

Democracy and Anti-Corruption Strategy: The Role of Civil Society in Preventing and Combating Corruption in Indonesia*

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ABSTRACT

Corruption is an impediment to development and also amounts to a violation of human rights.¹ The fight against corruption is a requirement in the good governance program.² Civil society as the biggest stakeholder in a State

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¹ Committee on Economic, Social and Cultural Rights, Preliminary Report of the Special Rapporteur on *Corruption and Its Impact on the Full Enjoyment of Human Rights, in Particular, Economic, Social and Cultural Rights*, Sixty-sixth Session, E/CN.4/Sub.2/2004/23, 7 July 2004, p. 9.; Human Rights Council, *Resolution adopted by the Human Rights Council, the Negative Impact of Corruption on the Enjoyment of Human Rights*, Twenty Third Session, A/HRC/RES/23/9, 20 June 2013, p. 2.; World Bank, *Combating Corruption in Indonesia, Enhancing Accountability for Development*, 12 November 2003, p. 31.; Kimberly Ann Elliott, *Corruption and the Global Economy*, Institute for International Economics: Washington D. C., 1997, p. 136-138.; Parthapatim Chanda, "The Effectiveness of the World Bank's Anti Corruption Efforts: Current Legal and Structural Uncertainties", *Denver Journal of International Law and Policy*, Vol. 32, Issue 2, 2003-2004, p. 315-353.; Joshua V. Barr, Edgar Michael Pinilla and Jorge Fánke, "A Legal Perspective on the Use of Models in the Fight Against Corruption", *South Carolina Journal of International Law and Business*, Vol. 8, Issue 2, p. 267-296.; Vinay Bhargava and Emil Bolongaita, *Challenging Corruption in Asia, Case Studies and A Framework for Action*, the World Bank: Washington D. C., 2003, p. 1.; John Girling, *Corruption, Capitalism and Democracy*, Routledge Studies in Social and Political Thought, Routledge: New York, 1997, p. 14.; Martine Boersma, *Corruption: A Violation of Human Rights and A Crime under International Law*, Intersentia: Antwerp, 2012, p. 32.

² Human Rights Council, *the Role of Good Governance in the Promotion and Protection of Human Rights*, Human Rights Council Resolution 7/11, 27 March 2008.; <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/AntiCorruption.aspx>, accessed 5 April 2015.; Augustine Ruzindana, *The Importance of Leadership in Fighting Corruption in Uganda* in Kimberly Ann Elliott, *Corruption and Global Economy*, Institute for International Economics: Washington D. C., 1997, p. 136-138.; Roger P. Alford, "A Broken Window

has the prominent role in the fight against corruption.³ Indonesia placed at 107th rank in the Corruption Perception Index (CPI) and is one among states which are severely impeded by corruption.⁴ Corruption in Indonesia is rampant and pervasive, several cases such as Cicak versus Buaya case and the appointment of Budi Gunawan have attracted public attention massively.⁵ Indonesian civil society

has actively engaged in the processes of these cases and their voice did make change, for example in the case of Cicak versus Buaya, the voice of civil society has led to the deponing decision of Bibit and Chandra's prosecution.⁶ This article aims to explain the legal framework on the participation of civil society with regard to corruption prevention and to conceptualize the role of the civil society in combating corruption by taking the evidence of emerging civil society and its relation to anti-corruption in Indonesia. This article also aims to explain the relationship between civil society, democracy and good governance as a strategic anti-corruption measures.

Theory of International Corruption”, *Ohio State Law Journal*, Vol. 73, No. 5, 2012, p. 1253-1282.

³ World Bank, *Consultation with Civil Society Organizations: General Guidelines for the World Bank Staff*, Washington, DC, World Bank, 2000, p. 1.

⁴ Transparency International, *Corruption Perception Index*, 2014, <https://www.transparency.org/cpi2014/results>, accessed 20 April 2015.; Nadirsyah Hosen, “The Habibie Government and the Law of Eradication of Corruption in Indonesia”, *European Journal of Law Reform*, Vol. IV, No. 1/2, 2003, p. 293-321.

⁵ Zubaidah Nazeer, *Indonesia Bureau Chief in Jakarta*, *Straits Times*, *Indonesia's President Jokowi Drops Budi Gunawan as Police Chief Nominee*, <http://www.straitstimes.com/asia/se-asia/indonesias-president-jokowi-drops-budi-gunawan-as-police-chief-nominee>, 18 February 2015, accessed 5 April 2015.; George Roberts, *Indonesia Correspondent*, *Indonesian President Joko Widodo's Police Chief Nominee, Budi Gunawan, Named as Corruption Suspect*, 15 January 2015, <http://www.abc.net.au/news/2015-01-14/indonesia-pick-for-police-chief-named-corruption-suspect/6015710>, accessed 5 April 2015.; George Robert, *Indonesia Correspondent*, *Corruption Suspect Budi Gunawan Confirmed as Indonesia's New Police Chief by Parliament*, *Radio Australia*, 16 January 2015, <http://www.radioaustralia.net.au/international/2015-01-15/corruption-suspect-budi-gunawan-confirmed-as-indonesias-new-police-chief-by-parliament/1406959>, accessed 5 April 2015.; Thai PBS, *Jokowi Drops Budi Gunawan's Nomination as National Police Chief*, 19 February 2015, <http://englishnews.thaipbs.or.th/jokowi-drops-budi-gunawans-nomination-national-police-chief>, accessed 5 April 2015.; Fatiyah Wardah and Munarsih Sahana, *Indonesian NGOs Blast Police Appointment of Scandal-tainted Candidate*, *Voice of America*, 23 April 2015, [## I. Legal Framework on the Participation of Civil Society in Anti-Corruption Strategy](http://www.voanews.com/content/indonesia-gunawan-</p></div><div data-bbox=)

The definition of civil society is diverse from source to source, the World Bank defined the civil society as the arena where people gather together to discuss for something that they have in common.⁷ Habermas proposed

[police-appointment/2732046.html](http://www.establishmentpost.com/president-jokowi-faces-major-dilemma-budi-gunawan-police-chief-nomination/), accessed 5 April 2015.; Ardi Wirdana, *Jokowi Faces Major Anti-Graft Dilemma Over Nomination of Budi Gunawan as Police Chief*, 16 January 2015, <http://www.establishmentpost.com/president-jokowi-faces-major-dilemma-budi-gunawan-police-chief-nomination/>, accessed 5 April 2015.; Jim Clough, *KPK vs Polri: Children of Lights and Children of Darkness*, *Jakarta Post*, 18 February 2015, <http://www.thejakartapost.com/news/2015/02/18/kpk-vs-polri-children-light-and-children-darkness.html>, accessed 5 April 2015.; *Jakarta Post*, *Text Your Say: Reliving Bibit-Chandra Case*, 26 April 2010, <http://www.thejakartapost.com/news/2010/04/26/text-your-say-reliving-bibitchandra-case.html>, accessed 5 April 2015.; Simon Butt, *Corruption and Law in Indonesia*, Routledge: Oxon, 2012, p. 90-113.

⁶ Ibid.

⁷ World Bank, *Consultation with Civil Society Organizations: General Guidelines for the World Bank Staff*, Washington, DC, World Bank, 2000, p. 5.

the idea that civil society is a public sphere.⁸ Civil society is an arena outside the state where citizens can advance their interests.⁹ The idea that is propositioned by Habermas can be taken further to say that any civic action, *inter alia*, mass social movements and popular demonstrations are forms of civil society's manifestation.¹⁰ Sanders et al, classified the compositional characteristics of civil society into five compositions, those five compositions are the structure of organization in the civil society's organization, the private nature of the organization, the non-profit orientation of the organization, the self-governing nature of the organization and the non-voluntary membership.¹¹ However, defining civil society in a single definitive concept is difficult.¹²

The participation of civil society is regulated on international and national level. The legal continuum on civil society aims to promote, encourage and strengthen the participation of civil society in governance, especially with regard to anti-corruption. On international

level, the main legal instrument on the fight against corruption is the United Nations Convention against Corruption (UNCAC)^{13,14}. The legal continuum on the fight against corruption is then supplemented by several regional legal instruments concerning anti-corruption, those are Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union¹⁵, the Criminal and Civil Law Convention against Corruption from the Council of Europe¹⁶, Inter-American Convention against Corruption¹⁷ and African

⁸ Lester M. Salamon, "Putting the Civil Society Sector on the Economic Map of the World", *Annals of Public and Cooperative Economics*, Vol. 81, No. 2, 2010, 167-210.; Organization for Economic Co-operation and Development, *Fighting Corruption, What Role for Civil Society? The Experience of the OECD*, 2003, OECD: Paris, p. 1-30.

⁹ Ibid.

¹⁰ Ibid.

¹¹ David Sanders et al, "Making Research Matter: A Civil Society Perspective on Health Research", *Bulletin of the World Health Organization*, October 2004, Vol. 82, No. 10, 757-763.

¹² Rob Gray et al, "NGOs, Civil Society and Accountability: Making the People Accountable to Capital", *Accounting, Auditing and Accountability Journal*, 2006, Vol. 19, No. 3, p. 319-348.

¹³ United Nations, *United Nations Convention Against Corruption (UNCAC)*, 2349 UNTS 41, Doc. A/58/422, 31 October 2003, article 13, concerning participation of civil society in anti-corruption. Indonesia ratified UNCAC on 18 December 2003, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>, accessed 5 April 2015.

¹⁴ Before UNCAC, there were several anti-corruption legal instruments on international level, *inter alia*, the General Assembly, General Assembly Resolution 51/59, *Code of Conduct for Public Officials*, 12 December 1996, and the United Nations Convention on Transnational Crime, 1996.; Carlos Castresana, *Prosecution of Corruption Cases and Respect of Human Rights*, Review Meeting, the International Council for Human Rights Policy, Geneva, 28-29 July 2007, p. 1-15.

¹⁵ European Union, *Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union*, Official Journal C 195/1, 26 May 1997.

¹⁶ Council of Europe, *Criminal Law Convention against Corruption*, CETS No: 173, 2216 UNTS 225, 27 January 1999.; Council of Europe, *Civil Law Convention against Corruption*, CETS No: 174, 2246 UNTS 3, 4 November 1999.; Council of Europe, *Additional Protocol to the Criminal Law Convention on Corruption*, CETS No: 191, 2466 UNTS 168, 15 May 2003.

¹⁷ Organization of American States, *Inter American Convention against Corruption*, adopted at the

Union Convention against Corruption¹⁸. On Asian region, there is an initiative proposed by the Asian Development Bank in cooperation with Organization of Economic Cooperation and Development named the ADB-OECD Initiative to Combat Corruption that became the regional guidelines in anti-corruption.¹⁹ On national level, Indonesia has promulgated a national legal continuum concerning the fight against corruption, the main instruments are the Law number 31 of 1999 on the fight against corruption and the Law number 20 of 2001 on the change within the Law number 31 of 1999 on the fight against corruption.²⁰

II. Participation of Civil Society as An Anti-Corruption Measures: the Rise of Civil Society Awareness with Regard to Anti-Corruption in Indonesia.

After 1998, the reformation era, Indonesia

third plenary session, 29 March 1996.

¹⁸ One of the purposes to combat corruption based on the African Union Convention against Corruption is to remove impediment on the realization of socio economic rights that has been stated in art. 4, African Union Convention against Corruption placed the role of the civil society and media in par in article 12 of the Convention. African Union, *African Union Convention on Preventing and Combating Corruption*, UNTS No. 5008, Maputo, 11 July 2003.

¹⁹ ADB-OECD, *ADB-OECD Anti Corruption Initiatives for Asia Pacific, Combating Corruption in the New Millenium*, 2000; the third pillar of the Anti Corruption Initiatives is the support from the government for the active participation of civil society in anti corruption. The initiatives regulates that encouragement on public discussion with regard to the issue of corruption is needed in order to gain awareness and support from civil society. It is also important to establish an anti-corruption culture through education. Paragraph 1-3.

²⁰ The Law number 31 of 1999 and the Law number 20 of 2001, also see the Law number 28 of 1999.

has been conducting the fight against corruption. However, the fight against corruption still has a long way to go since in 2015, Indonesia still stands at the 107th rank of the Transparency International.²¹ The rank itself describes how Indonesia, through the years, has not yet succeeded in eliminating one of her malignant adversary, corruption.²² Regardless the fight that has to be continued and subsequently strengthen, Indonesia has shown that Indonesian civil society has given several notable responses on the fight against corruption. The case of Cicak versus Buaya on 2012 with regard to the criminalization of two Corruption Eradication Commission Commissioners that led into the deponerring decision due to the massive public pressure on the Attorney General and the case of massive demands from civil society on cancellation of Budi Gunawan's appointment as the Head of the Police Institution, those cases have given certain messages that civil society in Indonesia has been actively involved in the fight against corruption and supported anti-corruption

²¹ Transparency International, *Corruption Perception Index*, 2014, <https://www.transparency.org/cpi2014/results>, accessed 20 April 2015.

²² Mitchell A. Seligson, "The Measurement and Impact of Corruption Victimization: Survey Evidence from Latin America", *World Development*, Vol. 34, No. 2, 2006, p. 381-404.; Benjamin A. Olken, "Corruption Perceptions vs. Corruption Reality", *Journal of Public Economics*, Vol. 93, 2009, p. 250-964.; D. A. Lalountas et al., "Corruption, Globalization and Development: How Are These Three Phenomena Related?", *Journal of Policy Modelling*, Vol. 33, 2011, p. 636-648.; and Thomas Herzfeld and Christoph Weiss, "Corruption and Legal (In)Effectiveness: An Empirical Investigation", *European Journal of Political Economy*, Vol. 19, 2003, p. 621-632.

agenda.²³ The support and demand from civil society is the evidence that the civil society has awareness on anti- corruption. Civil society stands firm with KPK on some cases and it is an important phenomenon that has to be observed further.²⁴

This phenomenon will explain whether the active participation of civil society in anti-corruption agenda is in line with the notion of participatory and deliberative democracy and also why the active participation of civil society is important to prevent and combat corruption in Indonesia. Democracy is a mixture of theories, from the rule of the people proposed by Aristotle, liberalism by John Locke and John Stuart Mill and the separation of power by Montesquie and Madison.²⁵ Democracy can be built when people have a great sense of we-ness.²⁶ The feeling of connectedness to everyone that eliminate the egocentric interests of each individual.²⁷ The existence of civil society is important to maintain good governance in democracy.²⁸ Sustainable democracy can be reached if civil society is empowered.²⁹ There is a clear and direct relationship between democracy and successful anti-corruption

program. Democracy based its foundation on the civil society and good governance.³⁰ In the case of corruption, civil society is united by the common need to fight corruption.

A strong civil society will carry on the role as the supervisor of the government. Montesquie, in his theory of *trias politica* emphasized that democracy must be based on the notion of separation of power.³¹ In the separation of power only, the check and balance control between the government and the governed is being conducted. Corrupt practices happened when there is a lackness of transparency and accountability. The lack of transparency and accountability can be countered by the existence of civil society in anti-corruption strategy.³² Civil society plays an important role as an external control over the Government. When the internal control has been eroded by corruption as it can be seen through many cases of corruption involving public officials,³³ an impartial external control is needed. The case of Gayus Tambunan is an example that stronger internal control in *par* with external control is needed to combat corruption.³⁴

²³ Supra note 5, p. 90-113.

²⁴ Ibid.

²⁵ Jeffrey C. Alexander, "The Paradoxes of Civil Society", *International Sociology*, Vol. 12, No. 2, June 1997, p. 115-133.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Alan Whaites, *Let's Get Civil Society Straight: NGOs, the State and Political Theory*, in Jenny Pearce and Deborah Eade, *Development, NGOs and Civil Society*, Oxfam GB: Oxford, 2004, p. 124-141.

³⁰ Beate Kohler-Koch, "The Three Worlds of European Civil Society-What Role for Civil Society for What Kind of Europe?", *Public and Society*, Vol. 28, 2009, p. 47-57.

³¹ Montesquie, *the Spirit of Laws*, edited by Anne M. Cohler, et al, Cambridge Texts in the History of Political Thoughts, Montesquie, *the Spirit of Laws*, Cambridge University Press: Cambridge, 1989, p. 155 and 164.

³² Haidy Ear-Dupuy and Olivier Serrat, *Fighting Corruption with ICT: Strengthening Civil Society's Role*, Manila: Asian Development Bank, June 2014, p. 1-10.

³³ Maira Martini, *U4 Expert Answer, Causes of Corruption in Indonesia*, U4-Anti Corruption Resource Centre, 7 August 2012, p. 1-11.

³⁴ Alice Budisatrijo, *Indonesia Taxman Gayus*

The deliberative nature of civil society inherently stands with the realization of good governance. The law favors the participation of civil society in preventing corruption due to the nature of civil society. Civil society is also important to ensure the acceptance and legitimacy of policy and laws.³⁵ In order to maintain an institution morally intact with its constitution, an external impartial control is needed. Power should never go unchecked, a principal has to control its agents in order to ensure that the constitution is correctly implemented. Civil society also offers variety of perspectives which are important to form an effective and strategic policy for government.³⁶ Therefore, to prevent and combat corruption, *ipso facto*, civil society has to be strengthened. Democracy at its core bestows itself in the participatory nature of every person in a society.³⁷ Contemporary democracy in

Indonesia nowadays, is far from the deliberative democracy, the rule by the elites is too overwhelming and the chain between people as the principal and government as the agent is weakened. Many reprehensible behaviors conducted by governmental institutions such as the clash between KPK and Police Institution in the case of Cicak versus Buaya.

Indonesia has established the legal basis concerning the participation of civil society in anti-corruption program, *inter alia*, the Law number 31 of 1999 concerning Corruption Eradication, it has been regulated that society has to be included in the anti-corruption agenda and enforcement.³⁸ On the normative realm, the foundation of recognition and encouragement for a stronger civil society has been placed. Subsequent action that has to be taken by the Government is the education to people concerning their rights and obligation to participate in the governance. Civic education has to be accommodated and became the focus

Tambunan Jailed for Corruption, BBC News, 19 January 2011, <http://www.bbc.com/news/world-asia-pacific-12224782>, accessed 5 April 2015.; Andy Saputra, *Indonesia Tax Official Sentenced to Seven Years for Corruption*, 19 January 2011, CNN, <http://edition.cnn.com/2011/WORLD/asiapcf/01/19/indonesia.whistleblower/>, accessed 5 April 2015.; Olivia Rondonuwu, *Game Over for Corrupt, Wig-Wearing Indonesian Tax Official*, 19 January 2011, Reuters, <http://www.reuters.com/article/2011/01/19/uk-indonesia-corruption-gayus-idUKTRE70I16E20110119>, accessed 5 April 2015.

³⁵ Erik Blas et al, "Addressing Social Determinants of Health Inequalities: What Can the State and Civil Society Do?", *Lancet*, Vol. 372, 2008, p. 1684-1689.

³⁶ Organization for Economic Co-operation and Development, *Fighting Corruption, What Role for Civil Society? The Experience of the OECD*, 2003, OECD: Paris, p. 1-30.

³⁷ Donatella della Porta ed., *Democracy in Social Movement*, Palgrave Mac Millan: New York, 2009, p. 24-25.

³⁸ The Law number 31 of 1999 concerning *Corruption Eradication*, art. 8-9, further regulations were established in order to support the realization of art. 8-9 for example, the Governmental Regulation number 71 of 2000 concerning *the Guidelines on the Participation of Society and Awarding for Eradication and Corruption Prevention*. The Governmental Regulation highlights and emphasizes the rights and obligations of society to be actively involved in preventing and combating corruption, art. 1-4. Retrospectively, the Law number 31 of 1999 is based on the Law number 28 of 1999 concerning *National Governance that is Clean and Free from Corruption, Collusion and Nepotism*. The Law number 31 of 1999 specifically derived from the Law number 28 of 1999 with enforceable articles. The role of society in anti-corruption has been consistently affirmed in the Law number 28 of 1999, the Law number 31 of 1999 until the Governmental Regulation number 71 of 2000.

of the government's education program.³⁹ The citizen has to understand their rights and obligations, especially with regard to preventing corruption. However, further dissemination through various means, *inter alia*, the media is vital to ensure that the citizen understand their rights and obligations.

The proposed effective means to prevent corruption is by raising people's awareness that corruption is evil, impediment of economic growth and development and morally corrosive. The concrete exemplification of the importance of civil society to prevent and combat corruption is the active reporting attitude of civil society when it finds suspicious behavior of public officials with regard to the corruption allegation. Discerning upon the nature of corruption itself that is hidden and secretive, it is difficult to allege corruptors unless there is sufficient evidence. Civil society can contribute in monitoring suspicious behavior from the public officials such as unusual wealth possessed by the public employee. Their reports to the respective organs with a mandate to prevent and combat corruption can help to counter the secretive nature of corruption.⁴⁰

The dissemination of information concerning the rights and obligations of civil society to participate in preventing and combating corruption is compulsory for successful anti-corruption strategy. Every person has to realize and understand this concept thus education and dissemination on this matter is an important

matter. For example, civil society guides the formulation of anti-corruption laws and policies. Civil society also shall oversee the cases of corruption and they should have the awareness that their voice does matter. It has been prevalent that enforcement is important to deter corruptors and civil society is the vital organ to control and oversee the enforcement. However, despite its pivotal role to prevent and combat corruption, the dissemination of people's rights and obligations to participate in anti-corruption agenda is not quite popular yet. The obligation to disseminate is an underrated, many opinions too overly has been focused on deterrence by punishment. This way of thinking is not wrong, albeit, the underrated means to deter corruption has to be highlighted and prioritized too.

There are three main organs that have the mandate to prevent and combat corruption, those are the police institutions, judicial institutions and KPK. Civil society can contribute so much to help these three organs to prevent and combat corruption. Due to that reason, the police institutions, judicial institutions and KPK have to hand in hand working on the dissemination of the rights and obligations of a citizen with regard to corruption prevention. The narrative of the successful dissemination is a strong civil society that has the ability to monitor carefully the governance. A strong civil society has the orientation to guide the governance, they will demand integrity, accountability and professionalism in the governing process. They will actively participate because of the understanding that their voices do matter for

³⁹ Michael Johnston, *Syndromes of Corruption, Wealth, Power and Democracy*, Cambridge: Cambridge University Press, 2005, p. 187.

⁴⁰ *Supra* note 5, p. 47.

preventing and combating corruption. The cause of corruption is the lackness of integrity, accountability and professionalism of the public employee. When civil society as the principal cannot control and monitor the public employee as the agents, corruption will likely happen, therefore a strong civil society is the promising solution in combating and also subsequently preventing corruption in Indonesia.⁴¹

III. Conclusion

Civil society plays a pivotal role in preventing and combating corruption. In Indonesia, the rise of awareness concerning anti-corruption that has been displayed by the civil society as exemplified in the case of Cicak versus Buaya and the cancellation of Budi Gunawan's appointment as the Head of Police Institution, should be regarded as a good phenomenon and a juncture in the fight against corruption. Civil society contribution in social pressure towards the Government can help in reducing the chance of corruption by supervising closely the behavior of the public employees. A good governance as a requirement for ideal democracy can only be achieved if civil society is actively participating in the governance. Professionalism, accountability, integrity and transparency as key principles in good governance thus can be strengthened and eventually minimizing the chance for the public employees to conduct corruption. In conclusion, a strong civil society will be a strategic and effective element to prevent and combat corruption in Indonesia.

⁴¹ Natasha Hamilton-Hart, "Anti-Corruption Strategies in Indonesia", *Bulletin of Indonesian Economic Studies*, Vol.37, No.1, 2001, p. 65-82.

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