

Overall Score:

74 - Moderate

Legal Framework Score:

92 - Very Strong

Actual Implementation Score:

56 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶⁰ Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

References:

UUD, 1945 (Indonesia Constitution).

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:

Article 28 and 28E, Indonesian Constitution, 1945.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

I think the law requires every institution that receives funding to disclose sources to the public, but it is rarely enforced by the government. Also, the demand from the public to know such information is not too strong.

References:

Law No.28, 2004, about changes; Law No. 16/2001 about foundation/institute, Article 52.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

100

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

The government does not restrict the CSOs that perform work of good governance or anti-corruption. As far as requirements for administration is concerned, CSOs have operating licenses.

References:

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Some CSOs in Indonesia can engage in policymaking, both on the local and national levels. An example is BIGS (Bandung Institute of Governance Studies), which engages in policymaking at local levels, particularly in efforts to increase public participation in the district of West Bandung's budget-planning process in cooperation with the West Bandung agency.

References:

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

0

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Ibnu Jandi, Director Institute of Public Policy for Tangerang District, January 19, 2010, Bandung

Koran Jakarta, Eko (N-1), October 19 2009, Activists criminalization trigger demoralization, <http://www.koran-jakarta.com/berita-detail.php?id=29237>

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

There are many cases of harm against activists, especially at the local level, that are not widely reported by the media and government.

References:

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | **NO**

Comments:

in March 28th 2009, Anak Agung Gede Prabangsa (41th), a reporter for Radar Bali (local newspaper) killed for revealing cases of corruption.

References:

Arfi Bambani Amri, March 28, 2009, Strong Prabangsa Allegedly Murdered For News, <http://nasional.vivanews.com/news/read/44568-> prabangsa_diduga_kuat_dibunuh_karena_berita

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Indonesian Constitution, 1945, Article 28 and Law No.21, 2000, about trade unions.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | **50** | 25 | 0

Comments:

Trade unions are very clear about the rights of workers. But now many forms of intimidation are carried out by companies, although not physical forms of intimidation, but more systemic ones.

References:

Sidhartha, Chairman of Center Labor and Chairman of Trade Union, per Employee Communication Forum PT, Dirgantara, Indonesia, September 14, 2009, Bandung.

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

50

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Law No.40, 1999, about the Press, Articles 2(1); 4.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | **NO**

References:

Indonesian Constitution, 1945, Article 28/28E.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

75

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | **NO**

Comments:

Trading business licenses were abolished, so print media can print directly on their activities because the rules of SIUP been abolished.

References:

There is no regulation on this matter.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

56

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

References:

Broadcasting Act 32/2002 establishes the Indonesian Broadcasting Board (Komisi Penyiaran Indonesia — KPI). Article 8 rules that the KPI

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can get a broadcast license within 14 working days, but in practice the time can be more than 14 days.

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost to obtain a broadcasting license is free, but, in practice, many of the applicants give money because many applicants did not know about the rules and to speed up the process, they are better off giving money to officials to take care of it so fast right

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

88

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

There were cases of the government trying to block some websites that contain socially inflammatory materials, such as sites that contain videos against a particular religion.

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

Antara news, March 3, 2009, Internet Users in Indonesia Rise, <http://www.antaranews.com/berita/1236097124/pengguna-internet-di-indonesia-meningkat>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Law No.40, 1999, about the press, Article 5 (1).

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

65

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

According to law Number 1/1995, the media companies that include print media, radio or TV must disclose their ownership information.

References:

In the law number 1/1995, the media companies include print media, radio or TV.

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

Per law Number 1/1995, the media companies that include print media, radio or TV must disclose their ownership information.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | **25** | 0

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

0

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

Comments:

For the example, please visit the website mentioned above.

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

Legal Aid Agency Press, Hendrayana, S. H. Sholeh Ali, S. H. M. Halim, December 23, 2008, Press Freedom Still Under Threat, <http://www.lbhpers.org/?dir=perstampil&id=37>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

Comments:

For the example, please visit the website mentioned above.

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

Kompas, August 2, 2008, Journalists Persecuted Headman, <http://cetak.kompas.com/read/xml/2008/08/02/00245864/jurnalis.dianiaya.lurah>

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | **NO**

Comments:

For the example, please visit the website mentioned above.

References:

Nursyawal, Chairman of the Indonesian Broadcasting Commission of West Java, September 14, 2009, the Office KPID, West Java, Bandung.

Dadan S. SUHARMAWIJAYA, Research Executive, Java Post, September 13, 2009, Surabaya.

Media Indonesia, Gede Ruta Suryana, May 18, 2009, Journalist's Death 'Radar Bali' is Caused by Reporting, <http://www.mediaindonesia.com/read/2009/05/05/75310/129/101/>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

58
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The Free Information Act or section includes chapters that discuss the rights and obligations of applicants and users of public information and the rights and obligations of public agencies.

References:

Law No.14, 2008, about the Free Information Act, Articles 2(3); 3(a); and 4.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

The Free Information Act, Chapter 7, Article 26, discusses commission information. The commission receives, examines, and decides upon requests for information-dispute settlements with the public through mediation and/or adjudication submitted by applicants for public information on the grounds referred to in this act.

References:

Law No.14, 2008, about the Free Information Act, Article 4(4).

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Although the information commission has been formed, but not yet in operation, both the laws and institutions of public information will apply in 2010.

References:

Law No. 14, 2008, Article 3 (4) will be implemented in 2010, but the information commission as an independent institution has already established.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

4

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Law No.14, 2008, about the Free Information Act, will be implemented in 2010.

References:

Alamsyah Saragih, Chairman of the Commission of Public Information, September 15, 2009, Bandung.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Law No.14, 2008, about the Free Information Act, will be implemented in 2010,

References:

Alamsyah Saragih, Chairman of the Commission of Public Information, September 15, 2009, Bandung.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Law No.14, 2008, about the Free Information Act, will be implemented in 2010.

References:

Alamsyah Saragih, Chairman of the Commission of Public Information, September 15, 2009, Bandung.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Law No.14, 2008, about the Free Information Act, will be implemented in 2010.

References:

Alamsyah Saragih, Chairman of the Commission of Public Information, September 15, 2009, Bandung.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Law No.14, 2008, about the Free Information Act, will be implemented in 2010.

References:

Alamsyah Saragih, Chairman of the Commission of Public Information, September 15, 2009, Bandung.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

Law No.14, 2008, about the Free Information Act, will be implemented in 2010.

References:

Alamsyah Saragih, Chairman of the Commission of Public Information, September 15, 2009, Bandung.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁷³Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

Voters are Indonesian citizens who have reached the age of 17 (seventeen) years or more or are married.

References:

Article 1 (22), Law No. 10, 2008, about the Member Election for DPR, DPD, and DPRD.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

Elections are held every five years.

References:

Article 22E (1), Indonesia Constitution.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

83

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

References:

Rakyat Merdeka, Pipik Anwar Siddik, July 6, 2009, Pengumuman DPT, Ratusan Warga Bekasi Kehilangan Hak Pilih,” (DPT Announcement: Hundreds of Bekasi Citizens Lose Voting Rights), <http://www.rakyatmerdeka.co.id>

Kompas Cyber Media, C8-09, July 8, 2009, “Ribuan Orang di RSCM Kehilangan Hak Pilih,” (Thousands of People in RSCM Lose Voting Rights), <http://bisniskeuangan.kompas.com>

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Ballot security mechanisms are available. As stated in the Law No. 10 Year 2008, article 146, concerning the election of members of parliament of Republic of Indonesia, local parliament, and the house of local representatives, the Election Commission requested the Republic of Indonesia State Police assistance to protect the ballots during the printing process, storage, and distribution to the destination. But in some cases the security is weak. In the 2009 Presidential Election of District TOMBOLO, Sub Sombaopu, Gowa Regency, South Sulawesi, the Chairman of the Voting Organizer (KPPS) found local ballots have been marked number 2. He discovered this when verifying the ballot to one voter at the polling stations when going to vote. Other case, a chairman of the board of directors of party branch in Sunggal District, Deli Serdang, North Sumatra witnessed several ballot box was opened by a number of elements in the morning before the election. He also found some elements of PPS was filling sheet C1 (form contained the number of voters, invalid votes of both candidates, and the invalid votes) of city/county parliament vote recapitulation. Even police officers who should take responsibility for the security of the ballots in contributed to in this violation.

References:

Vivanews, Elin Yunita Kristanti, July 8, 2009, Ada Surat Suara Yang Sudah Contreng Nomor 2, (There is a Ballot Marked Number 2), <http://politik.vivanews.com>

Waspada Online, Tim Waspada (Reporting Team), April 12, 2009, "Kotak Suara Dibongkar, Aparat Usir Warga," (Ballot Box Opened, Officers Expelled Residents), <http://www.waspada.co.id/>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

ANTARA, author's name is not mentioned, June 17, 2008, KPU Belum Tetapkan Perubahan Tanggal Pemilu Legislatif," (Change of Date of Legislative Election Not Stated by KPU Yet), <http://www.antara.co.id/print/1213699617>

Kompas Cyber Media, Inggried Dwi Wedhaswary, January 20, 2009, KPU Segera Tetapkan Tanggal Pemilu Presiden, (Soon KPU Will State Presidential Election Day), <http://kompas.co.id/read/xml/2009/01/20/17201746/kpu.segera.tetapkan.tanggal.pemilu.president>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

70

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Political parties were founded and formed by at least 50 Indonesian citizens. The founders must be at least 21 years old.

References:

Article 2 (1), Law No. 2, 2008, about political parties.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

According to the above law, political party members have the right to determine policies and have the right to choose and be chosen.

References:

Article 5 (2), Law No. 2, 2008, about political parties.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Political reasons still inhibit citizens from establishing new political parties. In case of rejection by the GAM party, the Indonesian government still worries about the impact to the political condition and state security. But in other provinces, political party establishment can be done easily.

References:

Rakyat Aceh, Salahuddin Wage Lakuanin, March 27, 2008, Nama Dan Lambang Partai GAM,” (Name and Symbol of GAM Party), <http://www.rakyataceh.com>

Kapanlagi, Ipk, November 27, 2006, “Pembentukan Partai Baru Hanya Akal-Akalan Elit Politik” (New Party Establishment is a Political Elitist Trick), <http://www.kapanlagi.com>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties’ political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Essentially, everyone can run for political office. But the operational and political campaign costs are relatively very high. The Indonesian average income per capita at the end of 2009 is USD 2500-2600. For parliament candidates, campaign funds are around USD 1.5 billion-USD 2 billion, the provincial parliament USD 700 million-USD 1 billion, and the House of Representatives districts and cities USD 500 million-USD 600 million. While the official council salary for five years is the parliament is USD 30 million x 12 x 5 = USD 1.8 billion. Province parliament USD 15 million x 12 x 5 = USD 900 million. Regency/municipality parliament USD 9 million x 12 x 5 = USD 540 million. Excluding taxes and dues for parties which usually ranges from 15-25 percent.

References:

Jawa Pos, May 1, 2009, Pemilu Mahal Dan Investasi Korupsi, (Expensive Election and Corruption)

Investment), <http://antikorupsi.org/indo/content/view/144477/>

Sinarpagibaru.com, January 13, 2009, Pembiayaan Kampanye Pada Pemilu 2009 Memang Sangat Mahal (Financing the 2009 Election Campaign is Very Expensive), http://sinarpagibaru.com/index2.php?option=com_content&do_pdf=1&id=158

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | **25** | 0

Comments:

Almost all political parties want to engage with the cabinet. What happens in Indonesia politics is parties -during the campaign- confirmed that they are opposition parties that defend the interests of the people, but after losing the election, they turned toward the ruling party. Golkar, for example, remains in their plans to join the government of SBY, even in advance of former chairman of Golkar Party, Jusuf Kalla said, Golkar became the opposition, so that they can do the check and balance. While some members of Golkar Party considers Golkar has no experience being an opposition party, because it has never been one. since the New Order era. Golkar always be in power, never outside. As for PDIP, for years they claim to be the opposition party, but they did not have much influence. They've never offered alternative programs. There's no place for opposition party in Indonesia since there're no laws governing opposition party, so they don't rights and obligations clearly. Meanwhile, in a survey conducted by ISAI (Institut Studi Arus Informasi/The Flow of Information Studies Institute), the desire to be the opposition was supported by 55 percent PDIP party voters and 54 percent of Golkar party voters.

References:

Rakyatmerdeka.co.id, Zul Sikumbang, September 3, 2009, 85 Persen, Keterwakilan Kader Demokrat di Kabinet SBY-Boediono," (85 Percent, Kader Democratic Representation in the Cabinet SBY-Boediono), <http://www.rakyatmerdeka.co.id/news/2009/09/03/80675/85-Persen,-Keterwakilan-Kader-Demokrat-di-Kabinet-SBY-Boediono>.

Republika, Mohammad Yasin Kara (Sekretaris Fraksi PAN DPR RI), September 9, 2009, "Oposisi/Megang Posisi," (Opposition Keeps Position), <http://jakarta45.wordpress.com/2009/09/09/politik-oposisi-atau-megang-posisi/>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

85

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

Article 73 (1), Law No. 22, 2007, about Conducting Elections.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Kapanlagi, cax, March 18, 2008, DPR Belum Miliki Pertanyaan Standar Seleksi Bawaslu," (DPR Hasn't Standard Questions for Bawaslu Selections), http://www.kapanlagi.com/h/0000218463_print.html

Okezone, jri, March 16, 2008, "Pembentukan Bawaslu Ditarget Akhir Maret", (Bawaslu Formation is Targeted in the End of March), <http://international.okezone.com/read/2008/03/16/1/92082/1/pembentukan-bawaslu-ditarget-akhir-maret>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed

usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Nur Hidayat Sardini, Bawaslu RI (Election Supervisory Board), Monday, September 7, 2009, BAWASLU RI Office, Jl. M.H. Thamrin, Central Jakarta.

Anwar Siswadi, News Contributor, Koran Tempo, September 9, 2009, Koran Tempo Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

Jambi Ekspres, wne/cr2, April 3, 2009, Satu Panwas Tujuh TPS," (One Election Supervisor for Seven Polling Stations), <http://www.jambiekspres.co.id/index.php/utama/989-satu-panwas-tujuh-tps.html>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

References:

Nur Hidayat Sardini, Bawaslu RI (Election Supervisory Board), Monday, September 7, 2009, Bawaslu RI Office, Jl. M.H. Thamrin, Central Jakarta.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The Election Supervisory Body (Bawaslu) reported President Susilo Bambang Yudhoyono (SBY) and the campaign team of SBY-Boediono to police headquarters. They are alleged to have worked beyond the scheduled limit legally allowed in the campaign schedule due to the National Coalition Parties Silaturahmi SBY-Boediono at PRJ, fully aired by TVRI and Metro TV. According to Bawaslu, the National Silaturahmi” event was included in the campaign category in the form of other activities, as stipulated in Article 38, Paragraph (1), Letter h. The reason is, SBY conveys the vision, mission, and programs of SBY-Boediono couples, and there are props or attributes of potential partners. SBY speech broadcast on the show fully aired by TVRI and partly by Metro TV. This evidence confirms that the activities are a campaign activity. They were not allowed to do that.

References:

Nur Hidayat Sardini, Bawaslu RI (Election Supervisory Board), Monday, September 7, 2009, Bawaslu RI Office, Jl. M.H. Thamrin, Central Jakarta.

Kontan Online, Yohan Rubiyantoro, June 8, 2009, Bawaslu Laporkan SBY ke Mabes Polri, (Bawaslu Reports SBY to Indonesian Police Headquarters), <http://www.kontan.co.id/index.php/nasional/news/15149/Bawaslu-Laporkan-SBY-ke-Mabes-Polri>.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | **50** | 25 | 0

Comments:

Voter registration should be conducted by a census method, then all citizens who have the right to vote can be registered. Voter registration authority should be given to KPUD (Regional Election Committee) or a voter registration committee should be established that has the staff to reach the lowest level of community. The KPUD is not considered transparent in the candidate-registration process and is weak in educating voters.

References:

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

Website, Jaringan Pendidikan Pemilih Untuk Rakyat, (Voter Education Network for People/JPPR), Jeirry Sumampow (National Coordinator of JPPR), January 12, 2008; JPRR: Benahi Sistem Pendaftaran Pemilih,” (JPRR: Fix Voter Registration System), <http://www.jprr.or.id>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost” voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Chapter III: Power of the Constitutional Court, the first part on Authority, Article 10 (1) Letter d, Law No. 24, 2003, about the Constitutional Court.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | **50** | 25 | 0

Comments:

Disputes on elections can be resolved in the constitutional court within a reasonable time. A candidate who is not registered on the list, but who has adequate votes, once processed in constitutional court, can have his or her name placed on the selected list.

References:

Nur Hidayat Sardini, Bawaslu RI (Election Supervisory Board), Monday, September 7, 2009, Bawaslu RI Office, Jl. M.H. Thamrin, Central Jakarta.

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

The role of the armed forces and the police in a political campaign, either open or closed (limited public meetings in a closed room), and at the time of voting, are to remain neutral. They do general security, but only to maintain public order.

References:

Nur Hidayat Sardini, Bawaslu RI (Election Supervisory Board), Monday, September 7, 2009, Bawaslu RI Office, Jl. M.H. Thamrin, Central Jakarta.

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

Article 231 (1) (2), Law No. 10, 2008, about Member Election for DPR, DPD, and DPRD.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Independent election supervisors stay outside the ballot-counting station (TPS). Only one witness from each party or coalition of political parties is allowed inside the ballot-counting station.

References:

Anwar Siswadi, News Contributor, Koran Tempo, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

Detik.com, Hery Winarno, May 6, 2009, "Pemantau Dilarang Masuk Ruang Rekapitulasi Suara," (Election Supervisor is Prohibited from Entering the Ballot-Counting Station), <http://www.detiknews.com/read/2009/05/06/134033/1127176/700/pemantau-dilarang-masuk-ruang-rekapitulasi-suara>.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

Indonesia has Bawaslu (Badan Pengawas Pemilu), an election monitoring agency.

References:

Article 6 (2), Law No. 10, 2008, about Member Elections for DPR, DPD, and DPRD.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

87 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

20a. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

The maximum contribution is a 1 billion rupiah (US\$105,330).

References:

Articles 35 and 40, Law No. 2, 2008, about Political Parties.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

Maximum is Rp. 1.000.000.000,00 (one billion), US\$105,330, in one budget year.

References:

Article 35, Law No. 2, 2008, about Political Parties.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES | NO

References:

There is no regulation on this matter.

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

The requirement on reporting donated funds to political parties is the inclusion of the identity of contributors.

References:

Law No. 2, 2008, concerning Political Parties, Article 40 (3).

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | NO

Comments:

Political parties must submit an accountability report on revenues and expenditures resulting from the financial aid budget and the state budget on a regular basis, by region, once a year to the government, after being reviewed by the audit agency.

References:

Law No. 2, 2008, concerning Political Parties, Article 13 (i).

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

References:

Law No. 2, 2008, concerning Political Parties, Article 13 (i): Political parties must submit an accountability report on revenues and expenditures resulting from the financial aid budget and the state budget on a regular basis, by region, once a year to the government, after being reviewed by the audit agency (BPK).

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are limits on individual donations to political candidates.

YES | NO

References:

Law No. 10, 2008, concerning Election of Members of DPR, DPD, and DPRD; Article 133 (2): Election campaign funds of DPD candidates from other party contribution groups, companies and/or nongovernmental entities referred to in Article 132, Paragraph (2), letter (b), shall not exceed Rp. 500,000,000.00 (five hundred million rupiah), US\$ 52,665.

Law No. 10, 2008, concerning Election of Members of DPR, DPD, and DPRD, Article 133, Article 139 (1): There is a prohibition from participating in the election if donations are received from foreign parties.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | NO

References:

Law No. 10, 2008, concerning Election of Members of DPR, DPD, DPRD, Article 133: (1) Election campaign funds for DPD candidates from party donations and (2) Election campaign funds for DPD candidates from party donations and other individuals as referred to in Article 132, Paragraph (2), Letter b, must not exceed Rp.250.000.000.00 (two hundred and fifty million rupiah), US\$26,333. Other groups, companies and/or non-governmental entities sebagaimana dimaksud in Article 132, Paragraph (2) b, are not to exceed Rp.500.000.000, 00 (five hundred million rupiah), US\$ 52,665.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

Article 135 (5), Law No.10, 2008, concerning Election of Members of DPR, DPD, and DPRD: KPU (General Election Commission) will announce the audited donations to the public in ten days, at the latest, after KPU receives the audited donations.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | NO

References:

Article 135 (2), Law No.10, 2008, concerning Election of Members of DPR, DPD, and DPRD: Report campaign funds of DPD candidates that includes revenues and expenditures submitted to the public accounting firm appointed by the Commission at the latest by 15 (fifteen) days after the date of voting.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

References:

Law No. 2, 2008, concerning Political Parties, Article 13 (i): Political parties must submit an accountability report on revenues and expenditures resulting from the financial aid budget and the state budget on a regular basis, by region, once a year to the government, after being reviewed by the audit agency (BPK).

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

46

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Although the laws/regulations have set limits of campaign funding (Rp 1 billion from individuals, Rp 5 billion from private companies), it did not prevent individuals or private companies to donate more than that. This was caused by legislation / regulation is weak. In law/regulation, the maximum contribution limit campaign funds, both individuals and business entities, applies to donations per transaction, not the maximum contribution limit of accumulation. Until now the Election Commission does not provide sanctions against those who violate the rules because the law/regulation did not include sanctions for violators.

References:

Kompas.com, Abk, March 4, 2009, Pembatasan Dana Kampanye Tak Efektif, (Campaign Fund Restrictions Not Effective), http://nasional.kompas.com/read/xml/2009/03/04/20330912/pembatasan_dana_kampanye_tak_efektif.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | **50** | 25 | 0

Comments:

Indonesia Corruption Watch (ICW) suspected vice presidential candidates of SBY-Boediono were funded by foreign companies, namely PT Northstar Pacific Investments, which contributed Rp 1 billion (US\$105,361) to the campaign fund. This contribution is affiliated with one holding company and exceeded contribution limits by almost the same number on five SBY-Boediono partners. The company is affiliated with the firm Northstar Pacific Capital, which contributed US\$1 billion and PT Sumber Alfaria Trijaya, which contributed Rp 3.5 trillion (US\$105,540,885). PT Tbk Retirement Savings Bank also contributed US\$3 billion, so if you add these figures up, these companies contributed US\$8.5 billion, or more than Rp 5 billion.

References:

JakartaPress.com, Ira, July 27, 2009, ICW Menduga Kampanye SBY Didanai Asing (ICW Suspected SBY Campaign was Funded by Foreigners), <http://www.jakartapress.com/news/id/7994/ICW-Menduga-Kampanye-SBY-Didanai-Asing.jp>

Republika Online, ikh/kpo, June2, 2009, Dana Kampanye Pasangan Calon Bertambah (Couple Candidate Campaign Funds Increase), http://sylviagustin.myrepublika.com/berita/54001/Dana_Kampanye_Pasangan_Calon_Bertambah

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

Law No. 22, 2007, concerning Conducting Election and Law No. 2, 2008, do mention about the obligation of political parties to report their expenditures to the government, but do not mention parties' spending limits.

References:

Hukum Online, April 7, 2008, Her, Aturan Dana Kampanye Perlu Dicermati Lagi (Campaign Fund Rules Should be Noted Again), <http://www.hukumonline.com/detail.asp?id=18942&cl=Berita>

Republika Online, ikh/kpo, June 2, 2009, Dana Kampanye Pasangan Calon Bertambah, (Candidate Campaign Funds Increase), http://sylviagustin.myrepublika.com/berita/54001/Dana_Kampanye_Pasangan_Calon_Bertambah.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Nur Hidayat Sardini, Chairman, Election Supervisory Body, Badan Pengawas Pemilu Republik Indonesia/Bawaslu RI, September 7, 2009, Bawaslu RI Office, Jl. M.H. Thamrin, Central Jakarta.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, thought limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

References:

Nur Hidayat Sardini, Chairman, Election Supervisory Body, Badan Pengawas Pemilu Republik Indonesia/Bawaslu RI, September 7, 2009, Bawaslu RI Office, Jl. M.H. Thamrin, Central Jakarta.

Media Indonesia Online, Kennorton Hutasoit, September 18, 2009, Bawaslu Pidanakan Tim Kampanye SBY-Boediono, (Bawaslu Penalizes SBY-Boediono Campaign Team), <http://www.mediaindonesia.com/read/2009/09/09/96392/3/1/Bawaslu-Pidanakan-Tim-Kampanye-SBY-Boediono>.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

Comments:

Donations to political parties was rarely officially reported. What often happens is that the audit conducted on party finances at the moment just before the general election. Financial Transactions Reporting and Analysis Center (PPATK/Pusat Pelaporan dan Analisis Transaksi Keuangan) actually has urged the political parties contesting the election, legislative candidates, as well as DPD member candidates to submit the accounts data to be clarified. They have signed an MoU with Bawaslu (the Supervisory Board Election) to trace the accounts. When PPATK urged it, the general election was very close, while there're so many datas to be traced. PPATK was not optimistic that savings and asset data or parliamentary party in accordance with reality, because accountants do not use a standard procedure or an accountant does not offer an opinion consider that the given time is very short.

References:

VHR Media, Hervin Saputra, March 10, 2009, KPU Minta Parpol Laporkan Cash Flow Dana Kampanye, (Commission Report Asks Political Parties to Report Their Campaign Funds), <http://www.vhrmedia.com/KPU-Minta-Parpol-Laporkan-Cash-Flow-Dana-Kampanye-prediksi71.html>.

KPU (The Election Commission) Official Website, June 3, 2009, Hasil Audit Dana Kampanye Parpol Peserta Pemilu, (Campaign Fund Audit Results of Political Party), http://www.kpu.go.id/index.php?option=com_content&task=view&id=6205&Itemid=68

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

5

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

Comments:

Although the laws/regulations have set limits of campaign funding (Rp 1 billion from individuals, Rp 5 billion from private companies), it did not prevent individuals or private companies to donate more than that. This was caused by legislation / regulation is weak. In law/regulation, the maximum contribution limit campaign funds, both individuals and business entities, applies to donations per transaction, not the maximum contribution limit of accumulation. Until now the Election Commission does not provide sanctions against those who violate the rules because the law/regulation did not include sanctions for violators.

References:

Riyan Sumindar, Senior Researcher, BIGS (Bandung Institute of Governance Studies), September 24, 2009, in Bandung.

Jawapos, February 24, 2009, The Problem in Campaign Fund Monitoring, <http://jawapos.com/halaman/index.php?act=detail&nid=53923>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Senior Researcher, BIGS (Bandung Institute of Governance Studies), September 24, 2009, in Bandung.

Jawapos, February 24, 2009, The Problem in Campaign Fund Monitoring, <http://jawapos.com/halaman/index.php?act=detail&nid=53923>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Nur Hidayat Sardini, Chairman of Election Monitoring Agency, Badan Pengawas Pemilu Republik Indonesia (Bawaslu RI), September 7, 2009, Kantor Bawaslu RI., Jl. M.H. Thamrin, Jakarta Pusat.

Riyan Sumindar, Senior Researcher, BIGS (Bandung Institute of Governance Studies), September 24, 2009, in Bandung.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The agency has no authority to impose penalties.

References:

Riyan Sumindar, Senior Researcher, BIGS (Bandung Institute of Governance Studies), September 24, 2009, in Bandung.

Nur Hidayat Sardini, Chairman of Election Monitoring Agency, Badan Pengawas Pemilu Republik Indonesia (Bawaslu RI), September 7, 2009, Kantor Bawaslu RI. Jl. M.H. Thamrin, Jakarta Pusat.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

References:

Kapanlagi.com, kpl/dar, February 27, 2009, Laporan Dana Kampanye Caleg Sulit Untuk Diaudit, (Campaign Fund Reports for Individual Candidates are Difficult to Audit), <http://www.kapanlagi.com/h/laporan-dana-kampanye-caleg-sulit-diaudit.html>

Riyan Sumindar, Senior Researcher, BIGS (Bandung Institute of Governance Studies), September 24, 2009, in Bandung.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

56

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Residents can read the report in the commercial mass media. But not all political parties can submit their financial reports on time, so the publication is sometimes pending. The delay can be caused by making financial statements that have not been in accordance with Commission standards, which must be returned to the political parties to be revised.

References:

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

Republika Online, ann/pur, September 23, 2009, Laporan Audit Dana Kampanye Pilpres Bermasalah, (Presidential Election Campaign Funds Audit Report is Problematic), http://www.republika.co.id/berita/77706/Laporan_Audit_Dana_Kampanye_Pilpres_Bermasalah

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

Comments:

The Election Commission announces financial reports of parties in the commercial mass media (e.g., newspapers) or news portals. The people who want to access the reports can purchase them or access media via the Internet news portal. The purchase price is relatively affordable.

References:

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

Viva News, Arfi Bambani Amri and Eko Huda S., April 25, 2009, Gerindra Terkaya, Demokrat Nomor Dua, (Gerindra the Richest Party, Democrats Number Two), http://politik.vivanews.com/news/read/52298-gerindra_terkaya_demokrat_nomor_dua

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

Comments:

Financial reports of parties do not specify the types of income and expenditures, only the totals.

References:

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

Indonesia.com, T.Az/yoel, July 27, 2009, KPU Diminta Publikasikan Rincian Dana Kampanye Capres, (The Election Commission is Asked to Publish Details of the Presidential Campaign Funds), <http://www.indonesia.com/mod.php?mod=publisher&op=viewarticle&cid=49&artid=3908>.

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Despite existing laws governing elections to the individual participants for financial reporting to the Election Commission, in practice, there're only few candidates who submitted their financial report to the Commission. There're certain unknown reasons, but one member of the Commission once said, for example in political parties, the inability to pay their auditors has been an obstacle to their financial statements. The same reason probably lies behind the inability of the individual candidates to make and report financial records to the Commission.

References:

Riyan Sumindar, Senior Researcher, BIGS (Bandung Institute of Governance Studies), September 24, 2009, in Bandung.

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can not access the financial records of individual candidates. Not only them, the Election Commission has not received the financial reports of individual candidates either. Only just a few of the individual candidates reported their financial records and the reporting models are still far from expectations, very minimalist, can not explain anything, except for the formality of questionable validity.

References:

Riyan Sumindar, Senior Researcher, BIGS (Bandung Institute of Governance Studies), September 24, 2009, in Bandung.

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can not access the financial records of individual candidates. Not only them, the Election Commission has not received the financial reports of individual candidates either. Only just a few of the individual candidates reported their financial records and the reporting models are still far from expectations, very minimalist, can not explain anything, except for the formality of questionable validity.

References:

Riyan Sumindar, Senior Researcher, BIGS (Bandung Institute of Governance Studies), September 24, 2009, in Bandung.

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Senior Researcher, BIGS (Bandung Institute of Governance Studies), September 24, 2009, in Bandung.

Anwar Siswadi, News Contributor, Koran TEMPO, September 9, 2009, Koran TEMPO Jawa Barat Bureau Office, Jl. Bengawan, No. 7A, Bandung.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. ⁶⁸Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

56

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

Every minister has a different way of making a relationship with the media. The chief executive usually has the relation with media only for socialization of one policy not to take question from them. So when the chief executive contact media, the policy has been finalized.

References:

Press Conference on Fiscal News, Finance Minister Sri Mulyani Indrawati, May 22, 2009, Menteri Keuangan Gelar Jumpa Pers Tentang Kebijakan BBM, (Minister of Finance Decrees Press Conference on Oil Policy), www.fiskal.depkeu.go.id

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Article 10 (1), Law No. 24, 2003, about the Constitutional Court.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary is not active in reviewing actions; it waits for citizens to report.

References:

Kontan, Magdalena Sihite, January 6, 2009, AAUI Ngotot Uji Materi PP 39 di Mahkamah Agung (AAUI persists for the Supreme Court to do material tests on PP 39), www.kontan.co.id

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

Comments:

Now Indonesia has prolegnas (Program Legislatif Nasional/National Legislative Program). But through this program, it can not be concluded that the executive limits the orders for establishing new regulations. According to the above expert opinion on legislative work on period 2004-2009, executive is still dominant in establishing draft of law.

References:

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

Sindo, Syamsuddin Haris, Kepala Pusat Penelitian Poltik LIPI, September 30, 2009; Lima Tantangan DPR, 2009-2014, (Five Challenges for National Parliament, 2009-2014), <http://www.golkar.or.id/contents/isu/?p=2100>

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

Articles 7A and 7B (1), Indonesia Constitution, 1945.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Article 27 (1), Indonesia Constitution, 1945.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

63

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Chapter IV: Rights and Obligations of State Officials, Article 5 (3), Law No. 28, 1999, on state administration free from corruption, collusion, and nepotism.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Chapter IV: Rights and Obligations of State Officials, Article 5 (3), Law No. 28, 1999, on state administration free from corruption, collusion, and nepotism.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Articles 12B and 12C, Law No. 20, 2001, about Change For Law No. 31, 1999, about Corruption Eradication.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

KPK, the Corruption Eradication Commission, has the mandate to compile the asset-disclosure forms.

References:

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

There is no regulation on this matter.

References:

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

it is very common in Indonesia that former public officials enter the private sector.

References:

Koran Tempo, Padjar, October 10, 2002, Banyak Bekas Pejabat, Militer, dan Politisi Masuk Perusahaan Publik, (Many Former Officials, Military, and Political, Sign With Public Company), <http://www.infoanda.com/linksfollow.php?h=AFFSVgZdBFBX>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to the above media report, the case of Bulyan Royan (the parliament member) involve member of executives from communication department but the media did not mention who they are. The media also reported that giving the fee to the member of executive (given by businessman in order to win tender) is a usual thing.

References:

Antara News, no name given, July 2, 2009, Kasus Bulyan Royan Libatkan Anggota DPR Lain Dan Pejabat Dephub (The Case of Bulyan Royan Involves Other Members of Parliament and Actions of the Communication Department), <http://www.antara.co.id/view/?i=1214956063&c=NAS&s=>.

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosures are audited by the auditor in the Corruption Eradication Commission/KPK/Komisi Pemberantasan Korupsi.

References:

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

63

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

KPK decision (KEP.07/KPK/02/2005).

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Previously, citizens could access these disclosures from the Corruption Eradication Commission (KPK). KPK's vice chief stated that parliament members questioned KPK's authority to disclose the asset declaration forms. They argued that according to Law No. 28, 1999, KPK has the authority to investigate the records, but not to publish them. It is possible that the newly enacted Freedom of Information law could address this in the future, once it is implemented.

References:

ICW Website (Indonesian Corruption Watch), no name given, November 3, 2008, KPK Akan Buka Lagi Akses terhadap LHKPN, (Commission Will Again Open Access to LHKPN), <http://antikorupsi.org/indo/content/view/13573/1/>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

ICW Website (Indonesian Corruption Watch), no name given, November 3, 2008, KPK Akan Buka Lagi Akses terhadap LHKPN, (Commission Will Again Open Access to LHKPN), <http://antikorupsi.org/indo/content/view/13573/1/>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

References:

www.jakarta.wartaegov.com, Dummy, June 1, 2008, 100 Pejabat Pemerintah Terkaya Indonesia (The 100 Richest of Indonesian Government Officials), http://jakarta.wartaegov.com/index.php?option=com_content&view=article&id=659&catid=34:wartautama&Itemid=54

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Article 63 (1), Law No.30, 2002, about the Corruption Eradication Commission (Komisi Pemberantasan Korupsi/KPK).

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

25

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

There is a law which prohibits the use of state facilities during the campaign

References:

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

www.koran-radar.com, Tmn/Hkln, 16 March 2009, There are no sanctions for User Facilities, <http://www.koran-radar.com/berita/read/2743/2009/Tak-Ada-Sanksi-Bagi-Pemakai-Fasilitas-Negara>

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

92

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

This article says that the Constitutional Court shall have the authority to make final decisions in cases of first and last instances, to handle the review of laws against the Constitution, to decide on authority arguments among state institutions whose competence is described in the constitution, to decide on the dissolution of political parties, and to decide on disputes regarding general election results.

References:

Article 24 C (1), Indonesia Constitution (UUD, 1945).

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The Constitutional Court (MK/Mahkamah Konstitusi) reviews the laws passed by the legislature passively. MK will act if there is complaint or report from public.

References:

Mediacenter.kpu.go.id, August 8, 2009, Sebagian Uji Materi UU Pemilu Dikabulkan MK, (Some Materials Test Laws Granted by MK (Mahkamah Konstitusi/Constitutional Court), <http://mediacenter.kpu.go.id/berita/825-sebagian-uji-materi-uu-pemilu-dikabulkan-mk.html>)

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

References:

Article 106 (1-6) Law No. 22, 2003, about Composition and Position of People's Consultative Assembly, the Indonesian House of Representatives, Provincial Representatives, and Local Parliament.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

54

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

Every state official must file asset-disclosure forms before and after occupying public office.

References:

Chapter IV: Rights and Obligations of State Officials, Article 5 (3), Law No. 28, 1999.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

There is no regulation on this matter.

References:

There is no regulation on this matter.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

Gifts and hospitality for public officials could be considered bribes if they are not reported to the Corruption Eradication Commission.

References:

Article 12B and 12C, Law No. 20, 2001, about Change For Law No. 31, 1999, about Corruption Eradication.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

KPK's (Corruption Eradication Commission) regulation.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

It is very common in Indonesia that former legislators enter the private sector.

References:

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to the above media report, the case of Bulyan Royan (the parliament member) involve member of executives from communication department but the media did not mention who they are. The media also reported that giving the fee to the member of executive (given by businessman in order to win tender) is a usual thing.

References:

Berita Sore, Ant, April 10, 2008, Kasus Al Amin Hanyalah Sinetron Kecil, (Al-Amin's Case is Only a Small Sinetron), <http://beritasore.com/2008/04/10/kasus-al-amin-hanyalah-sinetron-kecil/>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

Antara News, no name given, July 2, 2009, Kasus Bulyan Royan Libatkan Anggota DPR Lain Dan Pejabat Dephub, (The case of Bulyan Royan Involves Other Members of Parliament and Actions of the Communication Department), <http://www.antara.co.id/view/?i=1214956063&c=NAS&s=>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | **50** | 25 | 0

References:

Arif Nur Alam, Director, IBC (Indonesia Budget Center), September 7, 2009, South Jakarta.

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

75

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Article 5 (7), Decision of Corruption Eradication Commission No. 02, 2005, How to Register, Announce, and Examine State Official Assets. (LHKPN /Laporan Harta Kekayaan Penyelenggara Negara).

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Website ICW (Indonesian Corruption Watch), no name given, November 3, 2008, KPK Akan Buka Lagi Akses Terhadap LHKPN," (Commission Will Again Open Access to LHKPN), <http://antikorupsi.org/indo/content/view/13573/1/>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The legislative members have no obligation to release asset disclosure.

References:

Website ICW (Indonesian Corruption Watch), no name given, November 3, 2008, KPK Akan Buka Lagi Akses Terhadap LHKPN,” (Commission Will Again Open Access to LHKPN), <http://antikorupsi.org/indo/content/view/13573/1/>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

References:

[www.jakarta.wartaegov.com](http://jakarta.wartaegov.com), Dummy, June 1, 2008, 100 Pejabat Pemerintah Terkaya Indonesia, (The 100 Richest of Indonesian Government Officials), http://jakarta.wartaegov.com/index.php?option=com_content&view=article&id=659&catid=34:wartautama&Itemid=54

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals’ sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

67

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

This act will be implemented in 2010.

References:

Free Information Act.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, OBI (Open Budget Index), Researcher for Indonesia, BIGS (Bandung Institute of Governance Studies), September 9 2009, Bandung.

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

Riyan Sumindar, OBI (Open Budget Index), Researcher for Indonesia, BIGS (Bandung Institute of Governance Studies), September 9 2009, Bandung.

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

72
III-3. Judicial Accountability

36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

UUD, 1945, (Indonesia Constitution), Article 24 A (3): Candidates for supreme court justice are proposed by the Judicial Commission for approval to the DPR and subsequently installed as supreme court justices by the President, www.mpr.go.id

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

References:

Okezone, Amirul Hasan, November 6, 2008, Judicial Commission Fnds Difficulties for Supreme Court Justices," <http://news.okezone.com/read/2008/11/06/1/161369/1/komisi-yudisial-kesulitan-mencari-hakim-agung>.

Republika, Anif Punto Utomo, September 15, 2008, Selection of Supreme Court Justices, <http://anifpuntoutomo.blogspot.com/2008/10/seleksi-hakim-agung.html>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

UUD, 1945, (Indonesia Constitution), Article 24, A (3): Candidates for supreme court justice are proposed by the Judicial Commission for approval to the DPR and subsequently installed as supreme court justices by the President, www.mpr.go.id

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

79

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Article 197, Law No. 8, 1981, concerning the Law of Criminal Procedure.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

Viva News, Nurcholis Anhari Lubis, July 30, 2009, Hakim Agung: Laporan ke KY Tak Masuk Akal, (Supreme Judge: Report to Judicial Commission is Unthinkable), http://politik.vivanews.com/news/read/78997-hakim_agung_laporan_ke_ky_tak_masuk_akal

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

According to the New Law of the Supreme Court, cited above, there are internal and external controls for national judges. Internal control becomes the task of the Supreme Court, while the external control becomes the task of Judicial Commission.

References:

Article 32 A, Law No.3, 2009, about the Second Change for Law No.14, 1985, about the Supreme Court.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

Both the Supreme Court and the Judicial Commission are not the executive ministry or the legislative committee.

References:

Article 32 A, Law No.3, 2009, about the Second Change for Law No.14, 1985, about the Supreme Court.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Hukum online, no name given, May 3, 2007, KY Investigasi Laporan Kekayaan Calon Hakim Agung, (Judicial Commission Investigates Asset Records of National Judge Candidates), <http://cms.sjp.co.id/hukumonline/detail.asp?id=16634&cl=Berita>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The judicial disciplinary agency does not impose sanctions, only recommendations.

References:

Rakyat Merdeka, Rmol, August 10, 2009, 8 Hakim Diusulkan Diberi Sanksi, (Eight Judges Given Proposed Sanctions), <http://www.rakyatmerdeka.co.id/news/2009/08/10/79546/8-Hakim-Diusulkan-Diberi-Sanksi>.

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

57

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Chapter IV: Rights and Obligations of State Officials, Article 5 (3), Law No. 28, 1999.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Articles 12B and 12C, Law No. 20, 2001, about changes for Law No. 31, 1999, about Eradication of Corruption.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

Asset disclosures are not audited until KPK found financial irregularities. Then KPK can ask BPK (external audit institution) to audit LHKPN (asset disclosure) when financial irregularities are discovered or suspected.

References:

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

Article 13 Law 30 Year 2002 about KPK (Anti Corruption body).

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

There is no regulation on this matter.

References:

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

it is very common in Indonesia that former public officials enter the private sector.

References:

Koran Tempo, Padjar, October 10, 2002, Banyak Bekas Pejabat, Militer, dan Politisi Masuk Perusahaan Publik, (Many Former Officials, the Military and Politicians Sign With Public Company), <http://www.infoanda.com/linksfollow.php?lh=AFFSVgZdBFBX>.

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | **25** | 0

Comments:

Prosecutor Urip caught by the Anti Corruption Commission at the time of accepting bribes.

References:

TV One, Ant, August 19, 2009, Hakim Pembebas Koruptor Dilaporkan ke KY (The Judge Who Made free Corruptor is Reported to Judicial Commission/KY/Komisi Yudisial), http://www.tvone.co.id/berita/view/20588/2009/08/19/hakim_pembebas_koruptor_dilaporkan_ke_ky.

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

Antara News, March 6, 2008, KY Turut Berduka Terhadap Kasus Jaksa Urip, (Judicial Commission Sorry for What Happened to Prosecutor Urip), <http://www.antara.co.id/view/?i=1204814267&c=NAS&s=>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent

or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Every state official has to report his/her wealth, and an independent audit is required when financial irregularities are discovered or suspected.

References:

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

75

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

Citizens can get these records at the KPK's office.

References:

Article 5(7), Decision of Corruption Eradication Commission, No. 02, 2005, How to Register, Announce, and Examine State Official Assets (LHKPN/Laporan Harta Kekayaan Penyelenggara Negara).

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

ICW Website (Indonesian Corruption Watch), no name given, November 3, 2008, KPK Akan Buka Lagi Akses Terhadap LHKPN (Commission Will Again Open Access to LHKPN), <http://antikorupsi.org/indo/content/view/13573/1/>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The above media report said that KPK would provide direct access to the public to view the LHKPN (asset disclosure records) through a computer. Public are not allowed to print the LHKPN.

References:

ICW Website (Indonesian Corruption Watch), no name given, November 3, 2008, KPK Akan Buka Lagi Akses Terhadap LHKPN (Commission Will Again Open Access to LHKPN), <http://antikorupsi.org/indo/content/view/13573/1/>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

www.kpk.go.id, 3 November 2008, KPK Will Increase Access to Public Official's Wealth Reports, <http://www.kpk.go.id/modules/news/article.php?storyid=709>.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

References:

www.jakarta.wartaegov.com, Dummy, June 1, 2008, 100 Pejabat Pemerintah Terkaya Indonesia, (The 100 Richest of Indonesian Government Officials), http://jakarta.wartaegov.com/index.php?option=com_content&view=article&id=659&catid=34:wartautama&Itemid=54

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

40a. In law, the legislature can amend the budget.

YES | NO

Comments:

The negotiation at this stage is very tough.

References:

Article 15, Law 17, 2003, about State Finance.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

The legislature knows all significant public expenditures.

References:

Arif Nur Alam, Director, IBC (Indonesia Budget Center), September 7, 2009, South Jakarta.

Riyan Sumindar, OBI (Open Budget Index), Researcher for Indonesia, BIGS (Bandung Institute of Governance Studies), September 9, 2009, Bandung.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Staff members who do are limited to the administration. But the legislature can take advantage of professional services to enhance their capacity in monitoring or in providing input to the national budget. But, unfortunately, they do not maximize this opportunity.

References:

Arif Nur Alam, Director, IBC (Indonesia Budget Center), September 7, 2009, South Jakarta.

Riyan Sumindar, OBI (Open Budget Index), Researcher for Indonesia, BIGS (Bandung Institute of Governance Studies), September 9, 2009, Bandung.
www.depkmham.go.id, Anggito Abimanyu, October 15 2005, Government Official at Finance Department and Economy Faculty Lecturer at UGM, Planning and Budgeting for APBN (national budget), <http://www.depkmham.go.id/NR/rdonlyres/C336ABF8-7005-40F3-87D0-8520FD969BF2/1758/KeuanganPerencanaandanPenganggaranAPBN.pdf>

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

17

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

There are some who declare open meetings and the public can be involved as far as observing, but cannot comment or ask questions.

References:

Arif Nur Alam, Director, IBC (Indonesia Budget Center), September 7, 2009, South Jakarta.

Riyan Sumindar, OBI (Open Budget Index), Researcher for Indonesia, BIGS (Bandung Institute of Governance Studies), September 9, 2009, Bandung.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

References:

Arif Nur Alam, Director, IBC (Indonesia Budget Center), September 7, 2009, South Jakarta.

Riyan Sumindar, OBI (Open Budget Index), Researcher for Indonesia, BIGS (Bandung Institute of Governance Studies), September 9, 2009, Bandung.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

Arif Nur Alam, Director, IBC (Indonesia Budget Center), September 7, 2009, South Jakarta.

Riyan Sumindar, OBI (Open Budget Index), Researcher for Indonesia, BIGS (Bandung Institute of Governance Studies), September 9, 2009, Bandung.

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

33

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | **50** | 25 | 0

Comments:

The report is submitted to Parliament, not to the above committee.

References:

Arif Nur Alam, Director, IBC (Indonesia Budget Center), September 7, 2009, South Jakarta.

Riyan Sumindar, OBI (Open Budget Index), Researcher for Indonesia, BIGS (Bandung Institute of Governance Studies), September 9, 2009, Bandung.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

Arif Nur Alam, Director, IBC (Indonesia Budget Center), September 7, 2009, South Jakarta.

Riyan Sumindar, OBI (Open Budget Index), Researcher for Indonesia, BIGS (Bandung Institute of Governance Studies), September 9, 2009, Bandung.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

Arif Nur Alam, Director, IBC (Indonesia Budget Center), September 7, 2009, South Jakarta.

Riyan Sumindar, OBI (Open Budget Index), Researcher for Indonesia, BIGS (Bandung Institute of Governance Studies), September 9, 2009, Bandung.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

There is budget committee (Panitia Anggaran) to provide oversight of public funds. And in August 29, 2009, Indonesia had a new law concerning the composition of the MPR, DPR, DPD, and DPRD. This is Law No. 27, 2009, about the MPR, DPR, DPD, and DPRD. According to this law, the above task will be conducted by the Budget Agency (Badan Anggaran) and the Accountability Agency (Badan Akuntabilitas).

References:

The Law on Composition of MPR, DPR, DPD, and DPRD.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ~~89~~ Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Law No. 43, 1999, about Personnel Principles, Chapter 2, Article 3.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

The regulations apply to state officials of the highest state institutions, including ministers, governors, judges, and other strategic state officials.

References:

Law No. 28, 1999, about state implementation of regulations clean and free from corruption and nepotism, Articles 5, 9, 10 and 20.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

References:

Law No. 25, 2009 about Civil Service, Articles 36-41 and 46.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

In the Government Regulation No.30 year 1980 article 3 of the ban on civil servants, that when an employee convicted of corruption TPTGR (Treasury Torts Claims) means employees need to replace or refund the corrupted. Types of sanctions depends on the weight given minor violations committed by employees

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

50

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants are prohibited from campaigning for the political party, but in reality the political party can interfere with civic servants in several ways. There is a specific example from website cited above in References. The article is about one of the senior officials who mobilized civil servant to vote certain party.

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ade Irawan, executive member of ICW (Indonesia Corruption Watch), September 18, 2009, Bandung.

Media Indonesia, Bantors Sihombing, April 3, 2009, Senior Official in Pematang Siantar Mobilized Civil Servants to Vote Democratic Party, <http://www.mediaindonesia.com/read/2009/06/06/81648/3/1/Pilpres-di-Halmahera-Utara-Terancam-Batal>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the

government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ade Irawan, executive member of ICW (Indonesia Corruption Watch), September 18, 2009, Bandung.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Nepotism, cronyism, and patronage are still commonly accepted in hiring, firing and promotion of civil servants, but these practices have been reduced slightly by the growing public monitoring.

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ade Irawan, executive member of ICW (Indonesia Corruption Watch), September 18, 2009, Bandung.

WordPress, Mikekono, December 10, 2008, Selection of CPNS Indication of Collusion, Corruption and Nepotism," <http://mikekono.wordpress.com/2008/12/10/seleksi-cpns-terindikasi-kkn/>

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | **50** | 25 | 0

Comments:

Job descriptions for civil servants can be downloaded at the government website.

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ade Irawan, executive member of ICW (Indonesia Corruption Watch), September 18, 2009, Bandung.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Bonuses for civil servants from participation in government projects are higher than their salaries.

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ade Irawan, executive member of ICW (Indonesia Corruption Watch), September 18, 2009, Bandung.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ade Irawan, executive member of ICW (Indonesia Corruption Watch), September 18, 2009, Bandung.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

There is a national organization called ORI (Ombudsman Republik Indonesia).

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ilham Cendikia S., Experts Complain About Mechanism at Pattiro, (Center for Regional Studies and Information), September 25, 2009, Bandung.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants usually have been paid on time.

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Rakyataceh.com, editorial, February 27, 2009, Honorary Pay Salaries on Time, <http://rakyataceh.com/index.php?open=view&newsid=8482&tit=LHOKSEUMAWE%20-%20Bayar%20Gaji%20Honor%20Tepat%20Waktu>

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | **25** | 0

Comments:

In law, corrupt ex-convicts are allowed to apply as civil servants, but a citizen who has been proved to break the law is forbidden to apply as a civil servant for certain departments.

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ade Irawan, executive member of ICW (Indonesia Corruption Watch), September 18, 2009, Bandung.

JPNN online, Ara, March 24, 2009, Constitutional Court Restores Ex-Convict's Political Rights as the Next Legislator for Governor/Regent, http://www.jpnn.com/index.php/index.php?mib=berita_detail&id=16122

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

50

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

Chapter IV: Rights and Obligations of State Officials, Article 5 (3), Law No. 28, 1999, on a state administration free from corruption, collusion, and nepotism.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | **NO**

Comments:

There is no regulation on this matter.

References:

There is no regulation on this matter.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

References:

There is no regulation on this matter.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Articles 12B and 12C, Law No. 20, 2001, about change for Law. No. 31, 1999, Corruption Eradication.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

The independent auditor for this asset-disclosure form is the Corruption Eradication Commission/KPK/Komisi Pemberantasan Korupsi.

References:

Law No. 30, 2002, Corruption Eradication Commission/KPK/Komisi Pemberantasan Korupsi.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ade Irawan, executive member of ICW (Indonesia Corruption Watch), September 18, 2009, Bandung.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | **25** | 0

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ade Irawan, executive member of ICW (Indonesia Corruption Watch), September 18, 2009, Bandung.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | **50** | 25 | 0

References:

Ajeng, Chairman, MP3, Community Care Service Delivery, Yappika (Indonesia Friendship Foundation of Canada), September 18, 2009, Bandung.

Ade Irawan, executive member of ICW (Indonesia Corruption Watch), September 18, 2009, Bandung.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

These asset disclosures are audited by the auditor on the Corruption Eradication Commission/KPK/Komisi Pemberantasan Korupsi.

References:

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

Arif Nur Alam, Director, IBC (Indonesia Budget Center), September 7, 2009, South Jakarta.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

KPK decision (KEP.07/KPK/02/2005).

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Previously, citizens could access these disclosures from the Corruption Eradication Commission (KPK). The KPK's vice chief stated that parliament members questioned KPK's authority to disclose the asset-declaration forms. They argued that according to Law No. 28, 1999, the KPK has the authority to investigate the records, but not to publish them. It is possible that the newly enacted Freedom of Information law could address this in the future, once it is implemented.

References:

ICW Website (Indonesian Corruption Watch), no name given, November 3, 2008, KPK Akan Buka Lagi Akses Terhadap LHKPN, (Commission Will Again Open Access to LHKPN), <http://antikorupsi.org/indo/content/view/13573/1/>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

ICW Website (Indonesian Corruption Watch), no name given, November 3, 2008, KPK Akan Buka Lagi Akses Terhadap LHKPN, (Commission Will Again Open Access to LHKPN), <http://antikorupsi.org/indo/content/view/13573/1/>

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

References:

www.jakarta.wartaegov.com, Dummy, June 1, 2008, 100 Pejabat Pemerintah Terkaya Indonesia, (The 100 Richest Indonesian Government Officials), http://jakarta.wartaegov.com/index.php?option=com_content&view=article&id=659&catid=34:wartautama&Itemid=54

Sulastio, Director, IPC (Indonesian Parliamentary Center), September 14, 2009, in Bogor.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

50

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The above regulation is not specific for civil servants.

References:

Law No. 13, 2006, on Protection of Witnesses and Victims, Article 1.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

The civil servant who reports cases of corruption is usually transferred to another division.

References:

Ade Irawan, executive member of ICW, Indonesia Corruption Watch (ICW), September 18, 2009, Bandung.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

It is not specific for private-sector employees.

References:

Law No. 13, 2006, on Protection of Witnesses and Victims.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

References:

Ade Irawan, executive member of ICW, Indonesia Corruption Watch, September 18, 2009, Bandung.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

94

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Each has staffs for the internal-reporting mechanism.

References:

Ade Irawan, executive member of ICW, Indonesia Corruption Watch, September 18, 2009, Bandung.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

This commission has regular funding from the national budget/APBN/Anggaran Pendapatan Belanja Negara.

References:

Ade Irawan, executive member of ICW, Indonesia Corruption Watch, September 18, 2009, Bandung.

Law No.30, 2002, on the Anti Corruption Commission/KPK/Komisi Pemberantasan Korupsi.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | **75** | 50 | 25 | 0

References:

Ade Irawan, executive member of ICW, Indonesia Corruption Watch, September 18, 2009, Bandung.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

This internal reporting mechanism is anti corruption commission / KPK / Komisi Pemberantasan Korupsi

References:

Ade Irawan, executive member of ICW, Indonesia Corruption Watch, September 18, 2009, Bandung.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

Law 30, 2002, on the Anti Corruption Commission/KPK/Komisi Pemberantasan Korupsi.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

81
IV-3. Procurement

51. Is the public procurement process effective?

90

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Presidential Regulation No. 80, 2003, about Implementation of Manual on Procurement, Article 5(e).

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Presidential Regulation No. 80, 2003, about Implementation of Manual on Procurement, Article 10(4).

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

References:

Yana Ismayana, Project Officer for Procurement Reforms for Indramayu District A at B-Trust, September 18, 2009, Bandung.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The Audit Board (Badan Pemeriksa Keuangan — BPK) is the institution that would theoretically be responsible for monitoring the assets, incomes and spending habits of public procurement officials.

References:

Presidential Regulation No. 80, 2003, about Implementation of Manual on Procurement, Article 48 (4, 5).

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

Presidential Regulation No. 80, 2003, about Implementation of the Manual on Procurement, Article 10 (1).

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

Sole sourcing is only allowed for procurement worth less than 50 million rupiahs (US\$5,249).

References:

Presidential Regulation No. 8, 2006, about the fourth change of Presidential Decision No. 80, 2003, concerning the Implementation of the Manual on Procurement, Article 1 (22).

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Presidential Regulation No. 80, 2003, about the Implementation of the Manual on Procurement. Article 27 (1).

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Presidential Regulation No. 80, 2003, about the implementation of the Manual on Procurement, Article 27 (3, 4, and 5).

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES

NO

References:

Presidential Regulation No. 80, 2003, about the implementation of the Manual on Procurement. Article 35.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100

75

50

25

0

Comments:

The regulation is not effective. There is public secret that company changes its name in order to participate in future procurement bids.

References:

Yana Ismayana, Project Officer for Procurement Reforms for the Indramayu District A at B-Trust, September 18, 2009, Bandung.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

75

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

Presidential Regulation No. 80, 2003, about the implementation of the Manual on Procurement, Article 3.

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Presidential Regulation No. 80, 2003, about the implementation of the Manual on Procurement, Article 20.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Yana Ismayana, Project Officer for Procurement Reforms for the Indramayu District A at B-Trust, September 18, 2009, Bandung.

Ibnu Jandi, Director of the Institute for Public Policy for Tangerang District, January 19, 2010, Bandung

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Yana Ismayana, Project Officer for Procurement Reforms for the Indramayu District A at B-Trust, September 18, 2009, Bandung.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Yana Ismayana, Project Officer for Procurement Reforms for the Indramayu District A at B-Trust, September 18, 2009, Bandung.

Ibnu Jandi, Director Institute of Public Policy for Tengerang District, January 19, 2010, Bandung

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full

participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | **50** | 25 | 0

References:

Yana Ismayana, Project Officer for Procurement Reforms for the Indramayu District A at B-Trust, September 18, 2009, Bandung.

Ibnu Jandi, Director of the Institute of Public Policy for Tangerang District, January 19, 2010, Bandung

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Article 3, Government Regulation No. 33, 2005, about the arrangement of PERSERO privatization.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

Conflict-of-interest regulations for government officials involved in privatization are enforced sometimes. It would be incorrect and perhaps naive to assert that this is the case across the board. The Indonesian people are well aware of corruption in their country up to the highest levels of government and joke about it frequently.

References:

Article 3, Government Regulation No. 33, 2005, about the arrangement of PERSERO privatization.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

Hamong Santono, National Coordinator for KRUHA People's Coalition for the Rights to Water), September 18, 2009, Jakarta.

Fabby Tumiwa, Executive Director for the Institute for Essential Services Reforms (IESR), September 18, 2009, Jakarta.

Pelita online, Tri Widiyono, October 15, 2009, Privatization is for ?, <http://pelita.or.id/baca.php?id=7132>

Sekilas Indonesia online, Dtk/Tam, June 23, 2009, Loading of Ruler's Interest, Statet Enterprise Management, is Inefficient, <http://sekilasindonesia.com/2009/06/sarat-kepentingan-penguasa-pengelolaan-bumn-tak-efisien/>

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

95

54a. In law, citizens can access privatization regulations.

YES | NO

References:

Article 3, Government Regulation No. 33, 2005, about the arrangement of PERSERO privatization.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Hamong Santono, National Coordinator for KRUHA (People's Coalition for the Rights to Water), September 18, 2009, Jakarta.

Fabby Tumiwa, Executive Director for the Institute for Essential Services Reforms (IESR), September 18, 2009, Jakarta.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Article 3, Government Regulation No. 33, 2005, about the arrangement of PERSERO privatization.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Hamong Santono, National Coordinator for KRUHA (People's Coalition for the Rights to Water), September 18, 2009, Jakarta.

Fabby Tumiwa, Executive Director for the Institute for Essential Services Reforms (IESR), September 18, 2009, Jakarta.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Hamong Santono, National Coordinator for KRUHA (People’s Coalition for the Rights to Water), September 18, 2009, Jakarta.

Fabby Tumiwa, Executive Director for the Institute for Essential Services Reforms (IESR), September 18, 2009, Jakarta.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁸⁴ National Ombudsman

56. Is the national ombudsman effective?

75

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

Before enacting Law 37, 2008, the ombudsman was part of the presidential institution, although operationally they were independent. After enacting Law 37, 2008, the Ombudsman of Indonesia became a state institution, like KPK (Komisi Pemberantasan Korupsi).

References:

Article 2, Law No 37, 2008, www.depdagri.go.id

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Now, the ombudsman is still independent, but the next ombudsmen should be voted in by parliament members. Therefore, this institution will be a potential cause of political interference.

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman.

Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

The Ombudsman of the Republic of Indonesia (ORI) Report, 2008.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

Recruitment of the ORI staff is still a debated problem between the government and ORI members. The Government prefers to support ORI with government officials and under the coordination of the Government Human Resources Board (BKN). But ORI members want to design independent recruiting to save the ORI from political interference from the presidential institutions.

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman.

Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman.

Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The main funding of the ORI is from the APBN, but they have partnerships with international donor funds, as with USAID.

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman.

Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The ORI makes yearly reports. They publish on a website and make hard-copy reports.

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman.

Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

<http://www.ombudsman.go.id/index.php/publikasi.html>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

They do investigations based on complaints.

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman, Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

www.borneotribune.com , April 22, 2009, Public complaints Nanga Kalis (Ombudsman Investigates into the Kapuas Hulu), <http://www.borneotribune.com/headline/aduan-masyarakat-nanga-kalis-ombudsman-investigasi-ke-kapuas-hulu.html>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the ORI follows up complaints until there is clarification by letter and mediation.

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman.

Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Ombudsman may carry out mediation roles, namely to reconcile with the government informant, for example. However, not all cases can be resolved, especially due to political issues such environmental and spatial planning issues.

There is another problem, that not all government agencies and the public schools of the functions and existence of the ombudsman. So, there are not a lot of complaints handled by the Ombudsman.

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman.

Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

Ombudsman Yearly Report in 2007.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

For simple issues, they act in less than a month. For larger issues, they should act within two months, but, in fact, many cases are delayed.

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman.

Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

Citizens can access reports from a website.

References:

Act 42, Law 37, 2008, www.ombudsman.go.id

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

At the website we only get access Yearly Report until 2007. Next year 2008, ORI not publish report on the website. And then, ORI have administrative problem after enacting become state agency. Report printing for example must be procured by State Secretary. ORI is not yet independent on administrative. But they have good will to publish easily on the website after on new office at 7 Oct 2009. (When we came to this commission, they gave us a soft copy of its annual report.)

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman.

Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Patnuaji Indrarto, SS information and communication staff of the Republic of Indonesia Ombudsman.

Ombudsman Office Jl. Adityawarman, No 42, September 10, 2009.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

Comments:

National Ombudsman more legitimate by enactment of Public Services, Law No 25, 2009, http://www.depdagri.go.id/konten.php?nama=ProdukHukum&op=detail_hukum&id=2313

References:

Law No.37, 2008, Ombudsman Republik Indonesia, www.ombudsman.go.id

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

78

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Article 2, Law 15, 2006, www.bpk.go.id

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

In the fact, BPK is not independent. In the last corruption case (Century Bank) BPK was ordered to audit Century Bank. They said that BPK independent. But there are supposed political game of general election fund. And BPK is supposed protecting one group. This case still investigated. So the head of BPK can be removed by president like KPK (anti-corruptions agency).

References:

Batampos.co.id, KPK Kejar Ketua BPK, Friday, June 19, 2009, <http://www.mediaindonesia.com/read/2009/09/09/94191/70/13/Independensi-BPK-di-Kasus-Century->

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Researcher of Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), 19 September 2009.

Tempointeraktif.com, because corrupt BPK officials get four years in jail, March 18, 2009.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

INILAH.com, Lobbying on Audit Agency Member (BPK) Selection," September 11, 2009.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Article 35, Law 15, 2006, BPK receives regular funding from the APBN.

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

BPK gives regular reports to the DPR, www.bpk.go.id

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

Tempointeraktif.com, Local Government Official Does Not Agree With BPK 's Audit Results", September 4, 2008.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

Strategic Plan of BPK, www.bpk.go.id

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

The results of the examination of the management and accountability of the state finances have been submitted to the DPR, DPD (parliament agency), and Parliament and are open to the public.

References:

Article 7, Law No 15, 2006.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

Audit Reports of BPK, www.bpk.go.id

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

References:

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

Interim Reports of BPK, www.bpk.go.id

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

UUD, 1945, Articles 23 E, F and G.

Law No 15, 2006, Badan Pemeriksa Keuangan (BPK).

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Kompas Cyber Media, September 28, 2007.

Jawa Pos, June 3, 2008, <http://www.pajakonline.com/engine/artikel/art.php?artid=2244>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Finance Department: Tax agency is Funded by APBN," www.depkeu.go.id

Interview with Riyan Sumindar, Researcher, Open Budget Index (OBI), International Budget Project, September 19, 2009.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

Ethics of custom and excise agency officials, www.beacukai.go.id

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

The customs and excise agency receives regular funding from the APBN, www.depkeu.go.id

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

This agency is the Direktorat Jendral Pajak. It is a division within the Finance Department.

References:

The Direktorat Jenderal Pajak (Tax General Directorate) is a division within the Finance Department, www.pajak.go.id

Law No 28, 2007, about Indonesian Regulation of Taxation.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

There is tax discrimination for female workers, <http://kilasberita.com/kb-news/kilas-indonesia/13241-buruh-wanita-yogya-minta-pemerintah-hapuskan-diskriminasi?format=pdf>

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

Direktorat Jendral Bea dan Cukai (Custom and Excise General Directorate), Finance Minister Regulation, No. 131, PMK.01, 2006, about the organization and job descriptions within the Finance Department, www.beacukai.go.id

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Antara East Java, "Increasing Cigarette Excise Tax was Discriminative Regulation," February 11, 2009, www.antarajatim.com

Riyan Sumindar, Researcher, Open Budget Index (OBI), Bandung Institute of Governance Studies (BIGS), September 19, 2009.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

60

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

There is no law that the protected state-owned Companies Department must be free of political interference.

References:

Law 19, 2003, www.bumn-ri.com

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Law No 43, 1999, about state officials.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The ministry of the state-owned companies is a department below that of the president and works within the law so they get regular funding from the APBN.

References:

General information about the ministry of state-owned companies, www.bumn-ri.go.id

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Antara News, August 31, 2009, Ministry of State-Owned Companies Investigated PINDAD about Weapons Transactions,” www.antara.co.id

Detik Finance, March 27, 2009, “The Government Investigates all BUMN Karya (infrastructure) Accounting,” www.detikfinance.com

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Detik Finance, December 4, 2008, State-Owned Companies Transacting Speculative Products Can Be Penalized, www.detikfinance.com

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

80

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Article 51, Law No.19, 2003, about the Badan Usaha Milik Negara (BUMN).

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | **75** | 50 | 25 | 0

References:

Viva News, April 19, 2009, 47 State-Owned Companies Have Not Yet Handed Over Financial Reports," www.vivanews.com

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

BPK (National Audit Agency) has made a list of public accountants to audit the SOEs. Not all SOEs can be audited according to international auditing standards; only state-owned enterprises that go public are required to follow international auditing standards.

References:

Tempointeraktif, March 22, 2007, Standard of Financial Reports for State-Owned Companies was Uniformity," www.tempointeraktif.com

Tempointeraktif, May 31, 2007, "BPK (National Audit Agency) Audit Difficulties with SOEs," www.tempointeraktif.com

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Pertamina, September 23, 2009, Annual Report of Pertamina, 2006 and 2007, www.pertamina.com

Meneg BUMN, September 23, 2009, Financial Reports of State-owned Companies," <http://www.bumn-ri.com/#>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access summaries of financial reports from a website, but not complete reports.

References:

Pertamina, September 23, 2009, Annual Report of Pertamina, 2006 and 2007, www.pertamina.com

Meneg BUMN, September 23, 2009, Financial Reports of State-owned Companies," <http://www.bumn-ri.com/#>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

The duties of the state-owned Companies Department (Kementrian BUMN) is to make policy and to oversee the BUMN.

References:

Article 6, Law No 19, 2003, www.bumn-ri.com

Audit Committee for State-Owned Enterprises (BUMN), BUMN Minister Regulation No.103/Mbu, 2002, about the formation of the Audit Committee for the BUMN.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

80 V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

YES | NO

References:

Law No. 40, 2007, www.depdagri.go.id

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Minister of Home Affairs, Regulation No. 24, 2006, Manual on Implementing One-Stop Service.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Goris Mustakim, young entrepreneur, interview, September 23, 2009.

The World Bank's Business Report, June 2008/May 2009, Starting a Business in 2010," www.doingbusiness.org

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

World Bank's Doing Business in Indonesia," June 2008/May 2009, www.doingbusiness.org

Goris Mustakim, young entrepreneur, interview, September 23, 2009.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Article 71A, Government Regulation No. 14, 1993.

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Environmental Minister Decision No. 35-A, 1995, Evaluation of Company Performance.

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

Law No.1, 1970, Work Security.

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

References:

Goris Mustakim, young entrepreneur, interview, September 23, 2009.

No funding for Work Security Evaluation at DKI," May 20, 2009, okezone.com

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Goris Mustakim, young entrepreneur, interview, September 23, 2009.

99 Environment Cases Neglected," June 5, 2009, www.walhi-jogja.or.id,

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

No funding for Work Security Evaluation at DKI," May 20, 2009, Okezone.com

Goris Mustakim, young entrepreneur, interview, September 23, 2009.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

VI-1. ~~77~~ Anti-Corruption Law

73. Is there legislation criminalizing corruption?

78

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

We have ratified the UN Convention Against Corruption, 2003, through Law No. 7, 2006.

References:

Article 2, Chapter II, Law No. 20, 2001, Concerning Amendment to Law No. 31, 1999, Concerning Corruption Eradication.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

Article 12 (e), Law No. 20, 2001, concerning the Amendment to Law No. 31, 1999, concerning Corruption Eradication.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

We have ratified the UN Convention Against Corruption, 2003, through Law No. 7, 2006.

References:

Article 5 (1), Law No. 20, 2001, concerning the Amendment to Law No. 31, 1999, concerning Corruption Eradication.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

We have ratified the UN Convention Against Corruption, 2003, through Law No. 7, 2006.

References:

Article 5 (2), Law No. 20, 2001, concerning the Amendment to Law No. 31, 1999, concerning Corruption Eradication.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

Until now, the handling of corruption cases still used Law Number 28 Year 1999 which does not have provisions on bribery of foreign officials. About this emerging in UNCAC, this was newly ratified by Indonesia in 2006. And so far Indonesia has not made the revision of the Anti-corruption Act in 1999. This means that Indonesia still has no provisions on bribery of foreign officials in anti-corruption law.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | **NO**

Comments:

There is no regulation on this matter.

References:

There is no regulation on this matter.

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

And this law will be implemented on April 31, 2010

References:

article 51, Law No. 14 Year 2008 concerning Disclosure of Public Information

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

Law No. 25, 2003, concerning the Amendment to Law No. 15, 2002, concerning Anti-Money Laundering.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Law No. 15, 2003, Terrorism Eradication; Article 340, Indonesian Penal Code (KUHP).

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

83

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

In fact, many observers said that government intervention for this commission is very large.

References:

Article 3, Law No. 30, 2002, Corruption Eradication Commission (Komisi Pemberantasan Tindak Pidana Korupsi, also known as

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

The government's decision to release Perppu (government regulation to substitute the law) due to a vacuum of leadership in the KPK is considered by many elements of a civil-society organization as political interference by the government.

References:

Kilasberita.com, asd/dtc, May 18, 2009, "KPK Masih Dibawahl intervensi Politik" (KPK still under political intervention), <http://www.kilasberita.com>.

Dr. Hernawati R.A.S, S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | **75** | 50 | 25 | 0

Comments:

On September 16, 2009, two heads of the KPK are stated to be suspect because of authority abuses. It is not the bribery case as alleged.

References:

Media Report: Kompas, Ingrid Dwi Wedhaswary, May 5, 2009, DPR Pertanyakan Kasus Non-Aktif, Undang-Undang Tidak Mengantisipasi,” (DPR asking about non-active status; such status was not anticipated for legislation), <http://www.kompas.com>

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The KPK officials were appointed by Parliament. However, some politicians were able to endorse their political agenda within the selection process.

References:

Inilah.com, Nuz, May 6, 2009, Pukat: Pejabat KPK Harus Psikotes,” (Pukat: KPK officials must take psychological test), <http://www.inilah.com>

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Currently, two of the deputy leaders of the KPK were named as suspects because of authority abuses.

References:

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

Media Indonesia, Nurulia Juwita Sari, September 16, 2009, Penetapan Tersangka Dua Pimpinan KPK Dipaksakan,” (Suspect determination of two KPK chairmen was forced), <http://www.mediaindonesia.com>

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Hukum online, Fat, February 12, 2009, Permintaan KPK Untuk Tambah Anggaran Dipertanyakan,” (KPK budget proposal questioned), <http://www.hukumonline.com>

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency’s funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

DPR Online, Rat, February 16, 2009, Ketua DPR Terima Laporan Tahunan KPK," (The head of Parliament received the KPK report), <http://www.dpr.go.id>

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

In current debate in Parliament, the KPK mandate will be reduced; there is an aspiration to diminish the KPK's authority to prosecute and to switch this authority to the Public Attorney (kejaksaan).

References:

Republika Newsroom, Pur, September 13, 2009, Tanpa Kewenangan, KPK Lumpuh," (minus authority, KPK paralyzed) <http://www.republika.co.id>

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

Kompas.com, Inggried Dwi Wedhaswary, September 11, 2009, PKS: Kewenangan KPK Harus Sampai Penuntutan,” (Prosperous and Justice Party (PKS): KPK authority must extend to prosecution), <http://www.kompas.com>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

75

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

Metro TV, R.A.S., March 3, 2009, KPK: Penangkapan Hadi Berdasarkan Laporan Warga,” (KPK : Hadi arrest based on citizen report), <http://www.metrotvnews.com>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung..

Koran Radar, TMN/KPL, September 11, 2009, Kinerja Agak Lamban: KPK Digugat Karena Mengabaikan Laporan Masyarakat,” (Slow performance: KPK sued for ignoring citizen report), <http://www.koran-radar.com>

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

Law No. 30, 2002, Corruption Eradication Commission (Komisi Pemberantasan Korupsi, also known as KPK), Web source, <http://www.kpk.go.id/>

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

86
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

92

77a. In law, there is a general right of appeal.

YES | NO

References:

Article 196 (3), Letter d, Law No. 8, 1981, Law of Criminal Procedure.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Arip Yogiawan S.H., Lawyer, Bandung Legal Aid Institute (LBH-Bandung), September 9, 2009, Bandung.

Tempo Magazine, Adek Media, Hamluddin, Cornila Desyana, Erick P. Hardi, February 02, 2009, Dibebaskan Memori Lamban” (Released by late appeal) .

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Arip Yogiawan S.H., Lawyer, Bandung Legal Aid Institute (LBH-Bandung), September 9, 2009, Bandung.

Tempo Interaktif, Sutarto, March 27, 2009, Biaya Permohonan Banding Dan Kasasi Diseragamkan” (Cost of Appeals Uniform), <http://www.tempointeraktif.com>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

100

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Arip Yogiawan S.H., Lawyer, Bandung Legal Aid Institute (LBH-Bandung), September 9, 2009, Bandung.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

Arip Yogiawan S.H., Lawyer, Bandung Legal Aid Institute (LBH-Bandung), September 9, 2009, Bandung.

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Chapter IX, Judicial Power, Article 24 (1), Indonesian Constitution, 1945.

Article 4 (3), Law No. 4, 2004, Judicial Power.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Dr. Atma Suganda, S.H., M.Hum., Dean of Faculty of Law, University of Langlangbuana, September 10, 2009, Bandung.

Inilah.com, Windi Widia Ningsih, July 31, 2009, Putusan MA Jadi Simalakama KPU," (Supreme Court decision, a simalakama for KPU), <http://www.inilah.com>

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Law No. 8, 1981, Law of Criminal Procedure (also known as KUHP).

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Article 12 (1) (2), Law No. 5, 2004, concerning the change for Law No. 14, 1985, concerning the Supreme Court.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

Dr. Atma Suganda, S.H., M.Hum., Dean of Faculty of Law, University of Langlangbuana, September 10, 2009, Bandung.

Zaki Yamani, Pikiran Rakyat, September 18, 200, Bandung.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Dr. Atma Suganda S.H., M.hum., Dean of Faculty of Law, University of Langlangbuana, September 10, 2009, Bandung.

Zaki Yamani, Pikiran Rakyat, September 18, 200, Bandung.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

46

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Arip Yogiawan, S.H., Lawyer, Bandung Legal Aid Institute (LBH-Bandung), September 9, 2009, Bandung.

Dr. Atma Suganda S.H., M.Hum., Dean of Faculty of Law, University of Langlangbuana, September 10, 2009, Bandung.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Arip Yogiawan S.H., Lawyer, Bandung Legal Aid Institute (LBH-Bandung), September 9, 2009, Bandung.

Dr. Atma Suganda S.H., M.Hum., Dean of Faculty of Law, University of Langlangbuana, September 10, 2009, Bandung.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

There is no regulation on this matter.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Article 37, Law No. 4, 2004, concerning Judicial Power explains that anyone who commits a crime has a right to legal aid. However, this act does not explain that the state will provide legal counsel for defendants; such obligations fell to advocates. They (the lawyers) are required to provide assistance to justice seekers (Article 22, Law No. 18, 2003, concerning advocates), hence the role of the state is very minimal (e.g., the state doesn't provide a budget for legal aid). Currently, there is debate in civil society to endorse a bill of legal aid to become law.

References:

Hukum Online, Ash, May, 15, 2009. Organisasi Advokat Masih Godok Konsep Bantuan Hukum Cuma-Cuma," (Advocate's organization still examines free legal aid concept), www.hukumonline.com

Arip Yogiawan, S.H., Lawyer, Bandung Legal Aid Institute (LBH-Bandung), September 9, 2009, Bandung.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Arip Yogiawan S.H., Lawyer, Bandung Legal Aid Institute (LBH-Bandung), September 9, 2009, Bandung.

Dr. Atma Suganda, S.H., M.Hum., Dean of Faculty of Law, University of Langlangbuana, September 10, 2009, Bandung.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | **25** | 0

References:

Arip Yogiawan, S.H., Lawyer, Bandung Legal Aid Institute (LBH-Bandung), September 9, 2009, Bandung.

Dr. Atma Suganda, S.H., M.Hum., Dean of Faculty of Law, University of Langlangbuana, September 10, 2009, Bandung.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | **50** | 25 | 0

References:

Arip Yogiawan, S.H., Lawyer, Bandung Legal Aid Institute (LBH-Bandung), September 9, 2009, Bandung.

Dr. Atma Suganda, S.H., M.Hum., Dean of Faculty of Law, University of Langlangbuana, September 10, 2009, Bandung.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

58

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

Tribun Jabar, Jaenudin, June 4, 2009, Rekrutmen Anggota Polri Yang Bebas KKN," (Free of corruption, collusion and nepotism for police recruitment), <http://www.tribunjabar.co.id>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

Inilah.com, dil, November 18, 2008, Anggaran Polri Akan Naik Jadi Rp. 44 Triliun,” (Police agency’s budget will increase US\$4,595,300,261) <http://www.inilah.com>;

Kompas.com, Inggried Dwi Wedhaswary, September 3, 2009, “Kapolri-DPR Bahas Anggaran Polri” (The head of Indonesian Police Agency and Parliament discussing Police Agency budget) <http://www.kompas.com>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency’s ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

The recent arrest of two leaders of the KPK, Bibit Samad Riyanto and Chandra Hamzah, by the police agency is considered an attempt to weaken the prosecution on a corruption case.

References:

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

Republika, February 25, 2009, Penegakan Hukum Masih di Intervensi Politik” (Political intervention still influences law enforcement), <http://www.republika.co.id>;

Warta Kota, Moe, March 19, 2009, “Polisi Diintervensi” (Police intervention), <http://www.wartakota.co.id>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | **NO**

References:

There is no regulation on this matter.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There is no clear mechanism for citizens to complain about police actions. However, police who are involved in a felony or crime can be reported and prosecuted through criminal proceedings.

References:

Jawa Pos, Kuh/Roz, September 14, 2009, Polisi Pemas Ditangkap" (Police exploiter arrested), <http://www.jawapos.co.id>

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Law No. 30, 2002, Corruption Eradication Commission (Komisi Pemberantasan Korupsi, also known as KPK),
webservice: <http://www.kpk.go.id/>

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung.

Tempointeraktif, Cheta Nilawaty, September 9, 2009, "KPK Kaji Kemungkinan Polisi Terlibat Kasus Bank Century" (KPK investigates the possibility of police involvement in the case of Century Bank), <http://www.tempointeraktif.com>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Article 29 (1), Law No. 2, 2002, concerning the Indonesian National Police.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

Dr. Hernawati, R.A.S., S.H., M.Si., Staff Lecturer, Faculty of Law, University of Langlangbuana, September 14, 2009, Bandung

Tempointeraktif, Erick P. Hardi, February 5, 2009, Menipu, Tiga Perwira Polisi Dipenjara Setahun," (Three deceptive police officers arrested for a year), <http://www.tempointeraktif.com>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
