the country's president was directly elected by the people, making him or her more accountable to them. Under the reformed 1945 Constitution, the president could even be impeached if he or she committed corruption or bribery. Furthermore, power checks and balances mechanisms were now functioning, preventing abuse of power by state branches.

The reformed 1945 Constitution also meant that the law enforcement organisations were now more independent in exercising their powers and authority. The police were institutionally separated from the armed forces, and the courts administered and financed their own activities, independent of the Department of Justice. The dual functions of the armed forces, which had allowed active members of the armed forces to hold civilian political and bureaucratic posts, were abolished. The reformed 1945 Constitution and its delegated legislation also better promoted and protected the rights of the people to participate in the government and enforcement processes.

Why did the Reform Order regime still fail in implementing Anticorruption Law 1999 and curbing corruption? This study has found that although this regime reformed its political system, it did not significantly change the people; that is, the corrupt political leaders, bureaucrats, and enforcers inherited from the authoritarian New Order regime. It was they who steered and controlled this reformed political system. The democratic political system,

including the reformed criminal justice system, could not work as designed if the people behind the system did not want the system to work democratically.

F. The most influential factor(s), in particular those factors determining the different outcomes

From the many implementation factors examined and explained throughout this thesis, this study has identified the most influential factors contributing to the different implementation outcomes of Anticorruption Laws 1971 and 1999. Factors which were the most responsible for the failed implementation of both Anticorruption Laws are:

1. The political will and commitment of the political leaders and the enforcers were too weak to effectively and seriously enforce the Anticorruption Laws and curb corruption.
2. The serious and chronic problem of the court mafia which had systematically disabled the institutional capacity and integrity of the enforcement agencies and the criminal justice system to combat corruption.
3. The people were tolerant of corrupt conduct.
4. The corruption problem itself had become so serious, endemic and, without radical anticorruption measures, very difficult to control.
5. The use of discretion by the law enforcers was unclearly defined and unchecked.
6. The government and the enforcement institutions had become an integral part of the serious corruption problem, not an effective solution.
7. The implementation structures and processes of Anticorruption Laws 1971 and 1999 were defective.

There are two key factors, one internal, the other, external, which were the most influential in contributing to the somewhat better implementation performance of Anticorruption Law 1999 of the democratic Reform Order regime. First was the democratic political system with its improved accountability framework, functioning checks and balances, and better promotion and protection of the civil and political rights of the people to control the government and enforcement processes. Second were the external, international forces, what I have called 'internationalism', that is, the international anticorruption policy agenda and

movement, in Indonesia; in this case, the role of the International Monetary Fund and Indonesia's participation in the United Nations' Convention against Corruption. These 'forced' the Reform Order regime to adopt anticorruption measures.

G. Theoretical significance and implication of the study

While supporting the central argument of the thesis, this study has shown the usefulness of the refined top-down implementation theorists' six prescriptions for effective policy implementation. Anticorruption Laws 1971 and 1999, to some extent, did not fulfil these six conditions. First, the policy objectives of both Laws were poorly defined and unattainable. Second, causal theories underlying these Laws were inadequate. Third, the implementation process of the Laws was not effectively and legally structured to enhance compliance by the enforcers. Fourth, many law enforcers were neither committed nor skilful in enforcing the Anticorruption Laws. Fifth, many key political leaders or sovereigns did not seriously support the implementation of these Laws. Finally, to some extent, socioeconomic conditions, such as the economic crisis and the tolerant attitude of the people to corrupt behaviour, were not conducive to effective enforcement of the Anticorruption Laws.

However, the refined top-down implementation model only partly explains the implementation failure in this Indonesian case study. This model, like other implementation frameworks, looks at the implementation problem more from a micro-analytical level. It emphasises the important interaction between policymakers and implementers, organisations and actors, at different levels of management and interorganisational relations. Like other models, this theoretical model fails to analyse the enforcement problem through macro-analytical lenses. Therefore, in case studies such as this, it disregards the influence of the political system on the implementation processes and outcomes.

The refined top-down implementation theorists would assume that the implementation of the Anticorruption Laws of the different political systems of these two regimes would face similar problems, and that the implementation factors were not particularly linked to the type of political system. Moreover, since this model was based on case studies in Western developed democratic countries, it does not completely explain the implementation phenomena in countries with different political systems or those in various stages of political development, for example, Indonesia.

Like other implementation models, the refined top-down implementation model is mostly applied to single case studies, in particular education and economic development policies. Some comparative case studies have been used, but very little empirical research has been conducted to compare and explain the implementation problem of a (anticorruption) policy in one country with different political systems transforming from an authoritarian to a democratic political system, as in this case study.

The contribution that this study makes to the policy implementation literature is that it shows how the refined top-down implementation model is not fully satisfactory for comparatively examining the implementation problem of anticorruption laws in a developing country undergoing political transition from an authoritarian to a democratic political system. Therefore, by employing a macro-analytical approach to implementation, this study 'completes' the picture of the Indonesian implementation phenomenon which was only partially portrayed by the refined top-down implementation model.

Equally as important, since this study has investigated the 'why' of the implementation failure of Anticorruption Laws 1971 and 1999, a research question central to implementation study, it will add to the body of knowledge of anticorruption literature. Of particular

importance is the identification and analysis of factors which may be common in comparative cases, or conversely, relate to only one of the case studies. My analysis of factors contributing to the implementation failure of the Anticorruption Laws in Indonesia, a country transforming from authoritarian to democratic political system, exemplifies this.

The findings of this Indonesian case study have shown *implementation as the integral function of a political system*; and, therefore, in the Indonesian case, a seventh condition for effective policy implementation may be added to the refined top-down implementation theorists' six prescriptions:

1. Clear and consistent policy objectives;
2. Adequate causal theory underlying a policy;
3. Implementation process legally structured to enhance compliance by implementing officials and target groups;
4. Committed and skillful implementing officials;
5. Support of interest groups and sovereigns;
6. Changes in socioeconomic conditions do not undermine political support and causal theory; and,
7. *The implementation structure and process of the country's political system must be conducive and supportive for effective policy implementation.*

H. Limitations of the study

Fiona Robertson-Snape (1999:589) raises an obstacle to the study of corruption (and therefore, in anticorruption) especially in an Indonesian context:

> A difficulty in writing about corruption [and anticorruption] in Indonesia, as elsewhere, is that such misuses of office are unlikely to be documented and much of the available information is therefore anecdotal. Well documented evidence of corruption is elusive—as might be expected—what evidence there is, is suggestive of a high level of corruption within Indonesia.

I overcame this difficulty by using the policy network I had established within the policy community in central and regional governments. Some of the findings of this study, for

example, the survey and its use of the TI's CPI, were based on perceptions, which, as Larmour has noted, are problematic. However, the qualitative approach of this study, which involved interviewing many key, senior, and experienced enforcers, experts and informants, should counterbalance this weakness. The study's qualitative approach should also compensate for the problem of the 'dark number' and the fact that there were multiple factors contributing to the increasing and decreasing level of corruption.

It should also be noted that the conclusions, generalisations, and recommendations of this study apply specifically to Indonesia, and, as such, would only be useful to countries with relatively similar characteristics and governance problems.

I. Agenda for further research

This study has identified potential areas, in terms of Indonesia's anticorruption and governance, beyond the scope of this study, which are worthy of future research. These are:

1. Court mafia, kleptobureaucracy, and bureaucratic mafia, and their relation to policymaking, access to justice, government performance, due process of law, integrity and quality of criminal justice system, anticorruption law enforcement, and policy performance.
2. The role of KPK, the police, the prosecution, and the courts in combating corruption.
3. The use of discretion in anticorruption law enforcement.
4. The socio-political aspects of KPK as an independent anticorruption agency in Indonesia.
5. Democracy, decentralisation policy, and anticorruption measures in Indonesia.
6. The role of the Constitutional Court in Indonesia anticorruption measures.
7. A comparative study of the role of criminal and anticorruption policy design in combating corruption.

Glossary

Terms and abbreviations

AGO	Attorney General Office
Bimas	*Bimbingan Masyarakat* (society development projects)
BLBI	*Bantuan Likuiditas Bank Indonesia* (Central Bank liquidity support for banks)
BPK	*Badan Pemeriksa Keuangan* (Supreme Audit General)
BPKP	*Badan Pengawas Keuangan dan Pembangunan* (Comptroller of Finance and Development)
Bupati	Head of district
DPA	*Dewan Pertimbangan Agung* (Supreme Advisory Council)
DPD	*Dewan Perwakilan Daerah* (Regional Representative Council)
DPR	*Dewan Perwakilan Rakyat* (House of Representatives, Indonesia's parliament)
DPRD	*Dewan Perwakilan Rakyat Daerah* (regional assembly)
GBHN	*Garis-garis Besar Haluan Negara* (General Outline of State Policy)
GeRAK	*Gerakan Rakyat Antikorupsi* (People's Movement for Anti Corruption)
Golkar	*Golongan Karya* (The ruling state party during the New Order)
Gubernur	Head of provincial administration
ICW	Indonesia Corruption Watch
IDR	Indonesian Rupiah/basic unit of Indonesia currency
INPRES	*Instruksi Presiden* (Presidential Instruction)
Kabupaten	District
Keppres	*Keputusan Presiden* (Presidential Decision/Decree)
KKN	*Korupsi Kolusi Nepotisme* (Corruption, Collusion and Nepotism)
Komisi-4	(Anticorruption) Commission Four
KON	*Komisi Ombudsman Nasional* (National Ombudsman's Commission)
Kostrad	*Komando Strategi Angkatan Darat* (Army Strategic Reserve)
KPK	*Komisi Pemberantasan Korupsi* (Corruption Eradication/Anticorruption Commission)

KPKPN	*Komisi Pemeriksa Kekayaan Penyelenggara Negara* (Assets Auditing Commission, or Commission to Audit the Wealth of State Officials)
KUHAP	*Kitab Undang-undang Hukum Acara Pidana* (Criminal Procedural Code)
KUHP	*Kitab Undang-Undang Hukum Pidana* (Criminal Code)
KY	*Komisi Yudisial* (Judicial Commission)
MA	*Mahkamah Agung* (Supreme Court)
Mafia peradilan	Court mafia (organized, coordinated and systematic corrupt acts which effectively corrupt and distort the enforcement process of a criminal or corruption case)
MahKeJaPol	*Mahkamah Agung, Kejaksaan dan Kepolisian* (coordinated enforcement efforts of the Supreme Court, the Attorney General's Office, and the National Police)
MPR	*Majelis Permusyawaratan Rakyat* (People's Consultative Assembly)
MK	*Mahkamah Konstitusi* (Constitutional Court)
MTI	*Masyarakat Transparasi Indonesia* (Indonesia Transparency Society)
New Order regime	The period of Suharto's presidency, 1966–98
Old Order regime	The government under Indonesia's first President Sukarno, 1945-66
OPSTIB	*Operasi Tertib* (Law and Order Operation)
PDI	*Partai Demokrasi Indonesia* (Indonesia Democratic Party)
POLRI	*Polisi Republik Indonesia* (Indonesian National Police)
PPATK	*Pusat Pelaporan Analisa Transaksi dan Keuangan* (Indonesian Financial Transaction and Analysis Centre)
PPP	*Partai Persatuan Pembangunan* (United Development Party)
Pungli	*Pungutan liar* ('illegal taxing', a form of extortion)
Reformasi	Literally 'reform'; often used to refer to the period following Suharto's fall
Reform Order regime	Post-Suharto democratic governments
R.I.	*Republik Indonesia* (Republic of Indonesia)
SBY	Susilo Bambang Yudhoyono (President Yudhoyono's nickname)
SKP3	*Surat Ketetapan Perintah Penghentian Penuntutan* (a letter ordering the termination of criminal prosecution)

SP3	*Surat Perintah Penghentian Penyidikan* (a letter ordering the termination of crime investigation)
StAR	The United Nations' Stolen Asset Recovery initiative
3S'	*Sowan, Sungkem, Setor* (meaning the person wanting a job promotion should meet, have a high regard for, and pay off the promoting superior judges or high officials of the Department of Justice in order to be promoted).
TGPTPK	*Tim Gabungan Pemberantasan Tindak Pidana Korupsi* (Anticorruption Joint Team)
TI	Transparency International
TII	*Transparasi Internasional Indonesia* (Indonesia Transparency International)
Timtas Tipikor	*Tim Pemberantasan Tindak Pidana Korupsi* (Corruption Eradication Team)
TNI	*Tentara Nasional Indonesia* (Indonesian National Army)
Undang-undang	law(s)

References

Aaron, H., 1978. *Politics and Professors: the great society in perspective*, Washington, D.C.: Brookings Institutions

Adèr, H.J. and Mellenbergh, G.J., (eds), with contributions by D.J. Hand, 2008. *Advising on Research Methods: a consultant's companion*, Huizen: Johannes van Kessel Publishing

Alatas, S.H., 1990. *Corruption: its nature, causes, and functions,* Aldershot: Avebury

_____, 2003. 'Korupsi menghambat pembangunan di Indonesia (Corruption constrains development in Indonesia)', *Focus Asia*, Radio Singapore International. Available from http://rsi.mediacorpradio.com/Indonesia/focusasia/view/20030902164100/1/html (10 July 2004)

Alrasid, H., 2004. *Naskah UUD 1945 Sesudah Empat Kali Diubah oleh MPR* (The 1945 Constitution text after it has been amended four times by MPR), Jakarta: Penerbit Universitas Indonesia

Altrichter, H., Feldman, A., Posch, P. and Somekh, B., 2007. *Teachers Investigate Their Work: an introduction to action research across the professions,* 2nd edition, London and New York: Routledge

Anderson, J.E., 1975. *Public Policy-making*, New York: Holt, Praeger

Antara, 2007. 'Pemerintah bubarkan Timtas Tipikor (The Government dissolves the Anticorruption Team) ', *Antara*, http://www.antara.co.id/print (12 January)

Aspinall, E., 1995. 'Students and the military: regime friction and civilian dissent in the late Suharto period', *Indonesia*, 59: 21–44

Assegaf, I.S., 2002. 'Legends of the fall: an institutional analysis of Indonesian law enforcement agencies combating corruption', in T. Lindsey and H. Dick (eds.), *Corruption in Asia: Rethinking the Governance Paradigm*, Sydney: Federation Press, Chapter 8, pp.127-46

Assegaf, I.S., Ahmad, R.G., Damayana, G.P. and Cahyadi, A., 2002. 'A gloomy picture of the attempts to eradicate corruption: reflections of the policies, laws and institutions of corruption management in Indonesia, (1969-2001)', in R. Holloway et al (eds.), *Stealing from the People: 16 Studies on Corruption in Indonesia.* Book 1, *Corruption — From Top to Bottom,* Jakarta: Aksara Foundation, pp. 135 – 76

Bardach, E., 1977. *The Implementation Game: what happens after a bill becomes law?* Cambridge: MIT Press

Barr, C. M., 1998. 'Bob Hasan, the rise and Apkindo, and the shifting dynamics of control in Indonesia's timber sector', *Indonesia*, 65: 1–36

Barrett, S. and Fudge C. (eds), 1981. *Policy and Action*, London: Methuen

BBC Indonesia Com 2008. 'Aulia Pohan ditahan KPK' (Aulia Pohan is detained by KPK), *BBC Indonesia Com*, http://www.bbc.co.uk/indonesian/news/story/2008/11/081127 _auliapohanarrests.shtml. (13 August 2009)

BBC News 2004. 'Suharto tops corruption rankings,' *BBC News*, http://news.bbc.co.uk /2/hi/business/3567745.stm. (25 March 2004)

Becker, G., 1968. 'Crime and punishment: an economic approach', *Journal of Political Economy*, 76: 169–217

Bird, K.,1996. 'Survey of recent development,' *Bulletin of Indonesia Economic Studies*, 32 (1): 3–32

Bobrow, D.B. and Dryzek, J.S., 1987. *Policy Analysis by Design*, Pittsburg: University of Pittsburg Press

Bolongaita, E.P., 2010. 'An exception to the rule? Why Indonesia's Anti-Corruption Commission succeeds where others don't–a comparison with the Philippines' Ombudsman', Bergen: Christian Michelsen Institute U4 Issue, No.4, August 2010, pp. 13–20

Bozeman, B., 1994. 'Evaluating government technology transfer: early impacts of the cooperative technology paradigm', *Policy Studies Journal*, 22 (2): 322-37

Brata, R.A., 1999. *The Role and Influence of Interest Group in Policymaking: the case of economic and political reforms in Indonesia*, Master of Public Policy Thesis, Wellington: Victoria University of Wellington

_____, 2007. 'Strategi Indonesia memerangi korupsi perlu intensifkan pendekatan preventif (Preventive approach is imperative for the Indonesia's strategy to combat corruption),' interview with Roby Arya Brata, *Republika Online*, 5 October

_____, 2007a. 'Guarding the integrity of independent commissions', *Jawa Pos*, 29 November

_____, 2007b. 'The Anticorruption Commission: dissolved or empowered?', *Koran Tempo*, 1 December

_____, 2007c. 'Political corruption and corruption politics', *Tempo Magazine*, 42nd Edition, XXXVI, 10 – 16 December

_____, 2008a 'Controlling the Anticorruption Commission', *Pikiran Rakyat*, 7 January

_____, 2008b. 'Bali UNCAC conference: recovering the state assets losses', *Jawa Pos*, 30 January

_____, 2009. 'Presidential office reform and reorganisation', *Jurnal Negarawan* (Statesmen Journal), November Edition, Jakarta: State Secretariat of the Republic of Indonesia, pp. 125–49

Brata, R.A., 2009a. 'Why did Anticorruption Policies Fail? Implementation of the anticorruption policy of the authoritarian new order regime in Indonesia, 1971–1998', in C. Wescott, B. Bowornwathana and L. R. Jones (eds), *The Many Faces of Public Management Reform in the Asia-Pacific Region*, Research in Public Policy Analysis and Management, Volume 18, UK: Emerald Group Publishing Limited, Chapter 6, pp. 123-53

_____, 2009b. 'Questioning the budget power of the parliament', *Koran Tempo*, 21 April

_____, 2009c. 'Antasari, victim of conspiration?', *Koran Tempo*, 21 May

_____, 2009d. 'The undermining of reform by state capture', *The Jakarta Post*, 9 June

_____, 2009e. 'Anticorruption strategy', *Vivanews Online*, 24 June

_____, 2009f. 'Kleptobureaucracy', *Koran Tempo*, 21 October

_____, 2009h. 'Preventing the weakening and dissolution of the Anticorruption Commission', *Koran Tempo*, 7 November

_____, 2010b. 'Court mafia and social revolution', *Koran Tempo*, 6 January

_____, 2010c. 'Key factor in antigraft failure', *The Jakarta Post*, 16 February

Brown, A.J., 2004. 'Sorting the good, bad, and ugly: in search of a new taxonomy of international corruption definitions', Corruption: Expanding the Focus, Workshop, Canberra: Australian National University

Browne, A. and Wildavsky, A., 1984. 'What should evaluation mean to implementation?,' in J. Pressman and A.Wildavsky, *Implementation*, 3rd ed., Berkeley: University of California Press, Chapter 9, pp. 81–205

Chelimsky, E., 1985. 'Old patterns and new directions in program evaluation', in E. Chelimsky (ed.) *Program Evaluation: patterns and directions*, Washington, D.C.: Society for Public Administration

Chomsky, N., 1998. 'Indonesia, master card in Washington's hand', Indonesia, 66:1–6

Cribb, R., 2002. 'Unresolved problems in the Indonesian killings of 1965–1966,' *Asian Survey,* 42 (4): 550–63

Crouch, H., 1979. 'Patrimonialism and military rule in Indonesia,' *World Politics*, XXXI (4), (July): 571–87

Davidsen, S., Juwono, V. and Timberman, D.G. 2006. *Curbing Corruption in Indonesia 2004-2006: A Survey of National Policies and Approaches*, Washington D.C. and Jakarta: The United States-Indonesia Society and Centre for Strategic and International Studies

Denzin, N., 2006. *Sociological Methods: a sourcebook,* 5th edition, Piscataway: Aldine Transaction

Detikcom, 2005. 'UU 22/2004 akan diamandemen, KY ingin adili hakim nakal (22/2004 Act will be amended, the Judicial Commission wants to try bad judges)',*Detikcom,*http://www.detiknews.com/index.php/detik.read/tahun/2005/bulan/09/tgl/22/time/134503/idnews/446670/idkanal/10 (29 September 2005)

_____, 2006. 'Pengadilan tipikor tiga tahun lagi (the Anticorruption Court will end in three years)', *Detikcom*, http://www. detiknews.com/index.php (19 December 2006)

_____, 2007. 'Bebas dari penjara, Ismoko mau sekolah lagi (Free from the prison, Ismoko intends to be back to college)', *Detikcom,* http://www.detiknews.com/index.php/detik.read/tahun/2007/bulan/02/tgl/11/time/080154/idnews/740730/idkanal/10 (11 February 2007)

_____, 2008. 'ICW: Burhanuddin ditahan, besan SBY kok tidak jadi tersangka? (ICW: Burhanuddin detained, why is SBY's son's father-in-law not made a suspect?),' *Detiknews,* 11 April 2008, http://www.detiknews.com/comment/2008/04/11/103136/921882/10/ icw-burhanuddin-ditahan-besan-sby-kok-tidak-jadi-tersangka (13 August 2009).

Derthick, M., 1972. *New Towns in Town: why a federal program failed?* Washington, D.C.: Urban Institute

Doig, A., 1995. 'Good government and sustainable anti-corruption strategies: a role for independent anti-corruption agencies?', *Public Administration and Development,* 15:151–65

Dunn, W.N., 1981. *Public Policy Analysis: an introduction,* Englewood Cliffs: Prentice-Hall

Eigen, P., 1996. 'Combating corruption around the world', *Journal of Democracy,* 7 (1) January: 161–62

EIU Country Report 4th quarter, 1998. 'Indonesia,' London: the Economist Intelligence Unit

Elmore, R., 1979. 'Backward mapping', *Political Science Quarterly,* 94: 601–16

_____ ,1982. 'Backward mapping: implementation research and policy decisions', in W.Williams et al., *Studying Implementation,* Chatam: Chatam House Publisher, pp. 18-35

Eng, L.G., 2002. 'Enforcing accountability and the transparency of political parties", in Asian Development Bank 2002, *Taking action against corruption in Asia and the Pacific',* Conference Papers and Proceedings. Available from http://www.adb.org/documents/conference/combating_corruption/default.asp (6 July 2005)

Flyvbjerg, B., 2006. 'Five misunderstandings about case-study research', *Qualitative Inquiry*, 12 (2): 219–45

Fowler, E.D. and Lineberry, R.L., 1975. 'Comparative policy analysis and the problem of reciprocal causation', in C. Liske, W. Loehr, and J. McCamant (eds.). *Comparative Public Policy: issues, theories, and methods*, New York: Halsted, pp. 243–59

Fritzen, S., 2003. 'The 'misery' of implementation: governance, institutions, and anticorruption in Vietnam', paper presented at conference 'Governance, Institution, and Anticorruption in Asia, NZIA, New Zealand, 28–30 April 2003

Gardiner, J.A., 1975. 'Problems in the use of evaluation in law enforcement and criminal justice', in K.M. Dolbeare (ed.), *Public Policy Evaluation*, Beverly Hills: Sage Publications, pp. 177–85

Garnaut, R., 1979. 'Survey of recent developments', *Bulletin of Indonesian Economic Studies*, 1979, 15 (3): 1–42

Glaser, D., 1973. *Routinizing Evaluation: getting feedback on effectiveness of crime and delinquency program*, Washington, D.C.: Government Printing Office

Grabosky, P.N., 1990. 'Citizen co-production and corruption control', *Corruption and Reform* 5: 125–51

Gillespie, K. and Okhrulik, G., 2000. 'The political dimensions of corruption clean ups', in R. Williams and A. Doig (eds), *Controlling Corruption,* Cheltenham: Edward Elgar, pp. 77–8

Goggin, M.L., 1986. 'The "too few cases/too many variables", problems in implementation research', *The Western Political Quarterly*, 39: 328–47

Government of Indonesia, 1970. *Government Address on Anticorruption Bill to Gotong Royong House of Representatives (Dewan Perwakilan Rakyat Gotong Royong, DPR-GR) by Minister of Justice,* Department of Justice, 28 August 1970

_____, 1970. Parliamentary Proceedings, 1970. *General Comments from Members of Parliament's Bill on Anticorruption*, 4 September1970

_____, 1971. *State Presidential Speech at Plenary Cabinet Meeting on 30 January 1970*, Directorate General for Legal Development, Department of Justice, 1971

_____, 1971. *State Speech of the President of the Republic of Indonesia on the Enactment of the Anticorruption Law No.3/1971, 16 August 1970*, Directorate General for Legal Development, Department of Justice, 1971

_____, 1978. *National Social Economic Survey*, Statistical Central Bureau, July 1978

_____, 1997. *National Social Economic Survey*, Statistical Central Bureau, 1997

Government of Indonesia, 2002. *Special Criminal Investigation Directorate Report*, Attorney General Office of Indonesia, January 2002

_____, 2003. *Special Criminal Investigation Directorate Report*, Attorney General Office of Indonesia, January 2003

_____, 2003. *Special Criminal Investigation Directorate Report* , Attorney General Office of Indonesia, February 2003

_____, 2006. *Special Criminal Investigation Directorate Report*, Attorney General Office of Indonesia, February 2006

_____, 2006. *KPK Annual Report 2006*, Komisi Pemberantasan Korupsi (Anticorruption Commission)

_____, 2007. *KPK Annual Report 2007*, Komisi Pemberantasan Korupsi (Anticorruption Commission)

_____, 2008. *KPK Annual Report 2008*, Komisi Pemberantasan Korupsi (Anticorruption Commission)

_____, 2008. *Corruption Outlook 2008* , www.menkokesra.go.id, (22 January 2008)

Goudie, A.W. and Stasavage, D., 1998. 'A framework for the analysis of corruption', *Crime, Law, and Social Change* , 29: 113–59

Gunn, L., 1978. 'Why is implementation so difficult?', *Management Services in Government*, 33: 169–76

Hadiz, V.R. 2004. 'The state of corruption: Indonesia', in V. Bhargava and E. Bolongaita (eds.), *Challenging Corruption in Asia: Case Studies and a Framework for Action*, Washington D.C.: World Bank, pp.209–35

Hamzah, A., 1984. *Korupsi di Indonesia, Masalah dan Pemecahannya (Corruption in Indonesia, problems and solutions)*, Jakarta: Gramedia

_____, 1991. *Perkembangan Hukum Pidana Khusus (Development of special criminal laws)*, Jakarta: Rineka Cipta

_____, 2005. *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional (Corruption eradication through national and international criminal laws)*, Jakarta: Raja Grafindo Persada

Hanf, K., 1982. 'The implementation of regulatory policy: enforcement as bargaining', *European Journal of Political Research* 10: 159–72

Harbin, G., Gallagher, J.J., Lillie, T., and Eckland, J., 1992. 'Factors influencing state progress in the implementation of public law,' *Policy Sciences,* 25:103–15

Hargrove, E.C., 1975. *The Missing Link*, Washington, D.C.: Urban Institute

Harris, R., 2003. *Political Corruption: in and beyond the nation state,* London: Routledge

Hart, N.H., 2001.'Anticorruption strategies in Indonesia,' *Bulletin of Indonesian Economic Studies*, 37 (1): 65–82

Hartwell, E. 2009. *' "Wild Money": The Human Rights Consequences of Illegal Logging and Corruption in Indonesia's Forestry Sector'*, New York: Human Rights Watch

Heidenheimer, A.J, Johnston, M. and LeVine, V., 1989. *Political Corruption: a handbook*, New Brunswick: Transaction Publisher

Hellman, J.S., 1998. 'Winner take all: the politics of partial reforms in postcommunist transitions', *World Politics* 50 (2): 2003–4

Hellman, J.S., Jones, G. and Kaufmann, D., 2000. 'Seize the state, seize the day: state capture, corruption, and influence in transition', Policy Research Working Paper, the World Bank, September 2000

Hindess, B., 2004. *Corruption and Democracy in Australia*, Report 3, the Australian National University, Canberra

Hjern, B. and Hull, C., 1982. 'Implementation research as empirical constitutionalism', *European Journal of Political Research*, 10:105–16

Hodess, R. et al. (eds.), 2004. *Global Corruption Report,* London: Pluto Press and Transparency International

Holsti, O.R.,1969. *Content Analysis for the Social Sciences and Humanities,* Reading: Addison-Wesley

Hood, C.C., 1976. *The Limits of Administration*, London: John Wiley

Huberts, L.W.J.C., 1998. 'What can be done against public corruption and fraud: expert views on strategies to protect public integrity', *Crime, Law, and Social Change* 29: 209–24

Hudson, B., 1993. 'Michael Lipsky and street level bureaucracy: a neglected perspective,' in M. Hill, *The Policy Process: a reader*, New York: Harvester Wheatsheaf, pp. 386–98

Hukumonline 2008. 'Pertarungan wewenang polisi dan jaksa dalam menyidik perkara korupsi (The power struggle between the police and the prosecutor in investigating corruption cases)', *Hukumonline*, http://www.hukumonline.com/berita/baca/hol18538/pertarungan-wewenang-polisi-dan-jaksa-dalam-menyidik-perkara-korupsi-/page/1(13 February 2008)

Indonesia Corruption Watch (ICW), 2003. *Eksaminasi Publik: partisipasi masyarakat mengawasi peradilan (Public examinations: public participation in monitoring the courts)*, 2nd edition, Jakarta: ICW

Indonesia Daily News Online, 1999. 'Pertanggungjawabannya ditolak, Habibie mundur (His accountability report rejected, Habibie resigns)', *Indonesia Daily News Online,* http://www.IndoNews.com/http:// id.wikipedia.org/wiki/Abdurrahman_Wahid.

Isra, S., 2009. 'KPK: undang-undang pengadilan tipikor harus jadi (KPK: Anticorruption Court Act must be enacted)', *Tempointeraktif,* 2009http://www.tempointeraktif.com/hg/hukum/2009/07/03/brk,20090703-185153,id.html (3 July 2009).

Jacobs, J.B. and Anechiarico, F., 1992. 'Blacklisting public contractors as an anti-corruption and racketeering strategy', *Criminal Justice Ethics*, 11 (2): 64–76

Jawa Pos, 2004. 'With a debt payment letter, corruptors walk free', *Jawa Pos*, 10 August

Johnston, M., 1997. 'Public officials, private interests, and sustainable democracy: when politics and corruption meet,' in K.A. Eliot (ed.), *Corruption and the Global Economy*, Washington D.C.: Institute for International Economics, pp. 61–82

Kaufmann, D., Aart K. and Pablo Z.L., 2002. *Governance Matters II, Updated Indicators for 2000/01*, World Bank Policy Research Working Paper 2772

Klitgaard, R., 1988. *Controlling Corruption,* Berkeley: University of California Press

_____, 1997. 'Cleaning up and invigorating the civil service', *Public Administration and Development*, 17: 487–509

_____, 1998. 'Strategies against corruption', *foro Iberoamaricano Sobre a la Corrupcion* 15 – 16 June, CLAD, Santa Cruz de la Sierra.

_____, 2000. 'Subverting corruption', *Finance and Development,* 37(2): 2–3

Kompas, 2007. 'Laporan akhir tahun 2007: saatnya Kejaksaan Agung berlari cepat, menghapus cap buruk (Annual report 2007: it is the time for the Attorney General's Office to run fast, wiping bad images)', *Kompas*, 21 December

Konsorsium Reformasi Hukum Nasional and Lembaga Kajian dan Advokasi untuk Independensi Peradilan, 1999. *Menuju Independensi Kekuasaan Kehakiman: position paper (Towards independent judiciary power: position paper)*, Jakarta: Indonesian Center for Environmental Law

Koran Tempo, 2009. 'Aulia akui hubungi Rusli (Aulia acknowledges contacting Rusli)', *Koran Tempo,* 27 May

Kurer, O., 2005. 'Corruption: an alternative approach to its definition and measurement', *Political Studies*, 53: 222–39

Lamsdorff, J.G., 1999. 'Corruption in empirical research – review', http://www.gwdg.de/vwvw/research_area/lambsdorff.eresearch.html (22 February 2001).

Lamsdorff, J.G., 2002. 'Corruption and rent-seeking,' *Public Choice* 113, 1–2 (October 2002): 97–125

Langseth, P., 1996. 'Civil service reform: a general view', in S. Villadsen and F. Lubanga (eds), *Democratic Decentralization in Uganda: a new approach to local governance*, Kampala: Fountain Publishers, pp. 47–59

Larmour, P. 2009. 'How much corruption is there in the Pacific islands? A review of different approaches to measurement', *Pacific Economic Bulletin*, 24 (1): 144–60

Larmour, P. and Wolanin, N. (eds.), 2001. *Corruption and Anticorruption*, Canberra: Asia Pacific Press, Australian National University

Lemarchand, L. and Leggs, K., 1972. 'Political clientelism and development: a preliminary analysis', *Comparative Politics*, 4 (2):151–52

Lev, D. S., 1973. 'Judicial unification in post-colonial Indonesia', *Indonesia*, 16:1–37

_____, 1998. 'Wawancara Daniel S. Lev: 'Habibie mundur, bentuk presidium (Interview with Daniel S. Lev: Habibie resigns, form a presidium)', *Tempointeraktif*, 30 May

Liba, M., 2002. *14 Kendala Penegakan Hukum (14 law enforcement constraints)*, Jakarta: Yayasan Annisa

Lincoln Y. and Guba E.G., 1985. *Naturalist Inquiry*, Newbury Park: Sage Publications

Lindblom, C.E., 1965. *The Intelligence of Democracy*, New York: Free Press

_____, 1979. 'Still muddling through', *Public Administration Review*, 39 (6): 517–25.

Lindlof, T.R. and Taylor, B.C., 2002. *Qualitative Communication Research Methods* (2nd ed), Thousand Oaks: Sage Publications

Lipsky, M., 1971. 'Street-level bureaucracy and the analysis of urban reform', *Urban Affairs Quarterly*, 6: 391–409

_____, 1980. *Street Level Bureaucracy: dillemas of the individual in public services*, New York: Russell Sage Foundation

_____, 1993. 'Street level bureaucracy: an introduction' in M. Hill, *The Policy Process: a reader*, New York: Harvester Wheatsheaf

Lodge, M., 2002. 'The wrong type of regulation? Regulatory failure and the railways in Britain and Germany', *Jnl. Publ.* 22 (3): 271–97

Lopa, B., 1991. 'Mengungkap kasus korupsi (Uncover corruption cases)', *Kompas*, 10 April

_____, 1994. 'Marginal Deterrence', *Kompas*, 30 March

Lopa, B., 2001. *Kejahatan Korupsi dan Penegakan Hukum (Corruption crime and law enforcement)*, Jakarta: Penerbit Buku Kompas

Lovell, D.W., 2005. 'Corruption as a transitional phenomenon: understanding endemic corruption in post communist states' in D. Haller and C. Shore (eds), *Corruption: anthropological perspectives,* London: Pluto Press, pp. 65–82

MacDougall, J. A., 1982. 'Patterns of military control in the Indonesian higher central bureaucracy,' *Indonesia*, 33: 89–121

MacIntyre, A., 2001. 'Investment, property rights, and corruption in Indonesia,' in J.E. Campos (ed.), *Corruption: The boom and bust of East Asia*, Manila: Ateneo de Manila University Press

Mackie, J. and MacIntyre, A., 1994. 'Politics', in H. Hill (ed.), *Indonesia's New Order the Dynamics of Socio-Economic Transformation*, NSW: Allen & Unwin, pp. 1–53

Majone, G. and Wildavsky, A., 1978. 'Implementation as evolution', in H. Freeman (ed.), *Policy Studies Annual Review*, Vol.2, Beverly Hills: Sage, pp. 103 – 17

Malley, M., 1998. 'The 7th development cabinet: loyal to a fault?', *Indonesia*, 65 (April):155–78

Manion, M., 2004. *Corruption by Design: building clean government in mainland China and Hong Kong*, Cambridge: Harvard University Pres

Marpaung, L., 1992. *Proses Penanganan Perkara Pidana: bagian pertama, penyelidikan dan penyidikan (Criminal case handling process: part one, pre-investigation and investigation)*, Jakarta: Sinar Grafika

Marshall, C. and Rossman, G.B., 1998. *Designing Qualitative Research*, Thousand Oaks: Sage

Marquette, H., 2001. 'Corruption, democracy, and the World Bank', *Crime, Law, and Social Change* 36: 395–407

Masduki , T., 2005. 'Antiklimaks KPK (KPK anticlimax)', *Kompas*, 18 December

Masyarakat Transparansi Indonesia (MTI), 2007. *Catatan Akhir Tahun 2007: Reformasi Birokrasi: Harapan Baru dalam Pemberantasan Korupsi (End year notes 2007: bureaucratic reform, new hope in corruption eradication)*, Jakarta, (http://www.transparansi.or.id/?pilih=lihatpopulerberita&id=4946) (28 December 2007)

Mazmanian, D.A. and Sabatier, P.A., 1989. *Implementation and Public Policy*, Lanham: University Press of America

McDonald, H., 2008. 'No end to ambition,' *Sydney Morning Herald*, 28 January

Media Indonesia, 1996. 'DPR nilai pengawasan belum berjalan efektif (DPR argues supervision is not yet effective),' *Media Indonesia*, 14 November

Media Transparansi,1999. 'Hukum lemah, korupsi merajalela (Law is weak, corruption is widespread)', *Media Transparansi,* 4th edition, January, http://www.transparansi.or.id/majalah/edisi4/4berita_5.html.

Mellenbergh, G.J., 2008. 'Tests and questionnaires: construction and administration', in H.J. Adèr and G.J. Mellenberg (eds), with contributions by D.J. Hand, *Advising on Research Methods: a consultant's companion*, Huizen: Johannes van Kessel Publishing, Chapter 10, pp. 211–36

Miguel, E., Gertler, P. and Levine, D.I., 2005. *Does Social Capital Promote Industrialization? Evidence from a rapid industrializer*,' Berkeley: Econometrics Software Laboratory, University of California

Miller, S., 2004. 'Corruption: expanding the focus', Australian National University/Independent Commission against Corruption (NSW), Corruption and Anticorruption Executive Program, November 2004, Canberra

Mohammad, 1996. *Koordinasi antara Penyidik dan Penuntut Umum Dalam Penyelesaian Perkara (suatu penelitian di wilayah pengadilan negeri Aceh Tengah) (Coordination between the investigator and the prosecutor in legal case settlement (research in Central Aceh District Court jurisdiction)*, Tesis, Program Pascasarjana, Universitas Indonesia, Jakarta

Morris, S. D., 1999. 'Corruption and the Mexican political system: continuity and change', *Third World Quarterly*, 20 (3): 623–43

Muhaimin, Y. A., 1990. *Bisnis dan Politik: kebijaksanaan ekonomi Indonesia 1950-1980 (Business and politics: economic policy in Indonesia 1950-1980),* Jakarta: LP3S

Mulgan, R., 2004. 'Aristotle on legality and corruption', unpublished article, Australian National University, Canberra

Murphy, J.T., 1973. 'The education bureaucracies implement novel policy: the politics of title I of ESEA, 1965-1972' in A.P. Sindler (ed.), *Policy and Politics in America: six case studies,* Boston: Little Brown, pp. 160 – 98

Nelson, J.M., 1984. 'The political economy of stabilization: commitment, capacity and public response', *World Development*, 12 (10): 983–1006

O'Donoghue, T. and Punch K., 2003. *Qualitative Educational Research in Action: doing and reflecting,* London: Routledge

O'Keefe, T.G., 1982. 'Evaluating technology transfer: some problems and solutions', *Journal of Technology Transfer*, 6 (2): 53

Palumbo, D.J. (ed.), 1987. *The Politics of Program Evaluation*, Newbury Park: Sage Publications

Panday, D.R ., 2002. 'Transparency International and anticorruption work in Nepal', in Asian Development Bank , *Taking Action against Corruption in Asia and the Pacific*, Conference Papers and Proceedings. http://www.adb.org/documents/conference/combating_corruption/default.asp (6 July 2005)

Parsons, D.W., 1989. *The Power of the Financial Press: journalism and economic opinion in Britain and America*, Aldershot, Hants: Edward Elgar

Parsons, W., 1995. *Public Policy: an introduction to the theory and practice of policy analysis*, Cheltenham: Edward Elgar

Perlmutter, A., 1981. *Modern Authoritarianism, a comparative institutional analysis*, New Haven: Yale University Press

Philp, M., 1997. 'Defining political corruption', *Political Studies*, XLV:436–62

_____, 2001. 'Access, accountability and authority: corruption and the democratic process', *Crime, Law, and Social Change* 36: 357–77

Phongpaichit, P., 2000. *Corruption, Democracy and Civil Society*, Keynote Speech for the International Conference on Corruption, Democracy and Development organised by Forum Asia, CSP, COLPI and OSI, 18–19 September 2000, Bangkok.

Pompe, S., 2005. *The Indonesian Supreme Court, a study of institutional collapse*, Ithaca: Cornell South East Asia Program

Pope, J., 1999a. *The Need for, and Role of, an Independent Anti-Corruption Agency*, TI Working Paper Series,13 August (available online: www.transparency.org)

_____, 1999b. 'Elements of a successful anticorruption atrategy', in *Curbing Corruption: Toward a Model for Building National Integrity*, R. Stapenhurst and S. J. Kpundeh (eds.). Washington DC: Economic Development Institute, World Bank, pp. 97-104

Pressman, J. and Wildavsky, A., 1984. *Implementation*, 2nd edition, Berkeley: University of California Press

Student Council, the University of Indonesia, 1970. 'Proceedings of Panel Discussion on Corruption and Development,' 10–12 August 1970

Quade, E S., 1989. *Analysis for Public Decisions,* New York: Elsevier

Quah, Jon S.T., 1989. 'Singapore's experience in curbing corruption' in A.J. Heidenheimer, M. Johnston and V. LeVine (eds), *Political Corruption: a handbook*, New Brunswick: Transaction Publisher, pp. 848–49

_____,2008. 'Combating corruption in the Asia Pacific countries: what do we know and what need to be done?" In C. Wescott, B. Bowornwathana and L. R. Jones, *The Many Faces of Public Management Reform in the Asia- Pacific Region*. Bingley: Emerald Group Publishing, Chapter 2, pp. 15–43

Quah, Jon S.T., 2009. 'Benchmarking the performance of the anticorruption agencies in the Asia-Pacific countries', In A. K. Rajivan and R. Gampat (eds.), *Perpectives on Corruption and Human Development*, Vol.2, Delhi: Macmillan Publishers, Chapter 18, pp. 757-801

Republika, 2007. 'Buron Kejagung agar segera menyerahkan diri (The fugitive to surrender),' *Republika*, http://www.republika.co.id/online, (16 February 2007)

Rist, R.C., (ed.), 1990. *Program Evaluation and the Management of Government: patterns and prospects across eight nations*, New Brunswick: Transaction Publishers

Riyanto, S., 2007. 'Pemberantasan korupsi terkait sikap mental (The fight againts corruption linked to mentality)', *DetikNews*, http://www.detiknews.com/read/2007/06/08/160739/791417/10/pemberantasan-korupsi-terkait-sikap-mental?nd992203605 (8 July 2007).

Robertson-Snape, Fiona, 1999. 'Corruption, collusion and nepotism in Indonesia,' *Third World Quarterly*, 20 (3): 589-602

Robison, R.J., 1978. 'Toward a class analysis of the Indonesian military bureaucratic state', *Indonesia*, 25 (April):17–40

Rose-Ackerman, S., 1978. *Corruption, a Study in Political Economy*, New York: Academic Press

_____, 1996. 'Redesigning the state to fight corruption: transparency, competition, and privatization', *Viewpoint*, Note 75, the World Bank, April 1996

_____, 1999. *Corruption and Government: causes, consequences, reform*, Cambridge: Cambridge University Press

Rosendale, P., 1980. 'Survey of recent development', *Bulletin of Indonesian Economic Studies*, 16: 1–33

Sabatier, P.A., 1975. 'Social movements and regulatory agencies: toward a more adequate and less pessimistic theory of "clientele capture",' *Policy Sciences*, 6 (September): 301–42

Sabatier, P.A., 1986a. 'What can we learn from implementation research,' in F.X. Kaufmann, G. Majone, and V. Ostrom (eds), *Guidance, Control, and Evaluation in the Public Sector*, Berlin: de Gruyter, pp. 313–26

_____, 1986b. 'Top-down and bottom-up approaches to implementation research: a critical analysis and suggested synthesis', *Journal of Public Policy*, 6 (January): 21–48

_____, 1993. 'Top-down and bottom-up approaches to implementation research' in M. Hill, *The Policy Process: a reader*, New York: Harvester, Wheatsheaf

Saleh, I.,1990. *Hukum dan Ekonomi (Law and economy)*, Jakarta: Gramedia Pustaka Utama

Shah, A. and Schacter, M., 2004. 'Combating corruption: look before you leap,' *Finance and Development* (International Monetary Fund) 41 (4): 40–3

Shergold, P., 2004. 'Plan and deliver: avoiding bureaucratic hold up', Department of the Prime Minister and Cabinet (Australia). Available from http://www.dpmc.gov.au/speeches/shergold/plan-and-deliver-2004-11-17.cfm (7 April 2005)

Sherlock, S., 2002. 'Combating corruption in Indonesia? The Ombudsman and the Assets Auditing Commission,' *Bulletin of Indonesian Economic Studies,* 38 (3): 367–83

Simon, H.A., 1960. *The New Science of Management Decision*, Englewood Cliffs: Prentice-Hall

Sinar Harapan 2007. 'Kejaksaan didesak gunakan Star untuk usut kroni Suharto (The prosecution urged to use Star to investigate Suharto's cronies),' *Sinar Harapan*, 9 October

Slater, D., 2004. 'Indonesia's accountability trap: party cartels and presidential power after democratic transition,' *Indonesia*, 78 (October): 61–92

Skidmore, M.J., 1996. 'Promise and peril in combating corruption: Hong Kong's ICAC', *Annals of the American Academy of Political and Social Science*, 547(September): 118–30

Smith, T.M., 1971. 'Corruption, tradition and change,' *Indonesia*, 11 (April): 21 – 40

Soedirjo, 1981. *Kasasi Dalam Perkara Pidana (Appeals in criminal cases)*, Jakarta: Akademika Pressindo

Soedjono, D., 1977. *Pungli, Analisa Hukum dan Kriminologi (Extortion, legal and criminological analyses)*, Bandung: Karya Nusantara

Sousa, L., 2004. 'Corruption: expanding the focus', Australian National University/Independent Commission Against Corruption (NSW), Corruption and Anticorruption Executive Program, Canberra, November 2004, Canberra

Stapenhurst, R. and Sedigh, S., 1999. 'Introduction: an overview of the costs of corruption and strategies to deal with it', in R. Stapenhurst and S.J. Kpundeh (eds), *Curbing Corruption: toward a model for building national integrity,* World Bank, Washington: pp. 1–2

Suara Karya 2007. 'Pemberantasan korupsi: dua tahun berkibar, Timtas Tipikor bubar (Corruption eradication: two years in existence, the Anticorruption Team dissolved) ', *Suara Karya*,12 June

Suara Merdeka 2007. 'Kasus korupsi terbanyak di Semarang (Corruption cases the biggest number in Semarang),' *Suara Merdeka,* http://www.suaramerdeka.com/harian (12 December 2006).

_____, 2007. 'Pasal memperkaya orang lain akan dihapus (Articles on enriching others to be repealed)', *Suara Merdeka,* http://www.suaramerdeka.com/harian, 12/02/2007

Suara Merdeka 2007. 'RUU Tipikor tandingan timbulkan pro-kontra (Counter anticorruption bill causes pros and cons)', *Suara Merdeka,* http://www.suaramerdeka.com/harian, 16/02/07

Sujata, A., 2000. *Reformasi Dalam Penegakan Hukum (Law enforcement reform)*, Jakarta: Djambatan

Tasrif, S., 1970. 'RUU antikorupsi yang baru (New anticorruption law)', *Indonesia Raya*, 26–27 August

_____, 1971. *Menegakkan Rule of Law di Bawah Orde Baru (Enforcing the rule of law under New Order)*, Djakarta: Persatuan Advokat Indonesia (Peradin)

Tempointeraktif, 2004. 'Pemberantasan korupsi dari masa ke masa (Corruption eradication in history)', *Tempointeraktif*, 25 October

_____, 2004. 'Desentralisasi korupsi melalui otonomi daerah (Corruption decentralisation through regional autonomy)', *Tempointeraktif*, http://www.tempointeraktif.com/hg/narasi/2004/11/04/nrs,20041104-01,id.html (4 November 2004)

_____, 2005. '43 anggota DPRD Sumbar terpidana korupsi masih bebas (43 convicted West Sumatra parliamentarians still walk free),' *Tempointeraktif*, http://www.tempointeractive.com/hg/nasional/2005/09/27/brk,20050927-67166,id.html (27 September 2005)

_____, 2009. 'KPK: Undang-undang pengadilan tipikor harus jadi (KPK: Anticorruption court act must be enacted), *Tempointeraktif,* http://www.tempointeraktif.com/hg/hukum/2009/07/03/brk,20090703-185153,id.html (3 July 2009)

Tempo Magazine, 1990. 'Vonis kunci manipulasi SE (Key verdict in SE manipulation)', Number 11/XX, 12 May

The editors, 1998. 'Current data on the Indonesian military elite: October 1, 1995 to December 31, 1997,' *Indonesia*, 65 (April): 179–94

_____, 2000. 'Changes in civil-military relations since the fall of Suharto,' *Indonesia*, 70 (October): 125–38

The Jakarta Post, 2002. 'IBRA to file criminal charges against ex-bankers,' *The Jakarta Post*,http://www.thejakartapost.com/news/2002/11/12/ibra-file-criminal-charges-against-exbankers.html. (13 August 2009)

Tomsa, D., 2006. 'The defeat of centralized paternalism: factionalism, assertive regional cadres, and the long fall of Golkar chairman Akbar Tandjung', *Indonesia*, 81 (April): 1–22

Transparency International, 1995–2007. *Corruption Perceptions Index (CPI) 1995 – 2007*, http://www.transparency.org/policy_research/surveys_indices

Transparency International, 1995. Newsletter September 1995, www.transparency.org/content/download/.../tiq-september_1995

_____, 1999. *Bribe Payers Index 1999*, http://www.transparency.org/policy_research/surveys_indices/bpi/bpi_1999

_____, 2002. *Report 2002*, http://www.transparency.org/publications/publications/annual_reports/informe_anual_2002

_____, 2003. *Report 2003*, http://www.transparency.org/publications/publications/annual_reports/annual_report_2003

_____, 2004–2007. *Global Corruption Barometer 2004-2007*, http://www.transparency.org/policy_research/surveys_indices/gcb

Van Meter, D. and Van Horn, C., 1975. 'The policy implementation process: a conceptual framework', *Administration and Society*, 6: 445–88

Weber, M., 1991. 'From Max Weber: essays in sociology,' with an introduction by H.H. Gerth and C. W. Mills, London: Routledge

Weimer, J. (ed.), 1995. *Research Techniques in Human Engineering*, Englewood Cliffs: Prentice Hall

Weiss, M.L., 2007. 'What a little democracy can do: comparing trajectories of reform in Malaysia and Indonesia,' *Democratization*, 14 (1): 26–43

Williams, R. and Doig, A., 2000. *Controlling Corruption,* Cheltenham: Edward Elgar

Winarta, F., 2002. 'Penegakan Hukum Nasional di Bawah Tekanan Politik (National law enforcement under political pressure),' *Kompas*, 9 March

World Bank, 1997. *Corruption and Economic Development, helping countries combat corruption: the role of the World Bank*, http://www.imf.org (September 1997)

World Bank, 2000. *Anticorruption in Transition: a contribution to the policy debate,* Washington D.C.: World Bank

_____, 2003. *Combating Corruption in Indonesia : enhancing accountability for development,* World Bank, East Asia Poverty Reduction and Economic Management Unit, 20 October 2003

_____, 2007. 'Stolen Asset Recovery (StAR) Initiative: challenges, opportunities, and action plan,' (siteresources.worldbank.org/NEWS/Resources/Star), http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/03-Publication/Combating+Corruption+in+Indonesia-Oct15.pdf (June 2007)

Yin, R.K., 1982. 'Studying the implementation of public programs', in W. Williams et al. Eds.), *Studying Implementation: methodological and administrative issues,* Chatham: Chatham House Publisher, pp. 36 – 72

Zon, F. 2007. 'Asing sponsori amandemen UUD 1945 dan UU era reformasi (Foreigners sponsor the amendment of the 1945 Constitution and reform era laws)', *Antara*, 16 February 2007

Appendix A Analysis of the Anticorruption Law 1971

> "The problem is in the legal culture and morality of the enforcers. The anticorruption laws in Indonesia are the most frequently changed laws in the ASEAN countries, the most progressive. However, the abuses of power by the enforcers are the most progressive too". (Indriyanto Seno Adji, Professor of Criminal Law, the University of Indonesia, Legal Drafter of Anticorruption Laws 1999 and 2001)[489]

1. Background

A literal translation of Anticorruption Law 1971 is the Law on the Eradication of Corruption Criminal Offences. In the preamble the lawmakers stated that the offence of corruption had seriously damaged state finance and the economy, and impeded the advancement of national development. The Law was intended to replace the Law No.24/1960 on the Investigation, Prosecution, and Trial of the Offence of Corruption, which was no longer seen to meet the social development and legal needs, and was judged as ineffective in attaining its policy objectives.[490]

The introduction of Anticorruption Law 1971 was also due to public concerns about widespread corruption. In her response to the Government's Anticorruption Bill, Saljo, a

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[489]In an interview with me, 24 May 2006.

[490]In the period of the Old Order regime under President Soekarno (1945—1966), for the first time the regime introduced a repressive anticorruption regulation—Military High Command Regulation Number PRT/PM/06/1957 dated 9 April 1957 (Hamzah 2005:39). In its preamble, the military lawmakers reasoned that the regulation was enacted to overcome the ineffective measures of combating the activities which had damaged the finance and economy of the state—what the people then called 'korupsi' or corruption. Thus, it was the first time that the regulation introduced the term 'corruption'. It was introduced as the Penal Code was ineffective in combating the already pervasive corruption practices.

This regulation was then followed by the enactment of Military High Command of the Chief of the Army Regulation Number Prt/Peperpu/013/1958 dated 16 April 1957 and Military High Command of the Chief of the Navy Regulation Number Z/1/1/7, on 17 April 1958. As these Military Regulations were issued in an emergency situation, which was in force under article 60 of Martial Law Number 74/1957, after the situation became 'normal' the Old Order government then repealed them and enacted a more permanent law—Anticorruption Law Number 24/1960.

However, there was a principal difference between the military regulations and the Anticorruption Law 1960 in defining the scope of corrupt conduct (Ministry of Justice 1971: 51). Under the regulations corruption was classified into two types: criminal corruption and civil corruption. A corruption case which had a civil law character would be filed by a coordinating government agent directly to the high court. On the other hand, under the Anticorruption Law 1960, all types of corrupt conduct were qualified as criminal offences.

member of the DPR from *Golongan Karya*, said that the enactment of the Law was 'hoog tijd' (urgent) as corruption had long been a chronic problem, attracting strong complaints from the public, but was now more pervasive (Parliamentary Proceedings, 4 September 1970). In his State Presidential Speech at Plenary Cabinet Meeting on 30 January 1970, President Suharto blamed the problem of pervasive corruption on the bad governance of the Old Order regime and said it was the commitment of his government to combat corruption using both preventive and repressive measures.

2. Policy objectives

The policy objective of the Anticorruption Law can be understood from President Suharto's statement concerning the impact of corruption on development. In his State Presidential Speech at Plenary Cabinet Meeting on 30 January 1970, Suharto stated that corruption and other forms of economic crimes were not only against the law, justice and morality, but also constrained national development and reduced the public trust in the government. Therefore, he said, corruption had to be 'controlled and reduced to the minimum point'.

This objective of controlling corruption in the bureaucracy was again restated in his State Presidential Speech before the plenary session of the MPR on 16 August 1970. The draft Law which had been submitted to the DPR, Suharto said, was legally considered as 'a stronger tool to eradicate corruption'. He then urged DPR to speed up the process of enacting it

As had been explained by the Minister of Justice in his Government Address on Anticorruption Bill before the *Gotong Royong* House of Representatives on 28 August 1970, the Law was introduced to replace the Anticorruption Law 1960, which was seen as ineffective and inefficient in combating corruption. The minister further reasoned:

> Therefore, we need to consider the reasons for justifying the making of a new anticorruption law. The social and state dynamics have determined the soul and direction of the anticorruption criminal law reform. Our people demand an effective and efficient corruption eradication, which the Law 1960 lacked and therefore needed to be replaced. This eradication of corruption had to be reinforced in an effort to realise our commitment to be back to *Negara Hukum* (the rule of law), which recognises and highly respects the human rights of a person in a criminal process.

The Minister of Justice explained that the Anticorruption Law was a repressive method to effectively combat any deviant acts, which financially damaged the state and its economy. The Law, he further reasoned, was also intended to ease and speed up the procedure of proving corrupt criminal offences.

3. Scope and definitions of corruption

Article 1 of Anticorruption Law 1971 defined the type of corruption it intended to combat:

Convicted, due to corruption offences, are:

(1). a. Any person who unlawfully enriches himself, others, or a corporation, which directly or indirectly damages the state's finance and/or economy, or is reasonably known or foreseen by him that his act has damaged to the state's finance and/or economy.

b. Any person, intending to enrich himself, others, or a corporation, misuses his authority, opportunity, or facility affixed to him because of his office or position, which directly or indirectly may damage the state's finance and or economy.

c. Any person committing offences as stipulated in articles 209, 210, 387, 388, 415, 416, 417, 418, 419, 420, 423, 425, and 435 of the KUHP [Criminal Code].

d. Any person giving gift or promises to a public official as stipulated in article 2, by consideration of power or authority attached to his office, or by the giver of the gift and promises was reasonably assumed as attached to the official's office or position.

e. Any person, without any reasonable reasons, in due time, after accepting the gift or promises, as stipulated in articles 418, 419, and 420 of the KUHP, did not report such a gift or promise to the appropriate authority.

(2). a. Any person attempting or conspiring to commit the criminal offences as stipulated in section (1) a, b, c, d, e of this article.

These definitions widened the scope of the offence (Tasrif 1970). Not only a public official, but also a common person; for instance, someone bribing a public official, could be accused of committing corruption.

Some problematic definitions may further be examined. In its elucidation, the Law stated that one element of a corrupt act was abuse of public office in an 'inadequate manner'. It did not clearly explain it or elaborate the meaning of 'unlawfulness'. It only said that 'unlawful act' itself could not be construed as a punishable act, but as a precondition to commit an illegal enrichment. Tasrif (1971), however, interpreted the meaning of 'unlawfulness' to include both an unlawful act in formal sense, against the written law, and unlawful act in civil legal terms, that is, an act which is socially inadequate or injures the (property) rights of a person, against the unwritten law. This formulation was intended to expand the definitions of corruption and ease its proving.

The lawmakers further explained that 'state finance' did not cover the finance of a legal body receiving all of its capital from private sources, such private companies; while, the meaning of 'an act damaging to the state's economy' included criminal economic offences which broke government regulations.

Lopa (*Kompas* 2001), former Attorney General and professor of law, opined that the definitions were generally about 'material corruption', which extended to the giving and receiving of commissions, economic manipulations such as smuggling, and other forms of manipulations. Lopa asserted that an attempt to commit corruption was also constructed as 'a finished act of corruption'.Therefore, he contended that these definitions had a wider scope for targeting corruption, compared to those of Anticorruption Law 1960.

To prosecute a corrupt offender, Lopa further argued, there was no need for the financial damages to the state to have occurred. It was legally sufficient that the corrupt act might potentially damage to the state's finance. As long as the corrupt act of the offender had met all the elements in the definitions, he might be punished. However, Effendi observed that there was a misunderstanding among the enforcers that corruption had to damage to the state's finance, not all corrupt acts damage the state finance, for example passive bribery or extortion.[491]However, according to Harkrisnowo, in practice judges had the tendency not to punish the defendant if there was no actual state financial damage. Therefore, she opined, even though the Anticorruption Law 1971 was good enough there was a problem of misinterpreting it.[492]

According to Hamzah (1984:75), professor of criminal law and former senior prosecutor, material and financial corruption stipulated in the Anticorruption Law 1971 was only formulated in the above article 1 paragraph (1) a, b, d and e; while the other articles punished those persons obstructing the investigation, prosecution and trial of a corruption offence.[493]

This article 1, Hamzah further learned, was actually adopted from the previous Anticorruption Law 1960, with some modifications. The main differences were that in the 1960 Law the phrases 'an act of a person with or due to committing a criminal offence [*kejahatan*, equal to felony or serious criminal offence] or misdemeanor [*pelanggaran* or less serious crime]' preceded the words 'unlawfully enriches himself, others, or a corporation' and 'intending to enrich himself, others, or a corporation'. Therefore, he

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[491]Dr. Marwan Effendi, SH., Director, Special Crime Directorate, Attorney General Office—in an interview with me, 4 July 2006.
[492]Prof. Harkristuti Harkrisnowo, PhD, Professor of Criminal Law, the University of Indonesia, and Member of the Indonesia Law Commission—in an interview with me, 7 June 2006.
[493]See articles 29, 30 and 31.

asserted, the 1960 Law adopted 'a double proving': the prosecutor had to firstly prove that the defendant had committed a criminal offence or misdemeanor before proving his corrupt offence.

The public officials defined in the 1971 Law were extended to those who received salaries or payment from the state and regional government's finance or from a body or legal body that received the financial assistance from the state and regional governments; or other legal bodies benefiting from the capital resources and special treatment from the state and the public.[494]

Thus, Anticorruption Law 1971 adopted a public office-centred definition of corruption, which views corruption as misuse of public office for private gain (Brown 2004). However, the Law not only punished the corrupt public official, but also penalised any person who gave gifts, promises or bribes to the public official. The scope and definitions of corruption contained in this Law, therefore, covered not only the 'abuse of public power for private gain' (World Bank 1997:6), but also extended to the 'abuse of public roles or resources or the use of illegitimate forms of political influence by public or private parties' (see Johnston 1997:62).

In practice, the scope and definitions of corruption as stipulated in the 1971 Law, in particular the meanings of 'unlawfulness' or against the law (*melawan hukum*)' and 'damage to the state's finance' created problems and controversies. The scope and meaning of 'unlawfulness' were subjective, and therefore open to different interpretations. There was no objective criterion to judge which act would be considered socially acceptable. The final interpretation would be in the subjective judgment of the judge.

[494]Article 2.

There are some *yurisprudensi*[495], however, which interpreted and applied the meaning of unlawfulness in corruption cases. For example, the Justice Panel of the Supreme Court in State vs. Otjo[496] released the defendant from prosecution even though he had broken Anticorruption Law 1971. Otjo, the Head of the Forestry Unit of Garut District Government, was accused of embezzling his office's budget. He had used it as loans to 'help' his subordinates build their homes and for other employees' welfare purposes. In the Court, the elements of 'unlawfulness' of the embezzlement in the sense of breaking written formal law were proven. However, the prosecutor failed to prove that it was socially inadequate or contradicted the living social norms or unwritten law. The Panel reasoned that the defendant's act was not a corrupt criminal offence as his act served the public interest (the welfare of the employees) and did not damage the state's finances. Thus, it was socially acceptable.

However, in the case of State vs. Soetopo[497], the Justice Panel of the Supreme Court rejected the use of 'unlawful or *delict materiil'* defence to justify the defendant's corrupt act. The defendant, a tax examiner of Magelang local government, had used this legal defence to justify collecting IDR 5,000 from taxpayers. He argued that he did it because his salary was inadequate to cover his living costs. The Panel, however, refused his defence, reasoning that his corrupt act was socially unacceptable.

Under Anticorruption Law 1971, the prosecutor had to prove the element of 'unlawfulness' of the defendant's corrupt act in both *delict formiil* and *materiil* senses. For instance, in the case of State vs. Sabar Soediman[498], who was Managing Director of PT. Telkom Bandung (state-owned telecommunication company), the Bandung District Court panel of judges

[495]The term equally has the same meaning with the legal precedence in common law, but in the Indonesian legal system it has no legal binding for judges to follow.
[496]In State vs Otjo Danaatmadja, Supreme Court Decision Number 81 K/Kr./1973, 30 March 1977.
[497]Supreme Court Decision Number 117/K/Kr./1968, 2 July 1969.
[498]State vs Sabar Soediman, Supreme Court Decision Number 97 K/Kr./1973 annulling Bandung District Court Decision Number 23/Pid./1970.

reasoned that Sabar Soediman's act of depositing the company's money in a state-owned bank qualified as an act of corruption. However, the Justice Panel of the Supreme Court acquitted him, saying, first, his act benefited the company; second, it was done under the instruction of his superior; third, he served the public interest; and fourth, his act did not damage state finances. Therefore, the Panel reasoned, his act was lawful and not corrupt.

Definition-related problems are typical of a public office-centred definition of corruption as there are no objective measures of when a public official has acted against the living or unwritten law, or clarity in terms of when a public office was misused (Gillespie and Okruhlik in Williams and Doig 2000:78). Moreover, reliance on written legal norms or 'formal unlawfulness' may also be problematic. As the above cases have shown, the corrupt act may contradict written legal norms, but be seen as 'part of the way things are done' (Hindess 2004:5), and thus, are socially acceptable. Furthermore, the legal definition of corruption may introduce biases by excluding 'acts which are either not covered by law or are legally ambiguous' (Scott in William 2000:58–9).

4. Powers of the implementing agencies

Even though the power and authority of the law enforcers were already stipulated in relevant legislation, the Anticorruption Law 1971 granted them specific powers to combat corrupt activities. The Law granted investigators the power to require a witness to disclose information, even though he or she was legally forbidden to do so.[499] Moreover, based on a request from the Attorney General, the Minister of Finance might give permission to the investigator to require a bank to disclose financial information about the suspect.[500]The Minister of Finance must give this permission within 14 days of the acceptance of the letter

[499] Article 8.
[500] Article 9 (1).

of request.[501] The investigator also had the authority to open, inspect, and seize a document or delivery from post and telecommunication offices and other agencies, if he suspected that these had a connection with the case under investigation.[502]

If the trial judge so wished, the accused might conduct his own defence to prove that he was not guilty of committing the charged corruption offence.[503] This discretionary permission of the judge might be given if the accused reasonably believed that his actions did not damage state finances or the economy[504], or were done in the public interest.[505] If the accused was able to prove that he was not guilty of the crime, his defence was used to support his case. Conversely, if the accused did not provide evidence to disprove the charge, this fact would be used against him.[506] However, in both cases the prosecutor still had an obligation to prove the guilt of the accused.[507]

At the trial, the accused had an obligation to disclose all his wealth and that of his spouse and children, and every person and corporation known or presumed by him to have a connection with the case, if the judge so required.[508] If he failed to convincingly prove legitimate sources of his wealth, propotionate to his income, his failure could be used to support evidence given by witnesses confirming that he had committed the corruption offence.[509]

Article 17 of the Anticorruption Bill did not adopt the reverse burden of proof. The Minister of Justice reasoned that adoption of this method would contradict the 'nonself-incrimination' principle, and was therefore, against the rule of law and the human rights of the accused.

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[501] Article 9 (3).
[502] Article 12.
[503] Article 17 (1).
[504] Article 17 (2a).
[505] Article 17 (2b).
[506] Article 17 (4).
[507] Article 17 (3).
[508] Article 18 (1).
[509] Article 18 (2).

Like the investigator, the judge had the power to request a witness to disclose information, even though the witness was legally protected from doing so.[510] In practice, there were confusion and power conflicts between the police and the prosecution. The source of these conflicts and misunderstandings was the transitional provision in article 284 (2) of the KUHAP, which stated:

> Within two years after this Act is ratified, all criminal cases shall be processed according to this Act, with the tentative exceptions to the special provisions on the criminal procedures as stipulated in certain laws, until these laws are changed and or revoked.

The certain laws mentioned included economic crime and anticorruption laws. The police intepreted this provision and other provisions of the KUHAP to mean they had the power to investigate corruption cases. The prosecutor contended that based on the transitional provision only the prosecutor had the power to investigate corruption offences. This conflict of power created problems in the enforcement of Anticorruption Law 1971.

5. Specific criminal procedures

> "Corruption is an extraordinary crime. However, we should be careful in applying extraordinary law enforcement in corruption cases. We should not break the general legal principles. The application of the reverse burden of proof is not always easy. From the public interest point of view, the investigation by the police or prosecutor has more legal significance than the information disclosed by the defendant. The information from the defendant may be easily manipulated."
> (Prof.Dr.Bagir Manan SH, McL, Chief Justice and President of the Supreme Court, Professor of Constitutional Law, Padjadjaran University)[511]

Anticorruption Law 1971 not only contains substantive norms against corruption, but also structures its implementation process. It contains the procedural law for the investigation, prosecution and trial of corruption offences. Because of the special characteristics of corruption, Indonesia needed an anticorruption law which was able to accelerate the procedure and ease the proving of a corruption offence, without harming the human rights of

[510] Article 21.
[511] In an interview with me, 21 June 2006.

a person involved in the criminal process (Minister of Justice 1970). Anticorruption Law 1960, the Penal Code (KUHP), and the Criminal Procedural Code (KUHAP) lacked these requirements.

Anticorruption Law 1971 stipulated that if it did not specifically regulate the investigation and prosecution of corruption offences, the pre-trial process would be conducted according to the applicable procedural laws.[512] Thus, the legal principle *lex speciali derogat lex generali* was also applied in corruption cases. In some cases, the Anticorruption Law did not follow the criminal process as detailed in the Criminal Procedural Codes—*Reglement Indonesia Yang Diperbaharui* (RIB) or Reformed Indonesia *Reglement* and the KUHAP. According to Anticorruption Law 1971, prosecutors were obliged to prioritise corruption cases ahead of other criminal cases. Furthermore, the cases had to be tried in the speediest fashion.[513]

If the accused did not appear before the court without legitimate reasons after he was lawfully summoned, the court could try the case *in absentia*.[514]In the trial of general crime, an *in absentia* trial can only occur for less serious crimes (Hamzah 1991:12). The accused or his lawyer could appeal to the High Court[515]against the *in absentia* trial's decision.

If the accused was deceased before a final, unappealed decision of the court was reached, but there was strong, reasonable suspicion that he had committed the accused corruption, the judge, based on the request of the prosecutor, might decide to confiscate the forfeited evidence.[516] The lawyer or the deceased accused's legal representative was not allowed to

[512]Article 3.
[513] Article 4.
[514] Article 23 (1).
[515] Article 23 (2).
[516] Article 23 (5a).

appeal this decision.[517] In a trial of general crime, the case will be closed if the accused dies during the court proceedings.

If the corruption offence was committed jointly by a member of the armed forces and a civilian under different jurisdictions, the Attorney General, as the highest prosecutor, had the power to coordinate the investigation of the corruption offence.[518]

6. Legal sanctions

In general criminal liabilities imposed by the Anticorruption Bill were also wider than those imposed by the Penal Code (Hamzah 1984:66). The Minister of Justice (1970) explained that the draft law increased the criminal punishment for corruption offenders. From the types of corruption offences as stipulated in article 1 paragraphs (1) and (2), for example embezzelment, bribery, gratification, abuse of public office or illicit enrichment, the Anticorruption Law punished corruption offenders with the same punishment; it punished the convicted corruptor by life sentence at a maximum or 20-year imprisonment and/or IDR 30 million fine. The Anticorruption Law 1971 did not set the minimum sentences.[519] Moreover, it also punished those who had attempted or conspired to commit corruption offences.[520] In addition, the corrupt wealth of the convicted corruptor might also be confiscated, as stipulated in article 34.

The Law punished the person who obstructed justice in the investigation, prosecution and trial of a corruption case by a 12-year incarceration maximum penalty and/or IDR 5 million

[517] Article 23 (6).
[518] Article 26
[519] Article 28.
[520] Article 1 (2). Utrecht (1968:393) reasoned that the purpose of sentencing those who attempted to commit a criminal offence was to protect the society from the evil intent of the offender. Thus, without having completed his corrupt offence or crime the offender may be punished if he has the intention to commit such crimes. This preventive function—which was also adopted in the Penal Code (KUHP)—he said, was consistent with the ideals of modern criminal law.

fine.[521] The same maximum penalty was also laid down to punish the person who intentionally did not present the required information or provided false information.[522] The maximum penalty formula were also fixed to sentence the corrupt offences stipulated in the Criminal Code by six-year imprisonment and/or IDR 4 million fine.[523]

In article 36, the Law 1971 transitionally regulated corruption offences which had been already investigated and tried before the Law came into effect (29 March 1971). It stipulated that such an offence would be tried by the law applicable at the time the offence was being committed.

7. Related legislation

> "When dealing with corruption cases, we have to study other regulations or laws related to the anticorruption law."
> (Monang Siahaan, Assistant Head, Special Crime Division, Bali Province Prosecution Office)[524]

The New Order government introduced some important implementing legislation and related legislation dealing with the investigation, prosecution and trial of corruption offences; some legislation was the product of the Old Order government. Of these laws, some were related to the power, duties and responsibilities of the police, prosecutor, and judge in the general criminal process; others governed the penal laws and criminal procedures related to combating corruption offences.

The important laws in force under the New Order regime structured the criminal process. These were the modified colonial law of civil and criminal procedures of the Dutch, the 'Het Herziene Inlandsch Reglement' (HIR) or in Indonesian 'Reglemen Indonesia yang

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[521] Article 29.
[522] Article 30.
[523] Article 32.
[524] In an interview with me, 7 August 2006.

dibaharui' (RIB), which was promulgated in State Gazzette Number 44/1941, and Law Number 8/1981 on Criminal Procedural Code (*Kitab Undang-undang Hukum Acara Pidana*/KUHAP). The modified HIR was in force from 1941 until it was revoked by the KUHAP in 1981. The KUHAP is still in force at present.[525]

Through the HIR, the Dutch colonial government modified its previous law, 'Inlandsch Reglement'/IR, which had been enforced in Indonesia since 1848. Both these Laws, however, permitted Indonesians and Europeans to be treated differently. Indonesians were tried in a court called 'Landraad', while trial for Europeans was under the jurisdiction of 'Raad van Justitie'. The two courts employed different laws of criminal procedures. The modification to IR was intended to strengthen the criminal procedural law of the Raad van Justitie, not to abolish the dualism in the criminal process.

In 1951, six years after Indonesia's independence, the Indonesian Government abolished the dualism by enacting Emergency Law Number 1/1951. Under that Law all civilians in Indonesia's jurisdictions were tried under the criminal procedural law of HIR. However, the 1951 Law retained most of the criminal procedural rules contained in the HIR, which, according the lawmakers of the KUHAP, did not respect human rights.

The KUHAP was a codification and unification of criminal procedural rules stipulated in several laws. The KUHAP, which consisted of 286 articles and came into effect on 31 December 1981, regulated the criminal processes, authorities and activities involved in this process, from the very beginning to the very end of the process.

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[525]In my interview with Prof.DR Andi Hamzah SH, 24 May 2006, he informed me that the KUHAP was now under revision. He is the head and chief legal drafter of an interdepartmental team on the KUHAP revision.

The other substantive implementing legislation was Bribery Act Number 11/1980. This Act criminalised forms of bribery acts not yet covered and punished by existing legislation. Consisting of only six articles, this Act formalised the dynamic sociological perceptions of bribery. This Act punished any person who gave or promised anything of value to a public official to induce him to act or not act against his public duties. It punished the briber with a maximum five year incarceration and IDR 15 million fine.[526] The official or bribee who was aware of the intentions of the briber was penalised by a maximum three years incarceration and IDR 15 million fine.[527] The Act extended its force to bribery acts committed outside the jurisdiction of Indonesia.[528]

[526] Article 2.
[527] Article 3.
[528] Article 4.

Appendix B Analysis of the Anticorruption Law 1999

1. Background

Anticorruption Law Number 31/1999 came into force on 16 August 1999 under the President Habibie administration. Literally translated, its title is 'Corruption Criminal Offence Eradication Act'. It consists of 45 articles, containing both substantive and criminal procedure provisions on combating corruption.The enactment of Anticorruption Law 1999 was intended to replace Anticorruption Law 1971, to meet the changing legal needs of society, to prevent and combat all forms of corrupt activities more effectively.

In the elucidation of the Anticorruption Law 1999, the lawmakers explained the background on the enactment of the Law. The objective of the national development, they stated, is to create a fair, prosperous, and law-abiding society. To achieve this objective, the lawmakers stressed the importance of intensifying and strengthening the efforts to continually prevent and eradicate criminal offences, in particular corruption criminal offences.

The lawmakers observed that the demands of the people to eradicate corrupt activities and other deviant behaviours had been increasing. In reality, the lawmakers believed that corruption had significantly damaged the state's finance and economy, which in turn triggered the crises in all sectors of social life. Therefore, they urged, while respecting human rights and public interest, the eradication of corruption must be intensified.

2. Policy objectives

The policy objective intended by the lawmakers is to eradicate corruption. In the preamble of the 1999 Law, they stressed the negative effects of corruption in terms of its damage to the state's finance and economy and in impeding national development. Therefore, they

stated, to realise a prosperous and just society corruption must be eradicated. To be more effective in preventing and combating corruption, they asserted, a new anticorruption act replacing Anticorruption Law 1971 which was no longer consistent with the social legal development needs, had to be enacted. Thus, similar to the policy objective of most criminal policies, which is to reduce crime, the policy objective of Anticorruption Law 1999 is to reduce or control corrupt criminal offences.

3. Scope and definitions of corruption

In the elucidation of the Anticorruption Law 1999, the lawmakers realised that to fight the various modes (*modus operandi*) of corruption in the public sector which had become more sophisticated and complex, the definition of corrupt criminal offences had to be extended to include all corrupt acts unlawfully enriching the offender, other persons or corporations. The meaning of 'unlawfulness' (*melawan hukum*) covered both acts against written laws (formal unlawfulness, *melawan hukum formil*) and those against unwritten laws or social norms (substantive unlawfulness, *melawan hukum materiil*).

The lawmakers purposely attacked forms of corrupt activities or behaviours, which were socially unacceptable or unethical, but not regulated and penalised by statutory laws. Moreover, the lawmakers constructed the corrupt offence as a formal criminal offence (*delict formiil*). This legally means that even though the corruptor repays the money or property, he cannot escape from prosecution. If found guilty of meeting all elements of the statutory definitions of a corrupt offence, the perpetrator will be punished.

Anticorruption Law 1999 further details the scope and definitions of corruption. Under this Law, the corrupt actor as a legal subject is extended not only to any person, public official or

private actor, but also to corporations.[529] Moreover, the definition of a public official is extended to cover those employed by a corporation receiving financial assistance from the state or local governments or benefiting from capital and facility given by the state or the public.[530]

Anticorruption Law 1999 defined some important behaviours and activities as corruption. It punishes any person who unlawfully enriches himself, others, or corporations, and which *may* damage the state's finance or economy.[531] In certain circumstances this corrupt act may incur the death sentence.[532] The term 'certain circumstances' includes a corrupt act committed by recidivists or in a state emergency, national natural disaster, or economic and monetary crises.[533] The Law also punishes whoever benefits himself, others, or corporations by misusing his authority, opportunity, facility attached to his office, which may injure the state's finance or economy.[534] Returning state monies does not excuse the offender from punishment.[535]

The definitions of corruption stipulated in the Anticorruption Law 1999 have met the criminal elements contained in the international definitions of corruption. Similar to the World Bank (World Bank 1997:6), this Law's definition of a corrupt act covers 'abuse of public power for private gain'. This also corresponds with Manion's definition of corruption (2004:5): '[corruption is]...the abuse of public office for private gain in violation of rules'. However, this Law stresses the phrase 'which may injure the state's finance or economy' as

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[529] Article 1 (1).
[530] Article 1 (2 (d) and (e)).
[531] Article 2 (1).
[532] Article 2 (2).
[533] Elucidation of the Anticorruption Law 1999.
[534] Article 3.
[535] Article 4.

the defining characteristic or criminal element of a corrupt act. In practice, this has caused difficulties in proving the corrupt elements of the act.

Anticorruption Law 1999 imports several articles on corrupt criminal offences from the Penal Code (*Kitab Undang-undang Hukum Pidana*, KUHP). The provisions adopted are articles 209, 210, 387, 388, 415, 416, 417, 418, 419, 420, 423, 425, and 435. Thus, the corrupt acts punishable by imprisonment and/or fine are:

1. Bribery to public official (article 209).[536]
2. Bribery to judge and defence counsel (article 210).[537]
3. Fraudulent acts by building contractor, expert or trader, which may endanger the safety of people, property, state in war.

   Deceptive conduct by any person when delivering supplies to the navy, and the supervisor who knowingly failed to prevent such acts from occurring (articles 387 and 388).[538]
4. Embezzlement by public officials or those commissioning public offices, or allowing such embezzlement or assistance by such officials to any person committing the embezzlement (article 415).[539]
5. Forgery by public officials or those commissioning public offices on any accounting books, schedules, or lists intended for administrative audit (article 416).[540]
6. Any act or allowing such an act to occur by public officials or those commissioning public offices of embezzling or destroying any exhibits, documents, deeds, books under his control *ex officio* intended to use as evidence before the authorities (article 417).[541]
7. Accepting gratification or bribe by public officials, judges, and defence counsels (articles 418, 419, 420).[542]
8. Extortion (articles 423, 425 (1) and (2))[543] and private use of state-owned land (article 425 (3))[544] by public officials.

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[536] Article 5 of the Anticorruption Law 1999.
[537] Article 6.
[538] Article 7.
[539] Article 8.
[540] Article 9.
[541] Article 10.
[542] Articles 11 and 12.
[543] Article 12.
[544] Article 12.

9. Any corrupt involvement, direct or indirect, by public officials in procurement, delivery and leasing when such an official is tasked with managing or supervising these activities (article 435).[545]

Thus, as Klitgaard (1997:500) said, corruption defined in the 1999 Law has many meanings. At the broadest level, it is essentially 'misuse of office for unofficial ends' (Klitgaard 1997:500). Klitgaard further argued that the different forms of corruption have no equal detrimental effects; therefore the 1999 Law should impose unequal penalties for different forms of corruption. This topic will be discussed in the next section.

Anticorruption Law 1999 also criminalises and punishes other forms of corrupt activities. For example, whoever gives a gift or promise to a public official, connecting such a gift or promise to the power and authority attached to the office or position of the public official, is guilty of committing corrupt offence.[546] The Law punishes not only the offender, but also those who attempt, assist, and conspire to commit a corrupt offence.[547] Moreover, it penalises any person outside the jurisdiction of Indonesia who gives assistance, opportunity, facility, or information to the corrupt offender.[548]

4. Powers of the implementing agencies

Most of the powers and duties of the law enforcers are drawn from the Criminal Procedure Code/KUHAP and the respective laws governing their powers and duties. The KUHAP generally structures the processes of investigating, prosecuting, and trying corruption offences.

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[545] Article 12.
[546] Article 13.
[547] Article 15.
[548] Article 16.

The lawmakers punish whoever obstructs justice or constrains the implementation process. Any person who intentionally prevents, obstructs, impedes directly or indirectly the effective investigation, prosecution and trial of corruption cases shall be punishable by imprisonment and/or fine.[549] Those people who refuse to give information to the law enforcers or give incorrect or misleading information shall also be punished.[550]A witness or others connected with a corruption case will be punished if they disclose or make known the identity of a person reporting a suspected corruption offence.[551]

In order to punish those obstructing justice, Anticorruption Law 1999 imports articles from the Criminal Code (KUHP). This importation is stipulated in article 22 of the Anticorruption Law 1999. Moreover, those who falsely complain or inform the law enforcers about the commission of a criminal offence will be punished (article 220 KUHP). Also punished, those who conceal and destroy the seized exhibits and assisted or failed to prevent these offences from occurring (article 231 KUHP). Punishable by imprisonment, any public official who abuses his power to force a person to act, not to act, or allow a criminal offence to occur (article 421 KUHP).

The lawmakers also punish the law enforcers or investigators who abuse their powers and forcibly gain a confession or information (article 422 KUHP). Also sentenced by incarceration are those public officials or investigators who by force enter a house, a room, or a place of others illegally (article 429 KUHP). If the investigator illegally confiscates letters, documents, post and telegraphic materials, goods, or instructs telecommunication officials to disclose phone conversation, he will also be punished by imprisonment (article 430 KUHP).

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[549] Article 21.
[550] Article 22.
[551] Article 24.

5. Specific criminal procedures

In order to settle a corruption case quickly, the lawmakers prioritised the investigation, prosecution, and trial of corruption offences.[552] In a difficult corruption case, the Attorney General may establish a joint task force to investigate and prosecute this offence.[553] The elucidation of the Anticorruption Law defines what is meant by 'difficult corruption cases'. They are corruption cases:

1. Involving cross sectional cases.
2. Done using sophisticated technology.
3. Committed by high state officials such as ministers or members of parliament.

For investigative purposes, the suspect is obliged to disclose information regarding his property and that of his spouse and child, and any person or corporation, suspected of having being connected with his suspected corrupt offence.[554] Moreover, the investigator, prosecutor, and judge have the power to request information from a bank concerning the bank accounts or finances of the suspect or accused.[555] They may also instruct the bank to block the suspect's bank accounts.[556] Such a request is addressed to the governor of the Central Bank, who must approve this request within three days.[557]

Anticorruption Law 1999 stipulates important provisions to recover state monies or damage. If the investigator finds that one or more elements of the corruption offence were not supported by sufficient evidence, but there was real proof of the state asset lost, he might proceed to submit the investigation dossier to the prosecutor for civil prosecution.[558]

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[552] Article 25.
[553] Article 27.
[554] Article 28.
[555] Article 29 (1).
[556] Article 29 (4)
[557] Article 29 (3).
[558] Articles 32 (1) and 33.

Moreover, decision of the court acquitting the accused in a corruption case will not waive the right of the state to recover the state finance lost through civil prosecution.[559] In a case where the accused died during the trial proceedings, and concrete evidence of state financial loss was found, the prosecutor still has the power to bring a civil case against the heirs of the deceased accused.[560]

Every person has the obligation to give information as a witness or expert, except the parents or spouse of the accused.[561] The obligation to testify also applies to those officials who are, by law or the nature of their offices, obliged to keep the confidentiality of the requested information. The exceptions are religious officials who, according to their faith, have an obligation to maintain the confidentiality of the information.[562]

To overcome the difficulty in proving corruption cases, the lawmakers formulated a provision on 'reverse burden of proof.' This is in accordance with the criminal legal principle followed by most countries adopting the continental legal system, including Indonesia. The prosecutor has an obligation to prove his accusation. However, the lawmakers adopted a somewhat different reverse burden of proof called a 'balanced or limited reverse burden of proof' (*pembuktian terbalik yang terbatas atau seimbang).* In this procedure, the accused has the right to prove that he did not commit the accused corruption offence.[563] If the accused is able to prove his innocence this evidence will be used to his benefit in the trial process.[564]

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[559] Article 32 (2).
[560] Article 34.
[561] Article 35 (1).
[562] Article 36.
[563] Article 37 (1).
[564] Article 37 (2).

If requested by the judge, the accused has an obligation to disclose all his property and that of his wife, child, and any person or corporation suspected of having a connection with the tried corruption case.[565] If he fails to prove his wealth, which is disproportionate to his income or source of earnings, this evidence will be used to support the existing evidence indicating his guilt.[566] However, the prosecutor still has an obligation to prove that the accused is guilty of committing the corruption offence. In practice, however, this 'balanced reverse burden of proof' can be problematic: 'what if an honest person cannot prove his wealth? He might be not careful in administering his properties'.[567]

Every effort was made by the lawmakers to recover state assets loss.[568] One way is to consider the possibility of trying the accused without his presence (*in absentia* proceedings). This will occur if the accused has been lawfully summoned but does not appear in the court without any legitimate reasons; the examination of his case will be continued and decided without his presence.[569] The accused or his legal representative may appeal such a decision. In the case where the accused was deceased before the judge decided his case, and there was strong, reasonable evidence that he had committed the alleged corrupt offence, the judge might, based on the prosecution's demand, confiscate the seized stolen property or exhibits.[570] This decision, however, cannot be appealed.[571]

Another important provision of Anticorruption Law 1999 in terms of the democratic workings of the law enforcement mechanisms for combating corruption in the public sector is public participation in the anticorruption movement. The people may participate in the

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[565] Article 37 (3).
[566] Article 37 (4).
[567] Interview with Henri Silaen, Judge, East Kalimantan High Court, 26 July 2006.
[568] See elucidation of article 38 of the Anticorruption Law 1999.
[569] Article 38 (1).
[570] Article 38 (5 and 6).
[571] Article 38 (6).

prevention and eradication of corruption.[572] For this purpose, the government will reward and honour those who have significantly contributed to the prevention and eradication of corruption.[573] Participation may be in the form of:

1. The right to seek, obtain, and provide information on a suspected corrupt offence.
2. The right to get assistance in seeking, obtaining, and providing information about a suspected corrupt offence from the law enforcers handling the corruption case.
3. The right to give recommendation and opinion to the law enforcers in charge of handling a corruption case.
4. The right to get a response from the law enforcers regarding the progress of his report on alleged corruption offence within 30 days at the latest. [574]
5. The right to legal protection when using these rights and when summoned as the informer, witness, or expert witness in the investigation, prosecution, and trial processes of a corruption case.

Anticorruption Law 1999 also stipulates an important provision in the history of anticorruption in Indonesia. It instructed the government to establish an anticorruption commission within two years of this Law coming into force or in 2001 at the latest.[575] This commission would have the power and duty to pre-investigate, investigate and prosecute corruption cases.[576] Membership of this commission would be composed of people from the government and the public.[577]

Anticorruption Law 1999 does not stipulate a transitional provision governing the investigation, prosecution, and trial of corruption offences committed before this Law came into effect on 16 August 1999. This Law only states that when it came into force

[572] Article 41 (1 and 3).
[573] Article 42 (1).
[574] Article 41 (2).
[575] Article 43 (1).
[576] Article 43 (2).
[577] Article 43 (3).

Anticorruption Law Number 3/1971 would cease to have legal effect.[578] This has attracted controversy and legal debate, and created legal problems.

6. Legal sanctions

The lawmakers acknowledged the destructive effects of corruption on the life of the people and the functioning of Indonesian governance and economy. Therefore, they severely punished the most serious forms of corruption with death sentence or life imprisonment and/or harsh fines. However, to be just and effective in preventing and combating corruption, the lawmakers formulated different types of punishment and devised minimum and maximum penalties.[579]

Punishment ranges from one year's incarceration or IDR 50,000,000, life sentence or IDR 1,000,000,000 to the death penalty. Moreover, the lawmakers also demanded that the convicted person return the stolen assets or property. If he failed to do so, he would be imprisoned as an additional penalty, proportionate to the value of this property.

The types, amount, and severity of the punishment depend on the form and seriousness of the corruption offence. The types of penalties contained in the Anticorruption Law 1999 can be described as follows:

1. Death sentence
2. Life sentence
3. Imprisonment
4. Fine
5. Additional penalties, such as:
    a. Confiscation of tangible or intangible goods used or resulting from the corrupt act.
    b. Restitution of the stolen assets or property.

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[578] Article 44.
[579] See elucidation of the Anticorruption Law 1999.

c. Locking up the operation of the corporation guilty of the corrupt act for a maximum of one year.
d. Withdrawal, in whole or part, of certain rights, or removal, in whole or part, of certain benefits, which have or will be granted by the government to the convict.
e. Announcement of the court's verdict. [580]

If the convict failed to pay back the stolen assets within a month of being convicted by the court, his property would be confiscated by the prosecutor and sold at auction to compensate the state.[581]If the value of the sold property was insufficient, an additional prison sentence, proportional to the value of stolen assets, would be imposed.[582]

A corporation guilty of a corruption offence can also be sentenced. The definition of a corruption offence committed by the corporation is any person having working or other relations with and acting for and/or on behalf of the corporation who committed such an offence.[583] The primary punishment, which can only be imposed on a corporation, is a fine.[584] The following table shows the types, amount and severity of the punishment for the various forms of corruption and related offences stipulated in Anticorruption Law 1999:

[580]Article 18.
[581]Article 18 (2).
[582]Article 18 (3).
[583]Article 20 (1).
[584] Article 20 (7).

Table 1 **Sentencing patterns of the Anticorruption Law 1999**

Articles	Forms of corruption and other related offences	Types and severity of sentences
2	Illicit or unlawful enrichment	• death sentence • life sentence • 4 to 20 year imprisonment *and* IDR 200 million to IDR 1 billion fine
3	Abuse of power or public office	• life sentence • 1 to 20 year imprisonment *and/or* IDR 50 million to 1 billion fine
5	Bribery to public official	1 to 5 year imprisonment *and/or* IDR 50 to 250 million fine
6	Bribery to judge or defence counsel	3 to 15 year imprisonment *and* IDR 150 to 750 million fine
7	Fraud by building contractor	2 to 7 year imprisonment *and/or* IDR 100 to 350 million fine
8	Embezzlement by public official	3 to 15 year imprisonment *and* IDR 150 to 750 million fine
9	Forgery by public official	1 to 5 year imprisonment *and* IDR 50 to 250 million fine
10	Destruction of evidence	2 to 7 year imprisonment *and* IDR 100 to 350 million fine
11	Bribe acceptance by public official	1 to 5 year imprisonment *and/or* IDR 50 to 250 million fine
12	• Bribe acceptance by judge and defence counsel • Extortion by public official • Extortion by public official towards another public official • Involvement in public procurement under his supervision	4 to 20 year imprisonment *and* IDR 200 to 1 billion fine
13	Gratification to public official	Maximum 3 year imprisonment *and* IDR 150 million fine
21	Obstruction of justice	3 to 12 year imprisonment *and/or* IDR 150 to 600 million fine
22	False information or perjury	3 to 12 year imprisonment *and/or* IDR 150 to 600 million fine
23	• False corruption allegation report • Concealment or destruction of confiscated evidence • Omission and commission of an act by other persons under undue influence of public official • Acquiring confession or information by force by investigator • Unlawful entering by enforcers to one's places • Unlawful getting and confiscating post and telecommunication materials	1 to 6 year imprisonment *and/or* IDR 50 to 300 million fine
24	Identification of the reporter by a witness in investigation and trial process	Maximum 3 year imprisonment *and/or* IDR 150 million fine

Referring to the minimum sentences formulated in Anticorruption Law 1999, Timbul Manulang, Head, District Prosecution Office, Kutai expressed his opinions:

> The Anticorruption Law 1999 sets the minimum sentences. This is a very good thing; so that the prosecutors cannot play with the provisions of the Law by prosecuting the defendant below the minimum sentences. Our prosecution to punish the defendant depends on the damage incurred by the state. For sure, we are not allowed to prosecute the defendant below the minimum sentence, because we are in one system [of prosecution], and there is a sentencing guideline from the Attorney General.[585]

7. Related legislation

Under the Reform Order regime, important related legislation operated and influenced the implementation process and outcomes of Anticorruption Law 1999. Therefore, analyses and descriptions of this legislation are crucial in understanding how the legal institution and processes were framed to influence the implementation of this Law. The important laws described in this section are Anticorruption Law Number 20/2001 which amended the Anticorruption Law Number 1999 and Anticorruption Commission Act Number 30/2002.

a. Anticorruption Law Number 20/2001. Literally translated, Anticorruption Law 2001 is titled 'Act Amending the Anticorruption Law Number 31/1999'. It not only amended articles, but also added new substantive and procedural provisions to Anticorruption Law 1999.[586] The amendments are merely explanatory. The amendment to the elucidation of article 2 explains the meaning of 'certain circumstances' in more detail by stressing 'misuse of public funds' as an element of a particular corruption offence. The corrupt offender may be punished by death if he misused public funds intended for relieving the impact of widespread social riots. The remaining amendments adopt substantive contents of the imported articles 5, 6, 7, 8, 9, 10, 11, and 12 as

[585]Interview with Timbul Manulang, Head, Tenggarong Kutai District Prosecution Office, East Kalimantan, 27 July 2006.

[586]The articles amended are articles 2 (its elucidation), 5, 6, 7, 8, 9, 10, 11, and 12.

stipulated in the Criminal Code, instead of just stating these particular numerical articles. These amendments do not change the sentencing patterns of the particular articles as specified in the Anticorruption Law 1999.

Anticorruption Law 2001 adds new provisions crucial to the detection, investigation, and prosecution of corruption offences. These provisions are articles 12A, 12B, 12C, 26A, 37A, 38A, 38B, 38C, 43A, and 43B.

Article 12A does not put into effect the provisions for the minimum and maximum fine and imprisonment sentences as stipulated in articles 5, 6, 7, 8, 9, 10, 11, and 12 of the Anticorruption Law 1999 for corruption offences of less than IDR 5 million damage to state finance. Instead, the lawmakers punish this particular offence by a maximum 3 year imprisonment and IDR 50 million. In articles 5, 6, 7, 8, 9, 10, 11, and 12 of the Anticorruption Law 1999 there is no set minimum value of the money or property, thus unfairly sentencing the 'petty' offender.

An important provision introducing 'reserve burden of proof' in the case of gratification to public official is regulated in article 12B. Any gratification given to a public official is presumed a bribe if such gratification is related to his office and against his duty. The onus of proof (that it was not a bribe) is on the receiver of the gratification if the value is IDR 10 million or more. If below this value, the prosecution must prove that such gratification is a bribe. The proceedings examining the legality of such gratification are conducted in the court (article 38A). In the elucidation of the Anticorruption Law, the scope of gratification is defined as a gift in a broad sense including money, goods, discounts, commissions, zero interest loan, travel tickets, accommodation, travelling, free medical treatment, and other facilities. It is worth noting that, as stipulated in article

12C, such gratification will not be assumed a bribe *if* the receiver reports such gratification to the Anticorruption Commission within 30 days of receiving it. Within 30 days of receiving the report, the Commission must decide whether the gratification can be acquired by the receiver or given to the state.

Article 26A stipulates other breakthrough provisions to ease the prosecution's burden in corruption cases. In addition to the use of formal legitimate evidence to infer and prove the commission of a corruption offence as stipulated in the Criminal Procedure Code[587], the lawmakers allow the use of electronic communications and recorded documents, both paper and electronic, as an inference indicating the commission and offender of a corruption offence.

Article 37A amends article 37 of Anticorruption Law 1999 by deleting the phrase 'may be used' and inserting 'is used'. This amendment emphasises that if the accused failed to explain and prove the legality of all his properties, or those properties owned by his spouse and children, or any person or corporation which had a connection with the accused corruption offence, this fact will be used to support and complement the existing evidence, proving that he had committed the corruption offence. However, the prosecutor still has an obligation to prove the guilt of the offender.

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[587] Article 64 (1) of the Criminal Procedure Code defines legitimate evidence as comprising of :
a. witness's testimony
b. expert witness's testimony
c. letter
d. inference
e. defendant's testimony.
An inference is defined as any act, event, or circumstance to which their correlation with the offence itself indicates that a criminal offence has been committed and may indicate who the offender is. Such an inference can only be obtained from witness testimony, document or letter, and accused testimony (article 188 (2) of the Criminal Procedure Code).

Another important evidencing procedure in the use of the reserve burden of proof is stipulated in article 38B. It states that whoever is accused of committing corruption offences has the onus of proof to prove that he is not guilty of committing such an offence. If he failed to prove that such possessions are legitimate, these possessions will be presumed to be the result of his corrupt offence and the judge has the authority to ensure the defendant forfeits all or part of these possessions. The defendant may appeal the decision of the judge to the High Court and the Supreme Court.

The prosecutor still has the power to prosecute corrupt properties even though the decision of the judge was final (article 38C). The request from the prosecutor to confiscate the suspected corrupt property is brought in civil proceedings. Such a civil request may be brought against the person sentenced before (under the Anticorruption Law 1971) or after the Anticorruption Law 1999 had came into effect.

Article 43A is very important article vital to combating systemic corruption in the Indonesian public sector. Those offenders committing corruption offences before Anticorruption Law 1999 came into force (16 August 1999) will be examined and decided based on Anticorruption Law 1971. However, the maximum sentence as stipulated in the Anticorruption Law 1999 will be applied, and there will be no minimum sentence. Under Anticorruption Law 1971, the maximum sentence was life sentence for all types of corruption offences and there was no minimum sentence.

Under the legal principle adopted by the Indonesia legal system, less severe sentences will be applied if there is a change in legislation. Thus, no death penalty and no minimum sentence will be imposed on the offender or corrupt public officials of the New Order regime who committed a corruption offence before 16 August 1999. With

the enactment of the Anticorruption Law 2001, articles 209, 210, 387, 388, 415, 416, 417, 418, 419, 420, 423, 425, and 435 of the Criminal Code[588] are repealed.

b. Anticorruption Commission Act Number 30/2002. A very important institutional reform in the history of Indonesian anticorruption is the establishment of an independent and powerful anticorruption commission. This section analyses the act which gives power to that commission, which is crucial for understanding how this auxiliary state agency implemented the Anticorruption Law 1999.

The act establishing the commission is Anticorruption Commission Act Number 30/2002. It consists of 72 articles and was enacted under the Megawati presidency and came into force on 27 December 2002. The preamble of this Act states the reasons and objective of creating this Commission. In the preamble the lawmakers stated that anticorruption law so far was not optimally implemented. Therefore, because corruption has in fact damaged the state finance and economy and constrained national development, they urged that the enforcement must be improved and reinforced in an intensive, professional, and sustainable manner.

The lawmakers further observed that criminal corruption offences in Indonesia have been widespread and entrenched. Corruption has increased year by year, both in terms of the number of corruption cases prosecuted and the amount of the state losses incurred. Qualitatively, they stated, corruption activities have also progressed more systemically and entered all sectors of the public life. These deep-rooted corruption behaviours, they further stressed, have also breached the social and economic rights of the people. Therefore, they believed, corruption offences cannot be classified as

[588]These articles are about corruption offences and adopted by the Anticorruption Law 2001 from the Criminal Code.

ordinary, but must be categorised as extraordinary crimes. The eradication of this evil behaviour, therefore, they reasoned, must be implemented by extraordinary procedures.

The lawmakers recognised that existing, conventional law enforcement agencies had been ineffective and inefficient in combating corruption offences. To overcome these institutional defects, they argued that an extraordinary law enforcement method was urgently required. This would be accomplished through the establishment of an independent and powerful (super body) anticorruption commission.

1. Powers and duties. The anticorruption commission is an independent institution, free from interventions of any kind. It was formed to increase effectiveness and efficiency in combating corruption.[589] In performing its duties and responsibilities, the commission operates under the principles of legal certainty, transparency, accountability, public interest, and proportionality.[590]

Five commissioners, who are given status as state high officials, lead the commission, and are collectively responsible for the performance and actions of the commission.[591] Openly recruited from the public by the government, commissioner candidates are proposed by the President to the House of Representatives to be elected as the commissioners of the commission.[592] The commissioners hold their office for four years and may be only re-elected for another four years.[593]

The commission has the duty to :

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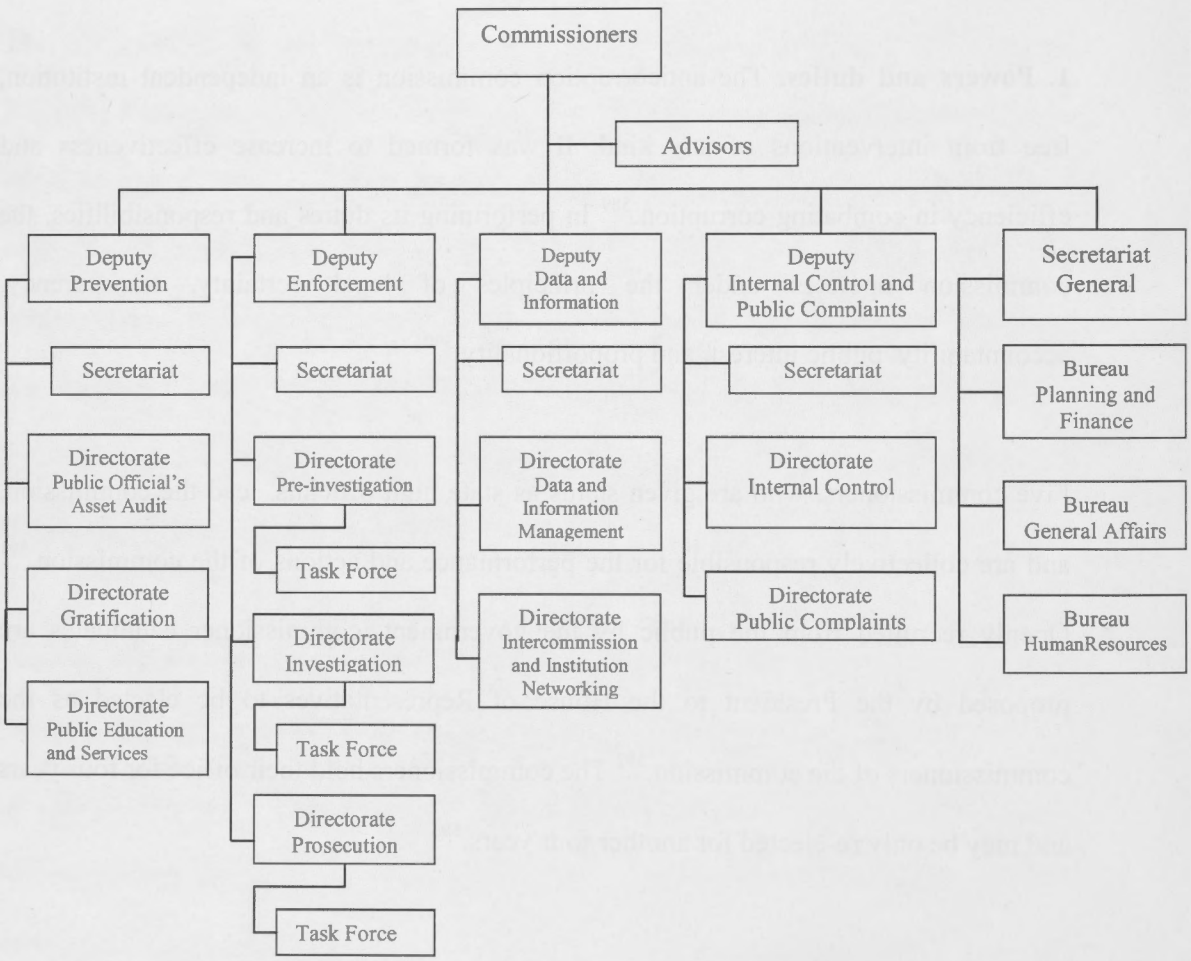
[589] Article 4.
[590] Article 5.
[591] Article 21.
[592] Article 30.
[593] Article 34.

1. Coordinate with the relevant anticorruption enforcement agencies.
2. Supervise the relevant anticorruption enforcement agencies.
3. Pre-investigate, investigate, and prosecute criminal corruption offences.
4. Perform any action to prevent corruption activities from occurring.
5. Monitor the administration and management of the government. [594]

The following is the organisational structure of the anticorruption commission:

Figure 1 **Organisational structure of the Anticorruption Commission**[595]



[594] Article 6.

[595] Based on articles 21 and 26 of the Anticorruption Commission Act 2002 and the Decree of the Commissioners of the Anticorruption Commission Number 07/KKPK02/2004, 10 February 2004.

The corruption offences which are pre-investigated, investigated, and prosecuted by the commission are those: [596]

1. Involving law enforcers, state officials and other persons related to the officials' suspected corrupt offences.
2. Gaining a wide attention from the public.
3. Damaging the state finance to a minimum of IDR 1 billion.

When coordinating with relevant anticorruption enforcement agencies, the commission has the authority to:[597]

1. Coordinate the pre-investigation, investigation, and prosecution of corruption offences.
2. Establish the reporting system for corruption eradication activities.
3. Request anticorruption-related information from relevant institutions.
4. Conduct a hearing and meeting with the relevant institutions.
5. Request the preventive anticorruption report from the relevant institutions.

In conducting supervision, the commission has the authority to take over the ongoing investigation or prosecution being carried out by the police or the prosecutor.[598] For the purpose of this takeover, the police and the prosecution are obliged to hand over the corruption suspect and all the case documents and evidence within 14 days of their acceptance of the commission's request.[599]

A takeover by the commission of the investigation and prosecution of corruption offences is based on the following reasons:[600]

1. The report on a suspected corruption offence from the public was not followed up by the police and the prosecutor.
2. The police and the prosecutor delayed or were slow in handling the corruption case without reasonable grounds.

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[596] Article 11.
[597] Article 7.
[598] Article 8 (2).
[599] Article 8 (3).
[600] Article 9.

3. The handling of corruption cases by the police and the prosecution was intended to protect the actual corrupt offender.
4. The handling of corruption cases by the police and the prosecution involved corruption by those enforcers.
5. The obstruction and impediments in the handling of corruption cases faced by the police and the prosecution due to the interventions from the executive, the legislature, and the judiciary.
6. Other circumstances, if according to the police and the prosecutor the handling of the corruption case will not be successfully and responsibly performed.

The commission in the pre-investigation, investigation, and prosecution of corruption offences has the power to: [601]

1. Intercept and record conversations.
2. Instruct relevant agencies to prevent a person from going overseas.
3. Request financial information about the suspect or the accused from the bank and financial institutions.
4. Instruct the bank or financial institutions to freeze the bank accounts of the suspect, the accused, or other related parties.
5. Instruct the superior of the suspect or the accused to temporarily dismiss him from his office.
6. Request asset and tax data of the suspect or the accused from relevant agencies.
7. Stop temporarily (based on sufficient evidence) the financial, business and other transactions, or temporarily revoke the permits, licenses, or concessions, which were concluded or owned by the suspect or the accused.
8. Ask assistance from the Indonesia Interpol or relevant foreign agencies to seek, arrest, and confiscate overseas evidence.
9. Request assistance from the police or other relevant agencies to arrest, search, detain, and seize the evidence.

In addition to repressive powers, the commission also has preventive powers. In performing these preventive powers, the commission has the authority to: [602]

[601] Article 12.
[602] Article 13.

1. Register and inspect the report on a state officials' assets.
2. Receive the report on and decide the legal status of reported gratification.
3. Administrate anticorruption education.
4. Design and promote the implementation of anticorruption socialisation programmes.
5. Conduct anticorruption campaigns.
6. Seek bilateral and multilateral anticorruption cooperation.

The commission is also granted important monitoring powers.[603] It has the authority to analyse and evaluate the administration systems of all state and government institutions. Based on this analysis and evaluation, the commission may recommend that chiefs of the state and government institutions change their administration systems, if these systems have the potential to be corrupted. If these institutions do not give proper attention to the commission's recommendations, the commission will report their improper response to the president, the House of Representatives, and the Auditor General.

The commission also has certain responsibilities.[604] It is obliged to protect the witness or the person reporting suspected corruption offences. It is also obligatory for the commission to inform and provide the public of data related to the outcomes of its investigation and prosecution. Moreover, the commission is accountable to the public[605] and is obliged to submit its annual report to the president, the House of Representatives, and the Auditor General.

2. The law enforcement process. All the pre-investigative, investigative, and prosecution powers as stipulated in the Criminal Procedure Code are also held by the

[603] Article 14.
[604] Article 15.
[605] Article 20.

pre-investigator, the investigator, and the prosecutor of the commission.[606] However, the investigator of the commission in the performance of his duties is not under the coordination and supervision of the police.[607] The pre-investigation, investigation, and prosecution of corruption offences are processed according to the relevant, applicable criminal procedural laws and Anticorruption Law 1999 as amended by the Anticorruption Law 2001.[608]

The commission has the power to coordinate and control the pre-investigation, investigation, and prosecution of corruption offences collectively committed by those persons under the jurisdictions of military and general courts.[609] It is not authorised to issue a letter discontinuing the investigation and prosecution of corruption offences (*Surat Perintah Penghentian Penyidikan dan Penuntutan*).[610] If the pre-investigator of the commission finds sufficient preliminary evidence, he must, within seven working days of the finding, report to the commission.[611] 'Sufficient preliminary evidence' is composed of a minimum of two pieces of evidence, including document and electronic data.[612] However, if the pre-investigator finds insufficient preliminary evidence, he reports to the commission which then stops the pre-investigation process.[613]If the commission is of the opinion that the pre-investigation process should be taken to the next stage, it may conduct the investigation itself or hand over the investigation of the corruption case to the police or the prosecution.[614] If this happens, the police and the

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[606] Article 38 (1).
[607] Article 38 (2).
[608] Article 39 (1).
[609] Article 42.
[610] Article 40.
[611] Article 44 (1).
[612] Article 44 (2).
[613] Article 44 (3).
[614] Article 44 (4).

prosecutor are obliged to coordinate with and report the investigation progress to the commission.[615]

Two other important investigative powers are given to the commission. First, the special procedure applied to the investigation of high public official suspects, for example, permission from relevant authorities, does not apply to the investigation performed by the commission.[616] Second, based on the finding of sufficient preliminary evidence, the investigator of the commission has the power to forfeit the evidence or exhibits without firstly gaining an order from the head of a relevant district court.[617]

When a corruption case is investigated by the police or the prosecutor, not the commission, they must report their investigation to the commission within 14 working days.[618] Moreover, they must continually coordinate the investigation with the commission.[619] However, if the commission has already investigated the corruption case, the police and the prosecutor are no longer authorised to investigate the case.[620]If the commission, the police, and/or the prosecution simultaneously investigate a corruption case, the police and/or the prosecutor must immediately stop their investigation activities.[621]

Having received the investigation dossier, the prosecutor of the commission must file the indictment with the relevant district court within 14 days.[622] In this case, the head of the district court must receive this indictment to be further examined and decided.[623]

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[615] Article 44 (5).
[616] Article 46 (1).
[617] Article 47 (1).
[618] Article 50 (1).
[619] Article 50 (2).
[620] Article 50 (3).
[621] Article 50 (4).
[622] Article 52 (1).
[623] Article 52 (2).

Anticorruption Commission Act 2002 also establishes anticorruption courts. These courts are attached to the district courts, the high courts, and the Supreme Court.[624] The anticorruption courts are composed of the judges of relevant courts and *ad hoc* judges. The Chief Justice of the Supreme Court appoints the anticorruption judges from the relevant courts, whereas the *ad hoc* judges are publicly recruited and are appointed and dismissed by the president.

The examination of a corruption case in the anticorruption courts is conducted according to the applicable criminal procedural laws and Anticorruption Law 1999 as amended by the Anticorruption Law 2001.[625] The trials of a corruption case by the anticorruption courts in the district and appellate courts and Supreme Court levels are presided over by five judges: two from the relevant courts and three *ad hoc* judges.[626] There are also time limits for the anticorruption court to finish deciding a corruption case: a maximum 90 days at district level, 60 days at appellate level, and 90 days at Supreme Court level.[627]

The lawmakers realised the potential for abuse of the powerful authority given to the commission and its employees. Therefore, punishments are incurred to deter the employees from abusing or misusing their powers. A maximum five years' punishment applies to those commissioners and employees of the commission who:[628]

1. Communicate directly or indirectly, without any legitimate reasons, with the suspect or other parties related to the corruption offence.
2. Handle a corruption case in which the offender has relation to him

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[624] See Articles 53 to 61.
[625] Article 62.
[626] Articles 58 to 61.
[627] Articles 58, 59 and 60.
[628] Articles 36, 65 and 66.

3. Hold other offices or professions, which have a conflict of interest with his office in the commission.

To manage the transitional law enforcement processes the lawmakers formulated some important provisions. The commission may take over all the pre-investigation, investigation, and prosecution of corruption offences which had not been completed before its establishment.[629] With the forming of the commission, the state officials' asset audit commission was integrated and became a functional organisational part of the anticorruption commission.[630]

[629] Article 68.
[630] Article 69.

Appendix C Recovery rate of the state assets losses from all High Prosecution Offices in Indonesia (January to December 2001)

No	High Prosecution Office	Monetary value of the state asset losses (IDR)	Monetary value of the recovered state assets (IDR)	Percentage of the state asset recovery (%)
1	Aceh	2,078,591,205.69	382,999,830.00	18.42
2	North Sumatra	8,887,459,304.00	90,238,382.00	1.01
3	West Sumatra	26,267,500.00	0.00	0.00
4	Riau	5,051,599,969.00	1,024,720,000.00	20.28
5	Jambi	116,057,689.00	116,057,689.00	100
6	South Sumatra	1,314,261,340.00	108,469,250.00	8.25
7	Bengkulu	2,554,054,740.00	12,500,000.00	0.48
8	Lampung	8,616,200,221.00	1,783,077,426.00	20.69
9	Jakarta	28,248,365,862,722.90	1,188,000,000,000.00	4.20
10	West Java	73,221,757,149.78	169,779,400.00	0.23
11	Central Java	37,854,498,305.00	1,727, 230,804.00	4.56
12	Yogyakarta	1,353,127,500.00	40,450,000.00	2.98
13	East Java	62,348,399,706.76	122,501,140.00	0.19
14	West Kalimantan	1,995,455,021.51	435,247,975.00	21.81
15	Central Kalimantan	126,979,909,566.00	0.00	0.00
16	South Kalimantan	3,164,960,666.23	215,122,562.00	6.79
17	East Kalimantan	983,586,340.00	0.00	0.00
18	North Sulawesi	4,735,897,829.00	993,435,100.100	20.97
19	Central Sulawesi	971,166,654.00	117,561,601.00	12.10
20	South-east Sulawesi	1,815,530,411.00	2,330,000.00	0.12
21	South Sulawesi	6,313,213,583.00	664,924,319.00	10.53
22	Bali	8,004,239,398.00	1,165,250.00	0.01
23	West Nusatenggara	1,633,077,991.00	0.00	0.00
24	East Nusatenggara	5,090,664,257.39	1,559,339,853.07	30.63
25	Maluku	12,144,548,412.30	0.00	0.00
26	Irian Jaya/Papua	4,489,004,097.00	28,683,632.31	0.63
	Total	28,630,109,391,569.60	1,197,595,834,213.38	4.18

Source: Adapted from Special Criminal Investigation Directorate, Attorney General's Office of Indonesia, January 2002.

Appendix D Monetary outputs of the courts' decisions on corruption cases (January –November 2005)

No	Court monetary settlements	Delayed monetary receipt from previous year (IDR)	Monetary outputs of the courts' decisions in the reported period (IDR)	Total (IDR)	Monetary value received in the reported period (IDR and %)	Delayed monetary receipt in the reported period (IDR)
1	Fine	3,015,744,500	1,383,200,000	4,398,944,500	449,000,000 (10.20)	3,949,944,500
2	Expenses of court's proceedings	675,100	444,250	1,119,350	69,500 (6.20)	1,049,850
3	Auctions of forfeited properties	0	0	0	0 (0.00)	0
4	Money forfeited	0	0	0	0 (0.00)	0
5	Monetary restitution	4,714,562,858,375	6,004,030,779	4,720,566,889,154	9,875,363,865 (0.20)	4,710,691,525,289
	Total	4,717,579,277,975	7,.387,675,029	4,724,966,953,004	10,324,433,365 (0.21)	4,714,642,519,639

Source: Adapted from Special Criminal Investigation Directorate, Attorney General Office of Indonesia, February 2006.

Appendix E Monetary outputs of the legal appeal-related courts' decisions on corruption cases (January –December 2002)

No	Court monetary settlements	Delayed monetary receipt from previous year (IDR)	Monetary outputs of the courts' decisions in the reported period (IDR)	Total (IDR)	Monetary value received in the reported period IDR (and %)	Delayed monetary receipt in the reported period (IDR)
1	Fine	1,397,844,500	0	1,397,844,500	250,000 (0.01)	1,397,594,500
2	Expenses of court's proceedings	170,000	0	0	0 (0.00)	170,000
3	Auctions of forfeited properties	0	0	0	0 (0.00)	0
4	Money forfeited	0	0	0	0 (0.00)	0
5	Monetary restitution	933,892,307,066	0	933,892,307,066	5,100,717 (0.0546)	399,887,295,349
	Total	935,290,321,566	0	935,290,151,566	5,350,717 (0.0572)	401,285,059,849

Source: Adapted from Special Criminal Investigation Directorate, Attorney General Office of Indonesia, February 2002.

Appendix F Investigation of corruption cases by all High Prosecution Offices in Indonesia (January – December 2001)

No	High Prosecution Office	Incomplete investigation from previous year	New cases received (1/1/2001 to 31/12/2001)	Total number of cases received	Completion of cases						Incomplete/ pending cases
					Followed up to prosecution	Discontinued investigation (SP3)			Sent to other agencies	Completed cases	
						Insufficient evidence	For legal interest	Not criminal offences			
1	2	3	4	5	6	7	8	9	10	11	12
1	Attorney General Office	36	22	58	11	1	-	-	-	12	46
2	Aceh	25	2	27	2	-	-	-	-	2	25
3	North Sumatra	74	5	79	-	-	-	-	-	-	79
4	West Sumatra	33	7	40	4	-	-	-	-	4	36
5	Riau	27	9	36	2	1	-	-	-	3	33
6	Jambi	13	23	36	14	3	-	-	-	17	19
7	South Sumatra	38	16	54	10	-	-	-	-	10	44
8	Bengkulu	20	6	26	1	-	-	-	-	1	25
9	Lampung	43	47	90	21	1	-	-	-	22	68
10	Jakarta	26	1	27	2	-	-	-	-	2	25
11	West Java	54	68	122	15	1	-	-	-	16	106
12	Central Java	58	44	102	37	1	-	-	-	38	64
13	Yogyakarta	21	7	28	7	-	-	-	-	7	21
14	East Java	70	25	95	16	3	-	-	-	19	77
15	West Kalimantan	17	3	20	-	-	-	-	-	-	20
16	Central Kalimantan	7	7	14	1	-	-	-	-	1	13
17	South Kalimantan	18	13	31	1	-	-	-	-	1	30
18	East Kalimantan	8	-	8	1	-	-	-	-	1	7
19	North Sulawesi	32	24	56	23	5	-	-	-	28	28
20	Central Sulawesi	9	6	15	3	-	-	-	-	3	12
21	South-east Sulawesi	18	6	24	8	1	-	-	-	19	15
22	South Sulawesi	45	17	62	18	-	-	-	-	18	44
23	Bali	16	5	21	-	-	-	-	-	-	21
24	West Nusatenggara	10	5	15	-	-	-	-	-	-	15
25	East Nusatenggara	25	6	31	-	-	-	-	-	-	31
26	Maluku	13	-	13	1	-	-	-	-	1	12
27	Irian Jaya/Papua	17	7	24	6	-	-	-	-	6	18
	Total	773	381	1,154	204	17	-	-	-	221	933

Source: Adapted from Special Criminal Investigation Directorate, Attorney General Office of Indonesia, January 2002.

Appendix G Investigation of corruption cases by all High Prosecution Offices in Indonesia (January – December 2002)

No	High Prosecution Office	Incomplete investigation from previous year	New cases received (1/1/2002 to 31/12/2002)	Total number of cases received	Completion of cases						Incomplete/ pending cases
					Followed up to prosecution	Discontinued investigation (SP3)			Sent to other agencies	Completed cases	
						Insufficient evidence	For legal interest	Not criminal offences			
1	2	3	4	5	6	7	8	9	10	11	12
1	Attorney General Office	46	15	61	4	3	-	-	-	7	54
2	Aceh	25	-	25	1	-	-	-	-	1	24
3	North Sumatra	79	32	111	55	2	-	-	-	57	54
4	West Sumatra	36	5	41	9	4	-	-	-	13	28
5	Riau	33	6	39	9	2	-	-	-	11	28
6	Jambi	19	12	31	19	4	-	-	-	23	8
7	South Sumatra	44	-	44	19	-	-	-	-	19	25
8	Bengkulu	25	12	37	23	-	-	-	-	23	14
9	Lampung	68	12	80	60	-	-	-	-	60	20
10	Jakarta	25	6	31	4	-	-	-	-	4	27
11	West Java	106	28	134	38	-	-	-	10	48	86
12	Central Java	64	12	76	15	-	-	-	4	19	57
13	Yogyakarta	21	19	40	28	2	-	-	-	30	10
14	East Java	76	28	104	8	-	-	-	-	8	96
15	West Kalimantan	20	22	42	23	-	-	-	6	29	13
16	Central Kalimantan	13	4	17	3	-	-	-	-	3	14
17	South Kalimantan	30	8	38	21	-	-	-	-	21	17
18	East Kalimantan	7	11	18	11	1	-	-	-	12	6
19	North Sulawesi	28	15	43	39	2	-	-	-	41	2
20	Central Sulawesi	12	5	17	9	2	-	-	-	11	6
21	South-east Sulawesi	15	17	32	5	-	-	-	-	5	27
22	South Sulawesi	44	59	103	35	-	-	-	-	35	68
23	Bali	21	2	23	4	2	-	-	1	7	16
24	West Nusatenggara	15	13	28	22	-	-	-	-	22	6
25	East Nusatenggara	31	15	46	10	-	-	-	-	10	36
26	Maluku	12	17	29	6	-	-	-	-	6	23
27	Irian Jaya/Papua	18	11	29	15	1	-	-	-	16	13
28	Banten	12	-	12	3	-	-	-	-	3	9
	Total	945	386	1,331	498	25	-	-	21	544	787

Source: Adapted from Special Criminal Investigation Directorate, Attorney General Office of Indonesia, January 2003.

Appendix H Investigation of corruption cases by all High Prosecution Offices in Indonesia (January – December 2003)

No	High Prosecution Office	Incomplete investigation from previous year	New cases received (1/1/2003 to 31/12/2003)	Total number of cases received	Completion of cases						Incomplete/ pending cases
					Followed up to prosecution	Discontinued investigation (SP3)			Sent to other agencies	Completed cases	
						Insufficient evidence	For legal interest	not criminal offences			
1	Attorney General Office	54	9	63	3	7	15	-		25	38
2	Aceh	24	6	30	5	-		-		5	25
3	North Sumatra	54	7	61	6	2		-		8	53
4	West Sumatra	28	17	45	15	19		-		34	11
5	Riau	28	16	44	15	3		-		18	26
6	Jambi	8	15	23	7	3		-		10	13
7	South Sumatra	25	11	36	10	-		-		10	26
8	Bengkulu	14	16	30	7	-		-		7	23
9	Lampung	20	72	92	29	1		-		30	62
10	Jakarta	27	32	59	22	5		-	1	28	31
11	West Java	86	64	150	46	-		-		48	102
12	Central Java	57	59	116	53	-		-		53	63
13	Yogyakarta	10	15	25	12	-		-		12	13
14	East Java	96	36	132	29	1	1	-		31	101
15	West Kalimantan	13	4	17	9	1		-		10	7
16	Central Kalimantan	14	13	27	12	-		-		12	15
17	South Kalimantan	17	8	25	5	-		-		5	20
18	East Kalimantan	6	8	14	3	-		-		3	11
19	North Sulawesi	2	44	46	29	-		-		29	17
20	Central Sulawesi	6	16	22	11	3		-		14	8
21	South-east Sulawesi	27	20	47	14	7		-		21	26
22	South Sulawesi	68	19	87	54	-		-		54	33
23	Bali	16	6	22	10	1		-		11	11
24	West Nusatenggara	6	20	26	16	-		-		16	10
25	East Nusatenggara	36	12	48	17	-		-		17	33
26	Maluku	23	10	33	15	-		-		15	18
27	Irian Jaya/Papua	13	14	27	10	-		-		10	17
28	Banten	9	13	22	2	-		-		2	20
29	Bangka Belitung	-	1	1	-	-		-		-	1
30	Maluku Utara	-	-	-	-	-		-		-	-
31	Gorontalo	-	14	14	1	-		-		1	13
	Total	787	597	1,384	467	55	16	-	1	539	845

Source: Adapted from Special Criminal Investigation Directorate, Attorney General Office of Indonesia, January 2004.

Appendix I Investigation of corruption cases by all High Prosecution Offices in Indonesia (January – December 2004)

No	High Prosecution Office	Incomplete investigation from previous year	New cases received (1/1/2004 to 31/12/2004)	Total number of cases received	Completion of cases						Incomplete/ pending cases
					Followed up to prosecution	Discontinued investigation (SP3)			Sent to other agencies	Completed cases	
						Insufficient evidence	For legal interest	not criminal offences			
1	Attorney General Office	45	11	56	4	8	-	8	-	20	36
2	Aceh	25	11	36	22	-	-	-	-	22	14
3	North Sumatra	53	22	75	32	-	-	-	-	32	43
4	West Sumatra	11	18	29	12	-	-	-	-	12	17
5	Riau	26	22	48	15	-	-	-	-	15	33
6	Jambi	13	13	26	11	-	-	-	-	11	15
7	South Sumatra	26	22	48	19	-	-	-	-	19	29
8	Bengkulu	23	15	38	17	-	-	-	-	17	21
9	Lampung	62	15	77	35	-	-	-	-	35	42
10	Jakarta	31	10	41	9	-	-	-	-	9	32
11	West Java	102	68	170	57	16	-	-	-	73	97
12	Central Java	63	61	124	37	1	-	-	-	38	86
13	Yogyakarta	13	4	17	12	-	-	-	-	12	5
14	East Java	101	22	123	39	-	-	-	-	39	84
15	West Kalimantan	7	5	12	-	--	-	-	-	-	12
16	Central Kalimantan	15	14	29	11	-	-	-	-	11	18
17	South Kalimantan	20	9	29	4	-	-	-	-	4	25
18	East Kalimantan	11	27	38	16	-	-	-	-	16	22
19	North Sulawesi	17	16	33	11	2	-	-	-	13	20
20	Central Sulawesi	8	16	24	11	-	-	-	-	11	13
21	South-east Sulawesi	26	26	52	38	-	-	-	-	38	14
22	South Sulawesi	33	24	57	14	-	-	-	-	14	43
23	Bali	3	1	4	2	-	-	-	-	2	2
24	West Nusatenggara	10	15	25	11	-	-	-	-	11	14
25	East Nusatenggara	31	12	43	13	-	-	-	-	13	30
26	Maluku	18	11	29	17	-	1	-	-	18	11
27	Irian Jaya/Papua	17	10	27	6	-	-	-	-	6	21
28	Banten	20	7	27	11	-	-	-	-	11	16
29	Bangka Belitung	1	3	4	-	1	-	-	-	1	3
30	Maluku Utara	-	3	3	-	-	-	-	-	-	3
31	Gorontalo	13	10	23	6	-	-	-	-	6	17
	Total	844	523	1367	492	28	1	8	-	529	838

Source: Adapted from Special Criminal Investigation Directorate, Attorney General Office of Indonesia, January 2005.

Appendix J Investigation of corruption cases by all High Prosecution Offices in Indonesia (January – December 2005)

No	High Prosecution Office	Incomplete investigation from previous year	New cases received (1/1/2005 to 31/12/2005)	Total number of cases received	Completion of cases						Incomplete/ pending cases
					Followed up to prosecution	Discontinued investigation (SP3)			Sent to other agencies	Completed cases	
						Insufficient evidence	For legal interest	not criminal offences			
1	Attorney General Office	36	26	62	12	-	-	-	-	12	50
2	Aceh	14	8	22	6	-	-	-	-	6	16
3	North Sumatra	43	14	57	16	-	-	-	-	16	41
4	West Sumatra	17	15	32	11	-	-	-	-	11	21
5	Riau	33	12	45	12	-	-	-	-	12	33
6	Jambi	15	16	31	16	-	-	-	-	16	15
7	South Sumatra	29	31	60	19	-	-	-	-	19	41
8	Bengkulu	21	3	24	12	-	-	-	-	12	12
9	Lampung	42	9	51	25	-	-	-	-	25	26
10	Jakarta	32	14	46	13	-	-	-	-	13	33
11	West Java	97	40	137	49	-	1	1	-	51	86
12	Central Java	86	59	145	32	-	-	-	-	32	113
13	Yogyakarta	5	23	28	9	-	-	-	-	9	19
14	East Java	84	43	127	37	-	-	-	-	37	90
15	West Kalimantan	12	20	32	6	-	-	-	-	6	26
16	Central Kalimantan	18	22	40	8	-	-	-	-	8	32
17	South Kalimantan	25	8	33	12	9	-	-	-	21	12
18	East Kalimantan	22	14	36	17	-	-	-	-	17	19
19	North Sulawesi	20	10	30	13	1	-	-	-	14	16
20	Central Sulawesi	13	21	34	26	-	-	-	-	26	8
21	South-east Sulawesi	14	24	38	18	-	-	-	-	18	20
22	South Sulawesi	43	10	53	26	-	-	-	-	26	27
23	Bali	2	19	21	1	-	-	-	-	1	20
24	West Nusatenggara	14	15	29	10	1	-	-	-	11	18
25	East Nusatenggara	30	24	54	7	-	1	-	-	8	48
26	Maluku	11	9	20	11	-	-	-	1	12	8
27	Irian Jaya/Papua	21	10	31	1	1	-	-	-	2	29
28	Banten	16	3	19	4	-	-	-	-	4	15
29	Bangka Belitung	3	4	7	5	-	-	-	-	5	2
30	Maluku Utara	3	-	3	-	-	-	-	-	-	3
31	Gorontalo	17	20	37	13	-	-2	-	-	13	24
	Total	838	546	1,384	447	12	4	1	1	463	921

Source: Adapted from Special Criminal Investigation Directorate, Attorney General Office of Indonesia, January 2006.

Appendix K

Information Sheet
(to be retained by the participant)

Name of the researcher:
Roby Arya Brata
PhD Candidate in Public Policy
Policy and Governance Programme
The Australian National University

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Description of the proposed research

The purpose of the proposed policy research is to analyse and compare the effectiveness of the Anticorruption Law Number 3/1971 of the New Order regime and the Anticorruption Law Number 31/1999 of the Reform Order regime in attaining their legally mandated objectives, and to explain the factors or reasons constraining such policy effectiveness (if any).

Statement of participation

Your agreement to be interviewed will be voluntarily given, and you can freely withdraw your participation in the interview at any time. If you wish, the interview will be conducted in confidential and your identity will not be disclosed in the thesis. The interview materials will be safely stored and later destroyed. If you wish, you can verify the cited interview materials before its publication in the thesis. Any legal measures will be taken to protect you from any perceived risk of disclosing information in the interview.

In case of any ethical concerns you may contact to:

The Secretary
Human Research Ethics Committee
Research Services Office
Chancelry 10B
The Australian National University ACT 2000
Tel: 61 02 6125 7945
Fax: 61 02 6125 4807
Email: Human.Ethics.Officer@anu.edu.au

I,....., (name and title of the participant) have duly understood the nature and purpose of the research, and have perceived any possible risk of disclosing information in the interview. I herewith voluntarily consent to be interviewed by the said researcher.

Date:.....

Signed:.....

Appendix L

Letter of Invitation

Jakarta

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Dear Sir/Ms....

For the purpose of collecting data for my research, I, Roby Arya Brata, PhD candidate in public policy at The Australian National University, would like to interview you, provided that you would give your voluntary consent to be interviewed. The interview would take approximately 1 to 2 hours.

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Your agreement to be interviewed will be voluntarily given in writing, and you can freely withdraw your participation in the interview at any time. If you wish, the interview will be conducted in confidential and your identity will not be disclosed in the thesis.

The proposed research will highly benefit not only for the Indonesian Government, but also for the public at large. Some of the research outcomes will be recommendations to the Indonesian Government to effectively improve its governance (the rule of law and anticorruption enforcement) and combat corruption, a serious problem that has adversely affected the people. No significant ethical or legal issues or difficulties will be involved in this research.

It is my pleasure that you would spare your time for the interview.

Your participation would be greatly appreciated.

Thank you very much.

Faithfully yours,

Roby Arya Brata

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